

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF CHRISTOPHER BUSCH,

APPELLANT

APPELLATE CASE NO 2017-000987

RECORD ON APPEAL

RECEIVED

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SC Court of Appeals

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF DORCHESTER) CASE NO.: 2015-CP-18-01513

STATE OF SOUTH CAROLINA)
)
 PETITIONER(S))) IN THE MATTER OF THE CARE
) AND TREATMENT OF CHRISTOPHER
) BUSCH
 v.)
) TRANSCRIPT OF RECORD
)
 CHRISTOPHER BUSCH)
)
 RESPONDENT(S))
)

ORIGINAL

Monday, March 27, 2017, Wednesday, March 29, 2017 -

Thursday, March 30, 2017

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Diane Schafer Goodstein, Judge

APPEARANCES:

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 Official State Reporter

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1 (The proceedings in the trial of this matter began on
2 Monday, March 27, 2017, at 12:35 p.m.)

3 VOIR DIRE

4 THE COURT: All right. Ladies and gentlemen, we are
5 about to select our jury for our first case for trial. And
6 in just a moment I'm going to introduce you to the matter.
7 And then I'm going to hopefully go over a short
8 non-argumentative statement. And the reason that I'm going
9 to be doing that is to find out whether or not any of you
10 know or think you may know or have you heard or think you
11 may have heard including today anything about the matter
12 that we are about to try. Then I'm going to have an
13 opportunity to introduce you to some folks, and then I have
14 some questions to ask of you, and then we're going to select
15 our jury.

16 Now, ladies and gentlemen, in a moment I'm going to
17 give you a short non-argumentative statement of the facts.
18 And my question on the other side is going to be do any of
19 you know or think you may know or have you heard or think
20 you may have heard anything about these allegations. So,
21 that's going to be the question. Keep the question in mind
22 as I go through it with you.

23 Ladies and gentlemen, Mr. Christopher Busch who is the
24 Respondent in this matter -- and the caption of the case is
25 In the Matter of the Care and Treatment of Christopher

1 Busch. That's the caption of the title of the case. I will
2 tell you that Mr. Christopher Busch was convicted of a crime
3 and he has served his time. I will also tell you that under
4 South Carolina law we have a statute, we have a law, that's
5 called the Sexually Violent Predator Act law. And it will
6 be incumbent upon this jury to determine whether or not
7 beyond a reasonable doubt Mr. Christopher Busch meets the
8 definition under the statute as a sexually violent predator.
9 And that will be the task for this jury. Now, ladies and
10 gentlemen, obviously -- and let me share with you,
11 obviously, Mr. Busch takes the position he does not meet
12 that definition, and that he has served his time and served
13 his debt to the community. And so the burden is on the
14 State to prove that Mr. Busch meets the definition of a
15 sexually violent predator and that burden is beyond a
16 reasonable doubt. Which those of you that serve on the
17 jury, we'll talk a lot more about that.

18 Now, ladies and gentlemen, do any of you know or think
19 you may know, or have you heard or think you may have heard,
20 anything about these allegations? If so -- or do you know
21 Mr. Busch. If so, please stand at this time?

22 (No response.)

23 THE COURT: And I find no one is standing. Now, ladies
24 and gentlemen, I'm going to begin by introducing you to Mr.
25 Christopher Morrow. This is Mr. Christopher Morrow. He is

1 an Assistant Attorney General. And the Attorney General
2 enforces -- Alan Wilson, he is our elected Attorney General
3 and Mr. Morrow works for Attorney General Wilson and is an
4 Assistant Attorney General. And I'm going to -- rather than
5 make Mr. Morrow tell us all the folks that work for the
6 Attorney General's office, which we could be here for a bit,
7 I'm going to ask the question this way: Are you related by
8 blood or marriage or acquainted with Mr. Christopher
9 Morrow -- and this is Mr. Morrow -- or any of the employees,
10 lawyers or otherwise, of Attorney General Alan Wilson? If
11 so, I'm going to ask you to please stand.

12 (No response.)

13 THE COURT: Thank you so much, Mr. Morrow. Now, I just
14 used the words acquainted with. I need to define those
15 words for you and then I'm going to ask the question again.
16 And because I intend a very, very general definition of the
17 two words acquainted with. Let me give you an example. It
18 may be that you went to school with somebody 20 years ago.
19 You haven't seen him, you haven't thought about him in 20
20 years, but you know you went to school with that person.
21 And believe it or not, that relationship is as old and moldy
22 as it is, would be is encompassed within my definition of
23 acquainted with. It may be that you simply work at the same
24 location as somebody whose name I'll ask you about. Maybe
25 you met each other across the parking lot. Well, believe it

1 or not, that relationship, as limited as it is, would be
2 encompassed within my definition of acquainted with. And
3 the reason that I use and intend such a general definition
4 for acquainted with is because I am trying to find out if
5 you have any connection with these people that I'm going to
6 be asking you about, if you have any connection with them at
7 all. And then I'll ask some follow-up questions. But
8 that's the reason that I have such a general definition for
9 acquainted with. Now, so I'm going to ask again: Ladies
10 and gentlemen, are you related by blood or marriage or
11 acquainted with Mr. Christopher Morrow or any of the
12 employees of Alan Wilson -- or Alan Wilson who is our
13 Attorney General? If so, please stand.

14 (No response.)

15 THE COURT: Very well. I find no one standing. Now,
16 ladies and gentlemen, please allow me introduce you to
17 Mr. Christopher Busch. Thank you so much, Mr. Busch. And
18 you may be seated. Thank you, Mr. Busch. Ladies and
19 gentlemen, are you related by blood or marriage or
20 acquainted with Mr. Christopher Busch? If so, please stand
21 at this time.

22 (No response.)

23 THE COURT: And I find no one is standing. And ladies
24 and gentlemen, Mr. Busch is represented by Mr. James Falk,
25 and this is Mr. Falk. Thank you so much, Mr. Falk. Ladies

1 and gentlemen, are you related by blood or marriage or
2 acquainted with or have you or any member of your immediate
3 family to your knowledge ever been represented by Mr. Falk?
4 If so, please stand at this time.

5 (No response.)

6 THE COURT: And I find no one is standing. Now, ladies
7 and gentlemen, I now have certain questions that I'm going
8 to ask of you. And the way that I'm going to do these is
9 some of them are very personal, some of them are not
10 particularly personal. So I'm going to ask them in groups,
11 probably three at a time. And I'm going to ask you not to
12 respond to any of them until I've asked all three together.
13 And then if you need to respond, I'm going to have you come
14 forward one at a time. So that's the way we're going to be
15 proceeding. I'm going to begin now. And please know that I
16 am going to ask three questions of you. Don't respond to
17 any until I ask the three.

18 Now, have you or any of member of your immediate family
19 or close personal friend -- let me define this close
20 personal friend. This close personal friend is so close to
21 you that they really are a number of your family. In other
22 words, you probably like this close personal friend better
23 than you like one of your brothers or your sisters. I mean
24 that's how close this personal friend is. I'm not talking
25 about just somebody that you know or somebody that you like.

1 I'm really talking about someone who is so close to you that
2 if -- they're like a family member. And the reason is, is
3 that association can be so close. And the reason we ask if
4 these things happened or involved a family member because it
5 can have an effect on you. So that's the reason that we ask
6 about close personal friends, that they got to be very,
7 close, like a member of your family. As I say, probably
8 like them better than you like one of your brothers or your
9 sisters.

10 Now, so my question to you is: Have you or any member
11 of your immediate family or close personal friend ever been
12 charged, accused, convicted, or been the victim of any kind
13 of sexual abuse or assault? I'm going to ask that question
14 again because it was kind of long. But don't anybody
15 respond because I've got two more I'm going to ask with it.
16 Have you or any member of your immediate family or that
17 close personal friend ever been charged, accused, convicted
18 or been the victim of a crime involving any kind of sexual
19 abuse or assault? That's question number one. Don't
20 respond. Question number two: Have you or any member of
21 your immediate family or close personal friend ever been
22 charged, accused, or convicted or have been the victim of
23 any criminal sexual conduct? That's question number two.
24 Question number three: Has any member of our jury panel
25 ever worked for or in any way been connected with a social

1 services agency, a Guardian ad litem program, a foster care
2 program, or any other entity, either private or
3 governmental, that investigates or counsels victims of rape
4 and/or sexual assault? If you need to respond to any of
5 those questions, I'm going to ask you to please come forward
6 at this time.

7 THE BALIFF: Juror 54.

8 THE COURT: I'm going to make a big announcement so I
9 don't have to say it every time. When you approach, I just
10 need enough volume for our court reporter to hear. The rest
11 of us will gather around. Yes, ma'am?

12 PROSPECTIVE JUROR: Yes. My Sunday school student, she
13 was a victim of sexual abuse.

14 THE COURT: Your Sunday school student?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. Now, as a result of your Sunday
17 school student having been a victim of sexual abuse, is that
18 right?

19 PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: Might that, could that, interfere with your
21 ability to be completely fair and impartial both to the
22 State as well as to Mr. Busch?

23 PROSPECTIVE JUROR: I probably would reflect a lot.

24 THE COURT: Okay. In other words, can you set what
25 happened -- set aside what happened to your Sunday school

1 student, can you set that aside and make up your mind based
2 upon what you hear in court while court is in session being
3 completely unaffected by what happened to your Sunday school
4 student?

5 PROSPECTIVE JUROR: I probably can, yes.

6 THE COURT: You can or cannot?

7 PROSPECTIVE JUROR: I think I can.

8 THE COURT: You think you can. Okay. Very well.

9 Please stay with us.

10 THE BALIFF: Juror 125.

11 THE COURT: Hi. Good morning. Yes?

12 PROSPECTIVE JUROR: (Out of hearing of court reporter.)

13 THE COURT: Okay. All right. Those -- both
14 individually and together, do you believe that they might or
15 could interfere with your ability to be completely fair and
16 impartial both to the State as well as to Mr. Busch?

