

23535

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable Thomas A. Russo, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF MICHAEL A. FULTON,

APPELLANT

APPELLATE CASE NO. 2017-000012

RECORD ON APPEAL

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State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-CP-21-02226

In the matter of
Michael A. Fulton,

Transcript of Record

December 5&7&8, 2016
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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1 DECEMBER 5, 2016

2 (WHEREUPON, the proceedings began at 11:14 a.m.)

3 THE COURT: Folks, if y'all don't mind, I'm going to get
4 you to come through and have a seat in the jury room right
5 there. Okay?

6 A JUROR: Okay.

7 THE COURT: Yes, ma'am. Right through that door and
8 straight to the next one. And I'll -- I'll call y'all back
9 out in just a little bit. Okay? That first door there.

10 (WHEREUPON, Jurors Number 20, 33, 50, 67, 72, and 79
11 exited the courtroom to the jury room.)

12 THE COURT: Have you got the sheets?

13 MR. BOGLE: In advance, what are the numbers? Jury
14 numbers?

15 THE COURT: I'm going to give them to you in just a
16 minute. All right. We'll do it right now. Let's see. I'm
17 going to put them in numerical order.

18 Okay. We have Juror Number 20, Douglas Carter; 33,
19 Crystal Davis; 50, Letitia Gilbert; 67, Joyce Jeffcoat; 72,
20 Shakail Keith; and 79, David King Lee. Okay?

21 MR. BOGLE: Thank you, Your Honor.

22 THE COURT: And we'll just take them in that order and
23 we'll bring out -- ask Douglas Carter to come out, if you
24 would, please?

25 (WHEREUPON, Juror Number 20 entered the courtroom.)

1 MR. FALK: Your Honor, just I don't want anything to blow
2 up. I think my client should be here.

3 THE COURT: Yeah. I apologize. Mr. Carter, let me get
4 you to just have a seat right there in that first seat right
5 there.

6 JUROR NUMBER 20: Okay.

7 THE COURT: Are there any other deputies up here?

8 THE DEPUTY: We're short today.

9 THE COURT: Okay. Can we get Mr. Fulton in?

10 MR. FALK: He was on the 11th. He was just down here.

11 THE COURT: Yeah. He should be.

12 THE DEPUTY: Did they have him on 11?

13 MR. FALK: Yeah.

14 THE DEPUTY: Okay.

15 (WHEREUPON, there was a pause in the proceedings until
16 the respondent entered the courtroom, after which the
17 proceedings resumed as follows.)

18 THE COURT: All right. Mr. Carter, thank you for being
19 up here. I'm just going to -- on the questionnaire, one of
20 the questions that you had circled -- the question that you
21 had circled -- the question is have you or anyone in your
22 immediate family ever been a victim of criminal sexual conduct
23 or sexual -- sexual abuse, whether reported or unreported.
24 That's the one you circled; correct?

25 JUROR NUMBER 20: Yes.

1 THE COURT: And, Mr. Carter, if you don't mind me asking,
2 was it yourself or a member of your family.

3 JUROR NUMBER 20: Member.

4 THE COURT: Okay. And --

5 THE COURT REPORTER: He needs to speak up.

6 THE COURT: Yeah, I'm going to get you to speak up a
7 little bit. Do you -- was the -- the sexual conduct or abuse
8 -- was that reported or unreported?

9 JUROR NUMBER 20: Unreported.

10 THE COURT: Unreported?

11 JUROR NUMBER 20: Yes, sir.

12 THE COURT: All right, sir. Now, here's what I want to
13 ask you and I know that -- that you know very little about
14 this case at all, but -- and I think for purposes of the
15 questioning, gentlemen, I'm going to have to give some
16 background as far as what this case is about.

17 MR. BOGLE: Uh-huh.

18 THE COURT: Mr. Carter, Mr. Fulton is going to be before
19 the Court and the State is seeking to -- or there is a -- the
20 determination that the jury is going to be asked to consider
21 is, based on evidence that is going to be presented, whether
22 or not Mr. Fulton should be classified under South Carolina
23 law as a sexually violent predator and be placed into
24 treatment for that type of conduct. That's what this trial is
25 about.

1 Now, the fact that you have this -- this history in your
2 family of someone who has been a victim of criminal sexual
3 conduct or sexual abuse, would that in any way affect your
4 ability to give both the State and the defense a fair and
5 impartial trial? Would it have any effect on your ability to
6 do that do you believe?

7 JUROR NUMBER 20: No, sir.

8 THE COURT: All right. You could set that aside and
9 judge this case based solely upon the testimony and the
10 evidence that is presented during the course of this trial?

11 JUROR NUMBER 20: Yes, sir.

12 THE COURT: All right, sir. Anything further as far as
13 --

14 MR. FALK: Your Honor, did he also circle number 3?

15 THE COURT: Number 3 was the one he circled. That was
16 the one I asked him about.

17 MR. FALK: Oh, I thought he circled number 1. Okay.

18 THE COURT: No, sir. Number 3 is the one that I asked
19 him about. All right.

20 MR. BOGLE: No, Your Honor. Nothing -- nothing from the
21 State.

22 THE COURT: Anything further?

23 MR. FALK: Yes, Your Honor. I would -- could I ask him
24 if it was a close -- could we ask if it was mother, daughter,
25 sister, brother?

1 THE COURT: What was the relation to you, Mr. Carter?
2 The family member?

3 JUROR NUMBER 20: Actually, it was my wife before I met
4 her.

5 MR. FALK: Your wife before you met her?

6 THE COURT: Prior to you -- okay. All right.

7 MR. FALK: Was that -- if I may ask one more question?
8 Was the perpetrator an adult? Was she an adult?

9 JUROR NUMBER 20: They were both under age.

10 MR. FALK: They were both under age?

11 JUROR NUMBER 20: Yes, sir.

12 THE COURT: Okay.

13 MR. FALK: Thank you.

14 THE COURT: All right. All right. Mr. Carter, what I'm
15 going to do is I'm going to -- I'll tell you what.

16 MR. FALK: Well, Your Honor, if I could just be heard?

17 THE COURT: Yeah.

18 MR. FALK: Okay.

19 THE COURT: But I'm going to -- the other folks are in
20 this room over here.

21 JUROR NUMBER 20: Yes, sir.

22 THE COURT: Ask -- get Mr. Carter to have a seat in the
23 other jury room. And if you'll just have a seat in the other
24 jury room and just be patient and I'll finish up and we'll get
25 back with you in a moment. Okay?

1 JUROR NUMBER 20: All right.

2 (WHEREUPON, Juror Number 20, exited the courtroom.)

3 THE COURT: All right. Mr. Bogle, do you wish to be
4 heard with regards to that -- that juror?

5 MR. BOGLE: I think he's fine. He said he could be fair.

6 THE COURT: All right. Mr. Falk?

7 MR. FALK: Your Honor, my concern about the case is that,
8 obviously, something that happens to your wife almost can feel
9 like something that's happened to you, and you're certainly
10 going to have some strong emotions about it. And from what I
11 can tell, it sounds like it was -- they were both underage; so
12 my hunch is it's probably both teenagers possibly.

13 And in that, some of the charges against -- some of the
14 past crimes for which my client has been charged were non-
15 consent.

16 THE COURT: Non --

17 MR. FALK: Date rape type of contact. Granted, in those
18 cases they were both -- no, it was. There was non-consensual
19 contact -- non-consensual contact between my client and other
20 females who also were underage, and I think it might hit a
21 little bit fair close to home for my -- in order for him to be
22 impartial, and we would ask that the Court would strike him
23 for cause.

24 THE COURT: All right. Well, I -- you know, I asked him
25 whether or not this would have any effect on his ability,

1 whether he could set this aside and judge the case based
2 solely upon the evidence and the testimony presented. He
3 indicated that he could. I -- it didn't seem -- he didn't
4 seem to hesitate or have any concern. Whatever occurred with
5 his spouse was before he ever met her and I think -- I think
6 I'm bound to take him at his word on that and I'm going to.

7 I'll note your exception, but I'm going to --

8 MR. FALK: Thank you.

9 THE COURT: I'm going to allow him to at least be in the
10 -- in the voir -- in the panel.

11 MR. BOGLE: Thank you, Your Honor.

12 THE COURT: All right. Ask -- ask Crystal Davis to come
13 out.

14 THE BAILIFF: Crystal Davis?

15 THE COURT: Yeah. And, guys, just so you know, Ms. Davis
16 marked 2, 3, and 4.

17 MR. BOGLE: 2, 3, and 4?

18 (WHEREUPON, Juror Number 33 entered the courtroom.)

19 THE COURT: Ms. Davis, could I get you to just -- you can
20 have a seat right there, please. Thank you, ma'am.

21 Ms. Davis, on -- with regards to the questionnaire, you
22 had marked questions 2, 3, and 4. I just have a few questions
23 to ask you.

24 JUROR NUMBER 33: Yes, sir.

25 THE COURT: And just so that the record is clear, I'll

1 read the question.

2 Question 2 was have you or anyone in your immediate
3 family ever been charged, accused or convicted of criminal
4 sexual conduct? And you had marked that one and let me just
5 ask was it yourself or a member of your family?

6 JUROR NUMBER 33: A member of my family.

7 THE COURT: All right. And was it a member of your
8 immediate family? Was it a cousin or a relative?

9 JUROR NUMBER 33: My immediate family.

10 THE COURT: What was the -- what was the relationship?

11 JUROR NUMBER 33: My father.

12 THE COURT: Your father? Okay. And you indicated -- it
13 said -- the question is ever been charged, accused or
14 convicted of. Was he convicted?

15 JUROR NUMBER 33: No, sir.

16 THE COURT: He was accused of that?

17 JUROR NUMBER 33: Yes, sir.

18 THE COURT: Okay. Was he ever charged with that?

19 JUROR NUMBER 33: No, sir.

20 THE COURT: Okay. So someone had accused him of that,
21 but it never came to a charge?

22 JUROR NUMBER 33: Yes, sir.

23 THE COURT: And so it never went to court?

24 JUROR NUMBER 33: No, sir.

25 THE COURT: Okay. All right. Question 3 you marked, and

1 that question is have you or anyone in your immediate family
2 ever been a victim of criminal sexual conduct or sexual abuse,
3 whether it was reported or unreported. Was that yourself or a
4 member of your family?

5 JUROR NUMBER 33: Member of my family.

6 THE COURT: Okay. And what family relationship?

7 JUROR NUMBER 33: It was my -- I had a father and two
8 cousins.

9 THE COURT: Okay. And with regards to that, were those
10 instances reported or unreported?

11 JUROR NUMBER 33: My cousins were reported.

12 THE COURT: The cousins were reported?

13 JUROR NUMBER 33: Yes, sir.

14 THE COURT: Your father's was unreported?

15 JUROR NUMBER 33: Yes, sir.

16 THE COURT: Okay. Were the -- the ones that were
17 reported, were there any charges ever come of that?

18 JUROR NUMBER 33: Yes, sir.

19 THE COURT: All right.

20 JUROR NUMBER 33: They did time for it.

21 THE COURT: And they -- did both of them?

22 JUROR NUMBER 33: Yes, sir.

23 THE COURT: Okay. And they both -- do you recall whether
24 it was a trial or a plea?

25 JUROR NUMBER 33: I'm not -- I'm not really sure.

1 THE COURT: Okay. But they both did time for that?

2 JUROR NUMBER 33: Yes, sir.

3 THE COURT: All right. And then the last question was do
4 you have strong beliefs about sexual abuse of any kind that
5 would affect you in being fair and impartial in the
6 consideration of the evidence in this case, and you've marked
7 that one?

8 JUROR NUMBER 33: Yes, sir.

9 THE COURT: Now, just so you have some understanding,
10 this -- in this case, Mr. Fulton -- the case is -- the State
11 has brought this -- this action seeking to have Mr. Fulton
12 before a jury to determine whether or not he would fit the
13 legal definition of a sexually violent predator and, if so,
14 the State is seeking to have him placed into a -- an
15 environment to get treatment for that, if that's the case, or
16 if the jury finds that he is -- he does not fit that
17 definition, and that's the question for the jury is whether he
18 fits that definition or does not fit that definition.

19 Is it your -- am I correct in your response to 4 that
20 your -- your experiences with this type of conduct in the past
21 with regards to your family that it would affect your ability
22 to be fair and impartial?

23 JUROR NUMBER 33: Yes, sir.

24 THE COURT: You don't believe you would be able to set
25 that aside and -- and --

1 JUROR NUMBER 33: No, sir.

2 THE COURT: Okay.

3 JUROR NUMBER 33: It's too personal. It was, you know,
4 too personal.

5 THE COURT: Oh, I understand. Sure.

6 JUROR NUMBER 33: Yes, sir.

7 THE COURT: Okay. All right. Well, I'll tell you what
8 I'm going to do, Ms. Davis. I'm going to -- I'm going to
9 excuse you from any participation in this case.

10 JUROR NUMBER 33: Yes, sir.

11 THE COURT: Okay? Now -- but what I'm going to do is I'm
12 going to get you to go back down to the 10th floor.

13 JUROR NUMBER 33: Yes, sir.

14 THE COURT: And have a seat because the case that we're
15 going to pull a jury on this morning is not this case. It's
16 another case.

17 JUROR NUMBER 33: Yes, sir.

18 THE COURT: Okay? So if you would, I'm going to get you
19 to go back down to the tenth floor --

20 JUROR NUMBER 33: Okay.

21 THE COURT: -- and just have a seat. And if you would do
22 me a favor?

23 JUROR NUMBER 33: Yes, sir.

24 THE COURT: Don't have any conversation with any of the
25 members of the panel about this charge.

1 JUROR NUMBER 33: Yes, sir.

2 THE COURT: Okay? Thank you, ma'am.

3 JUROR NUMBER 33: Uh-huh.

4 (WHEREUPON, Juror Number 33 exited the courtroom.)

5 MR. BOGLE: Judge, for recordkeeping purposes, are you
6 going to mark all these questionnaires, the six of them, all
7 with the same exhibit number or Court's Exhibits 1 through 6
8 or --

9 THE COURT: I'm going to mark these six as Court's
10 Exhibit 1.

11 MR. BOGLE: Okay.

12 THE COURT: As these six. I'm going to mark the
13 remaining ones as Court's Exhibit 2, the ones that -- that
14 reviewed the -- reviewed the questionnaire but did not mark
15 anything.

16 MR. FALK: Thank you.

17 MR. BOGLE: Thank you, Your Honor.

18 THE COURT: Okay. And -- and as you just heard that I
19 have excused Ms. Davis from participation in this case.

20 Now, let me ask -- other than Juror Number 72, Mr. Keith,
21 the remaining three jurors have all marked Number 4. Do you
22 want to go through this process with each one of those or
23 would the State consent to excuse those three for cause?

24 MR. BOGLE: That --

25 THE COURT: If you read the question, the question is

1 basically the question I'm going to ask.

2 MR. BOGLE: They've got to say it on the record. So I
3 guess you've got to bring them in and just point on that one.
4 Tell them what the case is briefly and point on that one
5 question. And then once they say it on the record --

6 THE COURT: Okay.

7 MR. BOGLE: I guess until they say it on the record, not
8 just check a block, then we'll know.

9 THE COURT: All right. All right. Well, that's fine.
10 Then we'll go -- we'll just go with our next juror. That
11 would be Juror Number 50, Ms. Gilbert. Would you get Ms.
12 Gilbert to step out, please?

13 (WHEREUPON, Juror Number 50 entered the courtroom.)

14 THE COURT: Ms. Gilbert, if you'd just have a seat there,
15 please? Thank you.

16 JUROR NUMBER 50: Here?

17 THE COURT: Yeah. That would be great. And I just want
18 to ask you a couple additional questions. In responding to
19 the questionnaire, question number 3 you had circled, and that
20 is have you or anyone in your immediate family ever been a
21 victim of criminal sexual conduct or sexual abuse, whether
22 reported or unreported. Was that yourself or a member of your
23 family?

24 JUROR NUMBER 50: Member of my family.

25 THE COURT: Okay. Was it -- what was the relationship?

1 JUROR NUMBER 50: It was an uncle and --

2 THE COURT: An uncle?

3 JUROR NUMBER 50: Yes, sir.

4 THE COURT: Was it reported or unreported?

5 JUROR NUMBER 50: Unreported.

6 THE COURT: Unreported? Okay. Now, you mentioned -- you
7 responded to question 4, which was do you have a strong -- do
8 you have strong beliefs about sexual abuse of any kind that
9 would affect you being fair and impartial in your
10 consideration of the evidence in this case.

11 And let me -- let me just share with you that -- and what
12 this case is about is Mr. -- Mr. Fulton. The State has
13 brought an action and they're seeking to have a jury to
14 determine whether or not Mr. Fulton would -- would meet the
15 standard under our state law of being classified as a sexually
16 violent predator.

17 If the jury were to find that he fits that definition,
18 the State is seeking to have him placed in a facility where he
19 can get treatment for that. If he -- if the jury does not
20 find that he is a sexually violent predator, then, of course,
21 there would be no need for treatment. But that's what this
22 case is about.

23 You've marked Number 4. Do you believe that your
24 experience with -- with this in your family that you mentioned
25 regarding your uncle -- would that affect your ability to be

1 fair and impartial?

2 JUROR NUMBER 50: Yes, sir.

3 THE COURT: Okay. You -- you would not be able to set
4 that aside and just focus on the evidence in this case?

5 JUROR NUMBER 50: No, sir.

6 THE COURT: Okay. All right. Well, I'm going to --
7 here's what I'm going to do, Ms. Gilbert. I'm going to excuse
8 you from any participation in this case.

9 JUROR NUMBER 50: Yes, sir.

10 THE COURT: Now -- but here's what I'm going to ask you
11 to do. I'm going to get you to go back down to the 10th floor.

12 JUROR NUMBER 50: Yes, sir.

13 THE COURT: And -- and get a seat back down there because
14 -- and, as I said, I'm going to excuse you from this case, but
15 we're not going to call a jury for this case this morning. We
16 have another case that we're going to pull a jury on. So I'm
17 going to let you just be a part of the panel for that other
18 case. Okay?

19 JUROR NUMBER 50: Yes, sir.

20 THE COURT: Now, when you go back down downstairs to the
21 10th floor and have a seat, don't have any discussion with any
22 of the jurors down there as -- as to our conversation up here.
23 Okay?

24 JUROR NUMBER 50: Yes, sir.

25 THE COURT: All right. Thank you, ma'am.

1 JUROR NUMBER 50: Yes, sir.

2 THE COURT: If you'll just go down to the 10th floor and
3 we'll be bringing you back up in just a little bit.

4 JUROR NUMBER 50: Yes, sir.

5 (WHEREUPON, Juror Number 50 exited the courtroom.)

6 THE COURT: Ask Mr. David Lee to come out. David Lee.

7 MR. BOGLE: Number 67?

8 THE COURT: 79.

9 MR. BOGLE: Oh, 79.

10 THE COURT: Yeah. I'm going to do 67 next.

11 MR. BOGLE: All right.

12 (WHEREUPON, Juror Number 79 entered the courtroom.)

13 THE COURT: Mr. Lee, if -- yeah, if I could get you to
14 have a seat there? In responding to the questionnaire, I see
15 that you have marked each of these as either -- whether
16 yourself or someone in your family -- whether this applies.

17 JUROR NUMBER 79: Uh-huh.

18 THE COURT: With regards to any of these questions, was
19 it yourself or a member of your family?

20 JUROR NUMBER 79: Member of my family.

21 THE COURT: Okay. And -- and let me just ask -- well,
22 let me back up a little bit and give you a little idea of what
23 this case is about.

24 JUROR NUMBER 79: Okay.

25 THE COURT: And then I'll ask you about -- about this.

1 In this case, Mr. Michael Fulton -- the State is bringing this
2 case before the jury asking the jury to consider whether or
3 not Mr. Fulton meets the state standards which would classify
4 him as a sexually violent predator.

5 JUROR NUMBER 79: Okay.

6 THE COURT: And if the jury were to find that he fits
7 that standard, then the State is seeking to have him placed
8 into a facility where he can get treatment for that. If the
9 jury finds that he does not fit that criteria, then -- of
10 course, then there is -- there is no further treatment or no
11 further action necessary.

12 That's what this case is about, but you've marked on the
13 questionnaire that you have strong beliefs about sexual abuse
14 that you believe would affect your ability to be fair and
15 impartial in this matter. Is that -- is that still what you
16 feel?

17 JUROR NUMBER 79: Yes.

18 THE COURT: Okay. Based upon the history that you've had
19 in your family or the experiences that you've had with regards
20 to members of your family, do you believe -- I mean would it
21 be possible for you to set that aside and judge this case
22 based solely on this evidence in here or do you think that --

23 JUROR NUMBER 79: Yeah.

24 THE COURT: That would come into play?

25 JUROR NUMBER 79: It's going to be -- yeah. It would

1 play a factor no matter what I believe.

2 THE COURT: Okay. So you don't -- you don't believe you
3 would be able to give both the State and the defense a fair
4 trial?

5 JUROR NUMBER 79: I don't believe so. No, sir.

6 THE COURT: Okay. All right. Well, let me -- Mr. Lee,
7 I'm going to get you to do this for me, if you would.

8 JUROR NUMBER 79: Uh-huh.

9 THE COURT: I'm going to send you back down to the 10th
10 floor.

11 JUROR NUMBER 79: Okay.

12 THE COURT: Because the jury that we're going to pull in
13 just a minute is not on this case. It's another case. It's a
14 contract case. Okay?

15 JUROR NUMBER 79: Yes, sir.

16 THE COURT: So I'm going to excuse you from any
17 participation in this case. Okay?

18 JUROR NUMBER 79: Okay.

19 THE COURT: But I will need you for the first case we're
20 going to pull, which is a different case.

21 JUROR NUMBER 79: All right.

22 THE COURT: Now, when you go back downstairs, just have
23 -- just have a seat with the rest of the panel.

24 JUROR NUMBER 79: Uh-huh.

25 THE COURT: But please do not discuss this conversation

1 with anybody downstairs. Okay?

2 JUROR NUMBER 79: Sure.

3 THE COURT: All right. Thank you, sir.

4 JUROR NUMBER 79: Uh-huh.

5 (WHEREUPON, Juror Number 79 exited the courtroom.)

6 MR. BOGLE: Your Honor, other than Question 4, which
7 others did he check?

8 THE COURT: All of them.

9 MR. BOGLE: All of them? Okay.

10 THE COURT: Now, the next juror that I'm going to bring
11 out is Joyce Jeffcoat, and she did not mark any -- any of the
12 questions other than 4.

13 MR. BOGLE: All right.

14 THE COURT: So I'll question her as to that.

15 MR. BOGLE: And she'll be number?

16 THE COURT: This is Number 67.

17 MR. BOGLE: 67.

18 THE COURT: Joyce Jeffcoat.

19 MR. BOGLE: She marked number 4? Thank you.

20 (WHEREUPON, Juror Number 67 entered the courtroom.)

21 THE COURT: Ms. Jeffcoat, if you -- yeah. If you could
22 just have a seat? Just -- I wanted to ask you -- you had --
23 just for -- I'm going to read the question just for the
24 record, the one that you marked. Okay?

25 So you marked the question number 4, which was do you

1 have strong beliefs about sexual abuse of any kind that would
2 affect you in being fair and impartial in your consideration
3 of the evidence in this trial, and that was the question that
4 you marked. Let me just give you just a brief explanation of
5 what this case is about and then I'll ask you some additional
6 questions.

7 This case -- Mr. Fulton -- the State has brought this
8 action and what the State is seeking is to put Mr. Fulton and
9 the evidence that they have before a jury to determine whether
10 or not Mr. Fulton meets the state requirements or the state
11 standards of being a sexually violent predator.

12 And if the jury finds that he meets that criteria, then
13 the State is seeking to have him placed into a facility where
14 he will receive treatment for that condition. If the jury
15 finds that he does not fit that criteria as a sexually violent
16 predator, then, of course, there would be no further action in
17 this case.

18 You have marked that you have such strong beliefs about
19 sexual abuse of any kind that you would not be able to be fair
20 and impartial in considering this case. Do you still believe
21 that to be the case, even --

22 JUROR NUMBER 67: Yes, sir, Your Honor.

23 THE COURT: Okay. So even though in this case, for the
24 purposes of this trial, Mr. Fulton is not being accused of a
25 new crime or a sexually violent crime, he's being considered

1 as to whether or not his past criminal conduct would fit the
2 criteria as being a sexually violent predator, do you feel
3 that your beliefs or your feelings with regards to that would
4 interfere and not allow you to give a fair and impartial
5 trial?

6 JUROR NUMBER 67: Yes, sir, Your Honor, I do.

7 THE COURT: Okay. All right. What I'm going to ask you
8 to do -- I'm going to excuse you from any participation in
9 this trial, but what I'm going to ask you to do is to go back
10 down to the 10th floor. The jury that we're going to pull
11 today is not this case. It is -- it's another case. It's a
12 contract case.

13 So I'm going to get you to be a part of the jury panel
14 for pulling the first case we have, but when it comes time for
15 this case, I'm going to excuse you from any participation in
16 this case. Okay?

17 So when you go down -- and I'm going to get you to go
18 back down to the 10th floor. If you would, please don't have
19 any conversation with any of the jury panel with regards to
20 this matter. Okay?

21 JUROR NUMBER 67: Okay.

22 THE COURT: Thank you, ma'am. If you'd go down to the
23 10th floor, we'll bring -- we'll bring you back up in just a
24 moment.

25 JUROR NUMBER 67: This way?

1 THE COURT: Yes, ma'am.

2 (WHEREUPON, Juror Number 67 exited the courtroom.)

3 THE COURT: All right. This last juror is Mr. Shakail
4 Keith, Number 72, and Mr. Keith marked questions 1, 2, and 3,
5 but not 4. Okay? Ask Mr. Keith if he would step in, please.

6 (WHEREUPON, Juror Number 72 entered the courtroom.)

7 THE COURT: Hey, Mr. Keith. Yeah, if you'd just have a
8 seat right there, if you would, please?

9 Mr. Keith, just for purposes of this record, I'm -- I'm
10 going to read the questions that you marked and then I've got
11 a couple of questions to ask you. Okay?

12 JUROR NUMBER 72: Okay.

13 THE COURT: You had marked Question 1, which says have
14 you or any member of your immediate family been charged,
15 accused or convicted of a crime involving any type of sexual
16 abuse, and you marked -- you marked that question. Was it
17 yourself or a member of your family?

18 JUROR NUMBER 72: A member of my family.

19 THE COURT: Okay. And -- and the question was were they
20 either charged, accused or convicted of a crime. Which one
21 was that? Were they -- were they charged with a crime?

22 JUROR NUMBER 72: He was charged with it. Yes, sir, he
23 was.

24 THE COURT: Okay. And did he go to a trial or did he
25 plead guilty or how was it resolved?

1 JUROR NUMBER 72: He went to trial, but I think he plead
2 -- I don't think he pleaded guilty, but he did six years for
3 it. It was six years.

4 THE COURT: So he was found guilty?

5 JUROR NUMBER 72: Yes, sir.

6 THE COURT: Okay. All right. All right. And then --
7 and what relationship was that person to you?

8 JUROR NUMBER 72: That's my uncle, my daddy's brother.

9 THE COURT: Your uncle?

10 JUROR NUMBER 72: Yes, sir.

11 THE COURT: Okay. And then you have -- have you or
12 anyone in your immediate family ever been charged, accused or
13 convicted of criminal sexual conduct. Is that the same person
14 --

15 JUROR NUMBER 72: Yes, sir.

16 THE COURT: -- that you're referring to?

17 JUROR NUMBER 72: Yes, sir.

18 THE COURT: Okay. And then you have -- has anyone -- you
19 or anyone in your immediate family ever been a victim of
20 criminal sexual conduct or an abuse, whether it was reported
21 or unreported. Was that involving the same uncle?

22 JUROR NUMBER 72: Yeah. All of that was involving the
23 same person.

24 THE COURT: Okay.

25 JUROR NUMBER 72: Yes, sir.

1 THE COURT: Was it someone else in your family that he
2 was accused of abusing?

3 JUROR NUMBER 72: No, sir. It was through marriage
4 though.

5 THE COURT: Okay.

6 JUROR NUMBER 72: My grandmother.

7 THE COURT: Okay.

8 JUROR NUMBER 72: Her husband. His granddaughter.

9 THE COURT: I gotcha. Okay. And -- okay. And so that
10 was the same one. Let me ask you this, if I could, Mr. Keith,
11 or let me tell you a little bit about this case and then I'll
12 ask you the question I need to ask.

13 This case -- what this case is involving is Mr. Fulton --
14 Mr. Michael Fulton. The State has brought this action and the
15 State is asking the jury to determine whether or not Mr.
16 Fulton fits the criteria or fits the standards to be
17 considered a sexually violent predator under South Carolina
18 law.

19 And if the jury finds that he does fit that criteria, the
20 State is seeking to have him placed into a facility where he
21 can get treatment for that conduct. If the jury finds that he
22 does not fit that criteria, then, of course, there's no need
23 for any further treatment or any further action. But that's
24 what this case is about.

25 Do you believe that you could set aside the experiences

1 that you've had in your family regarding your uncle and all of
2 that -- do you believe that you could set that aside and
3 listen to the evidence that's presented in this case and give
4 both the State and the defense a fair and impartial trial? Do
5 you believe you could do that or do you think that your
6 history or background would affect that?

7 JUROR NUMBER 72: I don't believe I could do it.

8 THE COURT: You don't think you would be able to give
9 both the State and the defense a fair and impartial trial?

10 JUROR NUMBER 72: No, because of what the situation with
11 my uncle.

12 THE COURT: Okay. So you think that's -- that's too much
13 in you to set it aside and do that?

14 JUROR NUMBER 72: Yeah. To be honest, yeah.

15 THE COURT: Okay. All right. That's fine. And I -- I
16 understand. Here's what I'm going to do, Mr. Keith. I'm
17 going to excuse you from any participation in this case.
18 Okay?

19 But I do -- I am going to get you to go back down to the
20 10th floor because the jury that we're about to pick is not
21 this case. It's another case. All right?

22 But when we come -- when it comes time for us to deal
23 with this case, I'm going to excuse you from participation in
24 this case. Okay?

25 JUROR NUMBER 72: Okay.

1 THE COURT: All right. So if you would, go back down to
2 the 10th floor, but do not -- don't have any conversation with
3 anybody about this matter. Okay?

4 JUROR NUMBER 72: I won't.

5 THE COURT: All right. Go ahead and go back down to the
6 10th floor. And go ahead and ask Mr. Carter to step out too.

7 (WHEREUPON, Juror Number 72 exited the courtroom.)

8 (WHEREUPON, Juror Number 20 entered the courtroom.)

9 THE COURT: Mr. Carter, I'm going to -- if you don't
10 mind, what I'm going to do is I'm going to get you to go back
11 down to the 10th floor.

12 JUROR NUMBER 20: Okay.

13 THE COURT: Now, we're not going to pull this jury today.
14 We're going to -- we've got another case that we're going to
15 pull a jury on.

16 JUROR NUMBER 20: Okay.

17 THE COURT: So if you would, go back down and be with the
18 rest of the jury panel and I'm going to bring y'all back up in
19 just a moment.

20 JUROR NUMBER 20: Okay.

21 THE COURT: But just don't have any conversation with
22 anybody downstairs with regards to these matters. Okay?

23 JUROR NUMBER 20: Okay.

24 THE COURT: All right. Thank you, sir. So just go back
25 down to the 10th floor, if you would, and I'll bring y'all back

1 up in just a moment.

2 (WHEREUPON, Juror Number 20 exited the courtroom.)

3 THE COURT: All right. Just in recapping, Mr. Carter,
4 who is Juror Number 20 -- he responded to Question 3, but he
5 did indicate that he could set that aside and he could be fair
6 and impartial and that his -- his experience with regards to
7 Question 3 would not in any way affect his ability to be fair
8 and impartial.

9 The defense has objected to his participation and has
10 asked that he be excused for cause. I have respectfully
11 denied that and wanted to note the defense's exception to that
12 -- that ruling, and Mr. Carter will be a part of the panel.

13 With regards to Juror Number 33, Crystal Davis, Juror
14 Number 50, Letitia Gilbert, Juror Number 79, David King Lee,
15 Juror Number 67, Joyce Jeffcoat, and Juror Number 72, Shakail
16 Keith -- with regards to those jurors, the Court is going to
17 excuse them from participation in this case.

18 All five of those folks have indicated that their -- they
19 have such strong beliefs with regards to sexual abuse of any
20 kind that they would not be able to give both the State and
21 the defense a fair and impartial trial and that their ability
22 to do so would be compromised. And so I've excused those five
23 individuals from participation in this case.

24 Is there any -- any further objections or exceptions?

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

1 THE COURT: All right.

2 MR. FALK: Nothing in response, Your Honor.

3 THE COURT: Now, folks, like I said, what we'll do is I'm
4 going to bring the jury up to pull that other case and we'll
5 start this case Wednesday morning.

6 MR. FALK: Right, sir.

7 MR. BOGLE: When you bring them up, do you want to ask
8 them those two other questions?

9 THE COURT: I -- the panel I am.

10 MR. BOGLE: The whole panel?

11 THE COURT: So if y'all want to hang around for that.

12 MR. BOGLE: Yes, sir.

13 THE COURT: Now, let me just reiterate for our scheduling
14 purposes even more so I think the need to start on Wednesday
15 is Art -- I've spoken with Art and they -- they want to pull
16 their jury, but we're going to actually not start their case
17 until tomorrow morning.

18 MR. BOGLE: Uh-huh.

19 THE COURT: Both Art and Paul feel that they'll be done
20 on Tuesday.

21 MR. BOGLE: Uh-huh.

22 THE COURT: So we'll still be ready to go first thing
23 Wednesday morning.

24 MR. BOGLE: What time?

25 THE COURT: 9:00? Or at 9:30?

1 MR. BOGLE: 9:30.

2 THE COURT: 9:30. We'll give you a little --

3 MR. BOGLE: Okay.

4 THE COURT: -- driving time.

5 MR. FALK: And we'll do our voir dire then?

6 THE COURT: And that's when we'll do our voir dire on the
7 panel itself.

8 MR. FALK: Thank you, sir.

9 THE COURT: Okay. All right. If you would, let's bring
10 everybody from ten and have them reconvene up here on the
11 eleventh floor.

12 THE DEPUTY: And I can put him --

13 THE COURT: Yeah. Mr. Fulton can go back in.

14 (WHEREUPON, the six questionnaires were marked as Court's
15 Exhibit Number 1 and the remaining questionnaires were
16 marked as Court's Exhibit Number 2.)

17 (WHEREUPON, there was a break in the proceedings from
18 12:25 p.m. on December 5, 2017, until 2:14 p.m. on
19 December 7, 2017.)

20 DECEMBER 7, 2016

21 (WHEREUPON, the proceedings resumed at 2:14 p.m., at
22 which time the respondent was not yet present.)

23 THE COURT: Do you -- do you want me to do at least the
24 introductory part --

25 MR. BOGLE: Yeah.

1 THE COURT: -- while we're waiting?

2 MR. BOGLE: Yeah.

3 THE COURT: Ladies and gentlemen, this next case that we
4 have is -- is captioned as the -- In the Matter and Care and
5 Treatment of Michael A. Fulton, and I'm going to give you a
6 brief introductory to this case and what it's actually about.
7 It's a little bit different than -- you heard the earlier case
8 we had was a breach of contract case. This case is a little
9 bit different.

10 It is a civil matter, although it may sound that it has
11 some elements of criminal court, but it is a civil matter.
12 The State has brought this case under South Carolina's
13 Sexually Violent Predator Law, and what's occurring here is
14 the State is seeking a civil commitment of Michael Fulton, who
15 is the respondent in this case, to a long-term control, care,
16 and treatment center at a secured facility for treatment.

17 This is not a criminal proceeding and the State is not
18 seeking incarceration, but it is rather a proceeding seeking a
19 civil commitment. I want -- I want to make sure that you
20 understand this. That Mr. Fulton is not accused of committing
21 a crime in this proceeding.

22 As you will hear from the testimony, he did have previous
23 charges for which he was convicted and sentenced on. He now
24 has completed his sentence; so the sentence that he was
25 sentenced to earlier -- he has completed that sentence and the

1 State now is alleging that Mr. Fulton fits under the category
2 of a sexually violent predator under the standards that the
3 State has set for that classification.

4 And the State in this case has the burden of proof and
5 that they must prove this case beyond a reasonable doubt.
6 They must prove the elements of this case beyond a reasonable
7 doubt and what they are attempting to prove to you -- to the
8 jury is that Mr. Fulton meets this criteria that the State has
9 set as to designate someone as a sexually violent predator who
10 should be committed for long-term care and treatment. And
11 that's the burden that the State will have through this
12 proceeding.

13 So although it may sound like a criminal matter, it is
14 not a criminal matter. It is a civil matter. It is a civil
15 commitment. Mr. -- is I told you, Mr. Fulton is not charged
16 with any new crimes. He's not charged at all. As a matter of
17 fact, he has completed his sentence.

18 And so that's -- that's not what this is about. This is
19 about whether or not he fits that criteria that the State has
20 set for being classified as a sexually violent predator for
21 purposes of a civil commitment. Okay?

22 Now, that's -- that's just to give you a brief
23 explanation as to what this case is about because it is a
24 little different from the typical civil -- civil case that you
25 may have -- may have heard about or dealt with in the past.

VOIR DIRE

1
2 THE COURT: Okay. Is there any member of the jury panel
3 who knows Michael Fulton, the respondent in this case, or who
4 knows anything about the crimes for which he was sentenced?
5 If so, please stand.

6 (WHEREUPON, no one stood.)

7 THE COURT: Thank you. There are none. The State,
8 ladies and gentlemen, is represented by Mr. James Bogle Jr.

9 Mr. Bogle, if you would, stand and introduce yourself and
10 let the jury get a look.

11 MR. BOGLE: Thank you. My name is Jim Bogle. I'm with
12 the Attorney General's Office out of Columbia. The lady
13 sitting next to me is Hannah Morris. She's our law clerk at
14 the University of South Carolina School of Law. All right.