17 PROSPECTIVE JUROR: (Non-verbal response.)

18 THE COURT: All right. Very well. I'm going to excuse
19 you from this. Don't leave me now. And I'm going to ask
20 you to -- you're not going to -- but not to discuss it.

21 Thank you.

22 PROSPECTIVE JUROR: So stay?

23 THE COURT: Yeah, because I've got to give you some
24 more instruction.

25 THE BALIFF: Juror 147.

1 THE COURT: Hi. Yes, ma'am?

2 PROSPECTIVE JUROR: My six-year-old daughter was
3 assaulted.

4 THE COURT: Who was?

5 PROSPECTIVE JUROR: My six-year-old daughter.

6 THE COURT: Your six-year-old daughter. When?

7 PROSPECTIVE JUROR: February 10th by my cousin. He was
8 13. The boy was.

9 THE COURT: Okay. A month ago?

10 PROSPECTIVE JUROR: February 10th, about two months
11 ago.

12 THE COURT: About two months ago?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Okay. And so you're involved with the
15 Department of Social Services?

16 PROSPECTIVE JUROR: Yeah. He's at DJJ.

17 THE COURT: He's at DJJ?

18 PROSPECTIVE JUROR: Yeah. He's already got charged.

19 THE COURT: Okay. Okay. All right. Do you believe
20 that experience might or could interfere with your ability
21 to be completely fair and impartial both to the State as
22 well as to Mr. Busch?

23 PROSPECTIVE JUROR: I don't believe.

24 THE COURT: I concur.

25 PROSPECTIVE JUROR: It's too fresh.

1 THE COURT: Exactly. I'm going to ask you to sit this
2 one out. But don't leave me because I've got to give you
3 some more instruction, okay? All right. Very well. Thank
4 you.

5 THE BALIFF: Juror 29.

6 THE COURT: Hi.

7 PROSPECTIVE JUROR: I work at DSS but not dealing with
8 those type of cases. But we would indirectly get a case,
9 for instance, someone's children taken away from them
10 because of whatever to get child support. So I have access
11 to the system to look at that information. But it would be
12 indirect.

13 THE COURT: Right. Your's is in support?

14 PROSPECTIVE JUROR: Right. Yes.

15 THE COURT: And as a result of your employment just as
16 you've described and your access just as you've described
17 it, do you believe that might or could interfere with your
18 ability to be completely fair and impartial to the State as
19 well as to Mr. Busch?

20 PROSPECTIVE JUROR: I'm thinking it wouldn't affect it.

21 THE COURT: And can you set that limited portion of
22 your employment, set that aside, and make up your mind based
23 on what hear in court while court is in session?

24 PROSPECTIVE JUROR: Yes, I could.

25 THE COURT: Thank you. Please stay with us.

1 THE BALIFF: Juror 23.

2 THE COURT: Yes, ma'am?

3 PROSPECTIVE JUROR: My son was molested -- not my son.
4 My nephew was molested when he was in the sixth grade going
5 to church camp.

6 THE COURT: All right. And approximately how long ago
7 was that? Years?

8 PROSPECTIVE JUROR: Twenty years.

9 THE COURT: Okay. As a result of that experience, do
10 you believe that that might or could interfere with your
11 ability to be completely fair and impartial?

12 PROSPECTIVE JUROR: I can still be fair.

13 THE COURT: And can you set that experience aside and
14 make up your mind based on what you hear in court while
15 court is in session?

16 PROSPECTIVE JUROR: Yes, I can.

17 THE COURT: Thank you. Please stay with us.

18 THE BALIFF: Juror 110.

19 THE COURT: Hello. Yes, sir?

20 PROSPECTIVE JUROR: My wife was sexually abused. She
21 was abused by here step-dad.

22 THE COURT: Okay. Years ago?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. As a result of that experience,
25 do you believe that that might or could interfere with your

1 ability be completely fair and impartial to the State as
2 well as to Mr. Busch?

3 PROSPECTIVE JUROR: I'd like to think that I could.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR: But your heart pounds when you your
6 hear stuff like that. The seriousness of that charge and
7 all that, there's a physical reaction. Mentally, I could do
8 it, yes.

9 THE COURT: Okay. All right. Well, because -- this is
10 what you have to do: You have to set that completely aside
11 because you have to make up your mind based on what your
12 hear in court while court is in session. And can you do
13 that?

14 PROSPECTIVE JUROR: I think I could.

15 THE COURT: Okay. All right. Let me say that one more
16 time and I want you to really focus on it because,
17 obviously, that happened years ago, I gather?

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Did you know her then?

20 PROSPECTIVE JUROR: Soon after.

21 THE COURT: Soon after. Okay. And so the question is:
22 Her journey, can you set that aside and then you make up
23 your mind about, what this jury must make it's mind -- and I
24 will tell you in the instruction that you have to be willing
25 to make your determination based upon what you hear in court

1 while court is in session. Can you do that?

2 PROSPECTIVE JUROR: I can.

3 THE COURT: All right. Now, let me tell you one other
4 thing. You're going to have to be able to not talk about
5 the case over night. Can you do that?

6 PROSPECTIVE JUROR: Sure.

7 THE COURT: Okay. And I'm going to ask one more since
8 this matter occurred to your spouse. In the event that you
9 are deliberating and in the event that you believe that the
10 State has failed to meet its burden, which is what the jury
11 has got to determine, have they met the burden or not? If
12 you think the State has not met it's burden, would the fact
13 that your spouse had this happen to her enter into your
14 consideration? In other words ---

15 PROSPECTIVE JUROR: No. I can separate it.

16 THE COURT: Okay. Very well. Please stay with us.

17 MR. FALK: Your Honor, do you want to hear strikes for
18 cause?

19 THE COURT: Now.

20 MR. FALK: I move for to strike for cause.

21 THE COURT: Okay.

22 MR. FALK: This is -- I mean, I can appreciate his
23 statements, but this is also situation where it was a
24 stepfather situation and abuse by and I think those facts
25 may have particularly hit home. He certainly did seem

1 reserved or very ---

2 THE COURT: Any response?

3 MR. MORROW: Your Honor, I believe he said that he
4 could be fair and impartial.

5 THE COURT: Okay. Let me think about it a minute.
6 Remind me.

7 MR. FALK: Yeah.

8 JUROR: Juror number five.

9 THE COURT: Yes, ma'am?

10 PROSPECTIVE JUROR: I have a cousin has been a victim
11 of sexual assault..

12 THE COURT: Okay. How long ago?

13 PROSPECTIVE JUROR: Twenty years ago.

14 THE COURT: Okay. As a result of that experience, do
15 you think that might or could interfere with your ability to
16 be completely fair and impartial both to the State as well
17 as to Mr. Busch?

18 PROSPECTIVE JUROR: Most likely.

19 THE COURT: You're tearing up. I'm going to ask you to
20 sit this one out. But stay with me because I have some
21 further instructions, okay.

22 PROSPECTIVE JUROR: Okay.

23 THE BALIFF: Juror number 2.

24 THE COURT: Hello. Yes, ma'am?

25 PROSPECTIVE JUROR: I was sexually molested for four

1 years and I was raped at 15.

2 THE COURT: Okay. All right. Would that experience
3 have an effect on your ability ---

4 PROSPECTIVE JUROR: Oh, yeah. I'm still very angry.

5 THE COURT: I understand. I'm going to ask you to sit
6 this one out. But stay with me because I have some further
7 instructions. Thank you.

8 THE BALIFF: Juror number 15.

9 THE COURT: Hi. Yes, ma'am?

10 PROSPECTIVE JUROR: I worked with Dorchester Children's
11 Center for about seven years from the concept. So a lot of
12 times, you know, because of -- we had to step in and do
13 things that were not in our job description. And I'm not
14 trying to get out of this.

15 THE COURT: I understand.

16 PROSPECTIVE JUROR: Just answering your question.

17 THE COURT: You are answering my question. It would be
18 a violation of your oath if you did not come forward. What
19 was your capacity there?

20 PROSPECTIVE JUROR: Starting out, it was more like
21 operations, office manager. But there were times that with
22 the forensics that MUSC was doing, for instance, if they had
23 to have a witness ---

24 THE COURT: A person in there.

25 PROSPECTIVE JUROR: Yeah. A lot of times, I'd get

1 called to do things like that. Although, I was not a
2 therapist. I had nothing to do with any of that.

3 THE COURT: I understand. I understand. As a result
4 -- and how long ago has that been?

5 PROSPECTIVE JUROR: About four years.

6 THE COURT: About four years ago.

7 PROSPECTIVE JUROR: It was very depressing.

8 THE COURT: As a result of that employment, do you
9 believe that that might or could interfere with your ability
10 to be completely fair and impartial to the State as well as
11 to Mr. Busch?

12 PROSPECTIVE JUROR: That's a hard question. I would
13 probably get look at it very much closer than most, but . .
14 .

15 THE COURT: Yeah. Because here's what I would need you
16 to be able to do as a juror is I would need you to be able
17 to set all that aside and make up your mind based solely,
18 meaning based only, on what you hear in court while court is
19 in session, being completely unaffected by the prior
20 employment.

21 PROSPECTIVE JUROR: I'm not sure I could do that.

22 THE COURT: I understand. I'm going to ask you to sit
23 this one out for me, okay.

24 PROSPECTIVE JUROR: Does that mean I can go now?

25 THE COURT: Well, hold on because I'm going to give you

1 some further instruction. Your number was?

2 PROSPECTIVE JUROR: 15.

3 JUROR: Juror number 37.

4 THE COURT: Hello. Yes, sir?

5 PROSPECTIVE JUROR: My wife and her sister and two
6 brothers were sexually abused by their father. And from
7 what I understand, it would be classified as hearsay. I
8 never knew from him. But, you know, he's passed on. But I
9 have a strong opinion against it.

10 THE COURT: Okay. In other words, you believe that
11 those experiences that family members have had could or may
12 interfere with your ability ---

13 PROSPECTIVE JUROR: Yeah. My wife is still going
14 through with therapy.

15 THE COURT: Okay. I'm going to ask you to sit this on
16 out. But just stay with me, I have further instruction.
17 Thank you, sir.

18 THE BALIFF: Juror 86.

19 THE COURT: Hello. Yes?

20 PROSPECTIVE JUROR: My daughter was picked up and
21 molested when she was -- but the man was not convicted at
22 the time of that case.

23 THE COURT: Okay. How long ago?

24 PROSPECTIVE JUROR: She's almost 27. She was around
25 12.

1 THE COURT: Okay. And as a result of that experience,
2 do you think it might or could interfere with your ability
3 to be completely fair and impartial both to the State as
4 well as to Mr. Busch?

5 PROSPECTIVE JUROR: I don't think so.

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

9 PROSPECTIVE JUROR: Yeah. It happened so many years
10 ago.

11 THE COURT: Thanks. Stay with us, please.

12 THE BALIFF: Juror 141.

13 THE COURT: Good morning -- afternoon now. Yes, ma'am?

14 PROSPECTIVE JUROR: My brother was charged with
15 sexually assaulting his stepdaughter. She was ten years old,
16 at the time. And he was never brought to trial for it.
17 But, I mean, his wife left him and everything and just, you
18 know, it tore the family apart.

19 THE COURT: Okay. And do you believe that that
20 experience may, could, interfere with your ability to be
21 completely fair and impartial to the State as well as to Mr.
22 Busch?

23 PROSPECTIVE JUROR: Can I ask you a question? Is this
24 jury -- is he being charged? I want to make sure I
25 understand.

1 THE COURT: I understand.

2 PROSPECTIVE JUROR: Is he being charged with sexually
3 assaulting someone?

4 THE COURT: No. It's different. He has been convicted
5 of an offense. He has served his sentence. That's done.
6 We have under South Carolina law something called a Sexually
7 Violent Predator Act. And this jury will make a
8 determination whether the State has met its burden of proof
9 to prove that Mr. Busch is sexually violent predator.

10 PROSPECTIVE JUROR: Can you tell me was the victim
11 child?

12 THE COURT: Yes. The victim was a child.

13 PROSPECTIVE JUROR: Yes, I would.

14 THE COURT: Okay. I'm going to ask you to sit this one
15 out. But don't leave because I have some further
16 instruction.

17 THE BALIFF: Number 142.

18 THE COURT: High. Yes?

19 PROSPECTIVE JUROR: I think I could have something for
20 all three.

21 THE COURT: Okay. Okay.

22 PROSPECTIVE JUROR: The first, I have two family
23 members, immediate family members, that one was the victim
24 and one was the accused.

25 THE COURT: Okay. All right.

1 PROSPECTIVE JUROR: The second one was the criminal
2 activity. So my uncle was convicted and deported after a
3 bank robbery.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR: And my nephew is currently awaiting
6 trial. Drugs and theft and -- there's two different cases
7 going on.

8 THE COURT: Gotcha. Now, as a result of really the
9 first, the first matter.

10 PROSPECTIVE JUROR: Okay.

11 THE COURT: And I'll ask about the others, but the
12 first matter. Do you believe that that experience might or
13 could interfere with your ability to be completely fair and
14 impartial both to the State as well as to Mr. Busch?

15 PROSPECTIVE JUROR: Probably not. My mother was
16 pregnant with me at the time. I didn't find out about it
17 until much later. So I didn't really see the full effects
18 of it. So probably not.

19 THE COURT: Okay. Can you set that experience aside,
20 that history of your family aside, and make up your mind
21 based solely on what you hear in court while court is in
22 session?

23 PROSPECTIVE JUROR: Yeah, I believe so.

24 THE COURT: Okay. Now, with regards to the other two
25 matters, do you think they'll, would likewise all three

1 together or separate or any combination thereof, interfere
2 with your ability to be completely fair and impartial both
3 to the State as well as to Mr. Busch?

4 PROSPECTIVE JUROR: No, I don't think so.

5 THE COURT: All right. You can set those other matters
6 aside and make up your mind based on what you hear in court?

7 PROSPECTIVE JUROR: Yeah.

8 THE COURT: Thank you. Please stay with us. Can y'all
9 hear me? If you can't raise your hand.

10 (Brief pause.)

11 THE COURT: All right. Here come the next three. Now,
12 ladies and gentlemen, if I have excused you and you would
13 come and respond, you don't need to respond. In other
14 words, if you have been excused, you do not have to be -- as
15 a matter of fact -- those of you who I've excused, I'm going
16 to ask you to please stand.

17 (Jurors comply.)

18 THE COURT: And now, I'm going to ask you to go with
19 our bailiff back down to the jury assembly room. I'm going
20 to give you further instruction now. I'm not going to do
21 it. Somebody else is. So, if you will follow
22 Mr. Salisbury.

23 (Brief pause.)

24 THE COURT: Okay. Three questions. Does any member of
25 our jury panel believe it is impossible, it is not possible,

1 to cure someone diagnosed with pedophilia which is a
2 condition where a person is sexually attracted to children?
3 That's the first question. The second question: Does any
4 member of our jury panel believe that it is impossible to
5 rehabilitate someone that has committed an act of criminal
6 sexual conduct against child? Those are so similar, I'm
7 going to ask four this time. Does any member of our jury
8 panel believe that the sentences defendants received for
9 crimes of sexual assault or sexual crimes against children
10 are too lenient? And the fourth one is: Does any member or
11 spouse of any member of our jury panel work for or with any
12 law enforcement agency either on the city, county, state, or
13 federal level? If you need to respond to any of those
14 questions, I'm going to ask you to please approach.

15 THE BALIFF: Juror 108.

16 THE COURT: Hi. Yes?

17 PROSPECTIVE JUROR: (Out of hearing of court reporter)
18 I believe it is impossible for a pedophile to recover.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR: And I also think that -- lenient.

21 THE COURT: Okay. All right. And do you believe that
22 those beliefs will impact your ability -- okay. I'm going
23 to ask you to sit this one out. I'm going to ask you to sit
24 this one out. Okay. But don't leave me. Don't leave yet.
25 Thank you.

1 THE BALIFF: Juror 54.

2 THE COURT: Yes, ma'am?

3 PROSPECTIVE JUROR: Yeah. I have a hard time believing
4 that rehabilitation will correct this individual decision on
5 children. That's just my opinion.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: I feel like they should really have
8 a true change of heart before any kind of positive action
9 will come from that.

10 THE COURT: Okay. Do you believe they can have a
11 change of heart?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. So you believe then they can -- do
14 you believe then with a change of heart, they can be
15 rehabilitated?

16 PROSPECTIVE JUROR: I think that only the lord can
17 change them. Human beings can only go but so far in helping
18 them change.

19 THE COURT: Yeah.

20 PROSPECTIVE JUROR: That's just my opinion.

21 THE COURT: So what I'm hearing is is that, yes, you do
22 believe it.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Not, no, you don't believe it?

25 PROSPECTIVE JUROR: No. I have to have the definition

1 of them being rehabilitated and ---

2 THE COURT: Right. Sure. Well, what that means is
3 that through -- rehabilitated means that somebody can
4 change. Somebody who commits, for example, a 17-year-old
5 kid that breaks into a store, that that child, that
6 17-year-old young person, can learn the error of their ways
7 and change. Do you believe that?

8 PROSPECTIVE JUROR: Yeah. I believe at 17, I think
9 they can change. But if it's a -- I find it very hard to
10 believe because they already got it in their the mind that
11 this is what they want to do. This is what they're gonna
12 do. Sometimes it's hard to change -- at a certain age to do
13 something totally different than what they have done
14 already.

15 THE COURT: I understand. Okay. And do you think that
16 those beliefs may impact your decision ---

17 PROSPECTIVE JUROR: I'll try not to let it bear on my
18 decision but those are just my thoughts.

19 THE COURT: Thoughts. Okay. I think I'm a little bit
20 concerned about that though. Because I need -- you know,
21 I'm a little bit concerned too. I'm gonna ask you to sit
22 this on out.

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: Okay. Just stay with me though.

25 THE BALIFF: Juror 29.

1 THE COURT: Yes? Hi.

2 PROSPECTIVE JUROR: The fourth one was do you work for
3 the state?

4 THE COURT: If you work with law enforcement. You
5 obviously work with law enforcement, right?

6 PROSPECTIVE JUROR: And I do work with attorneys too.
7 I supervise attorneys, but I'm not an attorney.

8 THE COURT: Okay. Very well. Stay with us.

9 THE BALIFF: Juror number 40.

10 THE COURT: Hi. Yes, ma'am?

11 PROSPECTIVE JUROR: I'd like to respond to the first
12 one.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: Like, you can't -- like whoever
15 you're attracted to is who you're attracted to -- their
16 personal -- can change who they're sexually attracted to,
17 but you can't really cure them. .

18 THE COURT: Okay. Okay. So tell me little bit more
19 about what you're telling me.

20 PROSPECTIVE JUROR: Pretty much like I think you can't
21 control. It's just who they are.

22 THE COURT: Okay. So you don't think they can control?

23 PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: All right. Very well. I'm going to ask
25 you to sit this one out for me. But don't leave because I

1 have further instruction, okay. Thank you.