15 THE COURT: Thank you, sir. Folks, is there any member
16 of the jury panel who is related by blood, connected by
17 marriage or who has any close business or personal
18 relationship with Mr. Bogle or who has in any way in the past
19 had any professional dealings with Mr. Bogle on a -- on a
20 legal basis? If so, please stand.

21 (WHEREUPON, no one stood.)

22 THE COURT: Thank you. There are none. Mr. Fulton is
23 represented by Mr. James Falk. Mr. Falk, if you would --

24 MR. FALK: Hi. I'm James Falk and it seems they're
25 bringing my client over. I practice in Charleston, South

1 Carolina. I have a contract with the State of South Carolina
2 to represent individuals who are charged as sexually violent
3 predators in these proceedings.

4 THE COURT: All right. Thank you, sir. Folks, is there
5 any member of the jury panel who is related by blood,
6 connected by marriage or who has any close business or
7 personal relationship with Mr. James Falk or who has ever been
8 represented by Mr. Falk? If so, please stand.

9 (WHEREUPON, no one stood.)

10 THE COURT: Thank you. There are none. Ladies and
11 gentlemen --

12 (WHEREUPON, there was a pause in the proceedings as the
13 respondent entered the courtroom, after which the
14 proceedings resumed as follows.)

15 THE COURT: I'm --

16 MR. FALK: Should he stand?

17 THE COURT: Yeah. Mr. Fulton, if you don't mind, I'm
18 going to just get you to stand, face the jury for just a
19 moment, let them get a look. Sometimes people -- they may not
20 know someone by name, but they may know them by sight.

21 (WHEREUPON, the respondent complied.)

22 THE COURT: Thank you, sir. That's good. You may have a
23 seat.

24 Folks, you've just met Mr. Michael Fulton. Is there any
25 member of the jury panel who is related by blood, connected by

1 marriage or who has any close business or personal
2 relationship with the respondent, Mr. Michael Fulton? If so,
3 please stand.

4 (WHEREUPON, no one stood.)

5 THE COURT: All right. Thank you. There are none.
6 Folks, I'm going to call out the name of some folks that are
7 potential witnesses that may appear during the course of this
8 trial. These folks may or may not appear as witnesses, but
9 they are listed as potential witnesses.

10 Now, that question that I just asked you with regards,
11 for example, to Mr. Fulton, that is are you related by blood,
12 connected by marriage or have any close business or personal
13 relationship with, that's the question that I'll be asking as
14 it relates to these names that I'm going to call out.

15 As I go through these names, if you hear the name of
16 someone and that question applies, go ahead and stand. If you
17 do stand, please continue to listen, however, because it may
18 be that you know more than one of these folks. As I said,
19 these are folks that are going to be or who are -- who are
20 listed as potential witnesses and may appear during the course
21 of this trial. If any of these folks are in the courtroom, I
22 would ask that they stand so the jury can see you.

23 Mary Fulton; Shakita Abraham; Wallace H. Jordan,
24 typically referred to as Jay Jordan; Tara Alexander.

25 Any members of the panel related by blood or connected by

1 marriage or have any close business or personal relationship
2 with any of those folks?

3 (WHEREUPON, two people stood.)

4 THE COURT: Yes, ma'am? And if I could get your name,
5 please?

6 JUROR NUMBER 118: Mary Rogers, 118.

7 THE COURT: All right, Ms. Rogers. And who on that list?

8 JUROR NUMBER 118: Jay Jordan, the attorney?

9 THE COURT: Yes, ma'am.

10 JUROR NUMBER 118: Yeah. Patrick Monroe's son-in-law
11 from my church.

12 THE COURT: Right. Right. Okay. The fact that Mr.
13 Jordan may appear as a witness during the course of this trial
14 -- would that in any way affect your ability to give both the
15 State and the respondent a fair and impartial trial?

16 JUROR NUMBER 118: No, sir.

17 THE COURT: Thank you, ma'am. You may have a seat. Yes,
18 sir, your name, please?

19 JUROR NUMBER 156: Rob Creveling, Juror 156.

20 THE COURT: All right, Mr. Creveling.

21 JUROR NUMBER 156: I grew up as a neighbor of Jay Jordan.

22 THE COURT: All right. The fact that Mr. Jordan may
23 appear as a witness during this case -- would that in any way
24 affect your ability to be fair and impartial?

25 JUROR NUMBER 156: No.

1 THE COURT: Thank you, sir. You may have a seat. All
2 right.

3 Is there any member of the jury panel who is related to
4 or who has a close friend who has ever accused Mr. Fulton of
5 committing any sexual offense? If so, please stand.

6 (WHEREUPON, no one stood.)

7 THE COURT: Thank you. There are none. Is there any
8 member of the jury panel or a close -- or a member of your
9 family who has ever been the victim of a crime of violence?
10 If so, please stand.

11 (WHEREUPON, no one stood.)

12 THE COURT: Thank you. There are none.

13 MR. BOGLE: Your Honor, there was one extra witness that
14 you didn't mention.

15 THE COURT: Oh, I apologize.

16 MR. BOGLE: I'm sorry.

17 THE COURT: Dr. Marie Gehle. Ladies and gentlemen, Dr.
18 Gehle I think is here. If you would stand, ma'am? Thank you.

19 Dr. Gehle is also going to appear during the course of
20 this trial as a witness. Is there any member of the jury
21 panel who is related by blood, connected by marriage or who
22 has any close business or personal relationship with or who
23 has ever been a patient of or been treated by Dr. Gehle? If
24 so, please stand.

25 (WHEREUPON, no one stood.)

1 THE COURT: All right. Thank you. There are none.

2 Thank you, Mr. Bogle. I apologize for that.

3 Is there any member of the jury panel who has ever worked
4 for either currently or in the past or in any way been
5 connected with either (A) a social services agency, (B) a
6 guardian *ad litem* program, (C) a foster care program or (D)
7 any other entity, whether it be a private entity or a
8 governmental entity, that investigates or counsels victims of
9 sexual assault? If so, please stand.

10 (WHEREUPON, one person stood.)

11 THE COURT: Yes, sir? Your name, please?

12 JUROR NUMBER 124: James Smaldone, 124.

13 THE COURT: Yes, sir?

14 JUROR NUMBER 124: My wife previously worked for the
15 Department of Social Services for several years. She's been
16 retired for about four or five.

17 THE COURT: All right, sir. Would -- would that in any
18 way affect your ability to give both the State and the
19 respondent a fair and impartial trial, sir?

20 JUROR NUMBER 124: No, sir.

21 THE COURT: Thank you so much. Is there any member of
22 the jury panel or member of your immediate family who either
23 -- either works for currently or in the past any law
24 enforcement agency, whether it be city, state, county, or
25 federal level? If so, please stand.

1 A POTENTIAL JUROR: Ask that question again, Judge? I'm
2 sorry.

3 THE COURT: Any member of the panel or member of your
4 immediate family who is either currently or in the past been
5 employed by law enforcement, whether it be state, federal,
6 local?

7 (WHEREUPON, two people stood.)

8 THE COURT: Your name, sir?

9 JUROR NUMBER 99: Charles McPherson, 99.

10 THE COURT: All right. Mr. McPherson, yourself or a
11 member of your family?

12 JUROR NUMBER 99: I was a police officer in Columbia,
13 South Carolina.

14 THE COURT: All right.

15 JUROR NUMBER 99: In the 70s.

16 THE COURT: Okay. Sir, would that in any way affect your
17 ability to give both the State and the respondent a fair and
18 impartial trial?

19 JUROR NUMBER 99: No, sir.

20 THE COURT: All right. Thank you very much. I
21 appreciate that. And, ma'am, your name, please?

22 JUROR NUMBER 100: I'm Kamonica McWhite, Juror Number
23 100.

24 THE COURT: You work with the Department of Social
25 Services?

1 JUROR NUMBER 100: No, sir. I worked in law enforcement
2 in the past.

3 THE COURT: Okay. Ma'am, would that in any way affect
4 your ability to give both the State and the respondent a fair
5 trial?

6 JUROR NUMBER 100: No, it wouldn't.

7 THE COURT: Thank you very much. I think she must've
8 been excused. We had a young lady that worked with the
9 Department of Social Services, but she may have been excused.

10 Any member of the jury panel or member of your immediate
11 family who works either for -- either currently or in the past
12 has worked for a solicitor's office or any type of
13 prosecutorial agency, whether it be a county, state or federal
14 agency or whether it be at a correctional facility? If so,
15 please stand.

16 (WHEREUPON, no one stood.)

17 THE COURT: Thank you. There are none.

18 (WHEREUPON, one person stood.)

19 JUROR NUMBER 100: I've got one thing. I've worked for
20 Florence County and I've also worked for the South Carolina
21 Department of Corrections.

22 THE COURT: Okay. And again, ma'am, would that in any
23 way affect your ability to be fair and impartial?

24 JUROR NUMBER 100: No, sir.

25 THE COURT: All right. Thank you very much. Is there

1 any member of the jury panel or member of your immediate
2 family who currently or in the past has worked as an emergency
3 medical technician, volunteer fire person or any occupation
4 that can be described as a first responder?

5 (WHEREUPON, one people stood.)

6 JUROR NUMBER 99: Yes, sir. I worked Florence County EMS
7 for nine years.

8 THE COURT: All right.

9 JUROR NUMBER 99: 99.

10 THE COURT: Mr. McPherson? This is Juror Number 99.
11 Would that, sir, in any way affect your ability to give both
12 the State and the respondent a fair and impartial trial?

13 JUROR NUMBER 99: No, sir.

14 THE COURT: Thank you, sir. Is there any member of the
15 jury panel --

16 (WHEREUPON, one person stood.)

17 MR. BOGLE: There's somebody standing.

18 THE COURT: Oh, I apologize. Yes, sir?

19 JUROR NUMBER 97: Number 97, Ronald McKissick.

20 THE COURT: Mr. McKissick?

21 JUROR NUMBER 97: My nephew is Florence Fire Department.

22 THE COURT: All right, sir. The fact that you have a
23 nephew that works with the fire department -- would that in
24 any way affect your ability to give both the State and the
25 respondent a fair and impartial trial?

1 JUROR NUMBER 97: No, sir.

2 THE COURT: Thank you, sir. Is there any member of the
3 jury panel who holds a degree in either psychology or
4 psychiatry? If so, please stand.

5 (WHEREUPON, no one stood.)

6 THE COURT: Thank you. There are none. Is there any
7 member of the jury panel or member of your immediate family
8 who is associated with any type of crime advocacy group or any
9 victims' rights group or criminal law enforcement
10 organization?

11 And some examples that I'm referring to would be MADD,
12 Mothers Against Drunk Drivers, or SADD, Students Against Drunk
13 Drivers, CAV, Citizens Against violence, the Fraternal Order
14 of Police, the South Carolina Troopers' Association, any types
15 of organizations such as that.

16 Whether you're either currently a member of or that you
17 financially support, either through monetary means or through
18 volunteering of your time. Any member of the panel associated
19 with any of those groups?

20 (WHEREUPON, no one stood.)

21 THE COURT: Thank you. There are none. I told you a
22 little bit about this case and about what the issues are going
23 to be in this case that the jury will need to decide.

24 With that in mind, would the fact that Michael Fulton has
25 been convicted for a sexual offense in the past but has

1 completed his sentence related to that conviction -- would
2 that in any way prevent you from being able to be a fair and
3 impartial juror in deciding whether or not Mr. Fulton would
4 meet the state criteria that I discussed earlier? Is there
5 any member of the panel that would not be able to give both
6 the State and Mr. Fulton a fair and impartial trial? If so,
7 please stand.

8 (WHEREUPON, no one stood.)

9 THE COURT: Thank you. There are none. Is there any
10 member of the jury panel who has been involved in either a
11 prison ministry, a prison outreach program or any other
12 program involving contact with those incarcerated within the
13 penal system? If so, please stand.

14 (WHEREUPON, one person stood.)

15 THE COURT: All right.

16 JUROR NUMBER 99: Number 99.

17 THE COURT: Juror Number 99. Mr. McPherson?

18 JUROR NUMBER 99: I was involved with prison ministry
19 back in the 90s.

20 THE COURT: All right, sir. Would that in any way affect
21 your ability to give both the State and the response a fair --
22 respondent a fair and impartial trial?

23 JUROR NUMBER 99: No, sir.

24 THE COURT: Thank you, sir. Is there any member of the
25 jury panel or member of your immediate family who has been

1 subject to civil commitment proceedings or has been either
2 voluntarily or involuntarily civilly committed? If so, please
3 stand.

4 (WHEREUPON, no one stood.)

5 THE COURT: Thank you. There are none. Folks, I've gone
6 through a lot of questions and as -- as you've heard and as
7 you heard earlier this week, my questions are always followed
8 up with whether or not it would affect your ability to be fair
9 and impartial. As I told you on Monday, that's our goal any
10 time we select a jury in this courtroom, whether it be a civil
11 matter such as this or a criminal matter.

12 Our purpose is to select a panel that can give both sides
13 a fair and impartial hearing, being able to set aside those
14 personal experiences and to judge this case based solely upon
15 the evidence that is presented during the course of this
16 trial.

17 Is there any member of the jury panel who knows of any
18 reason why you would not be able to give both the State and
19 the respondent a fair and impartial trial? If so, please
20 stand.

21 (WHEREUPON, no one stood.)

22 THE COURT: All right. Thank you. There are none. Are
23 there any additional questions or voir dire from the State?

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

25 THE COURT: Anything additional from the defense?

1 MR. FALK: No, Your Honor.

2 THE COURT: All right. We're going to do the two
3 alternates. Okay? So if you would, prepare the list.

4 Folks, like we did on Monday, Melissa is going to have
5 her computer program reach into the list of those of you who
6 are present here today and randomly select -- in this case,
7 we're going to have two alternates. We had one alternate on
8 the first trial and we ended up having to use that alternate.
9 So -- which is a good thing that we had that alternate, but
10 we're going to go ahead -- since we have enough folks, we're
11 going to select two alternates.

12 So her program is going to pull out 26 names. The first
13 20 names will be the folks that each side will have an
14 opportunity to remove four names and then we have two sets of
15 three. The 21 through 23 will be the first set and then 24
16 through 26 will be the second set. Each side for each of
17 those will get to remove one name, which will leave our two
18 alternates. And then we'll -- we'll call those members that
19 are selected.

20 So like I told you on Monday, you may or may not even
21 appear on this list. You know, it's just a random draw and
22 we'll see how it comes out.

23 When -- when Madam Clerk does recognize the attorneys for
24 their strikes, the numbers that you will hear them call out
25 are those marginal numbers on the side -- on the left-hand

1 side of the page, numbers 1 through 20, and then numbers 21
2 through 26. So those numbers they call out have no
3 correlation to juror numbers.

4 But we'll -- once that list is prepared, we're going to
5 give both Mr. Falk and Mr. Bogle a copy, allow them to retire
6 back here if they choose to. They can remain at their desk if
7 they want to or they can step back here. We'll give them a
8 few minutes to look over the list and then we'll begin with
9 jury selection once they are ready to go.

10 It's not a good sign when the clerk looks at her computer
11 and goes -- (gesturing.)

12 (WHEREUPON, there was a pause in the proceedings, after
13 which the proceedings resumed as follows.)

14 THE COURT: We have a couple of jurors that were excused
15 or granted protection for the balance of the week. For some
16 reason, the computer decided to put them on the list. So
17 we're having to make sure it takes those two folks out.

18 You know, folks, computers are awesome and they do
19 tremendous work, but I can honestly tell you when we used to
20 use the old bingo thing here, we never had it fail. Not once.
21 The computer has let us down on a couple of occasions. So
22 technology is great, but sometimes it's not better.

23 (WHEREUPON, there was a pause in the proceedings, after
24 which the proceedings resumed as follows.)

25 MR. FALK: Your Honor, can I approach?

1 THE COURT: Yes, sir.

2 (WHEREUPON, a bench conference was held in the presence
3 of the jury panel but out of the hearing of the jury
4 panel as follows.)

5 MR. FALK: It may be my mistake. I thought 53 was
6 excused. She might have a note. I have her circled and
7 saying she was excused.

8 THE COURT: Let me get my list. What's her name?

9 MR. FALK: 53.

10 THE COURT: You know who she was?

11 THE CLERK: No. She was excused from the first case.

12 THE COURT: That's what it was.

13 MR. FALK: That's what it was.

14 THE COURT: Yeah.

15 MR. FALK: Okay. That's what it was.

16 (WHEREUPON, the bench conference ended and there was a
17 pause in the proceedings, after which the proceedings
18 resumed as follows.)

19 THE COURT: All right. Is the State ready?

20 MR. BOGLE: Yes, Your Honor.

21 THE COURT: Is the respondent ready?

22 MR. FALK: Yes, sir.

23 THE COURT: All right. Madam Clerk, if you would, we'll
24 proceed to jury selection.

25 THE CLERK: The plaintiff strikes first using marginal

1 numbers.

2 MR. BOGLE: The plaintiff would strike Number 2.

3 THE CLERK: The plaintiff strikes 2.

4 (Juror Number 53, Brittany Graham, white female.)

5 MR. FALK: The respondent strikes 10.

6 THE CLERK: The respondent strikes 10.

7 (Juror Number 100, Kamonica McWhite, black female.)

8 MR. BOGLE: The State would strike Number 9.

9 THE CLERK: The plaintiff strikes Number 9.

10 (Juror Number 129, Richard J. Stokes II, white male.)

11 MR. FALK: The respondent strikes 88. I'm sorry -- 12.

12 THE CLERK: The respondent strikes Number 12.

13 (Juror Number 88, Latoya McClam, black female.)

14 MR. BOGLE: The State would strike Number 14.

15 THE CLERK: The plaintiff strikes Number 14.

16 (Juror Number 91, Raquan McElveen, black male.)

17 MR. FALK: The respondent strikes 18.

18 THE CLERK: The respondent strikes Number 18.

19 (Juror number 127, Pamela Smith, white female.)

20 MR. BOGLE: The State would strike Number 16.

21 THE CLERK: The plaintiff strikes Number 16.

22 (Juror Number 147, Chandler M. White Jr., white male.)

23 MR. FALK: The respondent strikes 13.

24 THE CLERK: The respondent strikes Number 13.

25 (Juror Number 97, Ernest McKissick, white male.)

1 THE CLERK: Now for your alternates?

2 MR. BOGLE: The State would strike Number 21.

3 THE CLERK: The plaintiff strikes Number 21.

4 (Juror Number 148, Rebecca Whitten, white female.)

5 MR. FALK: The respondent strikes 22.

6 THE CLERK: The respondent strikes Number 22.

7 (Juror Number 20, Douglas Carter, white male.)

8 MR. BOGLE: And for the second alternate, the State would

9 strike Number 25.

10 THE CLERK: The plaintiff strikes Number 25.

11 (Juror Number 24, Robert Coward, white male.)

12 MR. FALK: The respondent strikes 24.

13 THE CLERK: The respondent strikes Number 24.

14 (Juror Number 118, Mary Rogers, white female.)

15 THE CLERK: Gentlemen, please check your strikes. The

16 plaintiff struck Number 2, Number 9, Number 14, Number 16,

17 Number 21, and Number 25.

18 MR. BOGLE: That's correct.

19 THE CLERK: The respondent struck Number 10, Number 12,

20 Number 13, Number 18, Number 24, and Number 22.

21 MR. FALK: That's correct.

22 THE COURT: All right. Are there any motions regarding

23 jury selection from the State?

24 MR. BOGLE: No, Your Honor.

25 THE COURT: Anything from the respondent?

1 MR. FALK: None from the respondent.

2 THE COURT: All right. Madam Clerk, if you would, please
3 call out the jurors.

4 THE CLERK: As I call your name, please gather your
5 belongings and have a seat in the jury box. Robert Creveling.

6 (WHEREUPON, a white male came forward.)

7 THE CLERK: Richard Melton.

8 (WHEREUPON, a white male came forward.)

9 THE CLERK: Lacie Jones.

10 (WHEREUPON, a black female came forward.)

11 THE CLERK: Roy Brown.

12 (WHEREUPON, a black male came forward.)

13 THE CLERK: Austin Black.

14 (WHEREUPON, a black male came forward.)

15 THE CLERK: Melvin Lewis.

16 (WHEREUPON, a black male came forward.)

17 THE CLERK: Terica Belin.

18 (WHEREUPON, a black female came forward.)

19 THE CLERK: Samuel Willoughby.

20 (WHEREUPON, a black male came forward.)

21 THE CLERK: Christopher Daniels.

22 (WHEREUPON, a black male came forward.)

23 THE CLERK: Nicole Davis.

24 (WHEREUPON, a black female came forward.)

25 THE CLERK: Leroy Martin.

1 (WHEREUPON, a black male came forward.)

2 THE CLERK: Joshua Whorton.

3 (WHEREUPON, a white male came forward.)

4 THE CLERK: Jeffrey Collins.

5 (WHEREUPON, a white male came forward.)

6 THE CLERK: Michael Cox.

7 (WHEREUPON, a white male came forward.)

8 THE COURT: All right. I've got some bad news for those
9 of you left out there. We don't have anything left for y'all
10 to do this week; so we're going to have to excuse you for the
11 rest of the week.

12 Folks, in all seriousness, I want to thank you for your
13 service. It's a -- it's a very high honor that you give your
14 country when you serve on jury duty. It's second only to your
15 service -- to service in the military. So I want to thank you
16 for your service this week.

17 I may have said this to you on Monday. If I didn't, I'll
18 apologize now for whatever check you're going to get in the
19 mail. Please don't be offended by it. We're not able to pay
20 you what your time is worth. Your time is invaluable and
21 there's no way we can pay you for what your time is actually
22 worth, but you will get a check in the mail.

23 There will be a work -- there will be a work excuse in
24 that check if you need it. If you could, ask your employer to
25 be patient. If they need a work excuse, you can let them know

1 that that's coming and you'll be able to provide them with
2 that.

3 But I'm not going to keep you any longer. Thank you
4 again for your service. Everyone else please remain seated
5 while the members of the jury panel are excused.

6 (WHEREUPON, the jury panel was excused and exited the
7 courtroom at 3:07 p.m.)

8 THE COURT: Here's the bright side for y'all. You're
9 going to get paid more than them.

10 Folks, we're going to get started in just a little bit
11 with this trial, but I have a couple of matters that I need to
12 take up with the attorneys before we start. So I'm going to
13 ask you, if you would, to step back into your jury room.

14 Now, let me -- let me give you this instruction because
15 this instruction will remain with you throughout the course of
16 the trial. Please have no conversation about the case. Now,
17 I know you know very little about it, but it's very important
18 that you have no conversation about the case at all.

19 You can introduce yourselves to each other, get to know
20 each other, but please do not discuss the case. I'm going to
21 take up a few matters with the attorneys. I don't anticipate
22 that taking very long and then we'll get started. Okay? So
23 if you would, please step back into the jury room.

24 (WHEREUPON, the jury exited the courtroom at 3:08 p.m.)

25 THE COURT: All right. At this time, do you want to take

1 up the motions *in limine* and anything else that we need to
2 take up?

3 MR. BOGLE: Thank you, Your Honor. Our first motion *in*
4 *limine* has to do with the -- where he might go. As Your Honor
5 knows from previous cases of this nature, the location where
6 the people go for treatment is located in an unused wing at
7 the Department of Corrections, two wings actually side-by-
8 side, sealed off from the Department of Corrections, but they
9 are behind the wire at Broad River. For guys that have health
10 problems other than mental problems, they require a hospital.

11 We would ask that there not be any reference to the
12 where, the fact that it's prison, it's behind the wire, it's a
13 life sentence, it's death -- former death row, which one of
14 the wings where they'll be is a former death row, because the
15 elements that the State has to prove is has he been convicted
16 of a sexually violent crime and does he have the mental
17 abnormality that makes him likely to offend in the future. I
18 mean that's it. Anything else would distract the jury and
19 confuse the jury or might be prejudicial to the State.

20 THE COURT: All right, sir. Mr. Falk, do you wish to be
21 heard on that?

22 MR. FALK: Yes, Your Honor. I have no intention of
23 talking about the -- on death row or that, but I do think I'm
24 allowed, if the opportunity presents itself, to talk a little
25 bit about what kind of facility they would be going to as far

1 as they have to show that he needs -- that he poses a risk of
2 committing a sexually violent act unless confined to a
3 facility for long-term care and treatment.

4 And so I think as part of the definition I think I can
5 talk a little bit about what secure means and what treatment
6 means because I don't want them to think that he's going to
7 some kind of posh hospital. I mean I think the jury needs to
8 know that he's going to be wearing a jumpsuit and that he's
9 going to be in a cell if he goes there.

10 THE COURT: How -- how does that have any relevance to
11 the issues they have to decide?

12 MR. FALK: Because they have to decide whether he needs
13 to be in a secure facility or whether or not he can get
14 treatment other than in a secure facility. So I think that
15 means some level of --

16 THE COURT: Well --

17 MR. FALK: -- the security that he needs to be subject
18 to.

19 THE COURT: I'm not totally disagreeing with you with
20 regards to that, but then, of course, even in your argument of
21 the motion you take it further to talk about being in
22 jumpsuits and --

23 MR. FALK: Well, there's always a line somewhere.

24 THE COURT: You know, I think we need to stay -- you need
25 to stay with matters that are relevant to the elements that

1 the State has to prove, one of those being that he receive
2 treatment at a secured facility.

3 So I'll give you some leeway as to the secured facility,
4 but I don't -- my concern is that the jury make their decision
5 based solely upon the elements of the statute and not upon any
6 other --

7 MR. FALK: Yes, Your Honor.

8 THE COURT: -- any other criteria. So I don't know that
9 it's a motion that I can -- it's going to be one of those
10 things that we'll just have to listen for. Mr. Bogle --

11 MR. BOGLE: Yes, Your Honor.

12 THE COURT: I'll give him some leeway as to the fact that
13 the facility is secure and that he is not able to leave the
14 facility and have that level of freedom, but I mean we're not
15 going to paint any kind of picture that takes the jury off of
16 the issues that they have to decide.

17 MR. FALK: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. BOGLE: Thank you, Your Honor. The second motion has
20 to do -- the second motion *in limine* has to do with treatment.
21 Again, the elements are what I just said: the crime and the
22 mental abnormality and whether or not he can control it.

23 To require the State's expert to testify about the type
24 of treatment he might get would be something other than the
25 elements we have to prove. It would distract the jury. It

1 might confuse the jury. It wouldn't aid them. The thing they
2 have to find is the crime, the mental abnormality, and the
3 lack of control, and that's it.

4 It might confuse or mislead them. It would also be
5 speculative and even more so because at this time -- I don't
6 know if you read about this, but the legislature passed --
7 part of the budget allows the Department of Mental Health to
8 contract out for the treatment, not the pre-commitment
9 evaluations and not the annual review of evaluations, but the
10 actual treatment with a private company called Correct Care.

11 And as of December 1 moving forward, Correct Care is
12 taking over the treatment. So we don't know what they're
13 going to do. We just know that they have the contract to do
14 it. They also do the same service in Florida.

15 So any -- but to get back to my original reasons, any
16 explanation or testimony by the State's expert about the type
17 of treatment he might get would be purely speculative and
18 would not be one of the elements that we have to prove.

19 THE COURT: All right. Mr. Falk?

20 MR. FALK: I think that they have to prove -- well -- and
21 here's my other point on that. I think there needs to be some
22 general explanation of what the treatment is. I mean I would
23 think some of these people might think that it's, you know,
24 some type of chemical treatment, it's shock therapy, it's --
25 you know, I mean as long as there's some kind of -- like, a

1 little bit because I think Dr. Gehle would know that this is
2 basically talk therapy.

3 THE COURT: Yeah. I mean -- and I -- there may be some
4 degree of leeway, but again, I think -- and Dr. Gehle may can
5 correct me. I would think treatment is a very individualized
6 thing depending on the individual. I mean what -- I realize
7 that for certain disorders there's certain types of treatment,
8 but within -- within that, I mean, like, for example, if
9 you're going to counsel someone with regards to their tendency
10 to reoffend at this type of level, there's probably a course
11 of treatment for that, but that may vary with the individual
12 on how restrictive or severe or mild that is.

13 So I don't know that -- I mean --

14 MR. FALK: But it's still group therapy. It's talk
15 therapy.

16 THE COURT: Sure.

17 MR. FALK: And it's nothing more medical or -- you know
18 what I'm saying.

19 THE COURT: Yeah. I mean I don't know what it would be,
20 but I'll give you some leeway to ask about that, but, of
21 course, you know, Dr. Gehle, whatever her responses --

22 MR. FALK: To whatever she knows.

23 THE COURT: Yeah. To whatever she can --

24 MR. FALK: But then my point, again, is needs treatment
25 in a secured facility. That's something that begs the

1 question whether or not he can get treatment outside of a
2 secured facility. So if he can get the same stuff on the
3 inside that he can get on the outside --

4 THE COURT: Well -- and again, I'll leave it up to -- to
5 the experts, but the concern and the reason that these are
6 typically done in a secured facility is until they can get the
7 treatment that they need, there is a risk of reoffending and,
8 therefore, they're placed in a secured facility. And at some
9 point, whether it be a few months or longer, they reach a
10 level of physical and mental health that they can -- that
11 they'll no longer be in that classification and be released.

12 So I don't think it's -- in other words, if the treatment
13 that he needs can be administered outside just as well as
14 inside, that's not the standard I don't believe. The standard
15 is whether or not he meets the criteria that would cause him
16 to likely reoffend. And until he gets placed out of that
17 classification, he would need to be in a secured facility.

18 MR. FALK: I mean the standard likely to offend unless
19 confined to a secured facility.

20 THE COURT: Right.

21 MR. FALK: As that still qualifies and --

22 THE COURT: So I don't think it matters that the
23 treatment he would receive -- if he were to be found to fall
24 into this classification, I don't think it matters that --
25 that he could get the same treatment outside the facility that

1 he can get in. You see what I'm saying?

2 MR. FALK: I respectfully disagree. I mean I would think
3 that the State should have to prove that this can only -- that
4 this treatment can only be provided inside and not outside. I
5 mean if he has a year of probation, I mean he would still be
6 subject to some type of monitoring. He's going to have some
7 GPS monitoring. I mean there would be some monitoring. So I
8 mean there will be -- he's not going to be just loose.

9 THE COURT: But if he's -- if -- if a person is not
10 classified as likely to reoffend, then they're not in this
11 position. Then the jury comes back and finds that he doesn't
12 -- he's not classified for that. Am I missing something?

13 MR. BOGLE: No, that's it. We have to show the crime,
14 the mental abnormality, and serious difficulty controlling his
15 behavior, and that's --

16 THE COURT: Right.

17 MR. BOGLE: That puts him in.

18 THE COURT: But that -- but that's the reason. If you --
19 if you are to -- if you can prove that beyond a reasonable
20 doubt, that's the reason it's a secured facility --

21 MR. BOGLE: Yes, sir.

22 THE COURT: -- rather than simply being ordered to be
23 placed on probation and put into counseling.

24 MR. BOGLE: Serious difficulty controlling his behavior
25 elevates it to a secured facility as opposed to outpatient.

1 THE COURT: Correct. And at some point after treatment
2 and he's -- and he's no longer in that classification, a
3 person can be released, probably with continued treatment.

4 MR. FALK: Yes.

5 MR. FALK: I would think if that's all that the statute
6 required, then it would be mental abnormality, personality
7 defect, likely to reoffend unless confined, period, but it's
8 confined for long-term care and treatment. I believe that the
9 fact that the definition has care and treatment at the end is
10 relevant to whether or not he could get it on the inside or
11 the outside.

12 Because I mean you're only saying whether -- because the
13 way you -- respectfully, the way you described it was that
14 it's only a matter of he's a likelihood to reoffend and if
15 that is what the Court intended and the legislature intended,
16 then I don't know why they would put that last clause on there
17 that he needs to be secured for treatment.

18 THE COURT: Correct. I don't disagree with you, but I
19 think you and I are looking at it differently. The element of
20 likely to reoffend if not given this treatment -- that's the
21 element that requires it to be in a secured facility. If not,
22 then we would simply place someone on probation and order them
23 into therapy. That -- that would be the -- that would be the
24 result.

25 MR. FALK: And, of course, that would be great if that

1 were an opportunity for the Court to do that in this case,
2 which it doesn't. I mean I might --

3 THE COURT: Sure. But -- well, that opportunity is there
4 if the State fails to carry their burden, which is a high
5 burden. It's beyond -- it's the -- it's the highest burden.
6 If they fail to carry that burden that -- of the likely to
7 reoffend, then, you know, the individual is not classified in
8 that category and they're not in a secured facility.

9 So I don't -- I don't -- I don't think it matters whether
10 the treatment itself can be administered outside of a secured
11 facility. I imagine it can. I imagine the only reason that a
12 person is confined to a secured facility is until they reach
13 that -- that level of treatment and mental health stability
14 that they are taken out of that classification as likely to
15 offend.

16 And I have had that before where a person was initially
17 classified as a sexually violent predator and then sometime
18 after that classification received notification from the State
19 that that person is no longer under that classification and is
20 going to be released. So I -- you know, again, I don't think
21 the issue is whether or not the treatment can be administered
22 outside the facility. I don't think that's -- I think you've
23 got to take it as a whole.

24 MR. FALK: I'll just preserve my --

25 THE COURT: All right.

1 MR. BOGLE: Thank you, Your Honor.

2 THE COURT: Anything else that we need to take up before?

3 MR. FALK: There is one item and I'm sure Mr. Bogle is
4 anticipating this, although I did not prepare it.

5 MR. BOGLE: I got no motions.

6 MR. FALK: Well, I mean I can make a motion about
7 irrelevant evidence at any time, and maybe it's best not to do
8 it right now. I mean what I'm talking about is his lengthy
9 list of charges. Not all of them I think are relevant --
10 would be relevant here and I think that there would be a point
11 where some of the information about the charges, some of them
12 not even resulting in convictions -- the charges would tend to
13 be more prejudicial than probative and therefore the Court
14 would have the authority under 403 to exclude it as
15 irrelevant. We've got lengthy charges.

16 And there's another kind of classification that fits into
17 this that in 2004 -- so my client had a lot of conduct up
18 until 2004. Then in 2004, he was in one of these proceedings
19 already and he didn't get to this level. He got to the
20 evaluation and the Department of Mental Health said that he
21 did not need to be committed because he didn't have -- he had
22 maybe some -- a mental problem, but it was not related to a
23 sexual --

24 THE COURT: Yeah.

25 MR. FALK: -- connotation to it. So I think there's a

1 point of -- I don't know how relevant any evidence prior to
2 2004 would even be if the State has already said that, you
3 know, that person is not a sexually violent predator based on
4 his conduct up until 2004.

5 THE COURT: Mr. Bogle?

6 MR. BOGLE: Yeah. What we have here -- there's two
7 diagnoses that are going to be made. One is a mental
8 abnormality called other specified paraphilic disorder,
9 biastophilia, which involves coercive sex with nonconsenting
10 people. The other thing that the doctor diagnosed him with
11 his antisocial personality disorder.

12 Now, to get to antisocial, you have to look at a person's
13 entire history of just breaking the rules, violations, all
14 kinds of violations, and you have to go back, in some cases,
15 to the conduct that happened before the person was 15 or 16
16 years of age to reach the diagnosis. That's one of the
17 criteria for making that diagnosis.

18 Now, the *White* case from the South Carolina Court of
19 Appeals in 2007 and the *Corley* case in 2003 from the Supreme
20 Court talk about past criminal history being directly relevant
21 to proving whether or not someone is a sexually violent
22 predator. We also have the *Edel* case, which is a Court of
23 Appeals case from 2008 where convictions and offenses not
24 resulting -- or convictions, as well as crimes not resulting
25 in convictions, were relevant to the diagnosis. You're

1 looking for a pattern of behavior here, not just of sexual
2 offenses, but also of nonsexual antisocial behavior, and this
3 Dr. Gehle will explain is necessary for her diagnosis.

4 Now, it is true that back in 2003 or 2004 the case was
5 referred. We filed a petition. A doctor -- a court-appointed
6 psychologist did an evaluation and said the guy is not a
7 predator. The case got dismissed in -- I think it was 2004 or
8 early 2005. But all that does is dismisses that pending
9 action.

10 His lifetime of conduct going back prior to that is still
11 relevant to her making her ultimate diagnosis, particularly of
12 the antisocial personality disorder, which requires looking at
13 a lifetime of errors and just not following the rules. So
14 that's relevant and she'll explain that on the stand, but
15 that's kind of where we are here.

16 But there was a prior case and, of course, it's not *res*
17 *judicata* because it never was litigated. It just -- he was
18 evaluated and what disturbs us is -- and Dr. Gehle will
19 testify that as a result of that prior case being dismissed
20 under summary judgment, he was then released from the
21 Department of Corrections and very soon after started breaking
22 the law. I mean he was barely out before he started breaking
23 the law in multiple types of ways.

24 So that goes to the antisocial diagnosis. It's all --
25 the case law suggests it's all relevant in proving the

1 underlying mental abnormality and the personality disorder in
2 the cases that I've cited.

3 MR. FALK: Your Honor?

4 MR. BOGLE: I've got a memo of law which I think I can
5 hand up to you or email to you that talks about this -- this
6 very thing. It's in my trial materials for this case.

7 THE COURT: Mr. Falk?

8 MR. FALK: Your Honor, Mr. Bogle and I argue about this
9 all the time and I believe that neither the *Edel* case or the
10 *Corley* case really take that gatekeeping function of the Rule
11 403 and give it to Dr. Gehle as being the sole person to
12 determine what evidence is relevant and what evidence is not
13 relevant.

14 I'm willing to bet that if Dr. Gehle took the stand and
15 we started asking her questions about everything about his
16 past conduct, it's going to be at some level relevant to her.
17 I mean he has a -- he has a shoplifting when he was 8 years
18 old. Now, is that relevant? I mean I think Dr. Gehle said,
19 yeah, it all might be relevant, but at some point, you know,
20 it's not. You know, shoplifting in an eight-year-old versus,
21 you know, grand theft auto in an eight-year-old -- I mean
22 obviously those are two different things.

23 The Court still has to decide what is going to be -- what
24 information is going to be more probative than prejudicial,
25 and I think some of this crosses the line, especially on these

1 offenses when he's a very little child.