2 (Brief pause.)

3 THE COURT: Ladies and gentlemen -- all right. I'm
4 gonna ask three again. Are you or any member of your
5 immediate family associated with any crime advocacy group or
6 victims' rights groups or any criminal law organization such
7 as neighborhood watch groups, Citizens Against Violent
8 Crime, People Against Rape, Darkness To Light, or any such
9 organization? That's number one. Number two -- do you -- I
10 know it's not you because I would know at this point. But
11 do you have a spouse or a member -- do you have a spouse or
12 close personal friend that works for any solicitor,
13 prosecutors office, or works at any sort of county, state,
14 or federal correctional facility? And the third one is:
15 Does any member of our jury panel have any training or
16 experience in the fields of psychiatry, psychology, or the
17 law? If so, would those -- I'll ask that first. And let me
18 tell you what the cut off is. The experience of psychology,
19 did you have more than one class in psychology in college?
20 I had trouble with that. Couldn't remember if I had two or
21 not. I just don't remember. Did you have two or more
22 classes in psychology in college, or do you have any
23 training or experience in the fields of psychiatry,
24 psychology, or the law? If so, please stand. If you need
25 to respond to any of those questions, come forward.

1 THE BALIFF: Juror number 29.

2 THE COURT: Anything other than what I already know?

3 PROSPECTIVE JUROR: Just going ---

4 THE COURT: What?

5 PROSPECTIVE JUROR: Going to court for child support.

6 THE COURT: I gotcha.

7 THE BALIFF: Juror number 61.

8 THE COURT: Yes?

9 PROSPECTIVE JUROR: I had exactly two psychology
10 classes in college.

11 THE COURT: Did you really?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Like a breath of fresh air. Were they fun?

14 PROSPECTIVE JUROR: Yeah, they were.

15 THE COURT: Is that going to have an effect on your
16 ability to be fair and impartial?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Thank you.

19 THE BALIFF: Juror number 85.

20 THE COURT: Yes?

21 PROSPECTIVE JUROR: I'm finishing up my degree in
22 psychology.

23 THE COURT: That's great. All right. Thank you.

24 PROSPECTIVE JUROR: Is it okay?

25 THE COURT: Yeah. That's cool.

1 PROSPECTIVE JUROR: Thanks.

2 THE BALIFF: 98.

3 THE COURT: Hello. Yes?

4 PROSPECTIVE JUROR: I did 20 years in the NYPD. I went
5 through the Academy. I also went to -- that's the U.S.
6 marshals specialty which is Homeland.

7 THE COURT: Okay. That's it. Thank you. That's it.
8 Thank you, sir.

9 THE BALIFF: Juror number 77.

10 THE COURT: Hi.

11 PROSPECTIVE JUROR: In my undergraduate and my master's
12 program, I had basic psychology and behavioral psychology.
13 That's pretty much it. I'm in a legal nurse consulting
14 course, but I just started.

15 THE COURT: Got it. Thank you so much.

16 (Brief pause.)

17 THE COURT: I'm going to ask two questions together.
18 The first one: Has any member of our jury panel been
19 involved in a prison ministry, prison outreach program, or
20 any other program involving contact with incarcerated
21 persons? That's the first question. The second question
22 is: Do you know any reason why you ought not, should not,
23 could not be a juror in this case, being ready, willing, and
24 able to listen to the evidence and make up your mind based
25 solely on what you hear in court while court is in session?

1 If you have any concerns about your ability to do that, I'm
2 going to ask you to approach. I'm going to ask you to do it
3 now, approach if you need to respond to either of those
4 questions. And are you related by blood or marriage or
5 acquainted with or have you or any member of your immediate
6 family, to your knowledge, ever been treated by Dr. Marie
7 Gehle? Dr. Marie Gehle. If so, if you need to respond to
8 any of those three questions, please come forward.

9 THE BALIFF: Juror 123.

10 THE COURT: Yes, sir? Hi.

11 PROSPECTIVE JUROR: Hi. I'm a member of the Gideons
12 and we have jail ministry programs. I wanted to let you
13 know about that.

14 THE COURT: Okay. Great. Would that have an effect on
15 your ability ---

16 PROSPECTIVE JUROR: No.

17 THE COURT: --- to be fair and impartial?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you.

20 (Brief pause.)

21 MR. FALK: I'm renewing my objection number 110?

22 THE COURT: What are you talking about? 110?

23 MR. FALK: 110. His wife was abused by her father.

24 THE COURT: Oh, yeah. I'm going to manually strike
25 him. 110 is out.

1 MR. FALK: Thank you.

2 THE COURT: Yeah. Because it's stepfather.

3 (Brief pause.)

4 THE COURT: Now, ladies and gentlemen, in just a moment
5 these lawyers are going to get their sheets. And they're
6 going to take one more look at you and then we're going to
7 take a short break while they do that. They're going to
8 take about 10 minutes once they get their sheets. And then
9 y'all will hear some numbers. And the numbers that you're
10 going to hear are not your jury numbers. We take those
11 numbers and we process those numbers. And so when you
12 hear the final jury selection, the numbers that you are
13 going to hear are not your jury numbers. They've been
14 processed, and we get new numbers. And you don't know what
15 those numbers are. And I liken to, you know, like turkey on
16 Thanksgiving as opposed to turkey in little packages. They
17 don't look a thing alike. So you will not recognize the
18 numbers. The numbers that you -- are not your jury numbers.
19 And then we'll seat our jury. And then for those of you who
20 are then are remaining jurors, I'll give you some
21 instruction at that time. We'll stay in contact with each
22 other for the balance of the week. So just a few moments.
23 If you want to get up, y'all want to get up and walk around,
24 take a little comfort break. I just need to be sure you're
25 back in the courtroom at 25 minutes until two.

1 (A break was taken at 1:26 p.m. The proceedings
2 resumed at 1:39 p.m.)

3 THE COURT: Ready to strike the jury?

4 MR. FALK: Your Honor, may I approach?

5 THE COURT: Okay. Sure.

6 (Brief pause.)

7 JURY SELECTION

8 THE COURT: I messed up on my numbers. Everybody on
9 the front row, can y'all help me with your juror numbers to
10 be sure I'm right. Your jury number?

11 PROSPECTIVE JUROR: Fifty-four.

12 THE COURT: Fifty-four.

13 PROSPECTIVE JUROR: Twenty-nine.

14 THE COURT: Twenty-nine.

15 PROSPECTIVE JUROR: Sixty-four.

16 THE COURT: Sixty-four?

17 PROSPECTIVE JUROR: Yes, ma'am.

18 PROSPECTIVE JUROR: Eighty-five.

19 THE COURT: Eight-five.

20 PROSPECTIVE JUROR: Forty-three.

21 THE COURT: Forty-three.

22 PROSPECTIVE JUROR: Sixty-five.

23 THE COURT: Okay. Doesn't that clarify it?

24 MR. FALK: Thank you, Your Honor.

25 THE COURT: I just had to check my numbers to be sure I

1 have manipulated your numbers properly. And y'all were my
2 test, so thank you for that. And you don't have a clue what
3 I'm talking about, but that's the good news because I've
4 hidden your numbers that well. All right. In the process.
5 All right. Now, on behalf of the State, Mr. Morrow, you
6 ready to proceed?

7 MR. MORROW: Yes, Your Honor.

8 THE COURT: All right. Mr. Falk?

9 MR. FALK: Yes, Your Honor.

10 THE COURT: All right. Two alternates?

11 THE CLERK: Yes.

12 THE COURT: And I'm going to push, turn it over.

13 THE CLERK: Okay. Using the numbers to the left,
14 Plaintiff strikes?

15 MR. MORROW: Five.

16 THE COURT: Number five.

17 THE CLERK: The Defendant strikes?

18 MR. FALK: Number 11.

19 THE CLERK: Number 11. The Plaintiff strikes?

20 MR. MORROW: Six.

21 THE CLERK: Number six. The Defendant strikes?

22 MR. FALK: Thirteen.

23 THE CLERK: Number 13. The Plaintiff strikes?

24 MR. MORROW: Four.

25 THE CLERK: Number 4. The Defendant strikes?

1 MR. FALK: Number 3.

2 THE CLERK: Number 3. The Plaintiff strikes?

3 MR. MORROW: Twenty.

4 THE CLERK: Number 20. The Defendant strikes?

5 MR. FALK: Nineteen.

6 THE CLERK: Number 19. This is for the alternate.

7 Alternate number one, the Plaintiff strikes?

8 THE COURT: Wait, what numbers do you use? What
9 numbers do you use?

10 THE CLERK: Using number 21, 22, and 23.

11 MR. MORROW: Twenty-two.

12 THE CLERK: Number 22. The Defendant strikes?

13 MR. FALK: Twenty-one.

14 THE CLERK: Number 21. Using 24, 25, and 26, the
15 Plaintiff strikes?

16 MR. MORROW: Twenty-four.

17 THE CLERK: Number 24. And the Defendant strikes?

18 MR. FALK: Twenty-five.

19 THE CLERK: Number 25. Please check with me. The
20 Plaintiff strikes number 5, 6, 4, 20, 22 and 24.

21 MR. MORROW: That's correct.

22 THE CLERK: Thank you. The Defendant strikes number
23 11, number 13, number 3, 19, number 21, and 25.

24 MR. FALK: That's correct.

25 THE CLERK: Thank you.

1 THE COURT: Are there any matters regarding the
2 qualification or the selection of the jury from the
3 petitioner?

4 MR. MORROW: Nothing from the State, Your Honor.

5 THE COURT: All right. Respondent?

6 MR. FALK: Nothing from the Respondent.

7 THE COURT: All right. Let us have the jury, please.

8 THE CLERK: All right. As I call your name, please
9 come forward. Bring your personal belongings with you and
10 have a seat in our jury box to your right, my left. Juror
11 number 118, Jennifer Reed; juror number 13, Mary Bowers;
12 juror number 47, Steven Gnegy; juror number 126, Timothy
13 Ross -- 123 -- excuse me -- 123, Timothy Ross; juror number
14 62 Joseph Heath; juror number 44, Hannah Fleenor; juror
15 number 119, Mary Rigsby; juror number 136, Mark Tanner;
16 juror number 61, Ronald Hawthorne; juror number 67, Tiffany
17 Holmes-Rowe; juror number 104, Rodney Musselman; juror
18 number 65, William Holland; juror number 29, Brenda
19 Cummings; and juror number 58, Danette Harris.

20 (The jury was impaneled at 1:46 p.m.)

21 THE COURT: All right. Ladies and gentlemen, those of
22 you who are in our audience are now known as our remaining
23 jurors. I'm going to ask that you please follow Marvin and
24 Mr. Singletary downstairs to the jury assembly room. They
25 will give you further instructions. Ms. Graham is going to

1 go down there with you. Thank you all so much for every
2 tick of the clock, and have a great rest of your yesterday.

3 (The remaining jury panel is excused at 1:47 p.m.)

4 THE COURT: Ladies and gentlemen, in a moment I am
5 actually going to be dismissing you for the day. As I
6 mentioned -- as I mentioned to you, we're going to start
7 this case at 9:30 Wednesday morning. Now, and I've got to
8 give you some instruction. First, seating assignments.
9 There are none, except for Ms. Cummings. You and
10 Ms. Harris, those are the seats for our alternates. Now, if
11 y'all want to swap back-and-forth just for fun, feel free to
12 do that. But I need y'all to actually keep those two seats
13 so I can keep up with you as our alternates.

14 Now, with regards to the rest of our jury panel, you
15 have to have a presiding juror. So we're going to ask you
16 on one of our breaks to please select your presiding juror. (
17 Now, what does a presiding juror do? It's real easy. The
18 presiding juror actually, once the jury has finished its
19 deliberations, somebody has got to write something on a
20 verdict form. They'll do that, they'll write on the verdict
21 form. Secondly, the presiding juror is the spokesperson for
22 the jury. In other words, if the jury needs to communicate
23 with me for whatever reason, we need people to speak up, we
24 need people not to be so loud, whatever, we have diet coke
25 instead of -- I don't know, whatever. In the event the jury

1 needs to communicate with me for whatever reason, they'll
2 write that down, give it to one of our bailiffs who will in
3 turn give that to me. And when the jury deliberates, that
4 person -- you say preside in the jury room, but that's a
5 little heavy. In other words, somebody has got to say that
6 was awesome. Now, your turn. Whatever. In other words,
7 it's just to be sure everybody is given a chance to talk.
8 And it's not to be overbearing in anyway, but just to sort
9 of be a facilitator, make sure everybody's talking. Now,
10 those are the additional tasks of the presiding juror. And
11 I'm going to ask y'all to pick your presiding juror. When
12 that person has been selected, they'll take this seat
13 closest to the door in the front, and give me, if you'd be
14 so kind, to give a note to let me know that you have been
15 selected to serve as the presiding juror. That would be
16 terrific. Now, do we have any people who go to work at
17 night? Go in like at eleven, work to seven? Go in at three
18 and work til eleven?

19 (No response.)

20 THE COURT: Okay. Great. Very well. I don't need
21 people working at night and serving on the jury. You can't
22 possibly do that. That's exhausting. You think about doing
23 it, it's exhausting. All right. Now, you are going to be
24 going home this evening or sooner. And there is going to be
25 somebody curious about what you have been up to. It is

1 perfectly fine to say I was selected to serve -- I showed up
2 for my jury service. I didn't need a chauffeured ride down
3 to the courthouse. And I have been selected to serve on a
4 jury and it is a civil matter as opposed to a criminal
5 matter. But you cannot talk about the topic, cant' talk
6 about who is involved. You can't talk about any details at
7 all. You can't talk about anyone that has anything to do
8 with it either. And I want you understand why. And I want
9 to tell you that every time we leave each other, I'm going
10 to give you that instruction, do not discuss this matter, do
11 not allow anyone to discuss it with you. And I'm real
12 serious about that. It is critical that you follow that
13 instruction. Let me tell you why.

14 We know from over two hundred years of trying cases in
15 the United States that the way we are made, the way that we
16 are wired, the way that we are as human beings, if you begin
17 to talk about something, you begin to form an opinion about
18 it. We can't help it. It's the way we're made. Now, set
19 that aside for a moment. If you realize and in a moment
20 realize that as the finders of fact, and that's what you are
21 going to be, you are going to be the finders of fact, it is
22 absolutely critical that you not make up your mind about
23 anything until you have heard everything. That's critical.
24 You cannot be an appropriate fact finder unless you're able
25 to do that. So the reason that I give you the instruction

1 do not discuss this matter, do not allow anyone to discuss
2 it with you, is that so you don't begin to form an -- it's
3 to support your ability to listen to everything because
4 you're not forming an opinion about anything until you have
5 heard everything. It just sort of percolates. Sort of like
6 a crock-pot in your head. So that's the reason for the
7 instruction, and I'm very serious about it. That means do
8 not discuss this matter with your family, your friends, your
9 coworkers, or anybody that has anything to do with this
10 case.

11 I heard that -- a judge was telling me last week -- it
12 was really funny. I'm trying to remember what he said. He
13 said that he told a jury to not discuss this matter with
14 your spouse. And this juror had been -- I don't know how we
15 found out about it. The juror had been talking and talking
16 about the case throughout the case. And he said, do you not
17 understand that I told you not to talk to your spouse about
18 this. He said, well, yeah, but we haven't been getting
19 along. So, well, I was kind of not considering he was my
20 spouse anymore, something ridiculous like that. So I know.
21 So don't talk about this case with anyone.

22 And also no Columbo. I know some of you don't know who
23 Columbo is. Columbo was sort of this goofy investigator
24 that somehow solved cases. And it was like, well, how did
25 he do that because he's too goofy to do that. Now, no

1 investigation. You know, we are exposed to so much
2 information on the Internet that I have to tell people do
3 not go to the Internet; don't google; don't Yahoo; don't
4 Bing. Do not do any investigation about this matter at all
5 or anyone that has anything to do with it. And sometimes
6 that's almost irresistible. But resist. You must receive
7 all of the information from which you will make up your
8 minds here in court while court is in session. And if you
9 were to do that, the whole trial would have to be scrapped
10 because you will have injected information that didn't come
11 from the Court while court was in session. So please keep
12 that in mind. Do not Insta-chat, Facebook, blog, Tweet, or
13 otherwise communicate about this case with anyone. That
14 would also be forbidden by our rules for a jury. Because,
15 A, you're either talking about the case or you're
16 investigating. It's got to be one or the other.

17 Now, we have this instruction that says that if you
18 must use your cell phone or other communication device when
19 you're not in court on recess or overnight -- it's like if
20 you must. We're tethered to these things. But just be
21 mindful not to do any investigation. Use your phones and
22 Internet to do what you normally do, but do not do any
23 investigation about this case or even about words, even
24 about vocabulary. And you'll be provided the information
25 that you need during court sessions while we are here

1 together in court.

2 Now, don't bring your cell phone or other communication
3 device with you tomorrow -- or Wednesday rather. Wednesday.
4 I don't want to confuse you. Wednesday. You must not have
5 a cell phone or other communication device with you while
6 you're serving on the jury. And why might that be? Well,
7 in Charleston about six or seven years ago, we had a jury
8 who was deliberating and somebody had a cell phone. And the
9 jury just reached a place where they needed to work a little
10 bit and remember what the testimony was and work a little
11 bit. And mister said, ah, I got a buddy that's got this
12 answer. I'm gonna phone a friend. Play that television --
13 picked up the phone. Phoned a friend, got the answer. That
14 was disclosed to the Court and the entire trial had to be
15 scrapped because there was information injected into the
16 jury's deliberations that was not received in court while
17 court was in session. So please be mindful of that as well.
18 Now, we are tethered to these things. And our parking lot
19 is a fair distance away from the courthouse or from the
20 courtroom. If you forget and you bring it in with you
21 tomorrow, if you can give it to one of our bailiffs, they'll
22 take of your phone or other communication device while
23 you're serving on the jury. But if you think you can turn
24 that thing off and put it in your pocket or pocketbook, let
25 me tell you, it will turn itself on and it will ring right

1 in the middle. You know it will. So if you forget, don't
2 worry about it. Don't go running all the way back to your
3 car. Just bring it with you and give it to one of our
4 bailiffs. They'll take good care of it. And I don't think
5 that Ms. Suzie has anybody in the family right now in
6 Europe, so you're in good shape.

7 All right. I think -- what I do want you to do is I do
8 want you to go with Ms. Suzie because she will show you your
9 jury room and then talk to you about coming on Wednesday
10 morning. And think they probably want you to go to the jury
11 assembly room in then they bring everybody out to stand at
12 the same time. You might want to go a little light on your
13 breakfast Wednesday morning because they are wonderful with
14 having a little something for you here. So just please keep
15 that in mind. Now, we are going to start at 9:30.
16 Seventy-eight is a tough road. If there's an awful lot of
17 traffic on there. Please don't, you know, don't hurry.
18 Don't rush. Come on, but try to leave enough time that you
19 never know. All of sudden -- I am convinced there is a
20 hole-moving committee who is committed to Highway 78 because
21 they're out there all the time either digging a hole or
22 covering it up just so people got to stop. But I'm
23 delighted to have them. We've been friends for a long time.
24 I waive. I'm friends with the person that holds the sign
25 that says stop or go. So in any event -- so if you meet the

1 hole-moving committee, just take your time and come on. I
2 don't want anyone hurt going back and forth.