2 THE COURT: It would help me to have a list of what
3 you're talking about. I don't know. I don't know anything
4 about Mr. Fulton's case or his history. I don't know what you
5 intend to go into.

6 MR. BOGLE: Well, we plan to -- we plan to begin with his
7 -- when he got arrested as a juvenile and we're not going to
8 -- we're not going to look at his shoplifting. Of course,
9 we're looking at the type of crimes that he began getting
10 arrested for back starting probably about 1998 or before when
11 he was assaulting a male victim and his sexual crimes began.

12 There was some Family Court convictions back in 2000,
13 but, you know, to make this diagnosis you've got to -- of
14 antisocial personality disorder, you've got to look for
15 conduct and misbehavior and to go back a long ways. How far
16 Dr. Gehle will go back I can't tell you off the top of my
17 head. Probably not to when he was eight years old. We're
18 talking, you know, teenager conduct forward. Right?

19 DR. GEHLE: No. I'm looking at it all.

20 MR. BOGLE: You're looking at it all? Okay.

21 MR. FALK: Then we have charges where -- then we have it
22 where the charges were dismissed or where there was no
23 disposition of the charges.

24 MR. BOGLE: And the case law approves. The *Edel* case,
25 the *Corley* case -- they also approve charges that didn't

1 result in convictions and that's something that these people
2 look at in making their estimate of risk. The fact that you
3 got in enough trouble to get arrested -- just because you
4 didn't get convicted down the road for whatever reason --
5 there could be a myriad of reasons why it doesn't result in
6 conviction. The fact that you keep getting in trouble enough
7 to get arrested raises your level of risk in society.

8 So the case law has approved, again as the justification
9 for her opinion, and that's where it all comes down to it. If
10 it's the type reasonably relied upon by experts in the field
11 in forming opinions or inferences about the subject -- and
12 that's straight out of *State v. Coutrou* [phonetic] and Rule
13 703 of the Rules of Evidence. So she's got to justify her
14 opinion by going into this background information, and the
15 case law has allowed it.

16 THE COURT: Well -- and I guess what Mr. Falk is saying
17 is that 403 gives the Court discretion to omit relevant
18 testimony --

19 MR. FALK: It does.

20 THE COURT: -- if its relevance is outweighed by its
21 prejudicial effect.

22 MR. FALK: Yes, Your Honor.

23 MR. BOGLE: Uh-huh.

24 THE COURT: So that's why I said I'm going to need a list
25 of what we're referring to and, of course, Dr. Gehle will have

1 some input into that as well, obviously. Yes, sir?

2 MR. FALK: I have copies. I'll hand this to Mr. Bogle.

3 THE COURT: All right.

4 MR. FALK: Can we -- I have -- those are my notes I was
5 going to use, but could we get a copy of that?

6 THE COURT: Uh-huh.

7 MR. BOGLE: Is that from Gehle or from your --

8 THE COURT: No, it's just --

9 (WHEREUPON, there was a pause in the proceedings, after
10 which the proceedings resumed as follows.)

11 MR. BOGLE: And again, while we're waiting, I returned to
12 the language in *Corley* where there was a Rule 401 and 403
13 analysis done and the finding was that past criminal history
14 was directly relevant to proving the elements of 44-48-30,
15 paragraph 1, which is the definition of what a sexually
16 violent predator is.

17 MR. FALK: And my response would be that would be -- that
18 evidence in that case --

19 THE COURT: For that individual? Right.

20 MR. FALK: Right.

21 THE COURT: And I don't know. You know, guys, what I may
22 need to do -- because right now I've got a list that you've
23 provided for me, Mr. Falk, which may be different than what
24 your intention is to go into.

25 MR. FALK: My list comes out of her report. So I assume

1 --

2 THE COURT: Okay.

3 MR. FALK: So I assume anything she didn't mention in her
4 report would not be relevant and I would have a problem with
5 that coming out. So my list comes from her report.

6 THE COURT: Okay. I'm not sure why it's taking this long
7 to get a copy. I don't know why it's taking Emily this long
8 just to get me a copy. How many copies did you make?

9 THE CLERK: Too many.

10 MR. BOGLE: Thank you.

11 THE CLERK: You're welcome.

12 MR. FALK: So, Your Honor, on that first line, so -- just
13 because these are my notes. It shows July 12th, 1991, and out
14 to the right it shows shoplifting and then I have some notes
15 underneath each of those charges. For example, that one he
16 was aged eight and he was ordered to pay restitution.

17 You see on number two that arson charge at age 8. It was
18 dismissed. Simple assault and disorderly conduct was diverted
19 because, you know, that was a DSS case and it was a Family
20 Court case and it was diverted with, you know, a social
21 contract for character. With one of those contracts I think
22 that they do.

23 THE COURT: Uh-huh.

24 MR. FALK: I've lost the word. The ABHAN -- it was an
25 ABHAN sexual times four in 1998. That was amended to a simple

1 assault. My arguments are stronger for some cases than
2 others.

3 If you go down to number 9, September 2003, it shows
4 lynching and malicious injury to property, and I can't find a
5 disposition on that case. The possession of a stolen vehicle
6 in 2005 -- these cases are dismissed. You have a possession
7 of less than 28 grams, item number 13. I can't find a
8 disposition in NCIC.

9 So I mean certainly when we don't even know if it
10 happened -- I mean without -- it's one thing to show something
11 *nolle prossed* and then it's quite something else that shows
12 that there was a charge and I can't find the disposition of
13 it. I don't know how that could be possibly relevant without
14 even knowing how -- without even knowing how it was disposed
15 of. I don't know how you could form that as part of an
16 opinion without knowing how the case was disposed -- the
17 disposition of the charges.

18 MR. BOGLE: Well, that's --

19 MR. FALK: I mean if she's using it as part of her
20 opinion, she's assuming that it happened at some level.

21 MR. BOGLE: No, no, no. It's assuming that he was
22 charged with it. Okay? Part of the underlying science of the
23 diagnosis is looking for similar offenses, sexual offenses,
24 whether they were convicted or not convicted, and also looking
25 for just a consistent lifetime of kind of rule breaking,

1 misconduct. Even if you can't find the disposition, the fact
2 that he got in enough trouble to get charged with it goes to
3 -- and this is from the literature, not from me. This is from
4 the literature behind the science of these diagnoses. It goes
5 -- it goes to the calculation of the diagnosis of antisocial
6 personality disorder.

7 MR. FALK: And that's just --

8 MR. BOGLE: I can put her on the stand if you'd like me
9 to clarify this, Judge?

10 THE COURT: Give me one second. It appears there's --
11 there's two no dispositions.

12 MR. FALK: Yes.

13 THE COURT: And then there are some -- there's several
14 dismissals.

15 MR. FALK: Yes, Your Honor.

16 MR. BOGLE: If you'd like, Your Honor, I can put Dr.
17 Gehle on the stand and have her explain why she had to do
18 this.

19 THE COURT: Well, let me tell you I'm inclined to grant
20 the motion as to the two no dispositions, but the dismissals
21 are another thing altogether. That's not -- that has nothing
22 -- and I'm talking about on that list, Mr. Bogle, number 9 and
23 number 13.

24 MR. BOGLE: 13 is the possession of less than 28 grams.

25 THE COURT: 13 is the possession of less than 28 grams.

1 It doesn't -- it didn't say whether it is crack or cocaine or
2 marijuana, but --

3 MR. BOGLE: If you want to keep those two out, we can
4 live with that.

5 THE COURT: Well, I just -- I think it's appropriate in
6 this respect. I don't know -- there's no dispositions; so,
7 you know, it causes me some concern. The dismissals --
8 there's any number of reasons why cases get dismissed and it
9 could be part of a package deal that if you plead to
10 something, we'll dismiss the other things.

11 MR. BOGLE: One of the main reasons she likes to include
12 everything to look at -- even if there's no disposition, the
13 fact that a charge has gone up against the guy -- what's the
14 phrase? It takes him out of society for a while while these
15 charges -- if he was in custody of some sort and that has to
16 do with if it's bad enough to take him out of society for a
17 while, it relates to this diagnosis. She can explain it
18 better than I can, Judge. I'm just -- if you'd like to hear
19 her?

20 THE COURT: No. I understand. And I am agreeing with
21 you and maybe this is -- maybe this is error on my part to do
22 it this way, but, yeah, I'm looking at some 21 things here.

23 MR. BOGLE: I can deal with those.

24 THE COURT: Dealing with 19 instead of 21 doesn't really
25 change anything.

1 MR. BOGLE: I can take those two out. I can take those
2 two out.

3 THE COURT: But, Mr. Falk, you know, depending on the
4 doctor's testimony, if all -- if these other matters --
5 excluding those two with no disposition, if these other
6 matters are relevant to that diagnosis, then I think that
7 relevancy would outweigh any prejudicial effect.

8 MR. FALK: And I appreciate the Court's position. It's
9 just -- my frustration is that the Court somewhat has a
10 grading of gray area to do this weighing and it seems to me
11 from prior testimony with forensic experts -- well, it's all a
12 data point. It all matters. You know, everything is either
13 white or black, and I think --

14 THE COURT: Well, I think -- and I'm not by any stretch
15 -- please don't ever mistake me as ever having said I have any
16 level of competence or expertise in psychiatry or psychology,
17 but I can see where if -- if the issue is antisocial behavior,
18 I can see where all of this would be relevant.

19 MR. FALK: Thank you, Your Honor.

20 THE COURT: And so I'm -- I would allow it other than
21 those two exceptions.

22 MR. FALK: To save my -- if I just object?

23 THE COURT: Yes.

24 MR. FALK: Is it 403 or do you want me to say relevance?
25 I just want to -- you know, that's going to be my grounds.

1 Based on 403, the weight.

2 THE COURT: Yes, sir. And I'll -- and I'll certainly
3 note those -- those objections.

4 MR. FALK: So I'll just object for relevancy?

5 THE COURT: Yes, sir.

6 MR. FALK: Okay.

7 THE COURT: All right. Anything else before we bring
8 them out?

9 MR. BOGLE: Nothing from us.

10 THE COURT: Anything else from the respondent?

11 MR. FALK: No, Your Honor.

12 THE COURT: All right. Let's bring them out, please.

13 (WHEREUPON, the jury entered the courtroom at 3:41 p.m.)

14 THE COURT: Ladies and gentlemen, thank you for your
15 patience. We're about ready to begin now. I'm going to ask
16 you, if you would, to give Madam Clerk your -- your attention.
17 She's going to place you under your oath for your role as
18 jurors in this case.

19 THE CLERK: If you would, please stand and raise your
20 right hand.

21 (WHEREUPON, the jury complied.)

22 THE CLERK: You shall well and truly try the issues
23 joined in this case between the plaintiff and the defendant
24 and a true verdict render according to the law and the
25 evidence, so help you God. You may be seated.

1 (WHEREUPON, the jury complied.)

2 THE COURT: Folks, I believe there's -- there's three of
3 you that were on the earlier case and to the three of you I
4 apologize for you having to listen to -- my opening comments
5 are pretty standard for all cases. So you'll be hearing again
6 what you -- what you heard earlier this week.

7 I want to thank you for your service to begin with,
8 folks. It's a -- it's a tremendous service you do for your
9 community when you serve on jury duty. It is a -- it's a
10 situation that even though you may not see it at the time,
11 it's kind of a rare opportunity. Most folks don't ever serve
12 on jury duty. Most folks never have the opportunity to do
13 what you're doing here this week, and some of you twice, and
14 that is to sit in on an actual jury trial.

15 Most people's experience as it relates to jury trials is
16 what they've seen in books, what they've read in -- or what
17 they've read in books, they've seen on television or what
18 they've seen in the movies. And, of course, we know that
19 those trials are always filled with high drama and intense
20 action and riveting circumstances because those trials are
21 Hollywood. They are an effort to entertain you.

22 Now, during the course of this trial, while any number of
23 those things could possibly occur, it's important to
24 understand and remember that this trial is not for your
25 entertainment. This trial is a fundamental part of our

1 democracy. Often times in seeing that justice is done, the
2 process can be slow. Sometimes it can be very deliberate. It
3 can be repetitive at times. In other words, it's very
4 different than what you've seen on television or seen in the
5 movies or read in books.

6 This courtroom is a place of honor that is dedicated to
7 the protection and to the preservation of citizens' rights
8 through what many people have called the greatest justice
9 system ever created. The lawyers that appear before you --
10 they are advocates for the parties that they represent, but
11 first and foremost they are officers of the court sworn to
12 uphold the integrity and the fairness of our judicial system
13 and to assist you in your search for the truth.

14 You should expect them to be ethical, professional, and
15 competent in the performance of their duties.

16 Now, you've just taken an oath to try this case and to
17 reach a fair and a just verdict, and so you are also expected
18 to be professional, reasonable, and ethical in the performance
19 of your duties, which I have no doubt you'll do and I want to
20 thank you for that service.

21 Now, I'm going to share some things with you that will
22 help you follow along as we go through the course of this
23 trial. You've been selected as fair and impartial jurors
24 whose purpose is to find and to determine the facts of this
25 case.

1 Ladies and gentlemen, you are the sole judges of the
2 facts in this case. If at any time I make any comment about
3 the evidence or the facts, you must disregard those comments
4 because only the jury has the right to determine what the
5 facts are in a case.

6 You determine those facts from the testimony that you
7 hear and from any other evidence that is presented during the
8 course of this trial. It is especially important that you
9 perform your service and your duty of determining the facts
10 diligently and conscientiously because ordinarily there's no
11 way that I can correct an erroneous determination of facts by
12 a jury.

13 Now, on the other hand but with equal emphasis, the same
14 law that makes you the judges of the facts makes me the judge
15 of the law. The law as given to you by the Court is the only
16 law that you may consider. You must accept it and you must
17 follow it, even though you may disagree with it.

18 I'm not allowed to tell you what I think about the facts
19 or the evidence in the case and you're not allowed to disagree
20 with me about what the law is or what you think the law should
21 be. Your job is to take the law as I give it to you, apply
22 that law to the facts as you find the facts to be from the
23 testimony and the evidence in the case in rendering your
24 verdict.

25 Now, it's very important that throughout the course of

1 this trial, folks, that you keep an open mind and that you do
2 not decide any issue in this case until all of the evidence
3 has been presented, the parties have made their closing
4 remarks to you, and I've instructed you on the law.

5 Now, in just a moment, I'm going to recognize the
6 attorneys. I'll begin with the State and recognize Mr. Bogle.
7 He will have an opportunity to present to you what we refer
8 typically to as -- we refer to it as an opening statement.

9 Typically, what occurs during that opening statement is
10 he'll share with you what he intends to show or what he
11 believes that he's going to be able to show through the
12 evidence in the case. Once he concludes his remarks, then Mr.
13 Falk will have an opportunity to address you as well.

14 What is important to understand though, folks, is this.
15 It's important that you listen carefully to the attorneys, but
16 understand that what they share with you is not evidence.
17 They are not under oath. They're not testifying. It is
18 merely their contention as to what they believe the evidence
19 in this case will show. The evidence in this case is going to
20 come from the testimony of witnesses who take the stand and
21 then any exhibits that may come in during the course of the
22 trial.

23 Now, from time to time during the course of this trial,
24 you may hear one of the attorneys say something along these
25 lines. Judge, we've got a matter of law we need to take up

1 with the Court or, Judge, may we approach the bench. If I can
2 resolve a matter up here at the bench, I will.

3 I'll do that, but it may be an issue of law that I need
4 to take up and, depending on what it is, I may ask you to step
5 back into the jury room while I do that. If I ask you to do
6 that, there's only one reason I would do that.

7 Sometimes when I'm dealing with an issue of law, it
8 requires me to make some comment about the testimony or the
9 evidence that was presented in connection with that ruling.
10 And as I said to you earlier, I'm not to have any influence
11 over you about the evidence or the facts of the case. So to
12 protect you from those comments, I may ask you to step back
13 into the jury room, let me resolve the issue of law, and then
14 once we've done that, bring you back out and we'll pick up
15 where we left off.

16 Now, in determining -- well, let me back up. In
17 determining what the true facts are in this case, ladies and
18 gentlemen, you're going to have to decide whether or not the
19 testimony of a witness is believable. It's going to be my job
20 to rule as a matter of law whether certain testimony is
21 allowed into this record at all or not, but once testimony is
22 allowed into the record, whether or not you believe it is
23 solely up for you to decide.

24 In deciding whether to believe a witness, you have the
25 right to consider whether the witness has an interest in the

1 result of the trial, whether or not the witness is biased or
2 prejudiced toward one side or the other, the opportunity for
3 those witnesses to have seen the matters and the things about
4 which they testify, and about the way a witness acts on the
5 witness stand. You have the right, ladies and gentlemen, to
6 consider anything in this record that will help you to
7 evaluate the believability or the credibility of the
8 witnesses.

9 That means it is very important that you pay strict
10 attention to all of the witnesses, listen carefully to the
11 attorneys and to the Court. Try not to let your thoughts
12 wander, but pay strict attention to all of the evidence in
13 this case so that at the end of the evidence and the lawyers
14 have an opportunity to address you with their closing remarks
15 and I've given you the charge on the law, you will then be in
16 a position to go back into the jury room and for the first
17 time start discussions and deliberations with regards to the
18 evidence in this case.

19 Now, before I bring the attorneys up for opening
20 statements, let me first inquire from the State. Are there
21 any objections or exceptions to the Court's opening remarks?

22 MR. BOGLE: There are none, Your Honor.

23 THE COURT: Anything from the respondent?

24 MR. FALK: None, Your Honor.

25 THE COURT: Thank you, gentlemen. Now, ladies and

1 gentlemen, please, if you would, give the attorneys your
2 undivided attention as they address you with their opening
3 remarks. Mr. Bogle?

4 MR. BOGLE: Thank you, Your Honor. May it please the
5 Court.

6 THE COURT: Yes, sir.

7 OPENING STATEMENT ON BEHALF OF THE STATE

8 MR. BOGLE: Ladies and gentlemen, I introduced myself
9 earlier. My name is Jim Bogle. I'm with the Attorney
10 General's Office out of Columbia.

11 Sometimes in cases like this, people wonder why they're
12 hearing from our office as opposed to the local solicitor or
13 the county attorney or someone like that, and the reason is
14 when the legislature passed this law back in 1998, they wrote
15 in the law that our office would handle these cases on a
16 statewide basis. I have eight initial circuits. My
17 counterpart, Ken Murrell, at the office has the other eight,
18 and Florence County is on mine. So that's what we're here.

19 Now, when you came to court Monday, you might've been
20 thinking I'm going to hear an auto wreck case, I'm going to
21 hear a contract dispute, maybe a medical malpractice case or
22 something like that, and that's not what this is. In South
23 Carolina, we passed this law back in 1998 called the Sexually
24 Violent Predator Act.

25 What the general assembly wrote down when they wrote this

1 law out was they said this. They found that a mentally
2 abnormal and extremely dangerous group of sexually violent
3 predators exists who require involuntary civil commitment in a
4 secured facility for long-term control, care, and treatment.
5 The general assembly further finds the likelihood these
6 sexually violent predators will engage in repeated acts of
7 sexual violence if not treated for their mental conditions is
8 significant.

9 So that's what they wrote. In this type of case, Mr.
10 Fulton was convicted of some crimes classified as sexually
11 violent. There are 16 of them in the statute. He was
12 convicted of at least one. He went to prison. He's done his
13 prison time. That's over.

14 So right now we have filed a case against him saying that
15 he is a sexually violent predator. Now, what does that mean?
16 What do we have to prove to you? First, has he been convicted
17 of a sexually violent crime, and the record will reflect he
18 has, criminal sexual conduct with a minor in the second
19 degree.

20 The second thing is does he have a mental abnormality or
21 a personality disorder that makes him likely to commit future
22 acts of sexual violence unless he's confined in a secured
23 facility for what's called long-term control, care, and
24 treatment. And a facility for just that purpose is run in
25 Columbia by the Department of Mental Health.

1 Also, we have to show that he lacks sufficient ability to
2 control his behavior such that it makes him likely to commit
3 those types of crimes in the future. So it's a civil
4 commitment process.

5 Now, a few months ago when this case first started, we
6 had a hearing and the Court appointed Dr. Marie Gehle. She's
7 sitting right over there. She's a psychologist with the
8 Department of Mental Health. She was appointed by the Court
9 here in Florence to evaluate this guy and see if he had these
10 issues, and she found that he did. She diagnosed him with a
11 mental abnormality and a personality disorder.

12 Now, when she testifies, her job is going to be to
13 explain to you how she got to those diagnoses. What she
14 looked at, how she reached that diagnosis, and here's where
15 I'd like to give you sort of a warning or an apology in
16 advance. It's the kind of case where you might hear some kind
17 of distasteful stuff. She will talk about the underlying
18 sexual crimes that he did, what he did to the victims, what he
19 did, what they suffered from, what kind of crime it was, and
20 she will have to go into those details to justify and explain
21 to you the diagnosis that she arrived at.

22 So we've got the mental abnormality and a personality
23 disorder called antisocial personality disorder. So we have
24 the crimes and the mental abnormality, but the judge told you
25 a few minutes ago his job is to be the judge of the law. He

1 decides what type of testimony is admissible. At the end of
2 the case, he'll explain to you what the law is that you have
3 to apply to the facts you hear from this witness stand.

4 Your job, your responsibility that no one else can touch,
5 is you are the judges of the facts. You will listen to the
6 testimony from all the witnesses that we'll put before you and
7 decide exactly what happened and how it relates to the law
8 that the judge is going to explain to you. You're the judges
9 of the fact and no one else is. That's very important.

10 The final thing is this. The burden of proof. Normally,
11 in a civil case like the contract case that was heard earlier
12 in the week, the burden of proof is what they call a
13 preponderance of the evidence, 51 percent, just barely. The
14 scales of justice tipping just one way or the other.

15 In this case though, when the legislature wrote this law,
16 they said that the burden of proof was the State had to prove
17 to you these two elements, the crime and the mental
18 abnormality, and the likely to reoffend. We had to prove
19 those to you beyond a reasonable doubt, and the judge will
20 explain to you later in the case what that definition means.
21 I would suggest that it means something that leaves you firmly
22 convinced it's true. The judge will explain that to you at
23 the end of the case.

24 In addition, in an average case in South Carolina,
25 witnesses can usually only testify as to things they perceived

1 with their senses. You know, I heard the gun go off. I saw
2 the man grab the knife. I saw the light turn red. I heard
3 this. I smelled this.

4 But in certain cases, if a person has training,
5 education, and expertise in a particular subject, they can be
6 allowed to give opinions, and that's what you will hear from
7 today. Dr. Gehle is a trained forensic psychologist who has
8 done maybe hundreds of these types of evaluations. So she'll
9 I think be allowed to give an opinion as to whether or not in
10 her expert opinion as a trained psychologist he has this
11 mental abnormality and can't control it.

12 That's what the case is. Listen to the evidence. Give a
13 verdict for the side, the State we hope, whichever you feel is
14 appropriate. Do your job. Listen to the facts. Listen to
15 the law.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Bogle. Mr. Falk?

18 MR. FALK: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. FALK: Mr. Bogle.

21 OPENING STATEMENT ON BEHALF OF THE RESPONDENT

22 MR. FALK: Ladies and gentlemen of the jury, I'm
23 representing Michael Fulton here today.

24 Now, the three of y'all who were on the last jury -- and
25 I think Mr. Bogle touched on this before -- you sort of have

1 to change gears a little bit because in that last case I
2 believe it was a contract dispute and it was a preponderance
3 of the evidence. You know, just kind of hear both stories,
4 which one is more believable than the opposite, and that's how
5 you reached a verdict.

6 This case is different than that. This -- you need to be
7 so sure that you're beyond a reasonable doubt, and what Mr.
8 Bogle didn't explain and what I think is helpful for you to
9 know is the reason why the standard is different.

10 Because we are in a civil court, this is a civil
11 proceeding like anything else, but you have to find beyond a
12 reasonable doubt and I think the reason is because at the end
13 of the day you're going to make a decision whether or not he's
14 going to be eating his mom's cooking tonight and sleeping in
15 his home or whether or not he's going to be going to some kind
16 of secured facility. So I mean this -- your decision is going
17 to have an impact on his liberty going forward and that's why
18 you need to be especially sure of your decision.

19 Now, in our society, criminals go to prison. That's what
20 all the prisons are for and that's what all the jails are for
21 and people with mental illness go to hospitals, and this case
22 is kind of a blend of those two things. That's why we have
23 the Sexually Violent Predator Law.

24 But what you may find is that the Sexually Violent
25 Predator Law, which was originally designed to catch the worst

1 of the worst, the big offenders, the pedophile offenders, the
2 multiple offenders, those type of people, and the way to keep
3 them out of society, but I think as time has gone on, this law
4 has suffered from mission creep, where they sort of keep
5 broadening this definition. It's no longer just worried about
6 pedophiles. Now they're talking about maybe antisocial
7 personality disorder or they're talking about other kinds of
8 disorders.

9 And what I think is going on and what I hope that you
10 will find is what's going on is they are trying to define
11 criminal conduct and say that it's really a mental illness.
12 My point is, is that it's always criminal conduct. Criminals
13 go to jail. They serve their time and then they're released.

14 You're going to hear a lot of bad stuff about my client's
15 childhood. He had a rough childhood and you're going to hear
16 about a series of foster homes, group homes. He was an angry
17 child and he did a lot of stuff when he was a child that he
18 shouldn't have and he acted out and sometimes he acted out
19 violently.

20 And you're going to have a decision at the end of the day
21 about whether or not you think he needs to be confined for
22 more treatment, but you can't just be -- I mean even if you
23 think that my client, if he's let out, is going to go and
24 steal a car or if he is going to go and buy some drugs or
25 maybe even get into a fist fight with somebody, under the

1 statute you are not allowed to put my client in the sexually
2 violent predator treatment program because you have to decide
3 whether or not you believe beyond a reasonable doubt that, if
4 he is not confined, he is going to commit a crime of sexual
5 violence, and that is a specific thing.

6 This program is not designed to take people out of
7 society because we're worried they're going to do something
8 bad in the future, and that's what I -- that's what this
9 program can become when you start using these really broad
10 definitions of what's a mental illness and what's a
11 personality defect.

12 At the end of the day, I think you may find that you
13 might not like my client that much and you might not
14 necessarily want to have him as your neighbor, but I think at
15 the end of the day you will also find that he does not pose a
16 risk that he's going to commit a crime of sexual violence in
17 the future. And if that is what you find, then you must find
18 my client not to be a sexually violent predator. Thank you.

19 THE COURT: Thank you, Mr. Falk. Mr. Bogle, you may call
20 your first witness.

21 MR. BOGLE: Thank you, Your Honor. May it please the
22 Court. We would call Dr. Marie E. Gehle.

23 THE COURT: Dr. Gehle, if you would, please come around
24 to be sworn.

25 MR. FALK: Could we have about two minutes?

1 THE COURT: Yeah.

2 (WHEREUPON, Mr. Falk exited the courtroom.)

3 MR. BOGLE: Go ahead.

4 THE COURT: Come around, Dr. Gehle. Go ahead and place
5 her under oath.

6 THE CLERK: Please raise your right hand. Place your
7 left hand on the Bible. Do you swear or affirm that the
8 testimony you give in this case will be the truth, the whole
9 truth, and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Have a seat and state your name for the
12 record.

13 THE WITNESS: Thank you. My name is Marie Gehle, G-e-h-
14 l-e.

15 (WHEREUPON, there was a pause in the proceedings until
16 Mr. Falk entered the courtroom.)

17 MR. FALK: Thank you.

18 THE COURT: All right. Mr. Bogle?

19 MR. BOGLE: Think you, Your Honor.

20 DR. MARIE E. GEHLE, being first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BOGLE:

24 Q: Good afternoon, Dr. Gehle.

25 A: Good afternoon.

1 Q: Now, you've given your name to the jury. What is your
2 occupation at the present time?

3 A: I'm a chief psychologist with the Department of Mental
4 Health.

5 Q: And what degrees do you possess, educational degrees?

6 A: I have a bachelor's degree in psychology, a master's
7 degree in clinical psychology, and a doctorate in clinical
8 psychology.

9 Q: Have you had any additional specialized training beyond
10 just getting those degrees?

11 A: Yes. I did a pre-doctoral internship at Washington state
12 -- in Washington state at Western State Hospital. Part of
13 that -- part of that internship was at their sexually violent
14 predator program, where I did treatment for a four-month
15 rotation. I trained in doing forensic evaluations for the
16 courts. I also did a post-doctoral fellowship in forensic
17 psychology at East Central Regional Hospital in Augusta,
18 Georgia, and then I've done various trainings over the years
19 since I've graduated from schooling and been licensed as a
20 psychologist.

21 Q: Dr. Gehle, what states are you licensed to practice
22 psychology in?

23 A: I'm licensed to practice in Georgia and in South
24 Carolina.

25 Q: And briefly, what is the definition of psychology?

1 A: Psychology is the study of the human behavior and the
2 mind.

3 Q: Okay. Now, if I use the word forensic and put it in
4 front of psychology and call it forensic psychology, what does
5 that mean in that context?

6 A: That's applying the science of psychology to matters of
7 the law. So we do things like competency to stand trial
8 evaluations, competency to be executed, not guilty by reason
9 of insanity, whether you've had an injury in a car accident, a
10 mental injury. We testify in things like that and we do risk
11 assessments, and that's what -- that's what we're here doing
12 today, a sexually violent predator evaluation, which includes
13 a risk assessment.

14 Q: So your job as a forensic psychologist has you conducting
15 psychological evaluations of people in all these different
16 types of areas you just mentioned?

17 A: Yes.

18 Q: Well, what --

19 A: That's what the field is.

20 Q: All right. Do you --

21 A: I don't do all those types of evaluations. This is
22 primarily the only evaluation I do these days.

23 Q: Okay. Historically looking at your career, what types of
24 psychological evaluations have you done in addition to the
25 ones under the Sexually Violent Predator Law?

1 A: Competency to stand trial evaluations, criminal
2 responsibility, which includes whether somebody is guilty but
3 mentally ill or whether they are not guilty by reason of
4 insanity, risk assessments as to whether somebody needs to be
5 civilly committed in a general hospital, and risk assessments
6 in -- in regard to sex offenders in the Sexually Violent
7 Predator Act.

8 Q: Okay. Now, with regard to this particular law, the
9 Sexually Violent Predator Law of South Carolina, what has been
10 your workings in that field? What types of evaluations have
11 you conducted in that field?

12 A: I've done two types of evaluations. I've done annual
13 review evaluations. Those are evaluations of people who have
14 been committed as sexually violent predators. They are
15 entitled to an evaluation every year to see if they continue
16 to meet the criteria, and I've done those evaluations. I've
17 also done what we're here for today, which we call a pre-
18 commitment evaluation, and that's to determine whether
19 somebody meets the criteria to be considered a sexually
20 violent predator and requires civil commitment.

21 Q: And about how many pre-commitment evaluations, like the
22 one today, have you done in your career with the Department of
23 Mental Health here in South Carolina?

24 A: It's roughly around 125 in South Carolina.

25 Q: Okay. Have you previously been recognized by the courts

1 of South Carolina in the fields of psychology and forensic
2 psychology here in South Carolina?

3 A: Yes.

4 Q: About -- also in Georgia?

5 A: Yes.

6 Q: In South Carolina, about how many times as an expert
7 witness in the field of psychology or forensic psychology?

8 A: It's been well over 75 times.

9 Q: Okay.

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

13 THE COURT: Do you wish to voir dire the witness?

14 MR. FALK: A couple questions?

15 THE COURT: Yeah.

16 VOIR DIRE

17 BY MR. FALK:

18 Q: Dr. Gehle, are you -- is there any board certification in
19 your field?

20 A: Yes, there is.

21 Q: Are you board-certified in your field?

22 A: No, I'm not.

23 Q: So is there any type of peer review that you go through?

24 A: Peer review as in what regard?

25 Q: I mean I assume board certification means that other

1 doctors decide you're competent enough to be certified by the
2 board. Is there any kind of same mechanism like that in your
3 field?

4 A: Well, board certification is a specialty. I went through
5 licensure evaluations and testing, and that also includes some
6 review of your work and of your evaluations. People routinely
7 look over my evaluations that I do in this regard, but it's
8 not -- it's not been in front of a board.

9 Q: You said there is -- but there is board certification in
10 your field?

11 A: Yes, there is.

12 Q: And what does that entail?

13 A: It's a very long process. It -- it entails -- first, you
14 apply to see if your credentials meet the minimum criteria.
15 Then you have to I believe take a test on case law and you
16 submit work samples. Those have to be approved. You do an
17 oral -- I guess an oral examination and then they make a
18 decision.

19 Q: And you haven't done that yet?

20 A: No.

21 MR. FALK: We'd have no objection.

22 THE COURT: All right. Thank you, sir.

23 MR. BOGLE: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. BOGLE:

1 Q: Dr. Gehle, how did you get involved in this particular
2 case involving Michael Fulton?

3 A: I was appointed by the Court to do this evaluation.

4 Q: And what type of evaluation again is the one you're doing
5 with Mr. Fulton?

6 A: It's what I call a pre-commitment evaluation.

7 Q: Could you describe for the jury your protocol, your step-
8 by-step method you follow when doing this type of evaluation?

9 A: Yes. First off, I get the order and that's accompanied
10 by records, typically the petition that was filed in the court
11 and other court orders. There are also many records that go
12 along with that, things from the Department of Corrections,
13 previous evaluations, criminal records, warrants, indictments,
14 police reports, things of that nature.

15 I review all those records. I look for things that might
16 exist that are missing and I'll request those. And then I sit
17 down and I do an evaluation of the respondent, in this case
18 Mr. Fulton. I'll do a thorough interview asking them all
19 kinds of questions about their background, where they were
20 born and raised, about their psychological history, medical
21 history, about their sexual history, about things that they
22 are aroused by sexually.

23 I will ask them questions about their criminal history.
24 I'll try to get an account of all their -- you know, their
25 side of things on all their offenses. I'll get an idea of

1 what they want to do in the future if they are not committed,
2 what they've learned in treatment if they participated in
3 treatment, and things of that nature.

4 I'll then take all that information and I'll write a
5 report, and all that information can go into the report and I
6 submit it to the Attorney General's Office and they submit it
7 to the attorney -- to other attorneys and the judge.

8 Q: Okay. Now, as far as this process you do, is there also
9 some testing or scoring or testing that you do of a person
10 like Mr. Fulton?

11 A: Yes. In this case, I had Mr. Fulton take a paper and
12 pencil personality test, and then I also scored an actuarial
13 risk assessment for sex offenders.

14 Q: Okay. And we'll get to that later on. Now, as part of
15 this process, you said you interview the guy. So did you meet
16 with and interview Mr. Fulton?

17 A: Yes, I did.

18 Q: About how long was that interview?

19 A: It was 5 hours and 30 minutes, and that included the time
20 that he took to take the psychological testing.

21 Q: Okay. Is the man you met with present in the courtroom
22 today?

23 A: Yes.

24 Q: Would you identify him just for the record?

25 A: He's over there in the plaid shirt sitting next to Mr.

1 Falk.

2 Q: Okay.

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

5 THE COURT: All right, sir.

6 BY MR. BOGLE:

7 Q: Now, in addition to meeting with him, what type -- you
8 talked about the categories and stuff you look for.
9 Specifically in this case, what type of information did you
10 get to review about Mr. Fulton?

11 A: Yes. This case had a significant amount of information.
12 I have two file folders full of information. I looked at
13 records dating back as far back as I could get, things that
14 included placements where he had been, group homes. He had
15 been at the Department of Juvenile Justice. I looked at
16 records from there.

17 I looked at records from the Department of Social
18 Services, the Department of Mental Health, because he had been
19 in William S. Hall, a mental hospital for children and
20 adolescents. He had been there when he was in -- when he was
21 a child. I looked at all those records. I looked at things
22 related to his criminal history, police reports, warrants,
23 indictments, court records related to those things, like
24 sentence sheets or dispositional reports from his juvenile
25 offenses.

1 I looked at his national criminal history, various
2 juvenile petitions. I looked at sexual assault examination
3 protocols for a victim from 1998, medical records for victims,
4 psychological evaluations that were conducted on him when he
5 was a juvenile, lots of Department of Corrections records.

6 I looked at a prior evaluation pursuant to the Sexually
7 Violent Predator Act. I also viewed two recordings. They
8 were audiovisual recordings of the interview of victims from
9 2012. That was the bulk of what I looked at.

10 Q: Okay. And in cases like this, if you're looking through
11 all these records and you find something that you want to get
12 and it's not there, do you then contact our office to try and
13 locate records?

14 A: Yes.

15 Q: Did that happen here?

16 A: Yes.

17 Q: Okay. And the records that you got -- were those the --
18 these were the records provided by the Department of
19 Corrections and by our office; is that right?

20 A: Yes. And then some things I might have gotten directly
21 from the source.

22 Q: Okay. Okay. And that also included -- now, do you have
23 to -- when you're looking through this stuff and you find
24 prior psychological evaluations of Mr. Fulton by any type, be
25 it Department of Juvenile Justice, Department of Corrections

1 or even under this law, the Sexually Violent Predator Act, do
2 you look at those and is it necessary to also look at those
3 prior evaluations and the diagnoses they either came up with
4 or didn't come up with?

5 A: Yes.

6 Q: Why is that? Why is it important to look at prior
7 evaluations?

8 A: Well, it's -- it's an objective report of his behavior
9 when he was younger, and so those become very important
10 because I'm looking for patterns of behaviors. So I want to
11 see what his behavior was like earlier. I asked him what his
12 behavior was when he was a kid, but it's good to have those
13 reports because then it's a third-party source. It's
14 typically more objective than what he would tell me.

15 Q: Now, Dr. Gehle, the stuff you've been talking about -- is
16 this the type of information that is typically and reasonably
17 relied upon by experts in your field?

18 A: Yes.

19 Q: And did you consider and rely upon this information in
20 addition to the testing and talking to Mr. Fulton in rendering
21 an opinion in this case?

22 A: Yes, I did.

23 Q: Now, looking around about page 7 of your report, you
24 begin talking about some juvenile -- well, let me back up and
25 ask you a different way. In an examination of this type, is

1 it necessary to look at criminal charges that resulted in
2 convictions?

3 A: Yes.

4 Q: Or a finding of guilty such as by a Family Court?

5 A: Yes.

6 Q: Okay. And why is that important?

7 A: Well, because the Court found those to be factual. So
8 those carry a lot of weight in my decision, depending on what
9 the -- what the conviction was for.

10 Q: Okay. Is it necessary to look at stuff that wasn't even
11 convictions and charges that weren't even -- weren't sexual in
12 nature?

13 A: Yes.

14 Q: Why is that important?

15 A: Well, because one of the -- one of the diagnoses that I
16 look for is personality disorders, and the most relevant
17 personality disorder in sexually violent predator proceedings
18 is antisocial personality disorder. In order to make that
19 diagnosis, you have to have evidence of conduct disorder prior
20 to age 15. So I need to see was he having problems with his
21 behavior prior to age 15, and so I look at all those criminal
22 charges, reports of his behavior in group homes and in the
23 Department of Juvenile Justice, and things like that prior to
24 age 15 as evidence of conduct disorder.

25 Q: So in your science, the science that you apply as a

1 psychologist -- as a forensic psychologist, it's important?
2 It's important to look at places where he was charged but not
3 convicted?

4 A: Yes.

5 Q: And why is that?

6 A: Well, it's also -- you know, sometimes when people are
7 charged, they're arrested and they're taken out of society.
8 So I'm looking at how much time did he have in the community
9 to commit offenses, and then I'm looking for patterns of --
10 you know, did he commit soon after he was released? Was he
11 out the whole time and didn't offend? Even when somebody's
12 charged with a crime, I mean that can feel horrible to people
13 and we often will amend our behavior if we are charged.

14 And I want to see, you know, is that the case with him.
15 Did he amend his behavior even though he wasn't convicted?
16 Did that change things for him or did he go on and act as if
17 it never happened? So those things become very important
18 because an arrest is a fact. It happened. The underlying
19 behavior for that offense might not have happened, but the
20 fact that he was arrested and, you know, going through court
21 proceedings is factual.

22 Q: Okay. Can you explain to the jury how a person's past
23 sexual offense behavior relates to future sexual offense
24 behavior?

25 A: Past sexual offense behavior relates to future sexual

1 offense behavior because people's sexual arousal patterns tend
2 to stay consistent over time.

3 Q: Okay. Now, starting early in your report, say around
4 page 7 and page 8, there's some 1998 evaluations done of this
5 guy. What was the significance you gleaned from those
6 evaluations?

7 A: Well, Mr. Fulton had a pretty rough upbringing.
8 Beginning at age 5, he was shuffled back and forth between his
9 parents and into foster care, things of that nature. He was
10 physically abused, per the reports, and this -- this was sort
11 of the beginning of him going in and out of foster cares,
12 Department of Juvenile Justice facilities, various treatment
13 facilities, group homes, and things of that nature.

14 Q: Can you walk through the criminal history that you found
15 relevant? Well, let's -- let's stop for a second. Was one of
16 the diagnoses -- what was -- of the diagnoses that you got on
17 this guy, did you diagnose him with a personality disorder?

18 A: Yes.

19 Q: And what was it?

20 A: Antisocial personality disorder.

21 Q: And basically, what is that?

22 A: It is a pattern of violation of the rights of others,
23 disregard for and violation of the rights of others. It has
24 various criterias, but that's the overarching definition.

25 Q: Okay. Starting early in your report, say around page 8

1 of your report, would you walk through the criminal history
2 that you found significant in developing your opinion about
3 him, both as far as that personality disorder and regarding
4 any mental abnormality that we'll talk about in a few minutes?

5 A: Okay.

6 Q: What significant criminal history did you find?

7 A: Well, Mr. Fulton was charged with his first criminal
8 offense at age 8.

9 MR. FALK: Objection, Your Honor. Relevancy.

10 THE COURT: All right. Overruled.

11 BY MR. BOGLE:

12 Q: Go ahead, please.

13 A: He was charged with shoplifting and he was actually
14 convicted of that and ordered to pay restitution. So that
15 started his criminal history and that -- that was the thing
16 that put him -- or it seemed to be related to that that he
17 went into foster care or at least, you know, one of the first
18 times.

19 He then, like, not too long after that was placed into
20 the hospital. That age 8 one was in 1991 because Mr. Fulton
21 was born in of 1983. So in -- let's see here. In
22 1995, he was charged with simple assault and battery.

23 MR. FALK: Objection. Relevancy.

24 THE COURT: All right. Overruled.

25 BY MR. BOGLE:

1 A: Various assault and batteries when he was, you know,
2 around age 12. He was placed in and out of group homes. In
3 1998 when he was 15, he was charged with four counts of
4 assault and battery of a high and aggravated nature, and those
5 were sexual in nature. That was while he was in a group home.

6 Q: How old would he have been at that time?

7 A: He was 14 years old when the offenses were committed and
8 15 when the charges were filed.

9 Q: And was he found guilty of those offenses?

10 A: He was found guilty of -- well, it's a little bit more --
11 and this is a very complicated case. So he was charged with
12 four counts of assault and battery of a high and aggravated
13 nature that were sexual in nature, and this was for
14 inappropriately and uninvitingly -- uninvited touching of
15 minor females. So females were under age 17, per the records.
16 He also made inappropriate comments to them. Before those
17 were disposed, he was also charged with assaulting a staff
18 member and --

19 Q: Would that be at the facility where he was housed?

20 A: Yes.

21 Q: Okay. Go ahead.

22 A: So that would make five charges. Then he -- some of the
23 charges were amended and he ended up pleading guilty to three
24 counts of assault and battery. So two of those were related
25 to the sexual behavior and one of those was related to the

1 assault of a staff member.

2 Q: Okay. And moving forward to November of 1998, was there
3 a criminal sexual conduct charge at that point in time?

4 A: Yes. So those convictions of the three counts of assault
5 and battery --

6 Q: Uh-huh.

7 A: Those sent him into the Midland Evaluation Center. So
8 that is a Juvenile Justice facility. They do inpatient
9 evaluations of juveniles and then they make recommendations to
10 the Court as to whether this person can be treated as an
11 outpatient, whether they should go to a group home or whether
12 they need to go to essentially juvenile prison. So they sent
13 Mr. -- Mr. Fulton there and he -- he did very poorly there,
14 and so they determined that he should go into a DJJ facility,
15 a Department of Juvenile Justice facility.

16 While there, he sexually assaulted a 16-year-old male.
17 According to all the records that I reviewed -- and there --
18 there were significant records because this was a major
19 incident in a -- in a state facility. He got into some
20 trouble one night. It was about, you know, 2 o'clock in the
21 morning. He apparently was in a little scuffle on one of the
22 units and so they transferred him to another unit, the special
23 management unit. So where they send the kids who are having,
24 you know, significant behavior problems.

25 Surprisingly, they put him in a room with another inmate,

1 who was 16 years old. So within a half-hour of him being
2 placed in that room, he sexually assaulted that 16-year-old
3 male, and this was a very violent assault. He apparently
4 choked the victim, waited until he regained consciousness,
5 choked him again until he lost consciousness, waited until he
6 regained consciousness, choked him a third time until he lost
7 consciousness, waited until he regained consciousness, and on
8 that third time the victim woke up to his underwear being
9 removed.

10 They I guess, you know, tussled back and forth, and Mr.
11 Fulton, according to the medical records, had about 75 pounds
12 on the victim; so he was quite a bit bigger than him. And he
13 was able to penetrate his anus with his penis. So he -- he
14 anally raped this 16-year-old male.

15 Q: Did that lead to a Family Court conviction?

16 A: It led to three Family Court convictions.

17 Q: Okay. For what type of crime?

18 A: He was convicted of criminal sexual conduct in the first
19 degree and two counts of assault and battery of a high and
20 aggravated nature, and those -- those assault and battery of a
21 high and aggravated nature were related to the choking.

22 Q: And is criminal sexual conduct in the first degree
23 classified as a sexually violent crime under the statute that
24 we're dealing with today?

25 A: Yes, it is.

1 Q: Okay. What about after that? As a result of that
2 conviction, what was -- when would that conviction have
3 occurred or that finding of guilt?

4 A: Okay. So the offense happened on November 25th, 1998, and
5 that conviction did not happen until April 11th, 2000.

6 Q: Okay. And the sentence he would have gotten then was --
7 from the Family Court would have been what?

8 A: He was sentenced to an indeterminate period not to exceed
9 his 21st birthday. And then when you get convicted as a
10 juvenile, the juvenile -- some board gives you a guideline as
11 to how much time you actually have to serve, and that guide --
12 with that case, his guideline was 36 to 54 months.

13 Q: Okay. And what -- what -- what surfaced next on your
14 radar in investigating this guy that leads to the diagnoses
15 that you have on him as far as criminal conduct?

16 A: Okay. Well, he was diagnosed with a mental illness,
17 depression, around -- or, you know, throughout his juvenile
18 years he was given various mental health diagnoses.

19 Q: Uh-huh.

20 A: And so at the time -- this is all very technical and
21 complicated and I had to do a lot of research to even figure
22 this out because this is well before my time of being involved
23 with the Department of Mental Health, but it's my
24 understanding that there was a lawsuit against the Department
25 of Juvenile Justice that they weren't adequately treating kids

1 with mental illnesses and so that there was a settlement that
2 required kids with mental illnesses who are convicted of
3 crimes be sent to programs at the Department of Mental Health.

4 And so Mr. Fulton had a history of mental illness and so
5 he was transferred into one of those facilities. At that
6 facility, he was described as having sexually inappropriate
7 behavior repeatedly. He also was offered sex offender
8 treatment, but his behavior was so disruptive that he was on
9 special programming and he was -- he was able to participate
10 in that program very minimally. He was too disruptive to be
11 into the treatment groups.

12 Q: Now, Doctor, let me ask you one preparatory question
13 before you go on. As we walk our way through these crimes,
14 would you have reviewed the documents that you could get
15 related to the crimes as part of your evaluation?

16 A: Yes.

17 Q: And when you did this on these criminal arrests,
18 convictions or adjudications or findings of guilt, is this the
19 type of stuff that's typically and reasonably relied upon by
20 other experts in your field?

21 A: Yes.

22 Q: Okay. And it's necessary to look at the underlying
23 details because why?

24 A: Well, I want to see, you know, what -- what are the
25 elements of the crimes, what kind of behavior does he

1 typically engage in, you know, what kind of problems does he
2 have in controlling his behavior.

3 Q: Okay. Go ahead then with where you left off in as far as
4 what happened next. He's in a mental health facility because
5 of that lawsuit?

6 A: Yes.

7 Q: What happens there?

8 A: The program where he was at apparently closed and so he
9 was sent to another Department of Mental Health program, and
10 there he assaulted a staff member and was charged with assault
11 and battery. That actually facilitated his transfer to the
12 Department of Corrections because at that time he was 18 years
13 old. They determined that he didn't have a mental illness
14 that -- that qualified for that Department of Juvenile Justice
15 lawsuit subclass and that he actually had antisocial
16 personality disorder, and so he needed to be treated in the
17 Department of Corrections. They transferred him to the
18 Department of Corrections and he was subsequently convicted of
19 an assault and battery of a high and aggravated nature, and so
20 he was serving a juvenile and adult sentence at the same time.

21 Q: Was that assault and battery of a high and aggravated
22 nature -- was that a sexual one or just beating somebody up?

23 A: No. That was the assault of a staff member at the
24 Department of Mental Health --

25 Q: Okay.

1 A: -- facility.

2 Q: And that led to more time added to his sentence?

3 A: Well, it added to a new sentence.

4 Q: Okay.

5 A: And at that time, he was charged as an adult.

6 Q: Okay.

7 A: So he had a juvenile sentence that could hold him until
8 he was 21 and then he had an adult sentence that could hold
9 him. I believe he -- it would have had an endpoint, but he
10 was sentenced to five years in that case.

11 Q: Uh-huh. Okay. What happened next that you found
12 significant?

13 A: Well, so he is -- he is at the Department of Corrections.
14 So, you know, adult prison, and he was -- in 2002, so that
15 would have been when he was just right before his 19th
16 birthday. He was 18 at the time.

17 Q: Uh-huh.

18 A: He was accused of a sexual misconduct in the Department
19 of Corrections. That's a disciplinary infraction at the
20 prison, and that was for publicly masturbating while looking
21 at a staff member. He was convicted of that in -- in the
22 prison disciplinary structure.

23 Several months later, about four months later, so he's 19
24 now, he was accused of sexually assaulting another inmate.
25 That sexual assault was described as he was very hostile and

1 aggressive. He struck the victim several times about the body
2 and choked the victim during sexual intercourse. It was noted
3 that he admitted to that to an investigator.

4 So with that case, he was actually charged in criminal
5 court and he was charged in the Department of Corrections in
6 their disciplinary proceedings. He was convicted of sexual
7 assault in the Department of Corrections; so it's a
8 disciplinary infraction.

9 And in the criminal court, the case was dismissed with
10 leave to restore because they couldn't locate the victim. So
11 the victim had been released from prison and they apparently
12 didn't know where the victim was; so they didn't proceed with
13 the case, but they left it open that they could refile if they
14 found the victim.

15 Q: Now, at this point, we're around 2002 or 2003; is that
16 right?

17 A: Yes.

18 Q: Okay. As part of your records, did you find where he had
19 been reviewed previously by a psychologist appointed by the
20 Court at the Department of Mental Health under this particular
21 law, the same type of evaluation you're doing now?

22 A: Yes.

23 Q: Okay. And as a result of that evaluation --
24 approximately when would this have been?

25 A: He was evaluated in 2004 and a report was issued on

1 November 27th, 2004.

2 Q: Okay. And did that evaluation find that he met the
3 criteria to be committed as a sexually violent predator?

4 A: No.

5 Q: For long-term control, care, and treatment?

6 A: No.

7 Q: Okay. And you reviewed that?

8 A: Yes.

9 Q: Well, did they diagnose him with a mental abnormality?

10 A: I'd have to look at that original source here. Just bear
11 with me. It's real buried in here.

12 Q: Okay. Let me -- let me withdraw --

13 A: I'm sorry.

14 Q: -- that question and ask you a different way.

15 A: Okay.

16 Q: In that particular case, they would have had to have
17 diagnosed him with a mental abnormality if they could and
18 recommend commitment to the SVP treatment program; right?

19 A: Yes.

20 Q: In this case, they did not; is that right?

21 A: They did not.

22 Q: So the case got dismissed?

23 A: Yes.

24 Q: All right. Now, it never went to a trial like we're
25 having today, did it?

1 A: No.

2 Q: All right. Now, was he then -- at the time this
3 evaluation was done, he was still at the Department of
4 Corrections; correct?

5 A: Yes.

6 Q: Okay. And then was he released from the Department of
7 Corrections fairly soon after that evaluation was done and
8 that case got dismissed?

9 A: Yes. He was released in -- on December 1st, 2004, per the
10 records.

11 Q: Okay. Was there criminal conduct by him that occurred
12 shortly after his release?

13 A: Yes. He was charged with possession of a weapon during a
14 violent crime on October 8th, 2005. So it wasn't -- or I guess
15 it was --

16 Q: Uh-huh.

17 A: -- a little over a year.

18 Q: Now, do you attach any significance to the fact that he'd
19 gone to prison, done the time for his crimes, and is getting
20 in trouble so soon after he gets out?

21 A: Yes.

22 Q: Why?

23 A: Well, you know, most people find prison to be an
24 unpleasant experience and they want to do everything that they
25 can to avoid it. Mr. Fulton had been in and out of facilities

1 that have a lot of rules. There's not a lot of freedom. They
2 tell you when to get up in the morning. They tell you what to
3 do all day. They decide what you're going to eat. They
4 decide if you can go to the bathroom or not. He had been in
5 and out of those facilities all his life and here he has an
6 opportunity for freedom and it didn't take him too long to,
7 you know -- you know, lose that freedom.

8 Q: Okay. Then after that in December of 2005, was there a
9 stolen vehicle charge?

10 A: Yes.

11 MR. FALK: Objection, Your Honor.

12 MR. BOGLE: Okay.

13 MR. FALK: Relevancy.

14 THE COURT: All right. Overruled.

15 BY MR. BOGLE:

16 Q: Now, what happened after that as far as his criminal
17 activity, getting arrested, and things like that that you
18 found -- that you found significant in doing your diagnosis?

19 A: He continued to get arrested for various crimes. You
20 know, once or twice a year, he was getting arrested. He
21 wasn't always getting convicted, but he was getting arrested.

22 Q: Okay. And moving ahead to about page 18 of your report,
23 I'd like to hand you this document.

24 MR. BOGLE: If I may approach the witness, Your Honor?

25 THE COURT: Yes, sir.

1 BY MR. BOGLE:

2 Q: I'd like to hand you a certified copy of a conviction
3 here in Florence County for criminal sexual conduct with a
4 minor in the second degree where the victim is under 16 years
5 of age, a copy of the sentencing sheet, the indictment, and
6 the warrants that went with it. Is that a document that you
7 looked at in the course of your investigation?

8 A: I looked at copies of these.

9 Q: Okay. And was he convicted? And the date is given as
10 October 21 of 2014; is that right?

11 A: Yes.

12 Q: And what was the crime he was convicted of?

13 A: He was convicted of criminal sexual conduct with a minor,
14 victim under 16 years of age, in the second degree.

15 Q: And is that particular crime also a sexually violent
16 crime under South Carolina's law?

17 A: Yes, it is.

18 Q: Okay. What information do you have about that particular
19 conviction that you feel relevant to making your diagnosis
20 about Mr. Fulton?

21 A: Okay.

22 Q: You mentioned the other criminal conduct kept happening
23 and happening and happening. Now, we come to this.

24 A: Yes. So this offense was a little bit different than his
25 previous offenses. This one involved an eight-year-old female

1 acquaintance and he was accused of performing vaginal
2 intercourse on the victim and simulating vaginal intercourse
3 on the victim. He was living with the victim and the victim's
4 mother and siblings, and he babysat the children when the
5 mother went to work. So he sexually offended this -- this
6 girl who was not consenting to this conduct in 2012.

7 Q: Okay.

8 MR. BOGLE: And, Your Honor, at this time, I'd like to
9 move to introduce into evidence the certified copy of the
10 criminal sexual conduct with a minor in the second degree
11 conviction here in Florence County.

12 THE COURT: Any --

13 MR. FALK: No objection.

14 THE COURT: All right. Without objection. That's
15 State's 1?

16 MR. BOGLE: State's 1. Yes, sir.

17 THE COURT: State's 1.

18 (WHEREUPON, State's Exhibit Number 1,
19 conviction/sentencing records, was admitted into
20 evidence.)

21 MR. BOGLE: Thank you.

22 BY MR. BOGLE:

23 Q: What did you find -- now, everything you've been talking
24 about so far seems to involve same-age people or people who
25 are younger. We've got an eight-year-old girl here. What did

1 you find significant about this particular crime as it fits in
2 the greater picture we're looking at about Mr. Fulton?

3 A: Well, to me it looked like a pattern of just wanting to
4 take sex from people, regardless of who it was, what their
5 ages were. It wasn't an age preference per se. It was an
6 opportunity and it was whoever was around, whether that be an
7 eight-year-old or an adult or, you know, a peer.

8 Q: Now, in this particular case, looking at the sentencing
9 sheet, State's Exhibit 1, the actual time he got, the sentence
10 he got, was how long?

11 A: 734 days.

12 Q: Okay. Now, the fact that he got a relatively light
13 sentence for the crime, does that impact at all on your
14 opinion about him or how you evaluate this crime?

15 A: Well, it doesn't impact my opinion because I have to look
16 at whether he was convicted of sexually violent offenses.
17 There are various sexually violent offenses defined by the
18 law. They include things including, like, criminal sexual
19 conduct, which is rape, down to criminal solicitation of a
20 minor, which is approaching a minor for sexual purposes. So
21 the degree of intrusiveness is not something that was
22 necessarily included in the law, and the sentences given for a
23 conviction is not included in the law.

24 Q: Okay.

25 A: So it says that it's -- you know, the law does not tell

1 me that I should weigh that.

2 Q: Now, did you personally interview Mr. Fulton about these
3 crimes we've been talking about this afternoon?

4 A: Yes.

5 Q: Okay. Particularly the one most recently? What is he
6 telling you about all this criminal activity? Other than the
7 one I just mentioned leading up to that, what is he telling
8 you about the reasons for all this criminal activity prior to
9 State's Exhibit 1?

10 A: Well, in -- in regard to the sex offenses, he -- he
11 denied committing those apart from that rape of the juvenile
12 that involved the choking in the Department of Juvenile
13 Justice.

14 Q: Okay.

15 A: He gave a slightly different account of that, but he said
16 that he did have sex with that victim after the victim said no
17 and that the victim was likely in pain.

18 Q: Okay.

19 A: He really gave minimal explanations about why he -- why
20 he did these sorts of things. Largely, it was denial.

21 Q: What about State's Exhibit 1, the criminal sexual conduct
22 with a minor on the eight-year-old girl? What does he say
23 about that?

24 A: He said that he didn't do it, that he pled to it just to
25 get it out of the way.

1 Q: Okay. Okay. Do you -- you said you've done 75 to 100 of
2 these types of evaluations. Do the guys often say I didn't do
3 it, but I pled guilty anyway?

4 A: Yes.

5 Q: How does that factor into your accounting of their
6 responsibility for what they did or their conviction for a
7 sexually violent crime?

8 A: Well, I tell the respondents that, you know, even if they
9 have a good explanation as to why they -- you know, why it's
10 wrong that they got convicted, that a conviction is a fact.
11 The Court proved that beyond a reasonable doubt or they pled
12 guilty to it and it's not my place to look at it differently.

13 When they don't admit responsibility for it, when they
14 say that they didn't do it, I get why they say that, but
15 basically it means that they're not ready to admit
16 responsibility for all kinds of reasons. I mean they're -- it
17 makes sense to me as to why somebody would -- would tell me
18 that they didn't do it when I'm doing this type of evaluation
19 and they know how high-stakes the outcome could be.

20 Q: Because at the beginning you explained to the guy, Mr.
21 Fulton in this case, exactly the type of evaluation you're
22 doing?

23 A: Yes. I explain. I give a very long explanation as to
24 what's happening because I find that most people that I sit
25 down with really have no clue about what's going on. This --

1 this law tends to fly under the radar of knowledge. I mean
2 most people don't know it exists.

3 So I probably take the first half-hour of the interview
4 to explain to them exactly what's happening, exactly -- you
5 know, what my purpose is, how I'm going to use the information
6 that I -- you know, I can use it -- I will use it against
7 them. That I'm an objective party, but if my opinion helps
8 them, I'll be their witness. If my opinion hurts them, I'll
9 be the witness for the State and it will be against them.

10 I explain, you know, what can happen if I -- if my
11 opinion is that they are a sexually violent predator, I
12 explain what happens if my opinion is that they're not a
13 sexually violent predator, and I show them all the documents
14 that I have -- that have been accumulated along the way. I
15 try to be very transparent about this because a lot of people
16 have anxiety about this, about what's going on. I try to help
17 them with that as much as possible.

18 Q: Uh-huh. What did -- in the course of these interviews
19 and this analysis of him, what did he say about his sexual
20 interests?

21 A: I think he said that his sexual interests were normal.
22 He wasn't -- he said that -- you know, I asked questions
23 about, like, what sex means to him, and he said it was for
24 physical gratification. He recognized that other people might
25 have sex as more of an emotional thing, but for him it was

1 physical gratification. He said that he was strictly
2 heterosexual. That he was not into forcing sex. That he was
3 not into -- he was not aroused by prepubescent children. He
4 really denied any paraphilic interest.

5 Q: Now, when you say paraphilic, what does that word mean in
6 the context of what we're doing here?

7 A: A paraphilia is a mental health term and that is, like, a
8 sexual deviancy. It's being aroused to things that are
9 illegal or harmful, things like that.

10 Q: Okay. Now, you mentioned earlier how one of the charges
11 against him was resolved by a prison disciplinary hearing.
12 Were there other prison disciplinary infractions he had,
13 besides that?

14 A: Yes.

15 Q: Okay. About how many times was he accused of or
16 convicted of prison disciplinary infractions while at the
17 Department of Corrections? And I'm around page 22 of your
18 report.

19 A: Thank you.

20 Q: Okay.

21 A: Well, he was convicted of a sexual assault and a sexual
22 misconduct, which I -- which I reviewed earlier, and then 13
23 other disciplinary infractions.

24 Q: Is -- are disciplinary infractions while a person is
25 locked up in the jail or the Department of Corrections -- are

1 those things important to you?

2 A: They are not very important to me. I tend not to put a
3 ton of weight on them apart from the sexual-based infractions.

4 Q: Uh-huh.

5 A: But it's notable that he continues to get in trouble in
6 prison.

7 Q: Because a prison is a place where you are watched I guess
8 24/7, aren't you?

9 A: Yes.

10 Q: Now, in your review of all the documents, did Mr. Fulton
11 complete any type of sex offender treatment while at the
12 Department of Corrections or another place prior to the
13 Department of Corrections?

14 A: Mr. Fulton was in treatment facilities and participated
15 in sex offender treatment several times, but I don't think
16 that he ever completed a sex offender treatment program. He
17 had ongoing behavioral problems and so his participation was
18 limited.

19 Q: Okay. What did he seem to think of the sex offender
20 treatment, however limited it was, that he had gotten?

21 A: Well, he said -- you know, I asked him what he learned in
22 treatment and he said that he -- he said you learn how to
23 control your sexual urges and what to do if you -- if you put
24 yourself in a position, how would you remove yourself from a
25 situation, how to control your sexual urges. Those are things

1 that he said. I asked him about what he meant by urges and he
2 said that he didn't have urges, that that was the term that
3 they used.

4 Q: Okay. Does he think he needs sex offender treatment in
5 the future?

6 A: No.

7 Q: (Sneeze.) Excuse me. Now, as a part of your evaluation,
8 you mentioned a few minutes ago some psychological testing or
9 assessments. There something in your report called the MMPI-
10 2. What does that stand for and what is it?

11 A: It's the Minnesota Multiphasic Personality Inventory,
12 Second Edition.

13 Q: Okay. And how does it work?

14 A: Well, it is 576 I believe true/false questions that he
15 answers on his own on paper and pencil, and then I enter it
16 into a computer program and it gives information about whether
17 he answered honestly, truthfully, whether his answers were
18 invalid, whether he just answered randomly, and it gives
19 information about various different personality traits and
20 problems.

21 Q: Why was it important for you to run that test on this guy
22 in this case?

23 A: Well, when I met with Mr. Fulton, he was pretty quiet,
24 soft-spoken. He was polite. And I was reading, you know,
25 this very significant history about him and those things

1 didn't necessarily match up. Like, his history didn't match
2 up with the person who was sitting in front of me. So I
3 wanted to get an objective report of his personality and the
4 way he views the world to see, you know, how that panned out.

5 Q: What did you learn from this assessment or this scoring
6 or this testing, the MM -- MMPI-2? What did you learn from
7 that?

8 A: His responses, the way he views the world, were very
9 consistent with traits that are antisocial. His scores were
10 consistent with somebody who is unreliable, egocentric,
11 irresponsible, angry, impulsive, unpredictable. Somebody who
12 has difficulty learning from experience, somebody who acts
13 without consideration of the consequences, somebody who has
14 little tolerance for frustration or delaying gratification,
15 somebody who blames other people for their problems, somebody
16 who is insensitive to the needs of others.

17 Somebody who actually can present -- has a good social
18 façade, which was consistent with what I saw. He can make a
19 good impression, but he won't be able to hide that forever,
20 particularly when he's under stress, is what the test told me
21 was that he'll be able to make that good impression initially,
22 but it won't hold over time or under stress.

23 Q: Is this a test that's frequently used by experts in your
24 field?

25 A: Yes.

1 Q: Okay. Go ahead. Did I interrupt you?

2 A: That's -- there's just a couple other things. It was --
3 his scores were consistent with somebody who generally does
4 not feel too distressed or anxious and who wants to appear
5 virtuous and well-adjust -- well-adjusted, but they're very
6 angry under the -- under the surface, and somebody who
7 requires a lot of internal resources to try to control their
8 hostility and aggressive -- aggressive impulses, but it
9 eventually will come out. And that was consistent with his
10 history.

11 Q: Okay. So the results of this scoring or this testing
12 kind of matched up to what you were reading about the guy?

13 A: Yes.

14 Q: Now, you also -- at the beginning of your testimony, you
15 referred to something called an actuarial assessment?

16 A: Yes.

17 Q: Is this thing called the Static-99R?

18 A: Yes.

19 Q: Now, can you tell the jury what do we mean by the words
20 actuarial assessment and exactly what is this thing?

21 A: Well, the Static-99R is a risk assessment that's used to
22 estimate or predict the likelihood that somebody will commit
23 another sex offense. So it looks at people who have already
24 been charged or convicted of a sex offense and then it looks
25 at 10 different variables to say -- to differentiate the

1 people who were arrested or re-convicted or not arrested or
2 re-convicted. So the scores range from -3 to 12, and the
3 higher score is the more risk that you're going to be arrested
4 or reconvicted of a sex offense. It's the most widely used
5 measure to estimate or predict sexual recidivism. Recidivism
6 just means re-offense.

7 Q: Now, can you give us an idea what we might run into in
8 our daily lives which is similar to this type of assessment or
9 risk assessment?

10 A: Yeah. If you have a heart attack -- so you're at the
11 hospital and your doctor wants to know, you know, what kind of
12 treatment they should give you, how invasive that treatment
13 should be, they're going to look at factors related to your
14 life, things like do you smoke, do you drink a lot, do you
15 exercise, are you pretty healthy, and they're going to get an
16 estimate of whether you're going to have another heart attack
17 or whether you're going to be a good patient to treat. They
18 do that when they are trying to figure out whether somebody
19 should get a donor heart. They'll look at, you know, who is
20 the best risk to take.

21 Actuarial science is used in that way. It's also used to
22 unfortunately, like, predict who's going to get into car
23 accidents and what your car insurance rates should be.

24 Q: Okay. Based on studies of thousands of offenders who
25 have gotten into accidents?

1 A: Yes.

2 Q: Okay. Now -- so is it -- why is it important for experts
3 like you to administer a scoring test like the Static-99R?

4 A: Well, I'm a human being and I'm fallible and these are
5 very highly-charged, emotional cases, and I want to make sure
6 that I'm using an objective measure that considers the most
7 relevant information to determine whether somebody is likely
8 to reoffend or not. There are things in people's history that
9 we might hear and we'll be, like, well, of course, he's going
10 to do it again, but the research might not -- might say that
11 that factor is actually not relevant. And so this places
12 aside emotion and it's an objective, concrete way to measure
13 whether somebody is going to reoffend.

14 Q: Okay. Now, what score did he get on the Static-99R?

15 A: He got a score of 9.

16 Q: And what does a 9 tell you? What does that mean? What
17 risk placement does that put him in?

18 A: A 9 is a very high score. It's in the high-risk category
19 and what it does is it -- I look at the people that scored 9
20 on the test, what percentage of that group re-offended within
21 5 years, and if you have a score of 9 on that test, 43.8
22 percent of that group re-offended within 5 years.

23 Q: Is there another way to state those numbers as to whether
24 or not they're higher than the average -- so-called average
25 sex offender?

1 A: Yes. So another way is I look at that score of 9
2 compared to the average sex offender, and the average sex
3 offender has a score of 2. And I look at, you know, compared
4 to the average sex offender, how much more likely is he to
5 reoffend, and that statistic is he is 7.32 times more likely
6 to reoffend. So his risk is 7.32 times higher, a little over
7 seven times higher than the average sex offender.

8 Q: Do you feel the Static-99 score accurately represented
9 his risk to reoffend?

10 A: Yes.

11 Q: What are risk factors? Aside from the stuff you score on
12 the Static, what are risk factors?

13 A: Risk factors are just anything that have been found in
14 the research to be related to sexual reoffending.

15 Q: And what risk factors did you find with regard to Michael
16 Fulton?

17 A: He had several. He has the risk factor called sexualized
18 violence, lifestyle impulsiveness, poor problem-solving
19 abilities, resistance to rules and supervision, grievance and
20 hostility, and negative -- negative social influences.

21 Q: Is there -- when you talked about the guy he was choking
22 and then stopped choking and choked again until he lost
23 consciousness and let him revive himself and kept doing it, is
24 Mr. Fulton being sexually aroused by the suffering he's
25 causing? Did you look into that?

1 A: Yes. There's a -- a disorder called sexual sadism, and
2 that is being aroused by the -- the physical or psychological
3 suffering of someone. It's being sexually aroused to
4 torturing someone or humiliating them, and choking somebody
5 and waiting until they regain consciousness is a sadistic act,
6 but when I make a diagnosis of those sorts of things, I have
7 to look for a pattern of behavior that lasts over six months,
8 and that was an isolated incident of sadism that, you know,
9 there could have been other incidents that I just don't know
10 about, but that was the one that I did know about it. It was
11 definitely sadistic, but it doesn't constitute a mental
12 abnormality because I don't have a pattern of that behavior
13 over time.

14 Q: But you looked into it?

15 A: Yes.

16 Q: Okay. Now, based on all this, the stuff we've been
17 talking about, the documents you looked at, the interview with
18 Mr. Fulton, the scoring, the testing, that sort of thing, do
19 you have an opinion to a reasonable degree of psychological
20 certainty as to whether or not Michael Fulton suffers from a
21 mental abnormality or a personality disorder?

22 A: Yes.

23 Q: What is that opinion?

24 A: My opinion is that he suffers from the mental abnormality
25 -- it's called other specified paraphilic disorder,

1 biastophilia, and he suffers from a personality disorder,
2 which is called antisocial personality disorder.

3 Q: All right. Let's take the mental abnormality first.
4 It's other specified mental paraphilic disorder?

5 A: Yes.

6 Q: Biastophilia you called it?

7 A: Yes.

8 Q: Okay. What does that mean? What is that?

9 A: That is being aroused by having sex that is coercive with
10 a nonconsenting person. So it's -- most of the time if, you
11 know, the average person makes a move on somebody, makes a
12 sexual move on somebody, and they are not into it, you know,
13 you're, like, I don't want any part of this, but with this
14 disorder that's exactly what you want. Like, you like it when
15 they're not consenting to the sex. That is arousing to you.
16 Then you're taking it, it's control, it's things of that
17 nature. And if you are aroused by somebody who doesn't
18 consent, you could meet criteria for this disorder.

19 Q: And that's the criteria you found that Michael Fulton
20 met; is that right?

21 A: Yes.

22 Q: Okay. Now, you also mentioned antisocial -- you
23 mentioned antisocial personality disorder. So he's got a
24 mental abnormality and a personality disorder. What is
25 antisocial personality disorder?

1 A: Antisocial personality disorder is a pattern of disregard
2 for and violation of the rights of others. It includes things
3 like whether he can -- can conform his behavior to the law,
4 which he can't. He's repeatedly been arrested since he was
5 eight years old and it's been consistently through his adult
6 years.

7 He's been manipulative. He's deceitful. He's very
8 aggressive. He actually engaged in a lot of predatory
9 aggression where his aggression was calculated, planned, goal
10 directed. He would become very aggressive when -- when he
11 wanted to get out of a placement, he would calculate and do
12 something to get himself out of that placement. They didn't
13 think that it was reactive. It was more planned, purposeful.

14 He was definitely diagnosed with conduct disorder at an
15 early age, and that's a necessary component of antisocial
16 personality disorder. His testing was also very consistent
17 with antisocial personality disorder.

18 Q: Okay. Now, Doctor, do you also have an opinion, again to
19 a reasonable degree of psychological certainty, as to whether
20 this mental abnormality that he has and the personality
21 disorder affect his emotional or volitional capacity so that
22 he is predisposed to commit future sexually violent offenses?

23 A: Yes. It's my opinion it is.

24 Q: When I say emotional and volitional, what do those terms
25 mean in the context of that question?

1 A: It really means whether he has the capacity to control
2 his behavior, whether he can make choices or whether he feels
3 like he can't make any choices, like, you know, he doesn't
4 have control of himself.

5 Q: And again to a reasonable degree of psychological
6 certainty, do you have an opinion as to whether or not Michael
7 Fulton has the propensity to be dangerous and commit future
8 sexually violent offenses?

9 A: Yes.

10 Q: And again to a reasonable degree of psychological
11 certainty, does this propensity -- is it such a degree that it
12 poses a menace to the health and safety of others? Do you
13 have an opinion, again to a reasonable degree of psychological
14 certainty, about that?

15 A: It's my opinion that it does.

16 Q: Okay. Do you also have an opinion, again to a reasonable
17 degree of psychological certainty, as to whether or not
18 Michael Fulton has serious difficulty controlling his
19 behavior?

20 A: Yes.

21 Q: And what's that based on? I mean we've talked about a
22 lot of stuff today, but briefly what is that based on?

23 A: Well, he has a long history of sexual offending. His
24 history began when he was a juvenile and it continued into his
25 adult years. He's also engaged in sexually inappropriate

1 behavior multiple times in those facilities. He offended
2 while in secure confinement. He offended before, during, and
3 after sex offender treatment. He offended in situations in
4 which it was highly probable he'd be caught. He offended
5 after sanctions, after being, you know, drug through the
6 courts, after being convicted, after being sentenced.

7 So it's my opinion that there's been very little that has
8 stopped him from acting and from committing sex offenses. So
9 my conclusion is that he either has little to no control over
10 his sexual impulses or the consequences that the courts have
11 imposed and that the various treatment facilities have imposed
12 have really done nothing to curtail his sexual behavior
13 problems.

14 Q: Do you also have an opinion, again to a reasonable degree
15 of psychological certainty, as to whether these diagnoses you
16 have on the guy, the biastophilia and the antisocial
17 personality disorder -- do these things make him likely to
18 engage in acts of sexual violence if he is not confined in a
19 secured facility for long-term control, care, and treatment?

20 A: Yes, they do.

21 Q: And do you also have an opinion, again to a reasonable
22 degree of psychological certainty, as to whether or not
23 Michael Fulton meets the legal criteria to be committed as a
24 sexually violent predator?