3 All right. Ladies and gentlemen, if anybody is dashing
4 off to work this afternoon, they'll be happy to get
5 something for you down in the clerk's office. The clerk's
6 office is directly below us. And our bailiffs will escort
7 you there if you need that help and get you that. They'll
8 get you something from the clerk's office. Otherwise, I
9 cannot wait to see you all Wednesday morning at 9:30.
10 Wednesday morning, 9:30. And have a good afternoon, a good
11 evening, and a good tomorrow. And I'll see you on . . .

12 (The jury is excused for the day and exits the
13 courtroom at 1:59 p.m.)

14 THE COURT: Do y'all want to go ahead and put on the
15 record so we -- what you agreed to in terms of the motions
16 in limine that way we'll be ready to go.

17 MR. MORROW: Yes, Your Honor.

18 THE COURT: All right. Why don't you, Mr. Morrow, why
19 don't you go first.

20 MR. MORROW: Your Honor, the State's first motion in
21 limine concerns the referring to mental health care
22 treatment unit as a prison or referring to it as punishment
23 for life versus a civil commitment to Department of Mental
24 Health. And it is not a prison sentence or any kind of
25 incarceration.

1 THE COURT: I think y'all have got agreements. So
2 y'all can -- you just state what the issue is. And, Mr.
3 Falk, you just tell me if there's an agreement or not and
4 then vice versa.

5 MR. MORROW: And so I believe we have an agreement to
6 not refer to the treatment unit as a prison or a term for
7 life.

8 MR. FALK: That's correct.

9 THE COURT: Okay.

10 MR. MORROW: The State's second motion in limine I
11 believe was referring to the treatment process and requiring
12 the State to prove an additional burden of the validity of
13 treatment or whether or not treatment works. That would be
14 an extra burden on the State to prove that element. And I
15 believe we have an agreement not to refer to validity or
16 degree of treatment.

17 THE COURT: I think there's an agreement with the
18 caveat that certainly on cross-examination, as I understand
19 it, Dr. Gehle is going to opine that Mr. Busch meets the
20 definition. And as I understand it, Mr. Falk wants to be
21 clear that he is going to cross-examine about the things
22 he's already done; to ask her if he's already done these
23 things, why isn't that enough? Right?

24 MR. MORROW: Correct.

25 THE COURT: Yes?

1 MR. FALK: That's correct, Your Honor.

2 THE COURT: Okay. Next?

3 MR. FALK: Well, then I had two. I'm not sure Mr.
4 Morrow and I agreed on this. It's just the language in his
5 opening remarks about extremely dangerous group of people
6 when they're talking about the legislative history of the
7 Sexual Violent Predator Act.

8 MR. MORROW: Your Honor, and I can leave those words
9 out. I can leave the words extremely dangerous persons out
10 of my opening statement.

11 THE COURT: Okay.

12 MR. FALK: And then the other thing that we discussed
13 is I think it would be -- and I think we agreed that the
14 State's not going to allow it through its case in chief the
15 fact that he could get an annual review hearing every year.

16 THE COURT: Right.

17 MR. MORROW: As we do not intend to bring that up. If
18 the door is open on cross-examination, we may go into that.

19 THE COURT: Right.

20 MR. FALK: That's it.

21 THE COURT: Good. We're ready to go. Very well. Now,
22 Mr. Falk, I know that your client has the clothes that were
23 available. He's welcome to use those. If he has family
24 members or someone else to bring him something else, that's
25 perfectly fine. But he's certainly welcome to utilize

1 those.

2 MR. FALK: We did discuss at length and he didn't
3 really have any other options. He's got family members who
4 are going to come.

5 THE COURT: Then he's good to go. He's good to.

6 MR. FALK: But if he could keep those, that would be
7 great.

8 THE COURT: Yeah. He's good to go. Major will manage
9 all of that as he manages everything in our world.

10 MR. FALK: Appreciate that. Thank you.

11 THE COURT: All right. Very well. It's amazing how
12 well they fit.

13 DEFENDANT: It's been so long, I didn't know what to
14 tell my family. These fit find.

15 THE COURT: They're great.

16 DEFENDANT: I got lucky that they had some that fit so
17 fine.

18 THE COURT: It's amazing.

19 DEFENDANT: That way my parents wouldn't have to come
20 out of -- out of pocket and try to have to find something on
21 their own. I greatly appreciate it.

22 THE COURT: It's great. I thought it was great. I
23 couldn't believe -- I accused Major of being a fine
24 haberdashery. All right. Very well. I'll see all three of
25 you on Wednesday morning, 9:30. And thank you all so much.

1 Do y'all need anything before you leave? I got some bars.
2 We got some chips.

3 MR. FALK: No, thank you, Your Honor.

4 MR. MORROW: No, thank you, Your Honor.

5 THE COURT: Thank you so much.

6 (The proceeding adjourned for the day at 2:04 p.m. The
7 proceedings resumed on Wednesday, March 29, 2017, at
8 10:16 a.m.)

9 THE COURT: Anything before we bring the jury out?

10 MR. BOGLE: Not that I'm aware of. We've got ---

11 THE COURT: We did all the pre-trial stuff yesterday.

12 MR. BOGLE: Yeah. We've got five exhibits. The five
13 certified copies of the indictment and sentencing sheet for
14 the sexually violent convictions. I've got those here. I
15 haven't marked them yet, but I've got them all lined up.
16 And that will come out during Dr. Gehle's testimony when she
17 testifies.

18 THE COURT: Okay.

19 MR. BOGLE: Our only witness is her.

20 THE COURT: Okay. All right.

21 MR. FALK: Two things, Your Honor.

22 THE COURT: Yes.

23 MR. FALK: One is if we could can maybe remind us where
24 we stood on my motion as far as the most dangerous group of
25 predators language that was in the opening statement. I

1 think Mr. Morrow said he was not going ---

2 THE COURT: He was not going to do that.

3 MR. BOGLE: My understanding, I can't say that.

4 THE COURT: Right.

5 MR. FALK: I just wanted to make sure that -- and
6 there's another item that I really just thought of ten
7 minutes ago.

8 THE COURT: Daggone it, I knew I shouldn't have been
9 late.

10 MR. FALK: I would ask the Court to consider in the
11 exhibits that the State is going to put back, they're going
12 to have the victims' names on them. And I think that's
13 probably been the practice of the past. I'm concerned
14 whether or not any off chance of one of these Dorchester
15 County jurors is going to recognize the last name of one of
16 these victims granted it's 16 years ago. I would ask the
17 Court consider maybe redacting the victims' names off of the
18 exhibits.

19 MR. BOGLE: I've always -- of course, we have certified
20 copies from the clerk's office. So I can't color on
21 certified copies. And so I've always introduced them as is.
22 If there was a concern about the jurors knowing somebody,
23 perhaps the victims' names could have been laid out in voir
24 dire yesterday or Monday. I'm not if that happened or not.

25 MR. FALK: And I did not do that.

1 MR. BOGLE: I've always just put them in. They are ---

2 THE COURT: You know, here's the interesting -- let me
3 ask this question. We've got victims that may or may not
4 know that these proceedings are occurring. And it occurs to
5 me that 16 years later, they have moved on with their lives.
6 I did not ask in voir dire. One of the concerns that I have
7 that is that one of these jurors recognizes the name. And
8 16 years later, their neighbor comes up and says, I
9 understand this happened to you 16 years ago, wow. You
10 know, that's tough for them, for the victims. So if -- I
11 just ask this question. Obviously, in criminal matters
12 during testimony, they're called as witnesses and their
13 names are very much before the jury, but they know that.
14 And there are people who surround us, psychologists, family
15 members, victims' advocates, who can handle that. They
16 don't have the benefit of that today. So my question is, is
17 there anything lost from an evidentiary standpoint if we
18 submitted to the jury, if we put the indictments in, sealed
19 them, but what goes back to the jury is actually redacted in
20 terms of last names?

21 MR. BOGLE: Yeah, we can do that. Now, bear in mind
22 that when Dr. Gehle testifies about the cases, her training
23 is to refer in court to them by initials, like AB, CD, and
24 things like that.

25 THE COURT: Yes.

1 MR. BOGLE: So the name never comes out there.

2 THE COURT: Yes. But once they're exhibits ---

3 MR. BOGLE: Once they're exhibits ---

4 THE COURT: Once they go back to the jury, then we have
5 these names. And I think it is a real concern because when
6 there's a prosecution, we do build in, maybe not as many
7 safeguards as maybe some other states do, but we certainly
8 have some. Family members are -- and these are children as
9 I understand?

10 MR. BOGLE: That is correct.

11 THE COURT: These are children.

12 MR. BOGLE: These are all children.

13 THE COURT: And, clearly, with children, there are
14 going to be family members. And it's going to be a victims'
15 advocate that maybe, you know, like a children's center
16 involved. So I think it's a legitimate concern. First
17 names don't worry me as much as last names. I think if we
18 put in the exhibits for appellate reasons that we seal those
19 and then what goes back to the jury, we have the last names
20 redacted.

21 MR. BOGLE: So, logistically, I'll put them in during
22 her testimony, and then when it comes time to send to the
23 jury, I'll either take copies that were redact or we'll take
24 the originals, redact, and run it through a copy machine
25 and, you know, fix that for the jury?