25 A: It's my opinion that he meets the criteria as a sexually

1 violent predator.

2 Q: If he's released, who would be in danger?

3 A: Well, it could be males, females --

4 MR. FALK: Objection, Your Honor.

5 A: -- people his age, people younger than him.

6 THE COURT: On?

7 MR. FALK: I think this is calling for some speculation.

8 He's saying if she believes who would be in danger. I'm not
9 sure of that.

10 THE COURT: All right.

11 MR. FALK: It seems --

12 THE COURT: Sustained.

13 MR. BOGLE: Okay.

14 BY MR. BOGLE:

15 Q: And looking at the sentencing sheet, other than the time,
16 is any box checked on here for probation?

17 A: No.

18 Q: Okay. Do you know of your own knowledge whether or not
19 he's subject to any kind of supervision if he is released by
20 this jury?

21 A: Yes. I contacted somebody at the headquarters of the
22 Department of -- South Carolina Department of Probation,
23 Pardon, and Parole.

24 Q: Uh-huh.

25 A: Let me just find that part in my report here.. I was told

1 that he has no community supervision, probation or parole. He
2 previously had a term of community supervision, which is like
3 a probation, a two-year limit of probation. However, that
4 maxed out in December of 2015. So he has nothing hanging over
5 his head.

6 Q: Do you know of anything that could get him the sex
7 offender treatment he needs other than being confined?

8 A: He could I guess get treatment in the community if he
9 could find a provider and he'd have to pay for it. Maybe
10 insurance would pay for it. I'm not sure, but I mean there
11 are people who do it in private practice, but there's nothing
12 that would force him to go to treatment other than this.

13 Q: And is the level of his conduct and your diagnosis such
14 that he needs to be confined for treatment as opposed to being
15 out in the community trying to get it?

16 A: Yes.

17 Q: Okay.

18 MR. BOGLE: Thank you, Doctor. Please answer any
19 questions Mr. Falk may have or the Court may have.

20 THE COURT: Mr. Falk, before I recognize you, folks, do
21 y'all need a short break or are you ready to go on with the
22 cross-examination?

23 A JUROR: Well, I need to leave before 6 o'clock.

24 THE COURT: Well, ma'am, I can let you make some phone
25 calls if you need to, but we're -- we're going to have to be

1 here as long as we need to be here.

2 A JUROR: Okay.

3 THE COURT: Let me -- let me get y'all to come up here
4 real quick. I'll tell you what. Let's do this real quick.
5 Let's take a short break and then I'll get back with you in
6 just a minute on that issue. Okay?

7 So let's -- please have no conversation about the case at
8 all and I'll bring you back out shortly.

9 (WHEREUPON, the jury exited the courtroom of 5:09 p.m.)

10 (WHEREUPON, a bench conference was held off the record.)

11 (WHEREUPON, there was a break in the proceedings from
12 5:10 p.m. until 5:27 p.m., after which the proceedings
13 resumed as follows.)

14 THE COURT: All right. Let's bring the jury out.

15 (WHEREUPON, the jury entered the courtroom at 5:27 p.m.)

16 THE COURT: All right. Ladies and gentlemen, when we
17 took the break, Mr. Bogle had completed his direct
18 examination. So we recognize Mr. Falk for your cross.

19 MR. FALK: Ladies and gentlemen. May it please the
20 Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. FALK:

24 Q: Dr. Gehle, you had testified that you gave my client the
25 MM -- was it MMPI?

1 A: Yes.

2 Q: Okay. And what is that test?

3 A: It is the Minnesota Multiphasic Personality Inventory,
4 Second Edition.

5 Q: And you said it's 537 questions or 567 questions?

6 A: I believe it is 567 true or false questions.

7 Q: Did you read those to him?

8 A: No.

9 Q: He read them?

10 A: He read them.

11 Q: Okay. Did you first get his -- do you know what his IQ
12 level is?

13 A: I don't know what his IQ level was, but I did have him
14 read a couple things out loud to make sure that he could read,
15 and there's also some validity scales on that to see if he
16 responded in a random fashion as somebody who couldn't read
17 might do.

18 Q: There's reading and then there's comprehending. He had
19 an IQ -- I'm sure you saw some of the reports where they
20 estimated his IQ at about 81 to 83? That was in the
21 multidisciplinary packet? He was described as low average?

22 A: I'd have to take your word on that. I don't recall
23 seeing that.

24 Q: Isn't that important to make sure that they understand
25 the questions? I mean as opposed to just being able to read,

1 you have to understand the questions?

2 A: Yes. And that test has validity scales that, if he
3 didn't understand the questions, it would come out as invalid.

4 Q: How long did it take him to take the test?

5 A: Let's see if I noted that on here, but I know I noted it
6 somewhere. I can't find that note in my records.

7 Q: Your note indicated that the whole evaluation took five
8 and a half hours?

9 A: Yes.

10 Q: And so when did you -- did he take the test first or did
11 you ask him those personal background questions first?

12 A: I gave him the test and -- and I mean I -- I couldn't
13 tell you exactly when I gave it to him. Typically, what I
14 would do is I'll meet with them in the morning and we will go
15 over part of the interview and then I'll have them take the
16 test and then we'll finish the interview after that.

17 Sometimes I give it to them at the end of the day. It really
18 just depends.

19 Q: I'm just curious about after somebody with limited
20 educational background and a low IQ or low average IQ -- how
21 reliable some of his answers might be after five and a half
22 hours of questions and answers, including this 567-question
23 test.

24 A: Well, his test came out to be valid and reliable, and I
25 asked him if he had any problems with taking the test and he

1 did not. He did not report any. So I would say that it was a
2 valid and reliable administration of that test.

3 Q: Thank you. You diagnosed him as a diagnosis of
4 paraphilia unspecified, biastophilia. Could you please --

5 A: Other specified paraphilic disorder, biastophilia.

6 Q: Okay. And have you heard of a term that was described
7 possibly back 10 years ago, paraphilia NOS nonconsent? Are
8 you familiar with that diagnosis?

9 A: Paraphilia not otherwise specified was a disorder that
10 was in the prior diagnostic and statistical manual as a mental
11 illness.

12 Q: And it had the -- it had the qualifier nonconsent at the
13 end?

14 A: Yeah. Some people --

15 Q: Sometimes, it could --

16 A: Some people use that qualifier, nonconsent, yes.

17 Q: Have you heard the term coercive paraphilic disorder?

18 A: Yes.

19 Q: Is there a difference between biastophilia or paraphilia
20 NOS nonconsent or coercive paraphilic disorder? Is that
21 basically describing the same conduct?

22 A: I don't know how other people would use that. I tend not
23 to use nonconsent. I've used it very rarely. I tend to use
24 biastophilia. So I'm not sure exactly what other people mean
25 by those disorders.

1 Q: But you testified earlier that it generally meant that
2 people were aroused by the forcible --

3 A: Coercive, nonconsent with nonconsenting victims, yes.

4 Q: Okay. And in your opinion, you said that he has a
5 preference for coercive sexual acts with nonconsenting adults.
6 Is that accurate?

7 A: Yes.

8 Q: So that means -- so what does that mean? Does that mean
9 that in order for somebody to become aroused they need to be
10 forcing themselves on somebody else?

11 A: It means that he becomes sufficiently aroused when --
12 when the person is nonconsenting. When they're saying no, he
13 becomes aroused anyways. When they're fighting, he's still
14 aroused.

15 Q: But does that exclude consensual sex? I mean does that
16 mean he doesn't get aroused with consensual sex with an age-
17 appropriate partner?

18 A: I don't know if he gets aroused with consensual sex with
19 age-appropriate partners. He told me he did and I know that
20 he's had children. So I mean it's in theory, but I don't
21 know. He could be -- he could be fighting with those victims.
22 There could be those elements in those relationships as well.
23 I'm not sure.

24 Q: But you really don't have any evidence that he has a
25 preference for coercive? Did you talk to -- I mean he's

1 indicated he's had -- he has several children and he's had
2 other romantic partners. He's had other sexual partners. Did
3 you interview any of them?

4 A: No, I did not.

5 Q: So his preference could easily have been white bread sex?

6 A: I don't know that I agree with that. When somebody is
7 committing acts that are illegal that will result in
8 significant consequences and they repeatedly, you know, engage
9 in those behaviors, that can indicate a preference for that
10 behavior. I mean they're doing that despite the consequences.

11 Q: But isn't there literature and certainly an understanding
12 that a sexual assault that occurs inside a jail is not
13 necessarily the same as a sexual assault that occurs on the
14 outside, that there may be other -- other motivations
15 involved?

16 A: I don't -- I'm not aware of any literature that says
17 that.

18 Q: I mean this was a -- okay. But I think we still have to
19 discuss whether or not is it just that he aggressively seeks
20 what he wants or that he responds sexually to the coercion?

21 MR. BOGLE: Objection to the form of the question.

22 THE COURT: What was the question?

23 MR. FALK: All right.

24 BY MR. FALK:

25 Q: Well, I mean the motivation is is he -- is he seeking sex

1 or is he seeking to hurt somebody?

2 A: Is he seeking sex or is he seeking to hurt somebody?

3 Q: Or is he seeking to coerce somebody? What's the -- what
4 is the end? What is the goal?

5 A: I mean that's a good question. He's saying that it's
6 none of those things. He's saying that he had sex with one
7 person after they said no and that they were probably in pain,
8 but it was a one-time thing. He's -- he's done this sort of
9 thing multiple times. I mean he's been convicted of sex
10 offenses multiple times. It's hard to say what his exact
11 motivations are.

12 Q: Well, you're trying to -- what we're talking about here
13 is not punishing him again for past criminal conduct, but
14 we're trying to determine about whether or not his past
15 conduct is evidence of a mental health disease?

16 A: That's right.

17 Q: Because certainly an eight-year-old kid goes into the
18 grocery -- well, let's -- let's take a -- somebody walks into
19 a grocery store, grabs a chocolate bar, runs out the front
20 door. Okay? If that's all that you know, would you know if
21 that person loves chocolate and would do anything to get a
22 piece of chocolate or is that somebody who loves to steal
23 something? You can't tell, can you?

24 A: Correct.

25 Q: It's similar to my client. It's -- you don't know if he

1 was primarily motivated in the sex act or if he was primarily
2 motivated by some type of bad wiring to hurt somebody, coerce
3 himself on them, can you?

4 A: Correct.

5 Q: You talked -- did you refer to the DSM in your direct
6 testimony? The DSM-5?

7 A: I did just a minute ago.

8 Q: Okay. And can you explain what this book is, the DSM-5?

9 A: Yes. It's a -- it's -- the DSM-5 is -- that's shorthand
10 for the *Diagnostic and Statistical Manual of Mental Disorders,*
11 *Fifth Edition.* It is a book that is published by the American
12 Psychiatric Association, and it includes all of the mental
13 illnesses and intellectual disabilities and criteria for those
14 things. So it's what we look at, what symptoms constitute a
15 disorder.

16 Q: Is it kind of the Bible?

17 A: Some people call it that, yes.

18 Q: I mean because it's an authoritative source? Everybody
19 at least refers to the DSM-5?

20 A: Most --

21 Q: Or the DSM or the prior additions?

22 A: Most people refer to the DSM-5. I mean most clinicians
23 that I know do, yes.

24 MR. FALK: May I approach the witness?

25 THE COURT: Yes, sir.

1 BY MR. FALK:

2 Q: I have highlighted --

3 MR. FALK: Let me show it to him.

4 BY MR. FALK:

5 Q: Could you read that highlighted section?

6 A: These disorders have traditionally been selected for
7 specific --

8 Q: Let me back up. What's the heading on that page?

9 A: Paraphilic disorders.

10 Q: And the -- your diagnosis for my client falls under that
11 category; right? As a paraphilic disorder?

12 A: Yes.

13 Q: Okay. Go on, please.

14 A: These disorders have traditionally been selected for a
15 specific listing and assignment of explicit diagnostic
16 criteria in DSM for two main reasons. They are relatively
17 common in relation to other paraphilic disorders and some of
18 them entail actions for their satisfaction that, because of
19 their noxiousness or potential harm to others, are classed as
20 criminal offenses.

21 Q: Okay. So is it safe to say that the ones that they're
22 listing here are the most common ones?

23 A: That's what they're saying, yes.

24 Q: And is it also safe to say that as far as an impact on
25 another person, they're the most significant ones? Noxious

1 consequences?

2 A: I believe that that's what that said, yes.

3 Q: Okay. And then if you look -- let me go back up. Then
4 it lists about seven paraphilic disorders specifically, does
5 it not? For example, on page 686, it lists voyeuristic
6 disorder?

7 A: Yes.

8 Q: And after that, does it -- without going into it, does it
9 list some kind of diagnostic criteria?

10 A: Yes.

11 Q: Okay. So -- and what's the purpose of the diagnostic
12 criteria?

13 A: It's to help you understand what the definition of the
14 disorder is and if somebody meets that criteria.

15 Q: And then is it also helpful that another doctor would --
16 does it help ensure that if another doctor looks at the same
17 patient, they're following the same criteria?

18 A: Yeah. That we're calling the same thing the same name.

19 Q: Standardization?

20 A: Yes.

21 Q: Okay. And then on page 689, there's exhibitionistic
22 disorder?

23 A: Yes.

24 Q: And that similar has diagnostic criteria?

25 A: Yes.

- 1 Q: And then 691, it has frott --
- 2 A: Frotteuristic disorder.
- 3 Q: Is that the subway guy? Is that the creep on the subway?
- 4 A: It's sexual arousal towards rubbing up against a
- 5 nonconsenting person. So yeah.
- 6 Q: The subway guy? Okay. And there are diagnostic criteria
- 7 there?
- 8 A: Yes.
- 9 Q: There is sexual masochism disorder? 694?
- 10 A: Yes.
- 11 Q: 695 lists sexual sadism disorder?
- 12 A: Yes.
- 13 Q: All of those -- well, just go on. You have pedophilic
- 14 disorder on 697?
- 15 A: Yes.
- 16 Q: And on page 700, it lists fetishistic disorder?
- 17 A: Yes.
- 18 Q: And those all have specific diagnostic criteria?
- 19 A: That's correct.
- 20 Q: Okay. Where is biastophilia listed?
- 21 A: Well, you can list it under other specified paraphilic
- 22 disorder.
- 23 Q: Is it listed in the book?
- 24 A: No. It's --
- 25 Q: Is it listed in the box?

1 A: It's not specifically listed as a -- as a disorder, no.

2 Q: Okay. So then if you go on to page 705 --

3 A: Yes.

4 Q: If you could, doesn't that -- so you have -- in your

5 field, don't they have -- say you've got a non-specified

6 paraphilic disorder, then you put, like, a qualitative term at

7 the end? That's not really the term I'm looking for. Like

8 you said, biastophilia?

9 A: It's like a description.

10 Q: A description?

11 A: A descriptor.

12 Q: A descriptor. That's right. And on page 705, does that

13 list some examples of those kinds of descriptors?

14 A: Yes.

15 Q: And that lists telephone scatologia?

16 A: Scatologia.

17 Q: Telephone scatologia, necrophilia, zoophilia,

18 coprophilia, klismaphilia.

19 A: Klismaphilia.

20 Q: Klismaphilia and ur̄ophilia?

21 A: Yes.

22 Q: Did it list biastophilia?

23 A: No.

24 Q: Okay. Do you have any kind of opinion as to how common

25 klismaphilia is?

1 A: I don't know how common that is.

2 Q: And what is klismaphilia?

3 A: It is sexual arousal towards enemas.

4 Q: Okay.

5 A: I should note that it says that that specifier includes
6 but are not limited to those listed there.

7 Q: Sure. But isn't -- isn't sort of the scope -- the way
8 this book is laid out, aren't they listing the most important
9 ones?

10 A: I mean that's what they're saying, yes.

11 Q: Because they certainly listed the criteria for having
12 that first seven where they would actually list it and then
13 had the diagnostic criteria. They talked about commonality
14 and sort of seriousness?

15 A: Yes.

16 Q: Is there a difference of opinion in the professional
17 community about whether or not biastophilia, coercive sexual
18 disorder, paraphilia NOS nonconsent, whether or not those are,
19 in fact, mental illnesses or personality disorders?

20 A: There is debate in the field as to whether having sex
21 with somebody who does not consent to it is a mental illness.
22 It's usually -- like, in a literature, it's usually referred
23 to as paraphilia not otherwise specified, nonconsent. That's
24 what most of the research or I guess opinions have been about
25 that specific disorder.

1 Q: And wasn't there a bunch of discussion prior to the
2 publication of the DSM-5 when I guess it was the DSM-4TR and
3 they talked about the possibility of including coercive
4 paraphilic disorder in it?

5 A: Yes. That's correct.

6 Q: And that was not included?

7 A: It was not included.

8 Q: And would you not draw a conclusion at the fact that they
9 thought about it and chose not to put it in there would mean
10 that there's certainly a consensus or a strong majority of the
11 forensic psychiatric community that do not believe that that
12 is a mental illness or a personality disorder?

13 A: The debate is on several different grounds. I mean it
14 could be that. It could also be that they were afraid of that
15 disorder being used to describe every rapist without any
16 specific criteria. Things of that nature is what I've seen in
17 the debates.

18 Q: Because certainly it seems like nonconsensual conduct
19 with an age-appropriate person is rape, but is it a mental
20 illness? Is it -- is it a sign of a mental illness or is it
21 just criminal conduct?

22 A: That's a good question. In certain cases, it's just
23 criminal conduct. I guess in every case it's criminal
24 conduct. Or is it just criminal conduct if somebody discloses
25 it and they're charged with it? You know, you could debate it

1 that way. Is it only criminal when it's charged or when it is
2 brought to the criminal justice system? I would say that it's
3 -- rape should always be considered illegal, but as to whether
4 it's a mental illness, I believe if you have a pattern of that
5 behavior, it can be a mental illness.

6 Q: I think you just said it can be a mental illness?

7 A: Yes.

8 Q: Is it always a mental illness?

9 A: No.

10 Q: How big of a pattern?

11 A: You have to have a pattern of behavior lasting at least
12 six months.

13 Q: There are not even any diagnostic criteria for
14 biastophilia, are there? In the DSM-5?

15 A: It's included under other specified paraphilic disorder.

16 Q: It's listed there? The word is in there?

17 A: No.

18 Q: Okay. So it's not in the book? The word is not in the
19 book?

20 A: The word is not in the book, but you can diagnose that
21 disorder under other -- under other specified paraphilic
22 disorder. That's in the -- that's in the diagnostic rules per
23 this book. There are hundreds and hundreds of paraphilias and
24 they did not include all of them.

25 Q: But they did include the most common ones?

1 A: Well, I don't know why this list is there. I mean that
2 sentence that you had me read earlier would seem to indicate
3 that or these are the most harmful ones, but I don't know if
4 these are the most common ones. I rarely see the ones that
5 are listed here, apart from telephone scatologia.

6 Q: Telephone scatologia? That's talking dirty on the phone;
7 is that right?

8 A: It's making obscene phone calls to nonconsenting people.

9 Q: Are you familiar with a gentleman, Allen Francis?

10 A: I've heard his name. I think he's a psychiatrist.

11 Q: Have you read any of his articles?

12 A: I believe so, but I couldn't be definite about that.

13 Q: Do you know whether or not he chaired the task force that
14 produced the fourth revision of the *Diagnostic and Statistical*
15 *Manual*?

16 A: I don't know that.

17 Q: Is the *Psychiatric Times* a publication that you would
18 read?

19 A: Not typically, no.

20 Q: I'm going to ask you to read part of an article.

21 MR. FALK: May I approach?

22 THE COURT: Yes, sir.

23 BY MR. FALK:

24 Q: Here's the article and you'll notice the section. So
25 I've handed you an article that came out of the *Psychiatric*

1 *Times*. Would you read the title of the article?

2 A: DSM-5 Rejects Coercive Paraphilia, Once Again Confirming
3 That Rape is not a Mental Disorder.

4 Q: And that was -- that was written by Allen Francis?

5 A: It says by Allen Francis MD and Allen Francis MD.

6 Q: I guess a father and son team?

7 A: I have no idea.

8 Q: Thank you. Could you read that on that one page?

9 A: Is it the same?

10 Q: It's the same, yeah.

11 A: It says -- but coercive paraphilia is not the average
12 rejected DSM diagnosis. It has been and is continuing to be
13 badly misused to facilitate what amounts to an
14 unconstitutional abuse of psychiatry. Whether naïvely or
15 purposefully, many SVP evaluators continue to widely misapply
16 the concept that rape signifies mental disorder and to
17 inappropriately use NOS categories where they do not belong in
18 forensic hearings, including coercive paraphilia in the DSM-5
19 appendix, might confer some unintended and undeserved backdoor
20 legal legitimacy on a disabused psychiatric construct.

21 Little would be gained by such inclusion and the risk of
22 promoting continued sloppy psychiatric diagnosis in
23 questionable legal proceedings are simply not worth taking.
24 The rejection of rape as grounds for mental disorder must be
25 unequivocal in order to eliminate any possible ambiguity and

1 harmful confusion.

2 We did not include any reference to a course of
3 paraphilia in DSM-4 and it should not find its way in any
4 form, however humble and unofficial, into DSM-5. The
5 inclusion of coercive paraphilia in the DSM-5 appendix is a
6 bad idea because the appearance of this white elephant
7 anywhere in DSM-5 could be used to justify the use of
8 paraphilia NOS in SVP commitments.

9 Q: So you would not agree with Dr. Francis?

10 A: I'm not saying that I would -- I mean that's a good
11 question. There's been debates about the disorder being --
12 being overused or used in every case of rape and I don't
13 believe that that should be the case, but when you have
14 somebody who's done it repeatedly and it meets that six-month
15 pattern of behavior, I think that you could make the disorder
16 -- make the diagnosis.

17 Q: Are you familiar with the *Journal of American Academy of*
18 *Psychiatry and the Law*?

19 A: So that's a psychiatric journal and those are things that
20 I don't typically read. I'm a psychologist and I tend to read
21 psychological journals.

22 MR. FALK: Your Honor, may I approach again?

23 THE COURT: Yes, sir.

24 BY MR. FALK:

25 Q: I have handed you a section from a journal -- a journal

1 article entitled *Paraphilia NOS Nonconsent, Not Ready for the*
2 *Courtroom*. It's written by Allen Francis MD and Michael D.
3 First MD. Are you familiar with Michael D. First?

4 A: No.

5 MR. BOGLE: Do these things have dates?

6 MR. FALK: This is December 1st, 2011.

7 BY MR. FALK:

8 Q: Could you read that section that I've given you? It says
9 if paraphilia NOS nonconsent is ever allowed?

10 A: If paraphilia NOS nonconsent is ever allowed in court, it
11 should only be when supported by incontrovertible evidence
12 that fantasizing or performing a rape is a specific and
13 necessary sexual stimulus for the rapist. Such evidence
14 should include that rape scenarios are the primary focus of an
15 offender's sexual arousal, that rape has been his major form
16 of sexual activity, and that he has demonstrated a strong
17 sustained preference for and reliance on rape pornography.

18 Such evidence must be direct, not inferential. The
19 inference that a rapist is motivated by paraphilia, if it is
20 based entirely on the fact that he has committed rape, should
21 never be allowed. The evidence supported in NOS diagnosis
22 should necessarily be much stronger and more unequivocal than
23 that required to support an official DSM diagnosis, both
24 because the paraphilia NOS diagnosis is so inherently
25 unreliable and because it has been so universally abused by

1 evaluators.

2 Any significant doubt or lack of clarity in the
3 documentation suggests that paraphilia NOS is overused and
4 misapplied. It is imperative that SVP evaluators be retrained
5 on the proper use of the DSM-4 diagnosis of paraphilia and
6 that their work be subjected to quality control and
7 reliability testing.

8 Q: You never found -- I mean he never indicated to you any
9 fantasies -- any rape fantasies that he had?

10 A: That's correct.

11 Q: And you never found any rape-oriented pornography?

12 A: I never found any pornography period.

13 Q: Okay. And what evidence do you have that rape is the
14 primary -- is the -- that rape is the -- that a rape scenario
15 is the primary focus of my client's sexual arousal?

16 A: I don't have evidence that it's the primary focus of his
17 sexual arousal.

18 Q: Okay. Are you familiar with Pamela M. Crawford MD?

19 A: She was --

20 Q: Are you familiar with a Pamela M. Crawford MD?

21 A: She was a previous evaluator at the Department of Mental
22 Health. I believe she may still work there. I'm not sure.

23 Q: Okay.

24 A: I had limited interaction with her.

25 MR. FALK: Jim, this is her report here.

1 THE WITNESS: Thank you.

2 BY MR. FALK:

3 Q: When you were reviewing his case, did you have an
4 opportunity to read that report?

5 A: Yes.

6 Q: And could you sort of fast forward to the end there and
7 look and see what her diagnosis was? It's highlighted on
8 there.

9 A: Uh-huh.

10 Q: Yeah. Could you read that?

11 A: He meets the criteria for a diagnosis of conduct disorder
12 and shows evidence of antisocial personality features. There
13 is no evidence of a primary sexual disorder.

14 Q: Okay. And that was in 2004?

15 A: That's correct.

16 Q: Okay. You had talked earlier about a charge that he got
17 in February of 1998 of ABHAN, sexual, times -- times four
18 victims? The fondling cases when he was 14 and the four
19 victims under 17?

20 A: I know what you're talking about. I just want to be
21 clear that I have the right time. Those offenses occurred in
22 1997.

23 Q: Okay. And the offense concerning the CSC while he was
24 still in -- the criminal sexual conduct, the first one, when
25 did that occur? '98 or thereabouts?

1 A: Yes.

2 Q: And actually, the allegations about the second sexual
3 assault while he was in the South Carolina Department of
4 Corrections -- that happened in 2001? Excuse me, 2002.
5 That's the one where you said --

6 A: That's correct.

7 Q: So all three of those sexual crimes that my client was
8 accused of committing and was sentenced on some of them --
9 they all happened prior to when Dr. Crawford made that report;
10 is that right?

11 A: Well, it wasn't three crimes. It was more than that.
12 But yes, those all occurred before that.

13 Q: So she didn't feel that that -- it would appear that she
14 didn't feel that that was a basis for commitment?

15 A: I mean you'd have to ask her what she, you know, thought.

16 Q: Okay.

17 A: But she -- she diagnosed conduct disorder and said that
18 he shows evidence of antisocial personality features, no
19 evidence of a primary sexual disorder.

20 Q: And as a result of her opinion, he was not -- he was not
21 put in the SVP program?

22 A: That's correct.

23 Q: Okay. Are you aware of any other evidence of sexual
24 conduct -- did you base your opinion on my client -- on any
25 other evidence of sexual conduct up until 2004? All right.

1 Let me try this question again. Was there evidence of sexual
2 conduct prior to 2004 that you based your opinion on that was
3 not those three incidents I just mentioned?

4 A: Sexual misconduct?

5 Q: Sexual misconduct.

6 A: He had repeated accusations of sexual misconduct in the
7 program said he was involved in. He had infractions
8 throughout.

9 Q: And they would have been I presume available to -- is it
10 -- is it the common practice that when you're doing one of
11 these evaluations that you would get all of the SCDC
12 disciplinary actions?

13 A: I try to. I get what I can, what's available, yes.

14 Q: Would you have any reason to think that Dr. Crawford
15 would not have also looked at that?

16 A: Unfortunately, I do because the evaluations these days
17 tend to be much more thorough and complete than they used to
18 be. So there's a chance that she didn't look at everything.
19 There's a chance that she didn't look at earlier stuff. I'm
20 not sure what she all looked at. I'm seeing what -- what her
21 sources of information were, but I'm not sure, you know, what
22 specifically she had.

23 Q: And he was referred on two other times to the MDT; is
24 that not correct? When they started these proceedings against
25 him on two other occasions?

1 A: I'm not sure if that's the case. Anytime he's in secure
2 confinement and he's about to be released from custody, his
3 case will be reviewed, and I know that he went through
4 previous reviews. I'm not -- off the top of my head, I'm not
5 sure how far into the process those went. I know that based
6 on one -- one case, they were dismissed before an evaluation
7 or before it even left the multidisciplinary team, which is
8 the first step.

9 Q: Let me grab my papers back?

10 A: Sure.

11 Q: When I looked at your report, you showed that -- you
12 indicated that on November 20th, 2003, he was referred into --
13 he was referred into the program or into the -- not into the
14 program. Excuse me. The MDT referred his case in order to
15 start one of these proceedings, a commitment proceeding, and
16 that's the one that ended with Dr. Crawford saying that it was
17 not -- that he was not a sexually violent predator?

18 A: Yes.

19 Q: Okay. And then I saw some notes, at least in the MDT --
20 I don't know if you saw them as well -- that on October 27th,
21 2011, that they voted not to refer him?

22 MR. BOGLE: Objection. Relevance, Your Honor.

23 MR. FALK: I think it's highly relevant. I mean these
24 are -- these are other people who have had an opportunity to
25 review his records and have reached conclusions that are 180

1 degrees different from Dr. Gehle's, and they would all have
2 presumably been looking at the same information that Dr. Gehle
3 did up to the times of these evaluations.

4 MR. BOGLE: Multidisciplinary team or MDT evaluations at
5 the prison are done without any kind of formal psychological
6 evaluations, such as were done here.

7 MR. FALK: So I think it's safe to say they cast a pretty
8 big net and these were the ones that were so thin that they
9 didn't even think it was worth going forward.

10 MR. BOGLE: And that's assuming facts not in evidence.

11 THE COURT: Step up here for a minute.

12 (WHEREUPON, a bench conference was held in the presence
13 of the jury but out of the hearing of the jury as
14 follows.)

15 THE COURT: Aren't they using the same -- they have the
16 same information?

17 MR. BOGLE: MDT has some information and they vote
18 whether or not for the case to go forward. It's a pretty low
19 burden.

20 MR. FALK: And they didn't --

21 MR. BOGLE: And there's no record, no recording, of how
22 they did or what they considered. All you've got is a vote.

23 THE COURT: And who's on that team? I mean who -- are
24 these doctors?

25 MR. BOGLE: There's one psychologist on the team and a

1 retired judge, a probation and parole person, an SCDC person,
2 a DMH person.

3 THE COURT: And their standard is probable cause?

4 MR. BOGLE: Correct.

5 THE COURT: Well, there's been higher.

6 MR. BOGLE: A lot.

7 THE COURT: Right. There's still -- I mean --

8 MR. BOGLE: All they got -- all they looked at were
9 probable cause and they voted no. There was no PRC, no
10 petition with a probable cause order signed by a judge, no
11 hearing, no appointment of an expert. It was so early in the
12 program.

13 MR. FALK: Then that's assuming that a bunch of people
14 are slipping through the net.

15 MR. BOGLE: That's assuming something not in evidence.
16 We don't know that.

17 THE COURT: Anyway, I'm going to allow it. I'll give you
18 the opportunity to redirect.

19 (WHEREUPON, the bench conference ended and the
20 proceedings resumed as follows.)

21 BY MR. FALK:

22 Q: So on October 27th, 2011, the MDT voted four to nothing to
23 not refer him to start this process? I found that -- I found
24 that in your report.

25 A: You said 2011?

1 Q: October 27th.

2 A: I don't know if that's the correct date, but in 2011 he
3 was reviewed by the multidisciplinary team and he was not
4 referred for further review.

5 MR. FALK: May I approach to refresh your memory?

6 THE COURT: Yes.

7 BY MR. FALK:

8 A: Okay.

9 Q: All right. And while I'm up here, that's from February
10 --

11 A: February 21st, 2013.

12 Q: Both of which they found that he was not a sexually
13 violent predator or there was not even probable cause to
14 believe that he was a sexually violent predator?

15 A: They don't look at probable cause. They -- they make a
16 determination based on a review of the records as to whether
17 the person meets the criteria and should be referred for
18 further review, and they voted no. I did note in my report
19 that with the 2013 one they didn't have his pending charges;
20 so they weren't aware of those or they weren't in the
21 materials that they reviewed.

22 Q: Do you have your report with you?

23 A: Yes.

24 Q: Could you look at page 14?

25 A: Yes.

1 Q: That last sentence refers to -- it says on or about June
2 20th, 2002, Mr. Fulton was reviewed under the Sexually Violent
3 Predator Act by the multidisciplinary team. He was referred
4 for further review by a vote of 4 to 0?

5 A: Yes.

6 Q: Did you have an opportunity to look through the MDT
7 package to see if there was any evidence that that did occur
8 on that day?

9 A: I'm not sure what your question is. Any evidence that
10 occurred on that day?

11 Q: Do you have the MDT package with you? Do you recall
12 seeing one of those sheets for him on that day?

13 A: Well, I mean there were multiple. So I'm -- I cannot
14 recall exactly what I saw. I'd have to look to see
15 specifically. Do you want me to do that?

16 Q: If you could. I'm going to show you something in a
17 second. Could I ask you to skim over this, which came out of
18 the MDT?

19 A: Okay.

20 Q: The date matches, does it not?

21 A: Yes.

22 Q: Does the name match?

23 A: No.

24 Q: So that's not -- so was there another person referred
25 that day or did you make a mistake in your report?

1 A: Well, this is the name of actually a victim of his, the
2 person that he --

3 Q: The alleged second victim?

4 A: -- was accused of sexually assaulting in SCDC. Yes. So
5 --

6 Q: And that person was referred to the program? Or at least
7 he went past the MDT?

8 A: Yes.

9 Q: Is there a possibility that you mistook that in looking
10 at this and thought that was my client?

11 A: Yes. There's a possibility.

12 Q: Because can you find one of these that matches my client
13 on that day?

14 A: Well, I'd have to look.

15 (WHEREUPON, there was a pause in the proceedings, after
16 which the proceedings resumed as follows.)

17 BY MR. FALK:

18 Q: Well, we can move on.

19 A: Okay.

20 Q: The other diagnosis you used was antisocial personality
21 disorder; is that correct?

22 A: That's correct.

23 Q: In part of your work as a forensic psychiatrist, do you
24 look at the case law?

25 A: I'm not a forensic psychiatrist.

1 Q: Excuse me. A forensic psychologist.

2 A: Yes.

3 Q: Do you look at the case law?

4 A: I look at case law in various areas.

5 Q: So would you have come across *Kansas v. Crane*? It's a

6 significant case, is it not --

7 A: Yes.

8 Q: -- in this area? Okay. The report -- I'm just -- in

9 *Kansas v. Crane*, they refer to a study that says that 40 to 60

10 percent of the male prison population is diagnosable with

11 antisocial personality disorder. Do you have an opinion as to

12 how accurate that might be?

13 A: I've seen research that says it's that high or higher.

14 Q: Would that surprise you if it's that high or higher?

15 A: No.

16 Q: So a lot of people who are coming out of prison

17 presumably have got or have an antisocial personality

18 disorder?

19 A: A lot of people in prison, yes.

20 Q: In prison, right. Are you familiar with Amy Phoenix?

21 A: I've heard her name.

22 Q: She -- are you familiar with -- you testified earlier

23 about the Static-99?

24 A: Yes.

25 Q: She was one of the developers of the Static-99?

1 A: I don't know if she was one of the developers. I know
2 that her name is on at least one of the evaluator workbooks.

3 Q: Her name is on the inside; right?

4 A: Yes.

5 Q: Okay.

6 A: I don't know. I don't know if she was one of the
7 original authors or if she joined later.

8 Q: Are you familiar with a publication that's the *Journal of*
9 *American Academic Psychiatry and Law*? Excuse me. The *Journal*
10 *of American* -- the *Journal of the American Academy of*
11 *Psychiatry and the Law*? Are you familiar with that
12 publication?

13 A: I've heard of it.

14 Q: I am going to show you an article -- hold on please --
15 from February 2004. If you could, just read that highlighted
16 section.

17 MR. BOGLE: Your Honor, could I take up briefly a matter
18 of law with you?

19 THE COURT: All right. Ladies and gentlemen, step back
20 in the jury room, please. Have no conversation about the
21 case.

22 (WHEREUPON, the jury exited the courtroom at 6:14 p.m.)

23 THE COURT: Yes, sir?

24 MR. BOGLE: Your Honor, I'm objecting to this article. I
25 don't know what it says, but I think what we've got here --

1 Mr. Falk is pulling up old articles. This one is 12 years
2 old, probably by somebody who doesn't like the Static-99 or
3 doesn't approve of it, just like the other guy who apparently
4 didn't like the way the DSM-5 was prepared because he was on
5 the board and somehow got excluded from the 5.

6 You know, he's pulling out old articles she's never seen,
7 handing it to her, asking her to take something out of context
8 in those articles. Without the entire article, the entire
9 opinion, it's not relevant. It confuses the jury. It
10 misleads the jury. It doesn't prove anything. It doesn't add
11 to the burden of proof or take away from the burden of proof.
12 It's somebody who probably doesn't like a test or doesn't like
13 NOS or doesn't like paraphilia or doesn't like raping or
14 mental illness or something like that. I'm not sure what this
15 does to the case. It's not relevant. It's not got any
16 probative value and it confuses the jury.

17 MR. FALK: I think it has probative -- probative value
18 and I think each time I've asked her if she agreed with the
19 opinion and why she did or did not agree with the opinion. I
20 mean she acknowledged the text and she at some level
21 acknowledged that the person was also in the field. I don't
22 see how --

23 THE COURT: Well, the concern I'm having -- and I haven't
24 said anything because I mean it's not my position to object to
25 anything, but you've put up several pieces of articles and

1 stuff, some of which she has seen before, some of which she
2 might be familiar with, but there's no authenticating these
3 articles and if they're even considered authoritative or
4 anything. I'm just getting a bunch of pieces of articles and
5 I'm not sure that that's appropriate with no further
6 foundation.

7 MR. FALK: Your Honor, I'm getting overwhelmed by hearsay
8 evidence that's coming in with --

9 THE COURT: What hearsay evidence?

10 MR. FALK: All the -- her entire testimony about other
11 documents that she's relied on is hearsay and testimony from
12 other people. I mean she's able to rely under 702 or -3 under
13 hearsay.

14 I'm just trying to see if these are opinions that she's
15 aware of and does she agree with them and does she acknowledge
16 that they exist. She acknowledged that the opinion exists.
17 She acknowledged that there is a difference of opinion in the
18 psychiatric and psychological community that DSM if coercive
19 pedophilic disorder is even a thing or whether or not it is
20 just rape, and I think I'm entitled to explore that because --
21 because she needs -- she needs to show that he has a sexually
22 based mental disease is what my argument is. There is --
23 there is an understanding in the professional community that
24 it does not exist, that it is rape, but it is not a mental
25 illness.

1 MR. BOGLE: Well, that's an understanding by some
2 dissenters we've heard about today, but --

3 THE COURT: Well, and here --

4 MR. BOGLE: If you want to --

5 THE COURT: Wouldn't it --

6 MR. BOGLE: -- ask the entire psychiatric community, who
7 knows what's out there? You know, I'm hearing -- I'm seeing
8 articles, excerpts of articles, like you said with no
9 foundation, nothing about their credentials. They're not here
10 to say what they say. I see there's not a person with her
11 qualifications sitting on the witness stand and saying, yeah,
12 this is a -- this is a junk diagnosis. It's just --

13 THE COURT: I mean --

14 MR. BOGLE: -- articles of people who disagree.

15 THE COURT: And this is what's been going on and what I
16 typically see here is that you bring somebody in who is
17 qualified in the field, has an opinion which more than likely
18 would be contrary to what, you know, Dr. Gehle's opinion is,
19 and then the State has an opportunity to cross-examine that
20 person. They have no opportunity to cross-examine any of this
21 and it's -- and it's becoming -- and it's becoming repetitive.
22 You know, article after article after article.

23 And I've got to -- you know, like I said, I'm not -- I'm
24 remaining silent because I'm not trying the case, but I've got
25 the objection now and I've got some real concerns about just

1 handing up articles that Dr. Gehle has never seen before and
2 asking her if she's familiar with it and, well, I've heard
3 about it, and there's no -- there's nothing to substantiate
4 the article or whether it's an authoritative article or
5 whether it's -- you know, anybody -- I can write an article.
6 So I'm going to sustain the objection as to this.

7 MR. FALK: But to the extent that she's aware of the
8 opinions expressed in the article?

9 THE COURT: She can be aware of opinions, but she can't
10 testify -- I mean I shouldn't say that. You can -- I mean you
11 can ask her. Do you know this person? Do you know this
12 person to be a reputable person who is qualified in the
13 psychiatric community and all that, but, you know, we're just
14 getting pieces of articles and asking what do you think of
15 that opinion, and I just don't think that's appropriate.

16 MR. BOGLE: And I would, of course, renew the objection.
17 I don't know how many more he's got stacked up behind this
18 one. I think it's the same objection.

19 THE COURT: I don't either, but let's deal with it now
20 while the jury is out. How many more we got?

21 MR. FALK: One. I can ask her --

22 MR. BOGLE: The same objection would apply.

23 THE COURT: Do what? I'm sorry.

24 MR. BOGLE: I'm sorry. The same objection would apply.
25 It's the same thing. Here's an article.

1 THE COURT: What's the date on this other article?

2 MR. FALK: It's a 2003 article, *Expert Testimony and*
3 *Sexually Violent Predator Commitments*, and it --

4 THE COURT: See, this is a 2003 -- and don't get me
5 wrong. I have no idea about the psychiatric community, but
6 this is a 2003 article. So it's 13 years old and I have no
7 idea what advancements or what things have occurred in the
8 psychiatric community between -- over the last 13 years that
9 may make that article completely irrelevant and completely,
10 you know --

11 MR. FALK: And I would think that she could respond to
12 that.

13 THE COURT: Well, I think she can respond to her -- her
14 opinion as to -- if you're giving her the entire article and
15 she can see what it's all based on, but not just somebody's
16 opinion that -- that -- and I don't even know the example to
17 use. What was the example?

18 MR. FALK: My example I was trying to use is whether or
19 not -- and I thought I laid a foundation that there was
20 significant disagreement in the community, whether it's the
21 psychiatric or the philosophical --

22 THE COURT: And I think you've done that.

23 MR. BOGLE: Yeah. That question was asked and answered.
24 She said, yeah, there is.

25 THE COURT: And so all we're doing now is continuing to

1 bring more articles in to just support that position.

2 MR. FALK: All right. Well --

3 THE COURT: And I mean I think you've made your point.

4 MR. FALK: Okay.

5 THE COURT: That's my point.

6 MR. FALK: Well, then I'll go about it a different way
7 with antisocial personality disorder, which has the same.

8 MR. BOGLE: Well, now, if we're going to -- again, not --

9 THE COURT: Not --

10 MR. FALK: I can ask her -- I can ask her -- she should
11 -- she should be familiar with the literature and she should
12 know whether or not there's contrary opinions and, you know,
13 this is right in her field. I should be able to ask her if
14 she knows of other opinions.

15 THE COURT: But are you going to start pulling out 10 --
16 13 -- 14-year-old articles?

17 MR. FALK: No, sir.

18 THE COURT: Because I'm not going to allow that.

19 MR. FALK: I understand.

20 THE COURT: But you can ask her. All right. Bring them
21 back in. But I'll sustain your objection --

22 MR. BOGLE: Thank you, Your Honor.

23 THE COURT: -- as to the most recent.

24 (WHEREUPON, the jury entered the courtroom at 6:22 p.m.)

25 THE COURT: All right. Mr. Falk, you may continue, sir.

1 BY MR. FALK:

2 Q: As part of your practice, do you try -- do you have the
3 opportunity to read scholarly publications and keep abreast of
4 changes in the field?

5 A: I do my best to. At the Department of Mental Health, we
6 do not have access to scholarly journals. That's not
7 something that we're afforded, but I do my best to read what's
8 available -- what's available publicly or what's available
9 through friends or colleagues.

10 Q: And as a -- do you ever have an opportunity to -- we
11 talked about you read the *Kansas v. Crane*; so do you try to
12 stay somewhat abreast of the case law in the area?

13 A: Yes.

14 Q: I am going to show you a passage from a 2014 decision by
15 the New York Court of Appeals dated October 28th, 2014, that's
16 reported in 21 NE3d 239, and I would like you just to read --

17 MR. BOGLE: Same objection, Your Honor, as to relevance,
18 particularly it's another jurisdiction, something that has not
19 been disclosed prior to trial as well. I don't know what it
20 is. I'd also object to relevance.

21 MR. FALK: Well, I'm not introducing it as evidence and
22 I'm trying to --

23 THE COURT: All right.

24 (WHEREUPON, a bench conference was held in the presence
25 of the jury but out of the hearing of the jury as

1 follows.)

2 MR. FALK: It expresses -- in the opinion, they express
3 the opinion that I want to ask her about. They're saying that
4 there's question in the community about using the antisocial
5 personality disorder.

6 THE COURT: I'm going to let you let her review it. How
7 about let's start doing this though? Let her review it. Let
8 her read it, but not publish it because that's what we've been
9 doing.

10 MR. FALK: Okay.

11 THE COURT: Just let her read it and then you can ask her
12 questions about it.

13 MR. FALK: Thank you.

14 MR. BOGLE: Read the whole case?

15 MR. FALK: No.

16 MR. BOGLE: The language?

17 THE COURT: The opinion.

18 MR. BOGLE: How do we know --

19 MR. FALK: This is an opinion.

20 THE COURT: This is an opinion you're talking about, not
21 the whole --

22 MR. FALK: No. That's the language I want her to read.

23 MR. BOGLE: It's a 20-page opinion. You're pulling out
24 two paragraphs buried in the whole case. There's no
25 authentication. We don't know if that is the opinion. This

1 is an end run around what he just said you couldn't do.

2 MR. FALK: No. It's just a better source.

3 MR. BOGLE: Same thing.

4 MR. FALK: Well, it's a 2014 decision which talks about
5 using --

6 MR. BOGLE: From New York. Was it appealed higher?
7 Which court issued it?

8 MR. FALK: The Court of Appeals.

9 MR. BOGLE: Well, they have one level higher than that,
10 don't they?

11 MR. FALK: Well, it's not the Supreme Court, which is a
12 trial court.

13 MR. BOGLE: I know.

14 THE COURT: And I haven't read the whole thing either; so
15 I don't have a clue as to about what all this is, but you read
16 all the highlighted parts, but then -- I mean I'm not going to
17 let you -- it says it therefore cannot be the sole diagnosis
18 that grounds such a finding.

19 MR. FALK: That's my point.

20 THE COURT: Go ahead.

21 (WHEREUPON, the bench conference ended and the
22 proceedings resumed as follows.)

23 BY MR. FALK:

24 Q: Could you read this highlighted section?

25 A: All three highlighted sections?

1 MR. BOGLE: Your Honor, we renew the foundation, what
2 it's from, what the name of it is, the date of it, what court.
3 I just don't think we have all that.

4 THE COURT: Go ahead and put --

5 MR. FALK: Okay.

6 BY MR. FALK:

7 Q: This is *State v. Donald DD*. It is reported in 21
8 Northeastern 3d 239. It's a New York decision by the Court of
9 Appeals, October 28th, 2014. I'm looking at page -- the
10 opinion starts on page 239. I'm asking her to read from the
11 first full paragraph on page 250, left-hand column.

12 A: Okay. Again, do you want me to read all three --

13 Q: No.

14 A: -- highlighted portions or just the first one?

15 Q: Yes. Actually, read the whole paragraph.

16 THE COURT: Just read it to yourself.

17 A: And the second one?

18 Q: No, just to yourself.

19 A: Oh, just to myself. Okay.

20 (WHEREUPON, there was a pause in the proceedings, after
21 which the proceedings resumed as follows.)

22 BY MR. FALK:

23 A: Okay.

24 Q: I can grab that back.

25 A: If you're going to ask me questions about that --

1 Q: No. I just --

2 A: -- I'd like to look at it.

3 Q: There's a sentiment here that antisocial personality
4 disorder, in the opinion writer -- in in the opinion of the
5 writer of the opinion, needs to be -- needs to be accompanied
6 by -- that it can't be the sole basis for a commitment?

7 A: Again, if you want to ask me questions, can I please look
8 at it?

9 Q: Okay. Sorry.

10 A: And your question was again?

11 Q: Well, the antisocial personality disorder can be the
12 basis for an SVP commitment standing as its sole diagnosis?

13 A: In this proceeding, it was their opinion that it should
14 not and that it does not constitute a mental abnormality.

15 Q: How is antisocial personality disorder -- and if you look
16 at the diagnostic criteria, how is that different than
17 describing somebody who is a repeat offender, whether it's car
18 theft, drugs or anything else?

19 A: Well, there's specific criteria I'm going to have to read
20 to you because criminal behavior is just one piece of it. So
21 antisocial personality disorder is a pervasive pattern of
22 disregard for and the violation of the rights of others
23 occurring since age 15 as indicated by three of the following.

24 So it's not just criminal acts. It's failure to conform
25 to social norms with respect to lawful behaviors. That's the

1 one that has the most to do with criminal acts. So you can't
2 conform your behavior to what's suspected by -- or expected by
3 society with regard to the law and that you repeatedly perform
4 acts that are grounds for arrest.

5 Number two is deceitfulness as indicated by repeated
6 lying, uses of aliases or conning others for personal profit
7 or pleasure.

8 Three is impulsivity or failure to plan ahead.

9 Four is irritability and aggressiveness as indicated by
10 repeated physical fights and assaults.

11 Five is reckless disregard for the safety of self or
12 others.

13 Six is consistent irresponsibility, as indicated by
14 repeated failure to sustain consistent work behavior or honor
15 financial obligations.

16 Seven is lack of remorse as indicated by being
17 indifferent to or rationalizing having hurt, mistreated or
18 stolen from one another.

19 So it's not just criminal behavior. That's -- that is --
20 that's a common fallacy. It's more than that.

21 Q: But haven't you just described 70 percent of the people
22 who are in prison right now?

23 A: I mean that's what the research says that they would
24 likely meet criteria for this disorder.

25 Q: I'll grab that back. In your testimony earlier, you said

1 that you're not allowed to look at the length of the sentence?

2 A: Well, it's not something that the law tells me, you know,
3 that is significant to these proceedings. I mean it's not
4 something that's necessarily relevant.

5 Q: Should you ever be concerned about whether or not the
6 event actually did happen?

7 A: I look at it as if they were convicted or they pled
8 guilty or even pled no contest, that's -- it's a fact because
9 that's what the law says that I should consider. Like, that's
10 when they have been convicted under those circumstances of a
11 sexually violent offense. It's not my place to decide whether
12 an incident actually happened or didn't happen. If the Court
13 said that it happened, then it happened.

14 I also look at whether the person says that they did
15 something that maybe they weren't convicted of. So I looked
16 at -- I look at that as a fact. If it's a charge that they're
17 not convicted of, I don't look at that as an absolute fact.

18 Q: I'll show you Exhibit Number 1. This is the State's
19 Exhibit Number 1. Do you know what that refers to -- that
20 zero to 20 refers to?

21 A: Not particularly.

22 Q: You said earlier that you assume that they're going to be
23 telling the truth because the stakes were high. Did you say
24 something to that effect?

25 A: I think I said that I assume that they don't always tell

1 the truth because the stakes are high.

2 Q: If you plead to 734 days as opposed to facing a much
3 longer sentence -- let me back up. Are you aware or do you
4 believe it is ever possible for somebody to be facing a large
5 sentence and taking a plea in order to play it safe?

6 A: I'm sure that that happens, yes.

7 MR. FALK: Your Honor, may I approach real quick?

8 THE COURT: Yes, sir.

9 (WHEREUPON, a bench conference was held in the presence
10 of the jury but out of the hearing of the jury as
11 follows.)

12 MR. FALK: That exhibit says zero to 20 on it. This is
13 the State's exhibit. It says zero to 20 on it. It's going to
14 go back in the jury room. Can I -- can I ask -- I think he's
15 already suggested -- I want to ask her if she knows it's 20
16 years.

17 MR. BOGLE: You've already asked her if she knew what
18 that meant and she said no.

19 THE COURT: I thought you already asked her that.

20 MR. BOGLE: You asked her if she knew what zero to 20
21 meant. She said she didn't know.

22 MR. FALK: I know, but I guess I'm going to ask another
23 question on the subject and it's off of that exhibit. I mean
24 the exhibit is going to go back and it's going to say zero to
25 20 on it.

1 MR. BOGLE: I think you can ask her.

2 MR. FALK: Okay.

3 MR. BOGLE: If that's what zero to 20 means. If she
4 does, she does.

5 (WHEREUPON, the bench conference ended and the
6 proceedings resumed as follows.)

7 BY MR. FALK:

8 Q: Does it make sense to you that zero to 20 might be the
9 sentencing range for the crime that he pled guilty to? Zero
10 to 20 years?

11 A: I don't know. I thought that there were mandatory
12 minimums for the criminal sexual conduct charges. So I'm not
13 sure if that's what that meant or not.

14 Q: Okay. Do you know what the maximum is?

15 A: No.

16 Q: You're basing your diagnosis on the fact that he did --
17 you were basing your diagnosis on the fact that he committed
18 those offenses and then pled guilty to, are you not?

19 A: Yes.

20 Q: If -- would your diagnosis be the same if he was not
21 charged with those offenses?

22 A: It would depend on whether he admitted to them because
23 I'll take that as a fact as well. So it would depend.

24 Q: If he didn't admit to them and he didn't commit them,
25 would your diagnosis be the same?

1 A: So if they just didn't exist?

2 Q: Yes.

3 A: My diagnosis probably would, you know, be different or he
4 wouldn't have one or I wouldn't even be evaluating him under
5 these -- under -- in these proceedings.

6 MR. FALK: Your Honor, may I have a moment?

7 THE COURT: Yes, sir.

8 MR. FALK: I have no further questions.

9 THE COURT: Redirect?

10 MR. BOGLE: Very briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. BOGLE:

13 Q: All these articles that he showed you from other
14 publications -- is it safe to say on some issues there is a
15 debate in your profession?

16 A: Yes.

17 Q: Is it safe to say that if I went down and sat in front of
18 a computer for 20 minutes, I could probably find just as many
19 articles on the other side of the position?

20 A: I don't think it would take you 20 minutes.

21 Q: Okay.

22 A: It would take you less.

23 Q: Okay. Now, there's been all this talk about the MDT
24 reviewing?

25 A: Yes.

1 Q: That stands for -- what does MDT stand for?

2 A: Multidisciplinary team. It's outlined in the statute
3 that they are the first group of people who will review people
4 in secure confinement who have been convicted of a qualifying
5 sexually violent offense.

6 Q: Okay. So like our guy here, convicted of a criminal
7 sexual conduct with a minor in the second degree, sexually
8 violent crime?

9 A: Yes.

10 Q: At prison?

11 A: Yes.

12 Q: So he's being reviewed by the multidisciplinary team, MDT
13 for short?

14 A: Yes.

15 Q: And if they vote yes, who reviews it next?

16 A: The prosecutors review committee.

17 Q: And if they vote yes, then what happens next?

18 A: A petition is filed and it will go before a judge --

19 Q: And a judge looks at it --

20 A: -- in a probable cause.

21 Q: He then has to sign a probable cause order; right?

22 A: Yes.

23 Q: And then we have a hearing to see whether or not there's
24 probable cause to have the guy evaluated?

25 A: That's correct.

1 Q: So there's a lot of steps in the process?

2 A: That's correct.

3 Q: And only one -- in a couple of cases, the MDT looked at
4 it and didn't vote for it to go forward; right?

5 A: Yes.

6 Q: Okay. Okay. Now, this thing here, the sentencing sheet
7 -- what? It was a guilty plea as far as we know; is that
8 correct?

9 A: I believe so.

10 Q: Yeah. And it's a conviction under our law; right?

11 A: Yes.

12 Q: Regardless of how much time he got or anything like that?

13 A: Yes.

14 Q: Okay. And he was represented by an attorney because the
15 attorney signed his name off where it says -- there's three
16 signatures. One is for the prosecutor, one for the guy, Mr.
17 Fulton, and one for his lawyer; right?

18 A: That's correct.

19 Q: Okay. And it would've been in a court just like this
20 one, probably this very courtroom?

21 A: It could have been, yes.

22 Q: Okay. And the little scrap that you were reading earlier
23 from the DSM, this issue of whether or not biastophilia is a
24 relevant diagnosis -- the language listed seven or eight
25 different mental abnormalities; right?

1 A: Yeah. Yes. They're listed with specific criteria.

2 Q: And it said included but not limited to?

3 A: Yeah. That's under the other specified paraphilic
4 disorder.

5 Q: Right.

6 A: It lists a couple and it says included but not limited to
7 this -- this list that they provide.

8 Q: Okay. And did you testify earlier that there's dozens,
9 if not more, mental abnormalities not on that small list?

10 A: There's hundreds of them.

11 Q: Hundreds? Hundreds. And they're recognized by your
12 profession; right?

13 A: Yes.

14 Q: Okay. And biastophilia is a recognized mental
15 abnormality by your profession?

16 A: Yes.

17 Q: Whether it's on that short list or not; is that correct?

18 A: Yes.

19 Q: Okay. And in this case, you found -- did you find to a
20 reasonable degree of psychological certainty that he met those
21 criteria for other specified paraphilic disorder, specifically
22 biastophilia?

23 A: Yes.

24 Q: We're talking about coercive sex with nonconsenting
25 people?

1 A: That's correct.

2 Q: And on top of that, the antisocial personality disorder?

3 A: That's correct.

4 Q: When you've got both of them together, does that cause I
5 guess more concern than just one existing without the other?

6 A: It's a particularly dangerous combination because broadly
7 the two types of things that drive sex offending are deviant
8 sexual interests and antisocial personality characteristics.
9 When you have both of those, that means that you have the
10 deviant sexual interests and you don't care about other
11 people; so you can get away with whatever you want. It
12 doesn't stop you.

13 Most of us care about people and we don't want people to
14 not like us or to be mad at us or we don't want to be drug,
15 you know, in front of the courts, but if you have antisocial
16 personality disorder, it's like you just don't care.

17 Q: And in South Carolina, the Sexually Violent Predator Act
18 requires a diagnosis of a mental abnormality or a personality
19 disorder?

20 A: That's correct. It's very clear it's or.

21 Q: Or it could be both, but either/or?

22 A: Yes.

23 MR. BOGLE: One moment, Your Honor. Thank you, Judge.
24 Nothing further.

25 THE COURT: All right. Recross?

1 MR. FALK: Briefly, Judge.

2 RECROSS-EXAMINATION

3 BY MR. FALK:

4 Q: You had testified, -- Dr. Gehle, you had testified just a
5 second ago that you could spend 20 minutes on the computer and
6 find different opinions?

7 A: I think that you could spend less, yes.

8 Q: Could you also find different opinions about whether or
9 not biastophilia is a recognized disorder?

10 A: You might be able to.

11 MR. FALK: No further questions.

12 THE COURT: All right. Thank you very much, Doctor. You
13 may step down.

14 THE WITNESS: Thank you.

15 MR. BOGLE: Judge, we'd ask that she be excused.

16 THE COURT: Any objections?

17 MR. FALK: No objection.

18 THE COURT: Thank you very much, ma'am. You're free to
19 go.

20 Ladies and gentlemen, obviously, we're going to recess at
21 this time. I want to just to let you know we don't typically
22 go late like this. It's just that Dr. Gehle has a full
23 schedule and she has to be in another place in another city in
24 the morning and was not going to be able to be back.

25 You know, often times we can stop after a certain

1 examination, break, come back in the morning, and pick up
2 where we left off, but we weren't able to do that because
3 she's got other obligations. So we appreciate your patience
4 now.

5 We're going to ask you, if you would, to be back at 9:30.
6 Now, listen, folks. And this is -- this is really important.
7 Now, when you get home, your family, friends or loved ones are
8 going to be curious as to what you've been doing and what kind
9 of case it is and all of those things. You can let them know
10 that, you know, you're on a jury, we went late this evening,
11 but you can't talk about the case and you need to tell them
12 that you can't talk about the case.

13 It's very important because saying something as innocent
14 as it involves a gentleman named Michael Fulton or it involves
15 the South Carolina law regarding sexually violent predators or
16 anything innocent like that could possibly elicit a response
17 that will compromise your ability to remain fair and
18 impartial. So you just need to tell the folks that you're not
19 allowed to discuss the case, but when it's over you'll tell
20 them everything they want to know.

21 And the other thing I would ask you to do -- if you can,
22 is to try and get a good night's rest, if you can. You can
23 tell from your time here today that jury service can be very
24 physically taxing from a mental standpoint, not necessarily
25 physical from a muscular, but from a mental standpoint it can

1 be very taxing. Your minds work and they operate much better
2 when you're well rested. So try to do that if you can do that
3 this evening.

4 If everyone else will please remain seated, folks, we're
5 going to excuse you now and ask you to be back at 9:30. Just
6 come straight up to the jury room.

7 THE DEPUTY: Do you want us to walk them out to the
8 parking lot?

9 THE COURT: Yeah. That's fine. We've got deputies that
10 will walk y'all to your cars if you need that. Okay?

11 (WHEREUPON, the jury exited the courtroom at 6:46 p.m.)

12 THE COURT: Is there anything else as far as this evening
13 we need to take up or --

14 MR. BOGLE: No. In the morning, we're going to rest.
15 I'd like to rest in front of the jury.

16 THE COURT: Okay.

17 MR. BOGLE: I can do that and then send them out and do
18 DV motions or do DV motions now. But basically, we're going
19 to rest right now.

20 THE COURT: We're still on the record; so let's do that.
21 Let's take them up now and then in the morning you can rest on
22 the record. I'll then let the jury know that we took up those
23 matters and that we're going to just proceed from that point
24 on, assuming I don't grant your motion. But I think that'll
25 make it go a lot smoother in the morning. So --

1 MR. BOGLE: That's what I've done.

2 THE COURT: Okay. All right. So, Mr. Falk?

3 MR. BOGLE: At this point, the State is resting for the
4 purposes of this -- where we are right now.

5 THE COURT: Right. For purposes of our trial right now,
6 the State is going to rest in the morning, but we're going to
7 go ahead while the jury is out and take up any motions at the
8 close of the State's case.

9 MR. FALK: Your Honor, since the standard here is beyond
10 a reasonable doubt, I think that there is sufficient doubt
11 here by which a jury could not find that my client is a
12 sexually violent predator, and I would point to her diagnosis
13 -- her statement at one point. I would point to her statement
14 at the very end was if he didn't commit the crimes that he
15 pled guilty to, her diagnosis -- her diagnosis would be
16 different.

17 I think there's reasonable belief -- there's reasonable
18 -- there could be doubt in there as to why a solicitor would
19 let somebody plead to 734 days on a sentence that carries 20
20 years, whether or not this gentleman gets 734 days' credit
21 time served, and I think there certainly can be reasonable
22 doubt as to whether or not he did commit that act or whether
23 or not he was saying what he needed to do to get out of jail.

24 She is basing her opinion on whether or not he did commit
25 that act. Much of the other conduct that she is alleging that

1 is the basis for her opinion was prior to 2004 and some of it
2 prior to 2011 and '13, all of which the MDT had already
3 evaluated and said that he was not a sexually violent
4 predator. They did that twice. He had another expert from
5 the Department of Mental Health testify. Her opinion was that
6 he was not a sexually violent predator at that time.

7 She acknowledged that there was doubt in her community
8 about whether or not the diagnosis that she gave him even
9 exists. She acknowledged that it was similar to whether it's
10 coercive pedophilic disorder or paraphilia NOS nonconsent.
11 She acknowledged that there was a difference of opinion in the
12 medical community about whether or not that was a mental
13 illness. I mean that's a significant difference about saying
14 whether or not pedophilia exists.

15 They're saying whether or not rapism exists as a mental
16 illness or whether or not it's criminal conduct, and I think
17 that same argument applies to the antisocial personality
18 disorder. Everything she listed describes 70 percent of the
19 people in SCDC today, and it's hard to believe that that is
20 the same type of mental disorder that you should be talking
21 about that will land my client in a sexually violent predator
22 commitment trial. And it does not look like he -- he possibly
23 has a risk to reoffend, but whether or not he's going to
24 offend as a sexually violent -- as a sexually violent offense,
25 I don't think there's sufficient evidence.

1 THE COURT: All right, sir.

2 MR. BOGLE: Your Honor, we think there is. She's a
3 qualified expert, qualified by the Court, got the education,
4 identified the conviction, identified the diagnosis. Whether
5 or not her explanation -- whether or not it's a debatable
6 diagnosis, that's a matter of fact for the jury. As an expert
7 witness, they can choose what to believe and what not to
8 believe, but the point is her diagnoses were acceptable within
9 her profession. There was no one here to contradict that.
10 That's what she's done.

11 We would think, Your Honor, there's enough evidence here
12 for the case to go to a jury and ask that the directed verdict
13 to be denied using the appropriate standard that applies to a
14 DV motion.

15 THE COURT: All right. I'm going to respectfully deny
16 the motion. There's evidence in the record, Mr. Falk, I
17 believe, but it's going to depend on how the jury views that
18 evidence, how -- what weight the jury gives that evidence.
19 The jury certainly has the right to accept the testimony or
20 reject testimony and to give weight to the testimony that they
21 think is -- is appropriate.

22 And so I think it's a question for the jury. There have
23 -- you did -- you did an outstanding job of raising issues
24 with regards to the things you mentioned, but again, it's
25 going to come down to I believe what the jury -- what it gives

1 weight to and what it believes. So I'm going to respectfully
2 deny the motion at this time.

3 MR. FALK: May we go off the record?

4 THE COURT: Yeah.

5 MR. BOGLE: Thank you, Your Honor.

6 (WHEREUPON, the proceedings adjourned for the day at 6:52
7 p.m.)

8 DECEMBER 8, 2016

9 (WHEREUPON, the proceedings resumed at 10:07 a.m.)

10 THE COURT: All right. I know we're going to begin with
11 Mr. Bogle resting on the record and then I'll speak to the
12 jury and we'll proceed, Mr. Falk, with your case. But is
13 there anything that we need to take up before we bring the
14 jury out?

15 MR. BOGLE: Nothing I can think of. Just thinking out
16 loud, do you -- is it your practice to when they come out to
17 just ask and make sure they didn't talk to anybody or do
18 anything last night?

19 THE COURT: I don't typically -- I don't typically do
20 that.

21 MR. BOGLE: Okay.

22 THE COURT: But I will if you want me to.

23 MR. BOGLE: Just curious.

24 THE COURT: I gave them the instructions not to. I
25 assume they --

1 MR. BOGLE: Okay.

2 THE COURT: I assume they followed it and, if they
3 didn't, I doubt they'll admit they didn't.

4 MR. BOGLE: Probably not.

5 THE COURT: Okay. Anything, Mr. Falk?

6 MR. FALK: No, Your Honor.

7 THE COURT: All right. Keisha, bring them out.

8 (WHEREUPON, the jury entered the courtroom at 10:08 a.m.)

9 THE COURT: All right. Ladies and gentlemen, I hope
10 everyone had a restful evening and are ready to get started
11 back. Let me just take care of one kind of administrative
12 matter.

13 Mr. Willoughby, you and I seem to have a connection here.
14 You seem to be able to read my mind. I was going to ask you
15 this morning if you would be so kind as to serve as the
16 foreman of the jury and I notice that you are now sitting in
17 the foreman's seat; so you must've had some idea that I was
18 going to ask you to do that. But if you would, sir, I would
19 appreciate it if you would do that and serve as the foreman of
20 the jury.

21 Let me address the rest of the panel. Folks, the foreman
22 -- we have found over time that when you deal with a group of
23 folks, it's much easier and more efficient to deal with one
24 person on behalf of the group rather than deal with everybody
25 individually. And so the foreperson's main role, the job of

1 the foreperson, is to be the communicator between the jury
2 panel and the Court.

3 If anybody has a question about anything and you need to
4 ask me a question, Mr. Willoughby will pass that question on
5 to me and I'll either -- he'll write it out and send it to me.
6 I will either write my response back and send it back to you
7 or I'll bring you out as a panel and I'll respond to your
8 questions.

9 But it's important that anybody who has a question make
10 sure that you let Mr. Willoughby know and he'll give it to me
11 and will respond to it. And that's the main role of the
12 foreperson.

13 I will tell you that in all cases tried in this court,
14 whether it be a civil case or a criminal case, the jury's
15 verdict must be unanimous. You must all agree on the verdict,
16 whatever it is, and I say that to you to tell you this.
17 Because your verdict must be unanimous, that tells you that
18 you are all equal members of the jury. No one person's vote
19 carries any more weight than anyone else's. No one person's
20 opinion has any more weight than anyone else's. You're all
21 equal members of the jury.

22 And I tell jurors all the time a good juror will listen
23 -- once you begin your deliberations, will listen to the other
24 jurors with an open mind. Obviously, everyone has their
25 thoughts and opinions, but you listen carefully and you listen

1 with an open mind and give respect to everyone's thoughts and
2 opinions and then give yours, and just it's a process that
3 because you all have to agree on the verdict, whatever it may
4 be, everyone is equal. And so the foreperson carries no more
5 weight or authority than anyone else.

6 But I would tell you, Mr. Willoughby, as the foreperson,
7 if during your deliberations if anyone has to use the restroom
8 and excuse themselves for that or -- you know, at that point,
9 the deliberations or the discussion needs to stop until that
10 person returns. And the reason for that I hope is obvious.
11 It's so that everybody has the benefit of all of the
12 deliberations and all of the discussions. Okay?

13 Now, when we ended yesterday, you had heard from Dr.
14 Gehle and I will now recognize the State for your next
15 witness.

16 MR. BOGLE: Thank you, Your Honor. May it please the
17 Court. At this time, the State would rest.

18 THE COURT: All right. Thank you, Mr. Bogle. Folks, Mr.
19 Bogle was kind enough last night to let the Court know that
20 the State would be resting their case, and here's what
21 typically happens in all cases.

22 Once -- once the State has completed their case, it
23 requires me to excuse the jury panel while I take up some
24 matters of law before we proceed. Mr. Bogle was, as I said,
25 kind enough to let me know last night that the State was going

1 to be resting. So we went ahead -- we stayed later last night
2 and we went ahead and took up those motions. So I don't need
3 to send you out and do that. We've already done it. So now
4 we're ready to proceed and so I would recognize Mr. Falk on
5 behalf of the respondent. Mr. Falk?

6 MR. FALK: May it please the Court. We'd like to call
7 Jay Jordan to the stand.

8 THE COURT: All right. Mr. Jordan, if you would, please
9 come around to be sworn, sir.

10 THE CLERK: Do you swear or affirm that the testimony you
11 give in this case will be the truth, the whole truth, and
12 nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Okay. Have a seat and then state your name
15 for the record.

16 THE WITNESS: Jay Jordan.

17 JAY JORDAN, being first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FALK:

21 Q: Mr. Jordan, where are you currently employed?

22 A: I am in private practice, practicing law here in Florence
23 on Evans Street, and I'm a sole practitioner in my law office,
24 and I'm also a member of the -- I guess it would be the
25 Twelfth Circuit Public Defender's Office, Florence office, in

1 a part-time capacity.

2 Q: So you handle a lot of criminal defense work?

3 A: That's fair -- fair to say, yes.

4 Q: Kind of what percentage of your practice?

5 A: I also do some federal criminal defense. So when you
6 combine those two, it's probably about around half of my
7 practice I'd say.

8 Q: And is that how you came to know Mr. Fulton here?

9 A: That's correct. I was assigned to Mr. Fulton, his case,
10 by way of my part-time status in the Florence Public
11 Defender's Office back in I think 2013 -- '14, sometime in
12 that time frame.

13 Q: Okay. Let me show you what's been marked as State's
14 Exhibit Number 1. That was shown as a sentencing sheet?

15 A: Yes.

16 Q: Does that have your signature on it?

17 A: It does. Marked attorney for defendant, has my signature
18 and South Carolina Bar number.

19 Q: Okay. And on that sheet, there's a little bracket. If I
20 could just show you what -- so the jury would understand what
21 this was?

22 A: Yes. That --

23 Q: There's a reference on there that says zero to 20?

24 A: Yes. That's written directly outside the two section of
25 the sentencing sheet where it denotes what the defendant is

1 pleading guilty to and marks what the potential sentence can
2 be. In this case, zero up to 20 years.

3 Q: Is that a common practice to mark that on there?

4 A: It's fairly common. I like to do it on -- or make sure
5 it's done on the sentencing sheets I do just so everybody's on
6 the same page before you go in front of the judge for the
7 actual plea. So everyone knows very clearly exactly what --
8 exactly what they're staring down as far as possible sentence.

9 In that -- in this particular case -- and it's also
10 marked this sentence was a recommendation by the State. So
11 while the judge can -- has a certain recommendation, in this
12 case time served, it would be in the judge's discretion to
13 determine if time served was appropriate or a higher term of
14 years.

15 Q: And what was the sentence?

16 A: This was a -- this was a time-served sentence. I looked
17 back. It's written on here a determinant term of 734 days,
18 which would have been the amount of time Mr. Fulton had been
19 incarcerated leading up to this plea.

20 Q: So he was not out on bail prior to this?

21 A: No. According to this and my recollection, he had sat in
22 the detention center for a term of 734 days prior to entering
23 into this plea.

24 Q: Did he ask you for a recommendation as to what to do or
25 did you make a recommendation to him as to what he should do?

1 A: I generally don't give a recommendation like you should
2 plead guilty or not plead guilty. I try and give, you know,
3 as best I can, a set of options. You know, in this case I
4 would have explained to him, you know, if you go to trial and
5 you are found guilty, you're staring down a very real
6 possibility of up to 20 years or, you know, you sort of
7 control the keys to the courthouse to some degree. If the
8 judge goes along with the recommendation, you can be out of
9 jail today.

10 Q: Did you have a chance to look at the discovery prior to
11 the sentencing day?

12 A: Yes.

13 Q: Do you have any recollection of kind of how strong the
14 case was? Were there forensic interviews?

15 A: In this particular case, the original -- if my
16 recollection is correct, the original what started off the
17 case was I believe somewhat of a hearsay discussion, and then
18 there was not a forensic -- medical forensic review done by a
19 doctor. I think there had been approximately a year or more
20 between the allegation and the -- when the offense was claimed
21 to have take place -- taken place. So I'm -- it wouldn't be
22 the strongest of cases certainly.

23 Q: Have you settled -- have you practiced a lot of cases
24 here in the -- well, you said you've done a lot of these types
25 of cases?

1 A: I haven't done a tremendous amount of the CSC cases.
2 I've done some. I'm starting or somewhere in the process of
3 my 10th year of practice. I've been in some form or fashion
4 doing criminal work for probably 9 of those 10 years. So I've
5 done a few of these cases, not a ton, but several.

6 Q: Well, the solicitor could've gotten a 20-year sentence.
7 You must've done a heck of a job in order to get him -- the
8 solicitor to agree to 734 days' credit time served?

9 A: My mother taught me not to take much credit.

10 Q: Do you think the solicitor thought he had a strong case?

11 MR. BOGLE: Objection. Speculation.

12 THE COURT: Sustained.

13 MR. BOGLE: Thank you.

14 BY MR. FALK:

15 Q: So you had a conversation with him about what his -- sort
16 of what the odds were here; right?

17 A: We -- we discussed his options, you know, and the -- one
18 of those being the offer that the solicitor had put on the
19 table, the recommendation of a time-served sentence, and
20 ultimately Mr. Fulton believed that was in his best interest
21 and made that decision to go forward with the plea.

22 MR. FALK: We have no further questions.

23 THE COURT: Cross?

24 CROSS-EXAMINATION

25 BY MR. BOGLE:

1 Q: Mr. Jordan, very briefly. For whatever reason -- if I
2 could approach you and look at -- there's a series of boxes
3 across the top of the sentencing sheet where it says convicted
4 -- one of them says convicted of or pleas and it's my
5 understanding -- is this correct? Convicted of usually means
6 there's been a trial of some sort; right?