1 THE COURT: Precisely. Precisely.

2 MR. FALK: And, of course, on appeal, they'd be
3 redacted as part of the record on appeal. They would have
4 to be redacted -- when you're preparing a record on appeal,
5 you'd ---

6 THE COURT: Unless there's an appeal by the State that
7 I did that, then it has to be -- and I'm not so -- I think
8 that for this reason, if the State objects to it, to the
9 redaction of it, then I think they have to remain
10 unredacted --

11 MR. FALK: Oh, I see. I see. Yeah.

12 THE COURT: Because in the event it is a reversal and
13 it would come, then it would have to come back in the
14 ability to be shown to the -- if they did have the certified
15 copies and not the original, it doesn't really matter.

16 MR. FALK: My point was if appellate defense appeals
17 the decision today?

18 THE COURT: And you won, doesn't matter.

19 MR. FALK: No, I'm just saying whoever would be
20 preparing the record on appeal would have to redact the
21 exhibits.

22 THE COURT: Right. That's right. Because that's what
23 went to the jury.

24 MR. FALK: Right..

25 THE COURT: Yeah. Okay.

1 MR. BOGLE: Logistic-wise, we'll just do the trial like
2 normal. I'll put them in like normal and then when it comes
3 time to send to the jury, we do some changing.

4 THE COURT: Yes.

5 MR. BOGLE: And we don't have a problem with that.
6 We're not objecting to it or anything like that.

7 THE COURT: Okay. Then it won't be an issue.

8 MR. BOGLE: No. I don't believe so, Your Honor.

9 THE COURT: Very well.

10 MR. FALK: Thank you.

11 THE COURT: All right. Anything further?

12 MR. FALK: That will do it.

13 MR. BOGLE: What I've got is, is I've got one
14 Charleston lude act and then I've got four Dorchester County
15 sexually violent crimes of different types.

16 THE COURT: Got it.

17 MR. BOGLE: Five total. There's five total.

18 THE COURT: Five total. Very well.

19 MR. BOGLE: I pulled off the warrants so it's just the
20 indictment sentencing sheets.

21 THE COURT: Got it. Got it. And we'll just redact the
22 victims' last name.

23 MR. BOGLE: Okay.

24 THE COURT: Perfect. Perfect. I think you can do it
25 on the certified copies, you know, quite frankly. I don't

1 think -- because we don't have the originals, we have
2 copies. I think we can just redact the copies.

3 MR. BOGLE: That will work.

4 THE COURT: Yeah. That way less paper to worry about
5 what goes back to the jury. Okay. Anything further?

6 MR. BOGLE: Not that I can think of.

7 THE COURT: Jury please. And Mary Beth Rigsby is our
8 presiding juror.

9 MR. BOGLE: Rigsby?

10 THE COURT: Rigsby.

11 (Brief pause.)

12 THE COURT: Both of you are going to make openings,
13 right? Opening and opening?

14 MR. BOGLE: Yes.

15 (The jury enters the courtroom at 10:28 a.m.)

16 THE COURT: Good morning, ladies and gentlemen. I am
17 so sorry I ran a little bit late this morning. As I was
18 coming up 78, there was an accident, like a couple of cars
19 ahead. So I had to redo and go around and whatever. And
20 Ms. Rigsby?

21 JUROR: Yes.

22 THE COURT: Thank you for serving as our presiding
23 juror. I really appreciate that very much. So, ladies and
24 gentlemen, you will notice that this morning Mr. Morrow is
25 not with us. Mr. Morrow morphed into Mr. Bogle.

1 Mr. Morrow, bless his heart, came down with the flu, so he's
2 not with us. And Mr. Bogle is -- delighted to have him be
3 with this us morning. He is also an Assistant Attorney
4 General. So I did want you to know that, no, we did not go
5 into like a time warp or anything. We have Mr. Bogle with
6 us this morning. So welcome, Mr. Bogle.

7 MR. BOGLE: Thank you, Your Honor.

8 THE COURT: Yes. And I guess I should ask whether or
9 not you are related by blood or marriage or acquainted with
10 Mr. Bogle, Mr. James Bogle? If so, please stand.

11 (No response from the jury.)

12 THE COURT: Okay. Very well. Now, ladies and
13 gentlemen, at this time I'm going to call on Ms. Stevens and
14 ask her to please swear you in as the jury in this case.
15 Please stand and raise your right hand.

16 (The jury was sworn at 10:30 a.m.)

17 THE COURT: Very well. Now, ladies and gentlemen,
18 before we began the trial, I want to tell you that this
19 trial probably will be different than what you might expect.
20 Many people, most people, do not have a chance to attend
21 actual court sessions as you are now doing, and may think
22 from watching television or movies or reading books that
23 trials are always full of riveting drama, high, intense
24 action, and amazing circumstances. I will tell you that
25 while all of these things may be true at times, obviously, a

1 trial is not for entertainment. It is a fundamental part --
2 it may be the fundamental part of our democracy. It is an
3 opportunity for matters to be resolved before a jury, people
4 from the community, citizens from our community.

5 Now, I will tell you that the process that we will be
6 going through in the trial of this case and making sure that
7 both sides have an opportunity to be heard is often slow,
8 deliberate, and repetitive. The opposite of what you may
9 have seen on television or in movies or read in books. I
10 want you to know that this courtroom is a place of honor
11 dedicated to the protection and the preservation of citizens
12 rights. Through what many have called, and I submit to you,
13 the greatest system of justice that people have ever come up
14 with. And I would submit to you it is because of juries.
15 It is because we have people who come into the community,
16 come in from the community, into court to help fellow
17 citizens resolve disputes. It is powerful. I've been doing
18 this, ladies and gentlemen, for nearly 20 years. And I
19 never failed to be absolutely so grateful and so impressed
20 with juries because of the time and the energy and effort
21 that they give to our system of justice.

22 Now, ladies and gentlemen, I want you to know that the
23 attorneys who are appearing before you, while they are very
24 skilled in what they do and they are both, I can tell you,
25 wonderful advocates for their clients, I want you to know

1 that before they were ever allowed to represent the very
2 first client, they were sworn to uphold rules of ethics and
3 they were sworn as officers of the Court. And they are
4 officers of the Court. You should expect them, and I know
5 they will be, ethical and professional as they represent
6 their clients. Now, ladies and gentlemen, I want to thank
7 you this day for giving to our way of life, our system of
8 justice, your dear and precious time and for your
9 contributions, which I know are significant because you're
10 giving to our system of justice. Your energy, your effort,
11 you attention, and your time, and for that, I am so
12 grateful.

13 JURY INSTRUCTION

14 Now, I want to give you little bit of background about
15 what were going to be doing; a little bit about the process
16 that we're going to be following. Because I want you to
17 know where we are the process. So what is the structure?
18 I'm not going to give you a charge on the law. I'm going to
19 do that at then end of the case. But I do want you to
20 understand the procedure that we are going to be following.
21 The first thing that is going to happen is we're going to
22 have opening statements. You are first going to hear from
23 Mr. Bogle as he represents the State. He, like Mr. Morrow,
24 is an Assistant Attorney General and you will hear from him
25 in his opening statement. You're then going to hear an

1 opening statement from Mr. Falk on behalf of the Respondent
2 in this matter. And once -- and what are opening
3 statements? I'm going to talk to you a little bit about
4 that. And of course, Mr. Falk, the Respondent -- let me
5 help you a little bit. The Petitioner is the State. The
6 Respondent, of course, is Mr. Christopher Busch who is here
7 with us; just the Respondent. And the reason that we allow
8 both sides to make what is called an opening statement is so
9 that they can frame for you with they believe the issues are
10 in this case. Sort of an introduction to the case. They're
11 not arguments. Those will come at the conclusion of the
12 case. But it allows each side to outline for you perhaps
13 what they believe the evidence will show. But, certainly,
14 what they believe the issues are in the case.

15 Once the opening statements are ended, then the State
16 will have an opportunity to present evidence to you.
17 Evidence will be sworn testimony. It may be documents and
18 the like. It's very important that you pay close attention
19 to all of the evidence that is presented by both sides.
20 Once the State has had an opportunity to present evidence,
21 then Mr. Mr. Falk will have an opportunity to present
22 evidence on behalf of Mr. Busch, the Respondent. And,
23 again, I'm going to ask you now to please be mindful that
24 you must not make up your mind about anything until you have
25 heard everything. Because evidence comes in once piece at a

1 time. And so it's very important that you keep an open mind
2 and that you not make up your mind about anything until you
3 have heard everything. Now, once Mr. Busch has had an
4 opportunity to present evidence to you and should the State
5 have any reply to present that to you, then you will have an
6 opportunity to hear the closing arguments of both sides.
7 And those are true arguments. Both sides will have an
8 opportunity to argue to you what they believe you have heard.
9 And no doubt each of these attorneys will emphasize certain
10 portions of the evidence and try to convince you to agree
11 with their version of the facts.

12 Now, ladies and gentlemen, I want you to give you these
13 attorneys your undivided attention because what they have to
14 say to you is very important. But I want you to understand
15 that what the lawyer say is not evidence. The evidence
16 comes from the sworn witnesses and any exhibits which are
17 admitted into evidence. That's what the evidence will
18 contain. Now, ladies and gentlemen, once the closing
19 arguments are finished, I will then deliver the charge or
20 the instruction on the law to you. You will then retire to
21 your jury room and you're going to consider the evidence,
22 the law, and then you will render your verdict.

23 Now, ladies and gentlemen, I want to talk to you a
24 little bit about this particular kind of case because this
25 case and in this case you are called on to determine whether

1 or not Mr. Busch meets the definition of a sexually violent
2 predator. And I'm going to give that -- the definition to
3 you when I give you the charge on the law. But I do want to
4 tell you that the burden of proof that the State must make
5 is beyond a reasonable doubt. The State must prove to your
6 satisfaction that Mr. Bush is a sexually violent predator,
7 meets that definition, and the State must meet that burden
8 beyond a reasonable doubt. Your job, your task, will be to
9 determine whether the State has met its burden.