7 A: I believe that's correct.

8 Q: And pleas mean there was a guilty plea?

9 A: That's correct as well.

10 Q: For whatever reason, they forgot to check pleas, but your
11 recollection is this was a guilty plea?

12 A: Yes. It was definitely a guilty plea. Sometimes during
13 a plea week we'll be dealing with 10 -- 20 -- 30 pleas in a
14 day and so sometimes I think that box gets --

15 Q: Okay. But this was a guilty plea?

16 A: This was a guilty plea, yes.

17 Q: And in a guilty plea, there's basically some steps that
18 have to be followed, are there not?

19 A: That's correct.

20 Q: First -- is it true that first the judge -- when he's
21 told there's going to be a guilty plea, the judge has to ask a
22 series of questions of your client and you to make sure that
23 your client, in this case Mr. Fulton, is pleading guilty
24 freely and voluntarily, not under pressure, not been offered
25 any reward or something like that?

1 A: That's correct.

2 Q: And then the judge then would turn to the prosecutor, the
3 assistant solicitor, and say give me a factual basis. What
4 happened? What crime was committed? Because you've got to
5 have the crime to go along with the plea; right?

6 A: That's correct.

7 Q: And then the judge would hear from any recommendations by
8 the State and from you, and then he would pronounce sentence;
9 correct?

10 A: Also correct.

11 Q: And after -- after listening to the assistant solicitor
12 tell what happened, in this case the sexual -- you know,
13 criminal sexual conduct with the eight-year-old girl, the
14 judge would then turn to your client and say is that what
15 happened, and your client would have to acknowledge it in
16 order for the plea to go forward?

17 A: That is typically what would happen. I haven't had the
18 benefit of reviewing a transcript and I don't have a
19 recollection of that taking place, but typically that would
20 certainly happen.

21 Q: Okay.

22 MR. BOGLE: Thank you, sir.

23 THE COURT: Anything on redirect?

24 REDIRECT EXAMINATION

25 BY MR. FALK:

1 Q: Do you recollect whether there was a conversation about
2 *North Carolina v. Alford*?

3 A: I -- I attempted to get a hold of the old file. It had
4 been reduced to scanning and Internet or digital format, which
5 unfortunately doesn't have my notes in it. Honestly, to be
6 100 percent honest, I cannot remember if that -- if we
7 discussed that or not.

8 Q: What does that mean?

9 A: *North Carolina v. Alford* is a plea in which the defendant
10 basically says I'm not saying I did anything wrong. I'm
11 saying -- the judge can correct me, of course. That I've been
12 offered a plea deal and the deal is too good for me to turn
13 down. So rather than take a risk of going to trial and losing
14 and facing a high sentence, I want to take advantage of the
15 offer that's been made to me, but I'm not willing to admit
16 that I did anything -- that I committed the offense, for lack
17 of a better phrase, but that I do want to go forward and plead
18 guilty.

19 Q: Like a no contest plea maybe?

20 A: I guess it would be sort of our form of that in some
21 sense.

22 MR. FALK: No further questions.

23 THE COURT: All right.

24 RECROSS-EXAMINATION

25 BY MR. BOGLE:

1 Q: Mr. Jordan, isn't that not what *Alford* says at all? In
2 an *Alford* case, the person is not admitting guilt, but they're
3 agreeing the State has such a strong case that he would be
4 convicted at trial; correct?

5 A: That is one of the acknowledgments. That is also
6 correct. That is -- I believe the question is asked in that
7 sense, yes.

8 Q: And if an -- if a person does plead guilty under *North*
9 *Carolina v. Alford*, the practice is to write *Alford* somewhere
10 on the sentencing sheet; correct?

11 A: Typically, that would be true as well.

12 Q: And it's not there here?

13 A: That's correct.

14 MR. BOGLE: Thank you.

15 THE COURT: All right. Thank you very much, sir. You
16 can step down.

17 THE WITNESS: Yes, sir.

18 THE COURT: Any objection to Mr. Jordan being excused?

19 MR. BOGLE: No, Your Honor.

20 MR. FALK: No, Your Honor.

21 THE COURT: All right. Thank you very much. You can go.

22 MR. FALK: Your Honor, may I approach briefly?

23 THE COURT: Yes, sir.

24 (WHEREUPON, a bench conference was held in the presence
25 of the jury but out of the hearing of the jury as

1 follows.)

2 MR. FALK: I know it's not a criminal case. Are you
3 going to want me to -- I'm going to call -- I want to call him
4 next and that would be it. I didn't know if you --

5 THE COURT: I think that's fine.

6 MR. FALK: Yeah. Okay.

7 MR. BOGLE: You're going to call him?

8 MR. FALK: I mean there's no advisement.

9 THE COURT: I know.

10 MR. BOGLE: No.

11 THE COURT: I don't need to advise him.

12 MR. BOGLE: No. Right.

13 THE COURT: Or anything like that. This is a civil
14 matter.

15 MR. BOGLE: Right.

16 MR. FALK: Yeah.

17 (WHEREUPON, the bench conference ended and the
18 proceedings resumed as follows.)

19 MR. FALK: At this time, we'd like to call the respondent
20 -- the respondent, Michael Fulton, to the stand.

21 THE COURT: Okay. Mr. Fulton, sir, if you would, please
22 come around to be sworn.

23 THE CLERK: Place your left hand on the Bible and raise
24 your right hand. Do you swear or affirm that the testimony
25 you give in this case will be the truth, the whole truth, and

1 nothing but the truth, so help you God?

2 THE RESPONDENT: I do.

3 THE CLERK: Have a seat and state your name for the
4 record.

5 THE RESPONDENT: Michael Fulton.

6 THE COURT: All right, sir.

7 MICHAEL FULTON, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FALK:

11 Q: Mr. Fulton, you just saw Mr. Jordan testify?

12 A: Yes, sir.

13 Q: And he was representing you?

14 A: Yes, sir.

15 Q: And he was representing you on this -- excuse me. Is
16 this your signature on the sentencing sheet?

17 A: Yes, sir.

18 Q: Okay. And you had pled guilty to criminal sexual
19 conduct; is that correct?

20 A: In a way, yes, sir. I believe it was *North Carolina v.*
21 *Alford*.

22 Q: What was your understanding of what you were doing?

23 A: The reason I -- the understanding or the reason I took
24 the plea?

25 Q: What -- when you were pleading, why did you take the

1 plea?

2 A: I took the plea because my mother was in the hospital at
3 the time. She was diagnosed with leukemia and then she had
4 lupus.

5 Q: Lupus?

6 A: Yes, sir.

7 Q: And so what kind of -- did you realize that if you went
8 to trial and were found guilty what kind of sentencing range
9 you could have faced?

10 A: Yes, sir.

11 Q: And you accepted a plea for, in effect, credit for time
12 served?

13 A: Yes, sir.

14 Q: You've heard something about *North Carolina v. Alford*?

15 A: Yes, sir. It was recommended to me.

16 Q: And what did -- what did you think you were doing?

17 A: When I -- when I took the plea? Basically, I thought I
18 was just leaving it and nothing more of it. I thought I was
19 just being released.

20 Q: Okay. Did you know that you were in effect -- you knew
21 you were pleading guilty though; right?

22 A: Yes, sir.

23 Q: Okay. And did you -- do you recall telling the Court
24 that -- do you recall the judge asking you whether or not you
25 were, in fact, guilty?

1 A: Yes, sir.

2 Q: And did you say you were pleading according to *North*
3 *Carolina v. Alford*?

4 A: Yes, sir.

5 Q: Were you guilty?

6 A: No, sir.

7 Q: Had Mr. Jordan gone through all your discovery and talked
8 about the case with you?

9 A: Yes, sir.

10 Q: Did he ever talk to you about whether or not -- I'll
11 withdraw that.

12 MR. FALK: No further questions.

13 THE COURT: All right. Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. BOGLE:

16 Q: So let's make sure I got this right. You walked into
17 court, pleaded guilty to a crime that could have gotten you 20
18 years for a felony that takes away your rights to vote and
19 things like that, and yet you didn't do it?

20 A: Yes, sir. Under the circumstances, yes, sir.

21 Q: Okay.

22 MR. BOGLE: Nothing further.

23 THE COURT: All right. Anything?

24 MR. FALK: Just one on redirect.

25 REDIRECT EXAMINATION

1 BY MR. FALK:

2 Q: You knew when you were pleading you were going to get 734
3 days' credit time served and you'd be released?

4 A: Yeah.

5 MR. BOGLE: Objection, Your Honor.

6 A: That's a negotiated plea.

7 THE COURT: Hold on.

8 MR. BOGLE: Objection. Assumes facts not in evidence.
9 It's judge's discretion what he might get even though it was a
10 recommendation.

11 MR. FALK: Excuse me.

12 THE COURT: That's correct. It was just a
13 recommendation, not a negotiation.

14 MR. FALK: I'll withdraw my question.

15 THE COURT: Sustained as to the objection. All right.

16 BY MR. FALK:

17 Q: You knew what a recommendation was?

18 A: Yes, sir.

19 MR. FALK: Thank you.

20 THE COURT: All right. Mr. Fulton, thank you very much,
21 sir. You may step down..

22 THE RESPONDENT: All right.

23 THE COURT: Yes, sir, Mr. Falk?

24 MR. FALK: We have no further witnesses. We would rest.

25 THE COURT: All right. Ladies and gentlemen, the

1 respondent has rested their case and I now have to take up
2 some matters of law at the close of the respondent's case. So
3 I will need to ask you, if you would, to step back into the
4 jury room.

5 Do not have any conversation about the case and I'll
6 bring you back out as soon as I resolve these matters of law.
7 Okay? If you need anything while you're back there, let the
8 bailiffs know.

9 (WHEREUPON, the jury exited the courtroom at 10:30 a.m.)

10 THE COURT: All right. Mr. Bogle, I was just going to
11 ask if the State had any reply.

12 MR. BOGLE: We do not.

13 THE COURT: Okay. All right. Well, at this time then
14 I'll take up motions at the close of the evidence.

15 MR. FALK: Your Honor, we would renew our motion for
16 directed verdict basically for the same grounds that I said at
17 the end of the State's case, although I do think Mr. Jordan's
18 testimony and my client's testimony does put a further
19 question onto the facts in this case because we did hear Dr.
20 Gehle say that, you know, if that last -- this conviction did
21 not happen, then her diagnosis would be completely different.

22 So although we acknowledge that -- now, a plea under
23 *Alford* is a plea and it's a qualifier and, you know, that's
24 not a jurisdictional issue, but to the extent that I think we
25 raised considerably more doubt as to whether or not he did the

1 offense or was just pleading to get out the door, and I think
2 it's especially important under these facts because the
3 State's expert said that if he didn't do it, her diagnosis
4 would be completely different.

5 THE COURT: All right, sir.

6 MR. FALK: And we wouldn't be here today. So I mean I
7 think her statement is that we wouldn't be here today.

8 THE COURT: All right, sir. Well, I'm going to
9 respectfully again deny the motion. Everything you say may
10 very well be correct, but I think it's based on how the jury
11 receives it and how -- what weight the jury gives the
12 testimony. So I still think it's absolutely a jury question
13 and so I think it's a matter for the jury to decide.

14 Do we need to -- have y'all seen the latest -- the draft
15 of the charge that we have? I mean I know --

16 MR. BOGLE: You've got what I wrote.

17 THE COURT: Right.

18 MR. BOGLE: This is something else.

19 THE COURT: I don't -- I don't think we've -- I mean you
20 submitted basically what the statute covers and what the law
21 is. Is this it right here?

22 THE LAW CLERK: Yes, sir.

23 THE COURT: Let me -- if y'all would, just take a few
24 minutes. I'll pass it first to you, Mr. Falk, and then Mr.
25 Bogle, or y'all can read it together.

1 MR. BOGLE: Sure.

2 THE COURT: But that's the proposed, and if we have to
3 make any changes, we're certainly open to doing that.

4 MR. BOGLE: And I gave you -- I emailed y'all a proposed
5 verdict form.

6 THE LAW CLERK: Yes, sir. I have that.

7 (WHEREUPON, there was a pause in the proceedings, after
8 which the proceedings resumed as follows.)

9 MR. BOGLE: Okay. I spent some time going over Judge
10 Newman's charge because it was such a high-profile case.

11 THE COURT: Yeah.

12 MR. BOGLE: And I was thinking as good a judge he is, he
13 probably got lots of advice for doing this thing the right
14 way.

15 THE COURT: And obviously, he's going to have to revisit
16 it again.

17 MR. BOGLE: Yeah. It looks like it.

18 THE COURT: This is a proposed form. The only change we
19 had made was adding Mr. Willoughby as the foreman.

20 MR. BOGLE: Oh, yeah.

21 THE COURT: Y'all didn't have that information yesterday.

22 MR. BOGLE: No.

23 THE COURT: All right. Is there anything else that we
24 need to do as far as anything else regarding the charge or the
25 verdict form?

1 MR. FALK: No.

2 MR. BOGLE: Not that I can think of.

3 THE COURT: Okay. Well, let's just take a few minutes.
4 You can gather your thoughts. We'll see -- now, again,
5 obviously, the burden of proof is beyond a reasonable doubt.
6 It is a -- it is a criminal burden of proof, but I think
7 everything else about the trial is civil.

8 MR. BOGLE: Yes.

9 THE COURT: So, Mr. Bogle, you'll open in full.

10 MR. BOGLE: I'll open in full.

11 THE COURT: You'll open in full and then Mr. Falk and
12 then if you want to reserve some rebuttal, you can do that.

13 MR. BOGLE: Well, if he brings up something new, I can
14 reply is the way I understand it. That's the way I've been
15 doing this. Yeah, if you bring up something new, then I'll
16 respond to it.

17 THE COURT: Well, under -- under the civil rules, you can
18 -- you can -- you can give a rebuttal if you choose to.

19 MR. BOGLE: Okay. Usually, I don't. We'll just play it
20 by ear.

21 THE COURT: Sure. But that's -- that's kind of the --

22 MR. BOGLE: I open in full?

23 THE COURT: Yes. All right. And so we'll just take a
24 few minutes if you want to gather your thoughts and stuff like
25 that and use the restroom and stuff like that.

1 (WHEREUPON, there was a break in the proceedings from
2 10:36 a.m. until 10:46 a.m., after which the proceedings
3 resumed as follows.)

4 THE COURT: All right. Here's much -- much shorter and a
5 little briefer, but this is what I propose, the charge there
6 and, like, it's just the part at the bottom about conclusion
7 and jury verdict.

8 MR. BOGLE: Oh, okay. Could you email that to me when
9 we're all done?

10 THE LAW CLERK: Yes, sir.

11 THE COURT: Yeah. Sure. All right. Well, if we're
12 ready?

13 MR. FALK: Five more minutes?

14 THE COURT: Yeah. Absolutely.

15 (WHEREUPON, there was a pause in the proceedings, after
16 which the proceedings resumed as follows.)

17 THE COURT: Are we ready to go, folks?

18 MR. FALK: Yes, we're ready.

19 THE COURT: All right. Let's bring the jury out, please.

20 (WHEREUPON, the jury entered the courtroom at 10:54 a.m.)

21 THE COURT: All right. Ladies and gentlemen, thank you
22 for your patience and giving me the opportunity to resolve
23 those matters of law, which I've done, and we're now ready to
24 proceed to our next phase of the trial and that is where the
25 attorneys have the opportunity to address you with what we

1 typically refer to as closing arguments.

2 This is their opportunity to discuss with you what they
3 believe the evidence in this case has shown. It's very
4 important that you listen carefully, but as I told you with
5 regards to their opening statements, what they share with you
6 in their closing arguments is not evidence.

7 The evidence is closed. It's the testimony from the
8 witness stand and then any exhibits which may have come in
9 during the course of the trial. But it is important that you
10 listen carefully as they share with you their thoughts and
11 opinions regarding the -- the evidence in the case.

12 Once they've concluded their remarks, I will then give
13 you the charge on the law and at that point you'll then
14 finally be in a position to go back into the jury room and to
15 begin your deliberations.

16 Now, just so you'll understand how we -- how this
17 proceeds, the plaintiff -- because the plaintiff has the
18 burden of proof, the plaintiff will go first and Mr. Bogle
19 will open the closing arguments and he'll present his
20 argument, and then Mr. Falk will have an opportunity to
21 address you. And then if Mr. Bogle chooses to, he can give a
22 brief reply or he may not. It will be his decision as to
23 whether he wants to do that or not.

24 And then, as I said, at the conclusion of all of that,
25 I'll give you the charge on the law. Okay? So please, if you

1 would, pay close attention to the attorneys as they address
2 you with their closing remarks. Mr. Bogle?

3 MR. BOGLE: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, sir.

6 CLOSING ARGUMENT ON BEHALF OF THE STATE

7 MR. BOGLE: Mr. Falk. Well, there's 12 of you or 14
8 because we have two alternates and I understand from the
9 conversation the other day we've got a few folks who might've
10 sat on the first jury. So I'd like to say thanks on behalf of
11 the State, the county, and Mr. Fulton for doing your job.
12 Okay?

13 You've had to sit here and listen to all the stuff and
14 look at the evidence we're going to present to you and
15 consider exactly what happened in this case and what the State
16 has proven or what it has not proven. And I appreciate that
17 effort by you in service to Florence County and to the State
18 of South Carolina.

19 When we began this thing, I talked about some things the
20 legislature wrote down when they created this law. There's a
21 second paragraph they said and here's what it says.

22 They said that because the existing civil commitment
23 process is inadequate to address the special needs of sexually
24 violent predators and the risks they present to society, the
25 general assembly has determined that a separate involuntary

1 civil commitment process for the long-term control, care, and
2 treatment of sexually violent predators is necessary. And
3 that's what we have today.

4 Now, as the judge will explain to you later on, because
5 Mr. Fulton's liberty is at stake -- you know, if he is found
6 to be a sexually violent predator, he will be committed to a
7 secure facility run by the Department of Mental Health in
8 Columbia for treatment. So his liberty is at stake and that's
9 why I think when the general assembly wrote this law, they
10 placed a strong burden of proof on the State.

11 We have to prove to you that this guy is a sexually
12 violent predator beyond a reasonable doubt, unlike that other
13 trial where the burden of proof was on the preponderance of
14 the evidence. And the judge explained to you what that means,
15 but I would suggest what you have to do is you have to look at
16 the testimony you heard, examine the exhibit -- you will have
17 that in the courtroom -- and the question will be does all of
18 this leave you firmly convinced that Michael Fulton fits the
19 definition of a sexually violent predator. If it doesn't, he
20 should get a verdict in his favor. If it does, then the State
21 would be the one to get the verdict.

22 Now, what is a sexually violent predator? Two things --
23 three things really. Number one, you've got to be convicted
24 of a sexually violent crime. Mr. Fulton has at least two that
25 we've heard about. He's got that criminal sexual conduct in

1 the first degree in Family Court back in the year 2000. He's
2 also got the more recent one we introduced into evidence right
3 here, criminal sexual conduct with a minor in the second
4 degree, and it's also here in Florence County and this
5 involved the eight-year-old girl.

6 So there's the crime. The next question is does he have
7 a mental abnormality, and the statute says a mental
8 abnormality or a personality disorder. In this case, he has
9 both. She diagnosed him. Dr. Gehle was qualified without
10 objection as being an expert witness in the field of
11 psychology.

12 Normally, like I said the other day, a witness can't give
13 opinions. They can talk about what they see, what they've
14 heard, what they smelled, that sort of thing, but in this case
15 if the witness has the kind of education and experience that
16 would help you as a jury find the facts, they can give an
17 opinion. And Dr. Gehle, who has done about 75 of these pre-
18 commitment evaluations -- she was qualified by the judge
19 without objection from the defense to give you her opinion,
20 her conclusion.

21 What she did was she analyzed everything this guy had
22 done since his youngest years. She's looking for patterns.
23 Is there something going on here that keeps happening over and
24 over again? Is it raising -- is all this conduct increasing
25 his level of risk where he would be too dangerous to be on the

1 outside, and she found that he was.

2 What she diagnosed him with -- the best phrase I remember
3 was coercive sexual acts with nonconsenting victims. Now, a
4 sexual act with a nonconsenting victim, like rape, criminal
5 sexual conduct, that's one thing, but to make it -- to throw
6 in the coercion on top of the nonconsent, that takes it to a
7 different level, and she found that he had that. She called
8 it paraphilic disorder, not otherwise specified, biastophilia.
9 A complicated word that talks about coercive sex.

10 It's the coercion that seems to turn this guy on, not
11 just the sex. It's the control, the violence. Remember the
12 assault case where he choked the kid, let the kid regain
13 consciousness, chokes him again into unconsciousness three
14 times while he's sexually assaulting the kid?

15 So we also have another criminal sexual conduct in prison
16 that was dealt with not as a criminal conviction in court, but
17 as a disciplinary infraction by the prison authorities. We
18 have it starting at a fairly young age and continuing until
19 the most recent thing we have right now. It's the arousal to
20 the suffering and he can draw the line.

21 No, she also looked -- in addition to the mental
22 abnormality, she looked to see if she could find a personality
23 disorder, a separate category thing, and she found one,
24 antisocial personality disorder. And what you're looking for
25 is basically a lifetime that's documented prior to age 15,

1 examples from when he was very young, basically a lifetime of
2 just not obeying the rules. That's reflected by the number of
3 times he's arrested, the number of times he's convicted, all
4 kinds of crimes, and that's what she found.

5 So basically, her conclusions as an expert witness
6 qualified by the judge to give these opinions is that he's got
7 the mental abnormality and he's got the personality disorder.

8 Now, the next question is does he have control over his
9 actions to the point that he can be turned loose or is he not
10 able to control his actions such that he needs to be confined
11 for treatment? And her expert opinion was, yeah, this guy has
12 issues. This guy has problems. He has a lack of control over
13 his sexual inclinations and it's been demonstrated in this
14 long history. It's there and it's such that he needs to be
15 confined for treatment, and that's what we are doing right
16 here today.

17 Now, the defense -- for a while, they were handing out
18 articles, some 10 -- 12 years old, some less older than that.
19 All they really -- they seemed to be pulled off the Internet
20 from publications by people who disagreed with a diagnosis or
21 didn't like the Static-99, the thing that she used to evaluate
22 the guy. You know, I could probably spend 10 minutes on the
23 computer and find a bunch of articles out there saying they
24 thought the American jury system was a bunch of junk. It's
25 just -- it is what it is. Look at Dr. Gehle's conclusions and

1 the strength she put behind them.

2 We also have -- all of a sudden, we have Mr. Fulton
3 saying that State's Exhibit 1 is a plea under *North Carolina*
4 *v. Alford*. The Supreme Court of the United States many years
5 ago came out with that case and what it says is it allows a
6 guy to plead guilty to a crime, even though they're saying I
7 didn't do it, but I believe the State's case is so strong it's
8 going to convict me if I go to trial. That's called an Alford
9 plea.

10 But you heard from his attorney. Was it an Alford plea?
11 He didn't think so. He's the lawyer who was there. And they
12 write Alford on the sentencing sheet to make a record of it
13 that this was a plea under that particular case. No, they
14 didn't. It's not on here anywhere. The word Alford or NC v.
15 Alford or North Carolina v. Alford, not on here. So I would
16 suggest to you he pled guilty.

17 Now, did he get a deal? Yeah, he did. Why he got the
18 deal, I don't know. The point is it is a conviction. The
19 judge will tell you that criminal sexual conduct with a minor
20 in the second degree is a sexually violent offense. So there
21 it is.

22 He's telling us today I didn't do it. Okay. He walks
23 into court with a qualified defense attorney. You know, Mr.
24 Jordan has been doing this for at least 10 years. He does
25 public defender work both in state and federal court, and he's

1 going to plead a guy to a crime the guy didn't do? No. That
2 kind of -- here's where you use your common sense. That
3 doesn't make sense.

4 So that's it. What have we got? We've got the crime.
5 We've got the mental abnormality. We've got the personality
6 disorder and the lack of control shown by a lifetime of
7 violating the rules and sexual misconduct, some that result in
8 assault convictions and some that result in criminal sexual
9 conduct convictions. That's what you've got.

10 The question is has the State left you firmly convinced
11 that this man is a sexually violent predator, and I would
12 submit that we have. Thank you again for your service. Your
13 Honor?

14 THE COURT: Mr. Falk?

15 CLOSING ARGUMENT ON BEHALF OF THE RESPONDENT

16 MR. FALK: May it please the Court. Ladies and gentlemen
17 of the jury. Mr. Bogle.

18 As I said at the beginning, there's a story of a troubled
19 childhood, a child that's been in and out of group homes,
20 foster care. At one time, his parents said they couldn't
21 control him. And there's probably no question that that
22 probably affected his personality and he probably does have
23 antisocial personality disorder. He sort of had a rough
24 upbringing. He had a rough go at it as a child and maybe
25 didn't always get the care that he needed when he needed it,

1 but that is what it is. Okay?

2 However, the question is whether or not he has a mental
3 disease or defect, a personality disorder, that makes him
4 likely that he will commit a crime of sexual violence if not
5 committed, and that's what I want y'all to focus on today.

6 In 2004, he went through this proceeding, not to a jury.
7 Actually, the State's expert -- you heard Dr. Gehle testify
8 the State's expert said that she evaluated him and it was her
9 opinion at that time that he did have an antisocial
10 personality disorder, but there was no sexual element to it --
11 to his diagnosis, no other kind of paraphilia of some type of
12 sexual dysfunction and, therefore, she recommended that he not
13 be referred to the program.

14 And it's interesting to remember the date. That was in
15 2004 and the stuff that Mr. -- Mr. Fulton was accused of doing
16 and pled guilty to -- it all happened -- except for the most
17 recent, but the incidents when he was 14 with the girls who
18 were 17 and, you know, the juveniles in prison, that all
19 happened prior to 2004. So we would assume that -- we saw how
20 thorough of an analysis Dr. Gehle did. You would assume that
21 that expert did an equally thorough analysis, and that person
22 at that time decided that he did not need to be in the
23 sexually violent predator treatment program because he didn't
24 have a sexual dysfunction.

25 And then in October 2011, the multidisciplinary team --

1 and that's kind of like this big screening panel, and they had
2 an opportunity to initiate these proceedings against him.
3 They had access to all of his records, all of his files, and
4 they said he didn't need to be referred.

5 They met again in February 2013. I don't know if it was
6 the same group. It was the same types of people and they said
7 that he did not need to be referred. Also, looking at all --
8 looking at his entire record and, again, that was looking at
9 those sexual crimes that were on his record all prior to 2004
10 and therefore prior to 2011 and 2013.

11 So along comes Dr. Gehle, and Dr. Gehle now says that
12 she's reviewed his record and she concurred with the diagnosis
13 that he has an antisocial personality disorder. And then she
14 said that he also has something called biastophilia, which is
15 -- which I think she said or Mr. Bogle referred to it as he
16 got aroused by coercive interactions with sexual partners.

17 But the other important part to remember is that it has
18 to be a preference for that. This is a man that Dr. Gehle
19 knows that he's fathered other children. He's had -- there's
20 no indication -- she didn't look to see whether or not he had
21 any normal romantic or sexual relations with any other women
22 who were the fathers of his -- who were the mothers of his
23 children, but I mean there's plenty of evidence in here that
24 that was not his preference, that he has a preference for this
25 coercive behavior, but again she thought that it did.

1 And what was interesting is Mr. Bogle said that she
2 looked through the records and she was looking for a pattern,
3 but I contend that what she was looking for was some kind of
4 diagnosis, some kind of sexual diagnosis to hang him with. So
5 therefore, there's the DSM-5 which she had said people
6 recognize as the Bible.

7 She also acknowledged that the DSM-5 -- you cannot find
8 the word biastophilia in this book. This book does not
9 recognize that a preference for sexual -- a preference for
10 coercive sexual behavior is a recognized -- this book does not
11 say that biastophilia is -- it's not mentioned in this book.
12 There is a catchall provision that says there's a -- and you
13 heard her say there's hundreds of other diagnoses. Maybe she
14 indicated there's too many to mention and so maybe it could be
15 in this other group, but you also heard her testify to the
16 ones that are mentioned in the book and she -- and the book
17 also acknowledged that and she recognized that when the
18 authors of the book -- and this is the Bible in this
19 profession -- said that what we were looking for were the ones
20 that were the most common and the ones that were the most
21 noxious I think is the terminology there.

22 So if the people who write the book believe that rapism
23 is a sexual disease, it's hard to believe that it wouldn't be
24 considered common or significant, like noxious. My point is
25 it's criminal conduct. In the State of South Carolina, we

1 deal with criminal conduct through the -- through the criminal
2 justice system. That's what my client is gone through. He's
3 had criminal acts in the past and he's dealt with those and
4 he's been sentenced and he served time for those, but the
5 question is whether or not he's got a mental disease that
6 makes it likely he will commit a crime of sexual violence.

7 There's no -- unfortunately, there's no guarantee that he
8 might not commit another crime, but you have to decide whether
9 or not it is likely that he's going to commit a crime of
10 sexual violence because although he may have a -- he may have
11 antisocial personality disorder and he may go rob a -- he may
12 go take somebody's car or something. I mean just the fact
13 that you're worried that he might commit another crime is not
14 a basis for you to commit him into this program. You have to
15 be convinced beyond a reasonable doubt that he's going to
16 commit a crime of sexual violence if he doesn't go through
17 this program.

18 One of the things I want you to consider is when you hear
19 an expert like Dr. Gehle and she practices in her little world
20 of psychology and sometimes it could be easy to draw some
21 parallels to getting a diagnosis from a medical doctor, but,
22 you know, if you go into the emergency room and you tell the
23 doctor your arm hurts and he looks at your arm and the bone is
24 broken, that's a pretty -- that's a pretty sound basis for a
25 diagnosis. You can look at a picture. You can look at an x-

1 ray and, yeah, that bone is broken and, in fact, you can
2 probably send that x-ray to every hospital in the country and
3 every orthopedic surgeon in there would agree that the
4 person's bone is broken.

5 Similarly, you can go in to -- let's say somebody is
6 coming in with chest pains and, you know, I don't really know
7 what the symptoms are here, but I'm sure there's symptoms of,
8 you know, high -- you know, racing heartbeat. They take a
9 blood test. There are certain antibodies in the blood,
10 certain chemicals in the blood, and they know that you're
11 having a heart attack and, again, they could probably take
12 that information and send it to five other doctors and they'll
13 all agree because there's set criteria for diagnosing these
14 types of problems.

15 There are no set criteria -- Dr. Gehle testified there
16 are no set criteria for even saying what it means to have
17 biastophilia. Her opinion could be one thing; somebody over
18 there could be something different. Nobody has taken the time
19 -- no group of people have taken the time to say that if you
20 have biastophilia, this is what you would look for. So her
21 opinion about whether or not there was a pattern in his life,
22 that's what she's going on that there's a pattern of this in
23 his life.

24 I think that if you are looking at this case -- and
25 again, you're going to have to decide beyond a reasonable

1 doubt. I have two places for you to look for doubt and I'm
2 not -- and I think the two places are, one, Dr. Gehle
3 testified that if the events of 2014 did not happen, say if he
4 did not assault that eight-year-old girl, then she would have
5 a completely different diagnosis of him. In fact, she said
6 that if -- we probably even wouldn't be here today is I think
7 is what her language was.

8 So is there reason to think that maybe the events of 2014
9 did not happen? Now, there's no question that he pled guilty
10 to it and in the state of South Carolina that guilty plea is a
11 guilty plea regardless of whether or not you plead guilty
12 under *North Carolina v. Alford*.

13 But let's look a little bit at it. Look a little bit
14 about what we do have. He was looking at a 20-year sentence.
15 He had a competent lawyer who was talking to him. He was
16 advising him. He got the -- the solicitor agreed to let my
17 client plead to a time-served sentence of 734 days. He had
18 been in jail 734 days at the time of that plea and, if he pled
19 guilty he could walk out the door, and my client testified
20 that he thought he was pleading under *North Carolina v.*
21 *Alford*, meaning in his mind he didn't do it, but he wants to
22 go home today. So if it didn't happen in 2014, does he have
23 some kind of sexual paraphilia?

24 And then the other thing -- the other place where I
25 really think we ought to consider is, again, whether or not

1 her diagnosis of a -- of whether or not he has biastophilia is
2 anything. Is it even a recognized diagnosis? Again, there's
3 nothing in this book. The word is not even mentioned in this
4 book. She heard where there was some testimony where there
5 was some discussion as they were doing different drafts of
6 this book about whether this notion of somebody who has
7 coercive sexual interest, interest in coercive sex, was some
8 type of mental disease or pathology, and as they were drafting
9 these different versions of this book, it's not in the most
10 recent book.

11 You can draw a conclusion as to why they would not put it
12 in this book. My contention is the reason it's not put in the
13 book is because the editors of the DSM-5 and as part of the
14 community recognized that there's criminal conduct and there's
15 mental health.

16 I used kind of simple analogy at the beginning, but I
17 still think it applies is if somebody goes in and steals a
18 chocolate bar and they run out the door from the gas station,
19 did they want a chocolate bar or did they get off on stealing?

20 Dr. Gehle want you to believe that he -- that what
21 aroused my client is the force, not the act, but the force of
22 coercing somebody into it and that's what gets him aroused. I
23 think that his own personal history, as Dr. Gehle alluded to,
24 that he had other sexual partners, that he's had children,
25 that that is not his preference. That's not where he wants to

1 go.

2 I expect that at the end of the day the judge is going to
3 instruct you on the law. I want you to look carefully at the
4 language where the judge is going to instruct you as to how to
5 evaluate testimony from an expert witness. He will -- the
6 judge will give you that law, but I think -- I would expect
7 that it says that just because she's an expert does not mean
8 that you have to believe her opinion in full or in part, that
9 you should evaluate her testimony just like you would evaluate
10 any other witness's testimony.

11 I am hopeful that at the end of the day, once you look
12 for where some obvious doubt is in this case, that you will
13 decide that my client may have a criminal past, may have done
14 some things in his past that he's not happy with -- a lot of
15 those things happened while he was a juvenile, but I am
16 hopeful that you will decide that it's time for him to go home
17 because he doesn't have a mental disease and doesn't need to
18 go to a place that's going to treat sexually violent predators
19 because my client is not a sexually violent predator. Thank
20 you.

21 THE COURT: Anything, Mr. Bogle, in reply?

22 MR. BOGLE: Nothing further, Your Honor. Thank you.

23 CHARGE ON THE LAW

24 THE COURT: All right. Folks, when we started this
25 trial, I told you that you were the judges of the facts and

1 that no one other than yourselves had any input into the fact-
2 finding. And so while the lawyers have been presenting the
3 evidence to you, it's been appropriate for me to be on the
4 bench up there and out of the way and allow them to do that.

5 But we've now reached the portion of this trial where you
6 and I are in this together, you as the judges of the facts and
7 me as the judge of the law. So I think it's appropriate that
8 I be here with -- down here with you to give you the charge on
9 the law. I'm going to read this verbatim. I don't want to
10 leave anything out or misquote anything.

11 Mr. Foreman and ladies and gentlemen of the jury, it is
12 now my duty as the trial judge under the Constitution of this
13 state to charge and to instruct you on the law that is
14 applicable to this case. It is your duty as jurors to accept
15 and to apply the law as I will now state it to you.

16 The State has brought this case under the Sexually
17 Violent Predator Law of South Carolina. The State seeks the
18 civil commitment of Michael Fulton, the respondent, for long-
19 term control, care, and treatment in a secure facility. This
20 is not a criminal proceeding seeking incarceration, but rather
21 a proceeding seeking civil commitment.

22 The State of South Carolina alleges or claims that the
23 respondent, Michael Fulton, is a sexually violent predator
24 under our law. Respondent -- the respondent denies that he is
25 a sexually violent predator and the burden of proof is,

1 therefore, on the State to prove by evidence sufficient to
2 satisfy you beyond a reasonable doubt that Mr. Fulton is a
3 sexually violent predator.

4 If the State is unable to meet that burden of proof as to
5 one or more of the elements of this claim, the respondent is
6 entitled to a finding that he is not a sexually violent
7 predator.

8 Ladies and gentlemen, I want to make sure that you
9 understand that Mr. Fulton is not accused of committing a
10 crime in this proceeding. As you heard from the testimony, he
11 did have previous charges for which he was sentenced by the
12 Court. The respondent has now completed his sentence for
13 those charges and the State is now alleging that Mr. Fulton is
14 a sexually violent predator. The State has the burden of
15 proof in this case and it must prove its case beyond a
16 reasonable doubt.

17 If you find that the State has not met this burden, the
18 respondent will be released. If you find that the State has
19 met this burden of proof and you find that the respondent is a
20 sexually violent predator, he will not be released, but he
21 will be committed to a secure treatment facility in Columbia
22 that is operated by the South Carolina Department of Mental
23 Health.

24 Now, during this trial, you and I have had separate
25 duties to perform. As the trial judge, it is my

1 responsibility to preside over this trial and I also have the
2 duty to rule upon the admissibility of evidence offered during
3 the process of this trial.

4 In that regard, you are to consider only the competent
5 evidence before you and you are to disregard from your mind
6 any testimony ordered stricken from the record of this case.
7 During the process of this trial, if there was any, you should
8 -- excuse me. You are to consider only the testimony which
9 has been presented from the witness stand, together with any
10 exhibits admitted into the record of this case and any
11 stipulations of counsel that have been made a record, if there
12 are any.

13 Now, I have the additional duty to charge you on the
14 applicable law of this case and, in that regard, I am the sole
15 judge of the law in this case. It is your duty to accept and
16 to apply the law as I now state it to you. If you have any
17 preconceived ideas as to what the law is or what you think the
18 law ought to be and it does not agree with what I tell you the
19 law is, you are obligated under your oath to abandon those
20 preconceived notions because you are sworn to accept the law
21 precisely as I state it to you now.

22 In this trial, you are the soul and the exclusive judge
23 of the facts and I am the judge of the law. Do not infer that
24 I have any opinion about the facts in this case from anything
25 that I have said during the course of this trial in ruling

1 upon the admissibility of evidence or otherwise or from
2 anything that I now state to you during the course of this
3 charge. In this regard, the law simply does not permit me to
4 have any opinion about the facts. As jurors, it is your duty
5 alone to determine the effect, value, weight, and truth of the
6 evidence presented during the course of this trial.

7 Now, while the arguments of counsel is beneficial -- is a
8 beneficial part of every trial, you should remember that the
9 statements made by counsel are not evidence. In presenting
10 arguments, counsel often referred to the evidence. However,
11 you should base your verdict on the evidence as you remember
12 it. Therefore, if there are any conflicts between the
13 recollection of counsel about the evidence and your own
14 recollection, you should rely upon your own understanding of
15 the evidence.

16 Now, ladies and gentlemen, in most civil cases tried in
17 this court, the burden of proof or the burden of proving a
18 claim is by the preponderance or the greater weight of the
19 evidence. However, in this type of case under this particular
20 statute, the State's burden is greater than that. Here, the
21 burden is beyond a reasonable doubt.

22 As already stated to you, the State has the burden of
23 proof. Under the law of this state according to the Sexually
24 Violent Predator statute, the State must prove its case to the
25 standard of proof beyond a reasonable doubt. If the State

1 fails to meet this high burden, then you must find that Mr.
2 Fulton is not a sexually violent predator.

3 So what is a reasonable doubt in the law? Proof beyond a
4 reasonable doubt is proof that leaves you firmly convinced
5 that the respondent is a sexually violent predator.

6 Ladies and gentlemen, there are very few things in this
7 world that we know with absolute certainty and, in this type
8 of case, the law does not require proof that overcomes every
9 possible doubt.

10 If, based on your consideration of the evidence, you are
11 firmly convinced that Mr. Fulton is a sexually violent
12 predator under the law, then you must return a verdict for the
13 State. If, on the other hand, you think there's a real
14 possibility that he is not a sexually violent predator, then
15 you must give him the benefit of that doubt and return a
16 verdict for the respondent.

17 Reasonable doubt may arise from evidence that is in the
18 case or from the lack of evidence in the case. It is up to
19 you, the jury, to determine whether or not a reasonable doubt
20 exists in this case.

21 Now, there's two types of evidence which are generally
22 presented during a trial. There is direct evidence and
23 there's circumstantial evidence.

24 Direct evidence is the testimony of a person who claims
25 to have actual knowledge of a fact, such as an eyewitness. It

1 is evidence which immediately establishes the main fact to be
2 proven.

3 Circumstantial evidence is proof of a chain of facts and
4 circumstances which indicate the existence of a fact. It is
5 evidence which immediately establishes collateral facts from
6 which the main fact may be inferred. In other words,
7 circumstantial evidence is based on inference and not on
8 personal knowledge or observation.

9 It is proof that does not actually establish the fact in
10 question, but that asserts or describes something else from
11 which you may reasonably infer the truth of the fact or at
12 least reasonably infer an increase in the probability that
13 that fact is true.

14 For circumstantial evidence to be sufficient to warrant
15 the finding of a fact, the circumstances must lead to that
16 fact with reasonable certainty. The facts and circumstances
17 should be considered in light of ordinary experience and
18 common sense. The existence of a fact cannot be based on
19 speculation, surmise or conjecture.

20 Now, the law makes absolutely no distinction between the
21 weight or the value to be given to either direct or to
22 circumstantial evidence, nor is there a greater degree of
23 certainty required of circumstantial evidence than of direct
24 evidence. You should weigh all of the evidence in this case.

25 Now, in determining what the facts in this case are, you

1 must judge the credibility, which simply means the
2 believability, of the witnesses and the value of weight to be
3 given to their testimony. You alone must decide the force,
4 effect, and truth of the testimony.

5 In making this decision, there are many things that you
6 may and you should consider or take into consideration, things
7 such as the appearance and the manner of a witness on the
8 witness stand, a characteristic often referred to as the
9 demeanor of the witness.

10 Also, was the witness forthright or was the witness
11 hesitant? Was the witness's testimony consistent or did it
12 contain discrepancies? What was the ability of the witness to
13 know the facts about which that witness testifies? Was there
14 some reason a witness would want to give testimony which would
15 either help or hurt one side or the other? In other words,
16 was the witness biased or prejudiced?

17 Was the testimony of the witness reasonable when
18 considered in light of all of the evidence in the case and in
19 light of your own experience and common sense? Was the
20 testimony of the witness corroborated or made stronger by
21 other testimony and evidence or was it made weaker or
22 impeached by such other testimony or evidence?

23 As jurors, please understand that you have the right to
24 believe a small portion of a witness's testimony and disregard
25 the larger or vice versa. You may believe all of a witness's

1 testimony or none of that testimony. You may believe the
2 testimony of a single witness against that of many or the
3 other way around and, of course, you do not determine the
4 truth merely by counting the number of witnesses presented by
5 each side.

6 The fact that the testimony is not controverted does not
7 mean that you must accept it as true or undisputed. You still
8 must gauge the credibility of the witness to determine the
9 believability or the truth of the facts offered through that
10 testimony.

11 In exercising your mental process in attempting to decide
12 the truth, the law simply requires that you exercise your good
13 judgment, your common sense, your sense of logic and reason,
14 and your experiences in life. You then apply these attributes
15 to the evidence and apply the law as I'm now going to state it
16 to you in arriving at your verdict.

17 Now, during the course of this trial, you have heard the
18 testimony of an expert witness. The rules of evidence
19 ordinarily do not permit witnesses to testify to opinions or
20 conclusions. There is, however, an exception to this rule
21 which exists for a witness that we call an expert witness. A
22 witness who has special knowledge, skill, experience, training
23 or education in a particular field may state an opinion as to
24 the relevant and material matters in which that witness claims
25 to be an expert.

1 In determining the weight to be given to such an opinion,
2 you should likewise consider the qualifications and the
3 credibility of the expert and the reasons given for the
4 opinion. If you -- excuse me.

5 You are not bound by such opinion. Rather, you should
6 give it the weight, if any, that you think it deserves. The
7 value and the effect of expert testimony is a matter to be
8 solely estimated by you, the jury. No opinion of an expert
9 can be accepted in and of itself as truthful or reliable, but
10 must be weighed by you and convince your judgment beyond a
11 reasonable doubt and with the same force and effect as any
12 other fact proved in this case before you can rely on it.

13 You must consider expert testimony in the same manner as
14 you do any other testimony and you give it such weight as you
15 believe it is entitled when considered with all the other
16 evidence in the case. Such testimony is given for the purpose
17 of helping you and not for the purpose of controlling your
18 judgment.

19 Now, the elements which the State must prove beyond a
20 reasonable doubt are as follows.

21 First, that the respondent has been convicted of a
22 sexually violent offense. Now, I do -- I will charge you that
23 criminal sexual conduct in the second degree is a sexually
24 violent offense under South Carolina law.

25 Second, that the respondent suffers from a mental

1 abnormality or personality disorder that makes him likely to
2 engage in acts of sexual violence if not confined into a
3 secured facility for long-term control, care, and treatment.

4 Inherent in these two elements is that the State must
5 prove the requirement that the respondent's medical
6 abnormality or personality disorder causes him serious
7 difficulty in controlling his behavior. In other words, the
8 State must prove beyond a reasonable doubt that the individual
9 that it seeks to commit suffers from a mental illness which he
10 cannot sufficiently control without the structure and the care
11 provided by a mental health facility, rendering him otherwise
12 likely to commit a dangerous act.

13 In order for you to better understand the elements of the
14 State's cause of action, I'm going to define for you some of
15 the terms that I have just used.

16 Mental abnormality means a mental condition affecting a
17 person's emotional or volitional capacity that predisposes
18 that person to commit sexually violent offenses. This mental
19 abnormality or personality disorder must cause Mr. Fulton
20 serious difficulty in controlling his behavior.

21 Likely to engage in acts of sexual violence means that
22 the person's propensity to commit acts of sexual violence is
23 of such a degree as to pose a menace to the health and the
24 safety of others so that he is dangerous to others.

25 Again, I remind you that the burden of proof is on the

1 State to prove to your satisfaction beyond a reasonable doubt
2 that the respondent has been convicted of a sexually violent
3 offense, as I have instructed to you, and also suffers from a
4 mental abnormality or personality disorder that makes him
5 likely to engage in acts of sexual violence if not confined
6 into a secure facility for long-term control, care, and
7 treatment.

8 If the statute -- excuse me. If the State carries its
9 burden of proof and convinces you beyond a reasonable doubt as
10 to each of the two elements of the cause of action, it is
11 entitled to a finding that Mr. Fulton is a sexually violent
12 predator. If the State, however, does not meet that burden of
13 proof as to one or both of these elements, then he is entitled
14 to a finding that he is not a sexually violent predator.

15 Mr. Foreman and members of the jury, as you retire to
16 begin your deliberations, I want to express the hope that each
17 of you will be mindful of the importance of your
18 responsibility. You are not called upon very often to serve
19 as jurors and the proper performance of the duty requires each
20 of you to reach the height of freeing your minds of all
21 improper influences.

22 As the presiding officer of this court, I am vitally
23 concerned that whatever your verdict is that it will be the
24 result of your going into the jury room and confining your
25 consideration to the evidence and to the law that you have

1 heard in this courtroom, weighing it fairly and impartially,
2 as I have every confidence you will do.

3 Your verdict in this case cannot be based on sympathy,
4 compassion or emotion or some other consideration that's not
5 in the evidence. And remember, as I told you earlier, your
6 verdict must be unanimous.

7 Now, Mr. Willoughby, this notebook will be in the jury
8 room with you and in the front cover is a verdict form. The
9 top of the verdict form is simply the caption of the case, but
10 the verdict form is self-explanatory.

11 After you have deliberated and you have reached a
12 decision, the verdict form reads has the petitioner, the State
13 of South Carolina, proved beyond a reasonable doubt that
14 Michael Fulton is a sexually violent predator under the South
15 Carolina Sexually Violent Predator Act? We, the jury,
16 unanimously answer the question as follows, and you'll answer
17 either yes or no depending on what your verdict is.

18 If you'll mark the appropriate decision of the jury and
19 then you'll sign it, Mr. Willoughby, and then once you've
20 reached a unanimous verdict, you'll knock on the door and let
21 the bailiff know you have a verdict and I'll bring you out and
22 receive your verdict.

23 If you have any question about anything, just write that
24 out and send it to me and I'll respond to any questions that
25 you may have or I'll try to.

1 Now, I'm going to get you, if you would, ladies and
2 gentlemen, to step back into the jury room. Please do not
3 begin your deliberations. Mr. Willoughby, I'm going to just
4 briefly review with the attorneys to make sure I haven't left
5 anything out or need to add anything. If I need to correct
6 something or add something, I'll bring you out and do that,
7 but if the charge is good as is, we'll collect any of the
8 exhibits and this notebook and we'll send those back to you.
9 When you receive these items, that'll be your cue to begin
10 your deliberations. Okay?

11 So if you would, step back and await these items, please.

12 (WHEREUPON, the jury exited the courtroom at 11:40 a.m.)

13 (WHEREUPON, the evidence was checked by the attorneys.)

14 THE COURT: And I think that's the only exhibit; correct?

15 MR. FALK: Exactly.

16 MR. BOGLE: That's correct.

17 THE COURT: Okay. Are there any exceptions or objections
18 to the charge from the plaintiff or from the State?

19 MR. BOGLE: No, Your Honor.

20 THE COURT: Anything from the defense?

21 MR. FALK: No, Your Honor.

22 THE COURT: All right. Well, let's -- that's it. So
23 we'll send this back. Ask the two alternates to step out,
24 please.

25 THE BAILIFF: Yes, sir.

1 (WHEREUPON, the jury deliberations began at 11:41 a.m.)

2 (WHEREUPON, the alternate jurors entered the courtroom.)

3 THE COURT: Mr. Collins? Mr. Cox?

4 AN ALTERNATE: Yes, sir.

5 THE COURT: Folks, I think the remaining jurors are all
6 healthy enough to go through their deliberations; so I'm going
7 to excuse you from any further service. You've completed your
8 service this week and normally I would tell you that you're
9 free to go and you are, but I think Melissa from the clerk's
10 office is going to bring your checks up here. So if you want
11 to just wait out here in this side room, she'll bring those to
12 you and then you'll be free to go. Make sure you get your --
13 get your phone or whatever you may have.

14 AN ALTERNATE: I didn't bring one in with me.

15 THE COURT: All right. And if you'll just wait around
16 the corner there, we'll get those for you. Thank you,
17 gentlemen.

18 (WHEREUPON, the alternate jurors exited the courtroom.)

19 THE COURT: All right. We will -- we will remain at ease
20 while the jury deliberates. What I -- with this timing that
21 we currently have, what I'll probably do is give them roughly
22 45 minutes to an hour. If they have not reached a verdict,
23 we'll then ask them if they think they need us to bring lunch
24 in and then we'll play it by ear then. Okay?

25 MR. BOGLE: Okay. Thank you, Your Honor.

1 THE COURT: All right. Well -- and if y'all are going to
2 head anywhere or go anywhere, just if you leave us a cell
3 number where we can get a hold to you --

4 MR. BOGLE: Okay.

5 THE COURT: -- in case they have a question or a verdict.

6 (WHEREUPON, there was a break in the proceedings from
7 11:43 a.m. until 12:00 p.m., after which the proceedings
8 resumed as follows.)

9 THE COURT: I'll need y'all's help to refresh my
10 recollection of the evidence. The question is where has Mr.
11 Fulton been since 2014. I don't know if that was addressed --

12 MR. BOGLE: It was not.

13 THE COURT: -- In the evidence.

14 MR. BOGLE: It was not. I'm looking for --

15 MR. FALK: I mean I know where he's been, but I don't
16 think it was in the evidence.

17 THE COURT: Right. So I don't know how to respond to the
18 question. I mean I know. I know where he's been.

19 MR. FALK: Yeah, yeah.

20 MR. BOGLE: His max-out date was in October of '15. That
21 never -- that didn't come into evidence, but just to let you
22 know, he was at SCDC until October of '15 and then he came
23 here.

24 THE COURT: Well, yeah, but, you know, it really doesn't
25 matter what I know.

1 MR. BOGLE: No.

2 THE COURT: I don't think I can answer. I think the only
3 response that I can give on this is you're going to have to
4 rely on your collective recollection of the evidence --

5 MR. BOGLE: Uh-huh.

6 THE COURT: -- to determine whether or not that was
7 addressed. The Court cannot add to or take away evidence.

8 MR. BOGLE: I think that's fair.

9 MR. FALK: I mean --

10 THE COURT: I mean I --

11 MR. FALK: That's my fault. I usually say it and I know
12 it's not evidence. I usually say it as part of my
13 presentation and I didn't.

14 THE COURT: I mean I -- I mean, you know, it would be
15 easy just to respond that he's been -- he's been in custody
16 since then, but now I'm -- I'm putting evidence into the
17 record that wasn't in there and I don't think that's
18 appropriate.

19 MR. BOGLE: You can't do that. I mean -- no.

20 THE COURT: I think I've just got to -- I'll tell you
21 what. Let me -- let me draft a little something here, I'll
22 read it to you, and you can tell me what you think. Okay?

23 (WHEREUPON, there was a pause in the proceedings, after
24 which the proceedings resumed as follows.)

25 THE COURT: Here's what I've put and tell me what you all

1 think. We can tweak it any way we need to.

2 The Court cannot make comments on the evidence presented,
3 nor can the Court add to or take away from the evidence. You
4 must rely on your collective recollections of the evidence to
5 determine if the answer to this question was in the evidence
6 presented.

7 MR. BOGLE: Sounds fine, Your Honor.

8 THE COURT: Will that work?

9 MR. FALK: Yes, Your Honor.

10 THE COURT: All right. If you will please mark this as a
11 court's exhibit, Krystal, and then, Keisha, if you'd send them
12 back to them and ask them to not dispose of that, to just put
13 it in that front pocket of the notebook.

14 THE BAILIFF: Yes, sir.

15 (WHEREUPON, the jury note was marked as Court's Exhibit
16 Number 3 and then returned to the jury room.)

17 (WHEREUPON, there was a break in the proceedings from
18 12:05 p.m. until 12:37 p.m., after which the proceedings
19 resumed as follows.)

20 THE COURT: Another question. The question: Will Mr.
21 Fulton be required to continue mental health counseling if he
22 is released?

23 MR. BOGLE: Well, the answer is no, but --

24 THE COURT: Right.

25 MR. BOGLE: -- it's not in evidence. I mean the truth is

1 he's not going to be required to do it now, but I mean the
2 answer is --

3 THE COURT: I mean I know the answer is no.

4 MR. BOGLE: The testimony was he's not going to be on
5 probation or community supervision. So nothing can make him
6 do anything. I don't know if they remember that, but that was
7 the testimony.

8 THE COURT: Right.

9 MR. BOGLE: But it's not really -- it's not in evidence
10 other than that. This is question two?

11 THE COURT: Yes, sir.

12 MR. BOGLE: Okay.

13 MR. FALK: So what is the answer?

14 THE COURT: Should I --

15 MR. FALK: The same kind of answer; right?

16 THE COURT: Should I say see the answer to question one?

17 MR. FALK: Yeah.

18 MR. BOGLE: Just that you must consider the case on the
19 evidence already -- the record is closed. You've got to
20 consider the case on the evidence already presented. Dr.
21 Gehle touched on there's nothing to make him do it.

22 THE COURT: Right.

23 MR. BOGLE: And that's in evidence, but as far as --

24 THE COURT: Because that's the question. Would he be
25 required to continue? And the answer is no, but I can't --

1 MR. FALK: But wait a minute. What exactly -- is it if
2 released, would he be required?

3 THE COURT: It says will Mr. Fulton be required to
4 continue mental health counseling if he is released.

5 MR. FALK: Oh, if he is released.

6 THE COURT: I guess what they mean is if we find he's not
7 a sexually violent predator, will he be required, and --

8 MR. BOGLE: And the answer is no, but you can't tell them
9 that.

10 THE COURT: The answer is no, but they've got to discern
11 them from the evidence --

12 MR. BOGLE: Right.

13 THE COURT: -- that is in the record.

14 MR. BOGLE: And that will be Court's 4?

15 THE COURT: Jim, what did you say -- your response
16 because I liked it?

17 MR. FALK: That I hope to use the last response. I think
18 it's the same.

19 THE COURT: You said something else though. I thought it
20 was a good response.

21 MR. FALK: Oh, I doubt that. I don't recall.

22 THE COURT: I know they're going to say, well, why in the
23 heck did you tell us we could ask questions if you're not
24 going to answer any of them.

25 MR. BOGLE: You know, I've never -- not to make

1 suggestions, but I've never tell a judge -- seen a judge prior
2 to deliberations beginning mention the possibility of
3 questions.

4 THE COURT: Some judges have it in their charge.

5 MR. BOGLE: Yeah. I didn't know that.

6 THE COURT: Yeah.

7 (WHEREUPON, there was a pause in the proceedings, after
8 which the proceedings resumed as follows.)

9 THE COURT: All right. Here's what I've put.

10 I'm not trying to be difficult, but I must refer you to
11 the same answer I gave you to your first question. You will
12 need to go back over your memories of the evidence to
13 determine if that was addressed in the evidence.

14 MR. BOGLE: Sounds good.

15 THE COURT: Tell them to not get rid of it, please.

16 (WHEREUPON, the jury note was marked as Court's Exhibit
17 Number 4 and then returned to the jury room.)

18 (WHEREUPON, there was a break in the proceedings from
19 12:46 p.m. until 1:17 p.m., after which the proceedings
20 resumed as follows.)

21 THE COURT: All right. Is the State ready to receive the
22 jury's verdict?

23 MR. BOGLE: Yes, Your Honor.

24 THE COURT: Is the defense ready?

25 MR. FALK: We are, Your Honor.

1 THE COURT: All right. Bring them in, Keisha.

2 (WHEREUPON, the jury entered the courtroom at 1:21 p.m.)

3 THE COURT: All right. Mr. Willoughby, has the jury
4 reached a unanimous verdict, sir?

5 THE FOREMAN: Yes, we have.

6 THE COURT: All right. If you would, please pass that to
7 Madam Clerk.

8 (WHEREUPON, the foreman complied.)

9 THE COURT: Madam Clerk, if you would, publish the
10 verdict of the jury for me, please, ma'am.

11 VERDICT

12 THE CLERK: State of South Carolina, County of Florence,
13 in the Court of Common Pleas, Twelfth Judicial Circuit. In
14 the matter of the care and treatment of Michael A. Fulton,
15 respondent. Case Number 2015-CP-21-2226. Verdict.

16 Has the petitioner, the State of South Carolina, proved
17 beyond a reasonable doubt that Michael Fulton is a sexually
18 violent predator under the South Carolina Sexually Violent
19 Predator Act?

20 We, the jury, unanimously answer the question as follows:
21 yes, Michael Fulton is a sexually violent predator.

22 Signed, Mr. Samuel J. Willoughby, foreman.

23 Foreperson and members of the jury, is this your verdict?
24 Please raise your right hand.

25 (WHEREUPON, all jurors complied.)

1 THE COURT: All right. Thank you.

2 THE CLERK: Thank you.

3 THE COURT: Thank you, ma'am. Ladies and gentleman, I
4 want to thank you for your service. It's a -- it's been a
5 good week. Some of you have served on a couple of cases.
6 Some of you on just this one, but I appreciate very much your
7 willingness to serve.

8 It is a -- I said this I think on Monday and I meant it
9 with all my heart. It's a high service and a high honor that
10 you have given to your community by serving on jury duty and I
11 think a lot of folks take that for granted, but it is -- it's
12 an amazing opportunity that many folks in many countries never
13 have the opportunity to do. Our system of justice is not
14 perfect, but it is the best system in the world and we are
15 fortunate to live in a country that allows us to resolve
16 issues with members of our -- of our peers, members of our
17 community.

18 This does conclude your service for the week and also you
19 have earned that exemption that I spoke about. You -- you
20 have that exemption. If you receive a summons for jury
21 service here in state Circuit Court during -- well, there's
22 not much left of this year, but the balance of this year, all
23 of 2017, all of 2018, and you wish to exercise that exemption
24 if you receive that summons, you can do that and be excused
25 from service.

1 It is just an exemption. It doesn't mean you're not
2 qualified to serve and if you would -- if you receive that
3 summons and you would like to serve, I would encourage you to
4 do so. But you do have that.

5 The other thing is normally I tell you that your check is
6 in the mail, but Madam Clerk has been very efficient and she
7 actually has your checks here today. So as you leave, she'll
8 -- she'll meet you in the hallway.

9 Again, please don't be offended by that check. It's not
10 meant to pay you for your time because your time is much more
11 valuable, but there is a work excuse there. So if you need
12 that, you'll have that. Okay?

13 So thank you again for your service. Make sure you get
14 your belongings as you go out.

15 Also, your instructions about not discussing the case
16 with anybody -- that's lifted now. So you certainly can
17 discuss it with anyone you want to, but you also don't have
18 to. So if you choose not to discuss it and someone asks you
19 about it, you can -- you can -- you have the right to talk
20 about it or to not talk about it. It's up to you. Okay?

21 If you could, just swap your juror badges with your
22 phones with Keisha, ladies and gentlemen. Everyone else
23 please remain seated while the jury is excused.

24 (WHEREUPON, the jury was released and exited the
25 courtroom at 1:26 p.m.)

1 THE COURT: And, folks, again because this is a matter
2 that's civil in nature, I'll either hear any motions at the
3 close of the reading of the verdict or I'll give you 10 days,
4 whichever you prefer. Mr. Falk?

5 MR. FALK: We have nothing at this time.

6 THE COURT: All right.

7 MR. BOGLE: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 MR. BOGLE: This is a proposed order and what I'll do is
10 after I get it filed, before you guys leave, let me give you a
11 filed copy to take back to the detention center. I'll give
12 you the name and phone number of the person at Mental Health
13 to call to set up a time to take him down there. You've got
14 to call ahead.

15 THE DEPUTY: That'll work.

16 MR. BOGLE: Okay.

17 THE DEPUTY: Thank you.

18 MR. BOGLE: And you're in the basement; right?

19 THE DEPUTY: I'll be on the 10th.

20 MR. BOGLE: Oh, the clerk's office is in the basement.

21 THE CLERK: I'll be on the second floor.

22 THE COURT: Yeah. They've moved. Well, half of them are
23 on -- in the basement and the other half is on the second
24 floor.

25 MR. BOGLE: Okay.

1 THE COURT: But they'll be on the second floor for this.

2 MR. BOGLE: I have not been here in a while. Was it all

3 in the basement at one time?

4 THE CLERK: Yeah.

5 MR. BOGLE: So I go to two?

6 THE COURT: Yes, sir.

7 MR. BOGLE: Okay.

8 THE COURT: Is today the 8th? Is it the 7th or 8th?

9 MR. BOGLE: Today is the 8th. Yesterday was Pearl Harbor

10 Day.

11 THE COURT: Do you need two copies signed, Jim?

12 MR. BOGLE: I can conform a copy. Whichever is easiest

13 for you. Thank you, Your Honor.

14 THE COURT: Thank you, sir.

15 THE CLERK: I'll file it for you. I'll be right back.

16 MR. BOGLE: You want me to stay here?

17 THE CLERK: Yes, sir.

18 MR. BOGLE: Thank you.

19 THE COURT: I want to thank Mr. Bogle and Mr. Falk and

20 Mr. Fulton for your professionalism and working -- working

21 with you this week. It's been a pleasure.

22 I know it's been a little crazy. We were first up on

23 Monday and then we had to change spots, but I appreciate your

24 patience through all of that and thank you again for

25 everything.

1 We -- we'll be in recess then for the balance of the day.

2 We do have those matters starting in the morning.

3 MR. BOGLE: Right.

4 (WHEREUPON, the proceedings ended at 1:27 p.m.)

5

6 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 260 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 5th through 8th days of December, 2016.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

March 12, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Florence

VS.

Michael Alphonzo Fulton

INDICTMENT/CASE#: 2013-GS-21-00215

A/W#: 2012A2110200396

Date of Offense: 9/16/2012

S.C. Code § : 16-03-0655(A)(2)

CDR Code #: 3022

AKA:

Race: Black Sex: M Age: 31

DOB: 1983 SS#:

Address:

City, State, Zip: Effingham, SC 29541

DL#: C031635862 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor - victim under 16 yrs of age - Second degree

[0-26]

in violation of § 16-03-0655(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd 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.

ATTEST:

Hoefler, II, Fredrick A.

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 734 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 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. 734 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: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain 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:

- no contact with victim
- no offender registry
- mental health counseling☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 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 Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	
TOTAL		\$ 1051.00

Clerk of Court/ Deputy Clerk

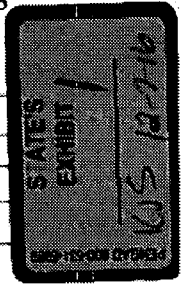
Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2140

Sentence Date: 10/21/14



Camps out

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT WITH A MINOR
 FIRST DEGREE
 AND
 CRIMINAL SEXUAL CONDUCT WITH A MINOR
 THIRD DEGREE

At a Court of General Sessions, convened on FEBRUARY 28, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Michael Alphonzo Fulton did in Florence County, State of South Carolina, on or about August 1, 2012 through September 17, 2012, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: penile sexual intercourse with an eight year old victim, whose date of birth is 2004, in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

COUNT TWO- CRIMINAL SEXUAL CONDUCT WITH A MINOR THIRD DEGREE

CDR: 3661 16-3-655 (C)

That Michael Alphonzo Fulton, being over fourteen years of age (or state specific age), did in Florence County on or about August 1, 2012 through September 17, 2012, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: simulated sexual intercourse by moving up and down on an eight (8) year old victim and removed her under garments and touched her genitalia, in violation of Section 16-3-655 (C)), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

ARREST WARRANT

2012A2110200396

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

THE STATE

against

Michael Alphonzo Fulton

Address:

Effingham, SC 29541-

Phone: _____ SSN: _____
Sex: M Race: B Height: 5 10 Weight: 275Date: _____ DL #: _____
DOB: 1983 Agency ORI #: SC0210000Prosecuting Agency: Florence County SheriffProsecuting Officer: Jennifer Floyd - 1043Offense: Sex / Criminal sexual conduct with minor, 3rd
degree - Commit/Attempt Lewd act (victim underOffense Code: 3661Code/Ordinance Sec: 16-03-06559C)This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to
defendant MICHAEL FULTON
on 5 OCT 2012

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

General Sessions Court
M S C-E 180 North Irby Street
Florence, SC 295013456

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

Personally appeared before me the affiant Jennifer Floydbeing duly sworn deposes and says that defendant Michael Alphonzo Fultondid within this county and state on or about 9/16/2012State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Florence)
in the following particulars:DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs
& actor over 14 yrs)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:On or about 9-16-2012 the defendant, Michael Fulton, did commit the crime of criminal sexual conduct 3rd degree with a minor by
removing the clothes of the 8 year old victim for the sexual gratification and desires of the defendant. The defendant lived in the
home and was a babysitter to the victim and other children. The defendant was also a convicted sex offender. The victim received a
forensic interview at The Care House of the Pee Dee. This incident occurred at _____ located in
Effingham SC and has been investigated by the FCSO case number 2012-09-0496.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

Affiant's Address 6719 Friendfield Road
Effingham, SC 29541-Affiant's Telephone (843)665-2121

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 9/16/2012defendant Michael Alphonzo Fulton

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Florence) as set forth below:DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16
yrs & actor over 14 yrs)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
Sworn to and subscribed before meon 9/28/2012

Signature of Issuing Judge (L.S.)

Belinda B Timmons

Judge Code: 7065Judge's Address 6719 Friendfield Rd
Effingham, SC 29541-Judge's Telephone (843)665-6690Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

264

2012 OCT 10 AM 9:35
FILED
JENNIFER FLOYD
FLORENCE COUNTY SHERIFF
OFFICE

2012A2110200395

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

THE STATE

against

Michael Alphonzo Fulton

Address:

Effingham, SC 29541-

Phone: _____ SSN: _____
Sex: M Race: B Height: 5 10 Weight: 275Date: 1983 DL #: _____
Agency ORI #: SC0210000

Prosecuting Agency: Florence County Sheriff

Prosecuting Officer: Jennifer Floyd - 1043

Offense: Sex / Criminal sexual conduct with minor - victim
under 16 years of age and offender w/previous

Offense Code: 3022

Code/Ordinance Sec: 16-03-0655(A)(2)

This warrant 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

RETURN

A copy of this arrest warrant was delivered to
defendant on

MICHAEL FULTON

5 OCT 2012

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Court
M S C-E 180 North Irby Street
Florence, SC 295013456

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
Apr 21, 2003
SCCA 518

Personally appeared before me the affiant Jennifer Floyd

being duly sworn deposes and says that defendant Michael Alphonzo Fulton

did within this county and state on or about 9/16/2012

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Florence

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor - victim under 16 years of age and offender w/previous
record under 23-03-0430(c) or (d), sex offender registryI 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:On or about 9-16-2012 the defendant, Michael Fulton, did commit the crime of criminal sexual conduct 1st degree with a minor by
placing his penis in the vagina of the 8 year old victim. The defendant lived in the home and was a babysitter to the victim and other
children. The defendant was also a convicted sex offender. The victim received a forensic interview at The Care House of the Pee
Dee. This incident occurred at
located in Effingham SC and has been investigated by the FCSO
case number 2012-09-0496.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

Affiant's Address 6719 Friendfield Road

Effingham, SC 29541-

Affiant's Telephone (843)665-2121

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 probable grounds to believe that

on or about 9/16/2012

defendant Michael Alphonzo Fulton

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Florence

as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor - victim under 16 years of age and offender w/previous
record under 23-03-0430(c) or (d), sex offender registryHaving 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
Sworn to and subscribed before me

on 9/28/2012

Signature of Issuing Judge (L.S.)
Belinda B Timmons

Judge Code: 7065

Judge's Address 6719 Friendfield Rd

Effingham, SC 29541-

Judge's Telephone (843)665-6690

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT

COUNTY OFFLORENCE)

FOR THE 12th JUDICIAL CIRCUIT

In Re Care and Treatment of)

CASE NO.: 2015-CP-21-2226

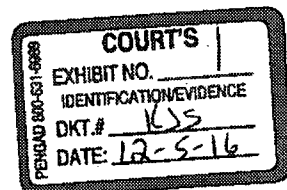
MICHAEL FULTON)

Respondent,))

RESPONDENT'S PROPOSED
JURY QUESTIONNAIRE

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
- ③ Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Douglas CarterJuror #: 20

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
MICHAEL FULTON	)	
Respondent,	)	RESPONDENT'S PROPOSED
	)	JURY QUESTIONNAIRE

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?

2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?

3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?

4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Crystal Davis

Juror #: 33

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Latitia GilbertJuror #: 50

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF FLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Joyce Jeffcoat

Juror #: 67

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

- ① Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse? *yes*
- ② Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)? *yes*
- ③ Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported? *yes*
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Shakail KeithJuror #: 72

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

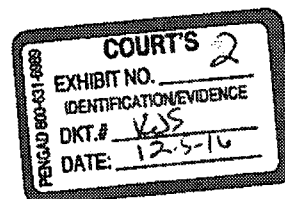
- ① Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
- ② Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
- ③ Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
- ④ Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: David Kay LeeJuror #: 79

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: RICHARD L. MELTONJuror #: 101

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Chandler White Jr.

Juror #: 147

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Nicole DavisJuror #: 35

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name

Christopher D. Dink

Juror #:

31

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name:

Kamonica McWhite

Juror #:

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Austin M. Black

Juror #: 11

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Ray BrownJuror #: 15

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF FLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: ROBERT S. CREVELING JR

Juror #: 156

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF FLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Rebecca Whitten

Juror #: 148

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Traguan McElveen

Juror #: 01

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name:

Richard Stokes Jr.

Juror #:

129

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: heroy Martin

Juror #: 85

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Ronald WelchJuror #: 145

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Latoya D McClan

Juror #: ~~88~~ 88

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Tiffany StewartJuror #: 128

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Terica Belin

Juror #: 9

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: James S M A L D O N EJuror #: 124

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Jeffrey Collins

Juror #: 23

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Katrina S. Dutton

Juror #: 37

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: ROBERT COWARD

Juror #: 24

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse? no
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)? no
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported? no
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial? no

Name: Lenell WilliamsJuror #: 152

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	
	)	RESPONDENT'S PROPOSED
Respondent,)	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Michael CoxJuror #: 25

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Lacie JonesJuror #: 11

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

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3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Cathy Watts

Juror #: 143

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Mary Rogers

Juror #: 118

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Joye Jenkins

Juror #: 68

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Michael LewisJuror #: 82

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
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3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Ernest Mexisirk

Juror #: 97

STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT

COUNTY OFFLORENCE)

FOR THE 12th JUDICIAL CIRCUIT

In Re Care and Treatment of)

CASE NO.: 2015-CP-21-2226

MICHAEL FULTON)

RESPONDENT'S PROPOSED
JURY QUESTIONNAIRERespondent,)
_____)

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Pamela J. SmithJuror #: 127

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: John M. Whit

Juror #: 149

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Margu L. SmartJuror #: 125

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Chala McPherson

Juror #: 99

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF FLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Michael W. FULTONJuror #: 154

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OFFLORENCE	)	FOR THE 12th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2015-CP-21-2226
	)	
MICHAEL FULTON	)	RESPONDENT'S PROPOSED
Respondent,	)	JURY QUESTIONNAIRE
_____	)	

JURY QUESTIONNAIRE:

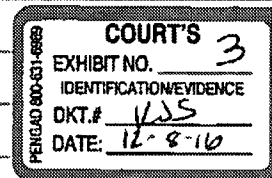
1. Have you or anyone in your immediate family ever been charged, accused, or convicted of a crime involving any kind of sexual abuse?
2. Have you or anyone in your immediate family ever been charged, accused, or convicted of criminal sexual conduct (i.e. CSC)?
3. Have you or anyone in your immediate family ever been a victim of criminal sexual conduct or sexual abuse whether reported or unreported?
4. Do you have strong beliefs about sexual abuse of any kind that would affect you in being fair and impartial in your consideration of the evidence in this trial?

Name: Robyn Heffernan

Juror #: 62

12/8/16.

WHERE HAS MR FULTON
BEEN SINCE 2014?

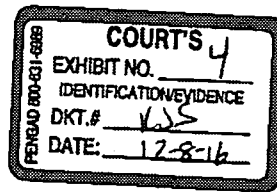


~~4608~~ 4608

THE COURT CANNOT MAKE COMMENTS
ON THE EVIDENCE PRESENTED NOR
CAN THE COURT ADD TO OR TAKE
AWAY FROM THE EVIDENCE.

YOU MUST RELY ON YOUR
COLLECTIVE RECOLLECTIONS OF
THE EVIDENCE TO DETERMINE
IF THE ANSWER TO THIS QUESTION
WAS IN THE EVIDENCE PRESENTED.

Judge / [Signature]



12/8/16

Will Mr. Fulton be required
to continue mental health
counseling if he is released?

A handwritten signature in black ink, appearing to be "J. R. [unclear]".

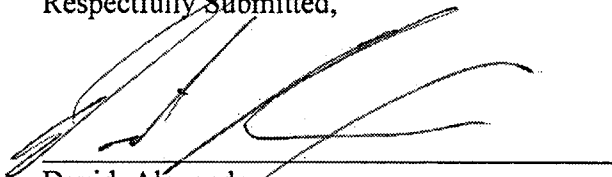
I'm not trying to be difficult
but I must refer you to
the same answer I gave
you to your 1st question.
You will need to go back
over your memories of the
evidence to determine if
that was addressed in the
evidence.

A handwritten signature in black ink, appearing to be "Judge [unclear]".

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

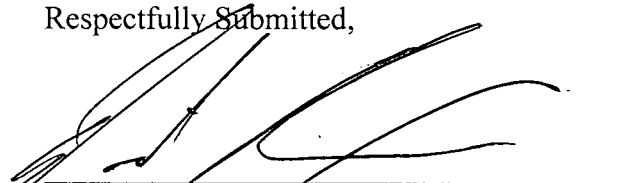
ATTORNEY FOR APPELLANT

This 12th day of September, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of September, 2017.

RECEIVED
SEP 12 2017
SC Court of Appeals

5

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Honorable Thomas A. Russo, Circuit Court Judge

RECEIVED

SEP 12 2017

SC Court of Appeals

IN THE MATTER OF THE CARE AND
TREATMENT OF MICHAEL FULTON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of September, 2017.



Scott Leverett
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 12th day of September, 2017.

 (L.S.)

Notary Public for South Carolina

My Commission Expires July 3, 2023.