10 Now, ladies and gentlemen, in this case you and I have
11 different duties to perform. You are the judges of the
12 facts. You're the judges of the facts. And no one else
13 will be allowed to make the determination of the fact but
14 you, the trial jury. I'm the judge of the law in this case
15 which is a very different duty. Our law does not allow me
16 to have an opinion regarding the facts. I don't have an
17 opinion regarding the facts because that's a matter solely
18 for you to determine. You cannot disagree with me about
19 what the law is. What that means is is if you hear the law
20 or if you had a preconceived idea about what you think the
21 law is or what it ought to be and it should disagree with
22 what I tell you the law is, for our system to work
23 correctly, you have to accept and apply the law exactly as I
24 state it to you. If you have a preconceived idea, you
25 think, oh, I think that's -- I don't like that, that might

1 be a conversation you want to have with your legislator at
2 some point. But for our system to work correctly in this
3 case, you must accept and apply the law as I state it to
4 you. Now, because you are the sole and only finders of the
5 facts, ladies and gentlemen, if I should have an expression
6 or say something that you think is a comment on the facts, I
7 want you to disregard that. Because I can assure you it
8 isn't. If I make an expression maybe it's because I had too
9 much lunch or something. Because I can assure you, I don't
10 have any opinion regarding these facts. I'm not going to
11 comment on these facts. So if I do something that you think
12 might be a comment on the facts, please disregard it because
13 I can assure you I don't have one of those. That is for you
14 to determine. The law doesn't allow me nor do I have an
15 opinion regarding the facts.

16 Now, ladies and gentlemen, really just a couple of
17 other things that I just -- I just want you to know what's
18 happening because I think y'all have a right to know what's
19 going on. Ladies and gentlemen, both sides must obey what
20 are called the rules of evidence when they are presenting
21 evidence. And these rules have a definite purpose. Their
22 purpose is to ensure that the information you receive is the
23 most trustworthy and reliable information that is available.
24 Now, the way that evidence is presented to you is governed
25 by these rules, the rules of evidence. These lawyers have a

1 duty to bring a possible violation of the rules of evidence
2 to my attention. And the way that our relationship works
3 around evidence is whether or not evidence is admissible at
4 all or not. That is a matter of law. That is for me to
5 determine. But once evidence is admitted, the weight you
6 give to it, the value that you think it deserves, whether
7 you believe it or not, those are all matters for you to
8 determine. Any inferences you glean from it, those are
9 matters for you to determine.

10 So I want to talk a little bit more about that because
11 the way that the lawyers bring possible violations of the
12 rules to my attention is that they will do it one of three
13 ways. They either stand and say objection. They may give
14 me a word or two about -- "objection, hearsay" for example.
15 You're not supposed to make talking objections and these
16 lawyers won't. They'll either use one word or two words or
17 maybe three words. Probably not any more than that. And
18 I'll be able to make a determination on properly based upon
19 what I'm hearing in that regard it. And if I overrule the
20 objection that means I don't think that there's a violation
21 of the Rules of Evidence and that piece of evidence can be
22 presented. I may say that the objection is sustained which
23 means that the evidence, that piece of evidence, cannot be
24 received or received in that manner. And that means, yeah,
25 I think there probably is a violation of the Rules of

1 Evidence. That's what it means when I sustain the
2 objection. Now, the attorneys may ask to approach or I may
3 even ask them to approach. And if they approach, you're
4 going to -- this is your clue -- you're gonna go to the
5 beach. In my mind that's like the ocean, right. And the
6 reason that that will be on, quite frankly, is so that I can
7 talk and you can't hear me. And there may be occasions, and
8 they'll be minimally in a trial, where I may need to ask you
9 to step to your jury room. So I want to tell you exactly
10 what is going on so you won't ponder. What is happening
11 when I ask the lawyers to approach or when I ask you to step
12 to the jury room? Quite frankly it's because I need to have
13 a conversation, and I wouldn't want anything that I might
14 say in ruling on the admissibility of evidence to be thought
15 by you as being a comment on the facts. In other words,
16 just to let me do my job. It's not for any other reason
17 than that. And so that's the reason you'll go to the beach
18 momentarily or I'll ask you to step to your jury room. It's
19 just to give me that ability to do my job.

20 Now, ladies and gentlemen, I'm going to ask a favor of
21 you. But I got to tell you a story so that it will make
22 sense. It used to be when we would go to worship services
23 when I was a little girl, my mama would concentrate with her
24 eyes closed like this (demonstrating). I thought she was
25 sleeping. Boy, was I wrong because that would be about the

1 time I'd start cutting up. And then she'd reach over and
2 she'd pinch me. And I knew I was in big trouble. I am
3 going -- see, we just met yesterday. I don't know how you
4 concentrate. Do you know what I mean? Clearly, I didn't
5 know how my mama concentrated. I didn't realize that my
6 mama concentrated with her eyes closed until we got pinched.
7 So I'm going to ask you since we just met and as a favor to
8 me, please concentrate with your eyes open. Because I might
9 make the same mistake that I made with my mama and think
10 you're sleeping. So I'm going to ask you to please
11 concentrate with your eyes open that way I'll know that
12 you're not sleeping. That will be a great favor to me.

13 Now, ladies and gentlemen, jurors often want to know
14 about taking notes. And this is -- and I want to tell you
15 about the debate that goes on, and then I'm gonna tell about
16 what I'm going to ask you to do for me. There is a debate.
17 It is raised in my head for 20 years. And I'm going to tell
18 you what it is and how I have resolved it. There is a real
19 concern that as a juror looks down to take note and focus on
20 the taking of a note, they can miss something as it's coming
21 from the witness stand. The other concern, primarily, about
22 the taking of the notes is if one juror has a note and
23 another juror doesn't have a note during deliberation, that
24 the jury can put an undue amount of influence upon the note
25 because it's written. I think that's legitimate. The other

1 consideration is that if a juror has heard a lot of
2 information, having taken a note to two can help a juror
3 refresh his or her recollection while in deliberation. I
4 think that makes sense. So here's where I have come to as a
5 policy matter. When trials are expected to be a relatively
6 short duration, then I ask jurors not to take notes. Listen
7 very carefully. Give to these matters your utmost attention
8 and not take notes. When trials are expected to be of
9 lengthy duration, then we come out with pads and pencils and
10 an instruction about the taking of notes. And I actually
11 provide for the ability for the jurors to take notes. Now
12 it is my understanding that this particular trial is
13 expected to be a relatively short duration. Because of
14 that, I'm going to ask you to listen attentively. Give to
15 these witnesses your undivided attention. Please give to
16 these lawyers your undivided attention and of course to the
17 Court and not take notes. Now, I've commented on the
18 expected duration of this trial. The only reason that I
19 have done that is I don't want you to be worried about my
20 instruction not to take notes. I in no way demean the
21 importance of it because it is of the utmost importance to
22 these parties and to our system. I just -- quite frankly, I
23 really don't want you to worry about my instruction not to
24 take notes, which I understand.

25 Now, ladies and gentlemen, I do want to emphasize why

1 it is so important that you listen so carefully to
2 everything. The reason is you see is that there is under
3 our system no way to correct an erroneous determination of
4 the facts by a trial jury. The facts as you find them to be
5 will be the facts for all time. So if you make an error,
6 that will be the error for all time because the way our
7 system is is there ordinarily is no way to correct an
8 erroneous determination of the facts by a trial jury.
9 That's why it is critical, it is so important, that you
10 listen attentively, that you pay attention to these
11 witnesses, that you listen to the lawyers. And, of course,
12 I want you to listen to me, right? And, of course, if you'd
13 be so kind as to do not let your thoughts wander. Give the
14 strictest to these matters so that at the conclusion of all
15 the evidence and my instruction on the law, you're going to
16 deliberate and render your verdict which will then be a just
17 verdict under the oath that you just took. Now, ladies and
18 gentlemen, in order to preserve everybody's rights, it's so
19 important that I ask these attorneys if they have any
20 objections regarding my preliminary remarks. I'm going to
21 ask them to stand at this time.

22 MR. BOGLE: No, Your Honor.

23 THE COURT: And Respondent?

24 MR. FALK: None from the Respondent, Your Honor.

25 THE COURT: Ladies and gentlemen, I'm going to ask you

1 to draw close as we listen to opening statements. Mr.
2 Bogle?

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

5 THE COURT: Yes, sir.

6 OPENING STATEMENTS

7 MR. BOGLE: Well, like she said, I'm not Mr. Marrow.
8 he's under quarantine back in Columbia wearing a mask at
9 home I hope. What happened was he was here Monday. We
10 picked a jury. He wasn't feeling good yesterday. He went
11 to a doctor. The doctor said -- gave him a flu test and
12 said you got the flu. And he went home, called me. I met
13 him at an Exxon station about half way between the office
14 and the house. I put the file in back of my car, came back
15 to the office. Got my legal assistant and a bottle of lysol
16 to wipe the file down. And here we are today.

17 Now, Cam and I do cases around the state. I've been in
18 Dorchester County before. I think last November I was doing
19 a case just like this here. Primarily we have certain
20 counties assigned to us. And this is normally where Mr.
21 Morrow would be. But he's sick, so you got me. I do these
22 cases. Been doing them for the office for some time now.
23 And here's what we've got today. Like the Judge said, this
24 case is being brought under South Carolina Sexually Violent
25 Predator law. Back in 1998, the General Assembly passed

1 this law. And what they basically said was they found that
2 there is this group of people out there who have serious
3 issues and they call them sexually violent predators. And
4 they exist who require involuntary civil commitment in a
5 secure facility for what is called long-term control, care,
6 and treatment. They went on to say, the General Assembly
7 further finds the likelihood these sexually violent
8 predators will engage in repeated acts of sexual violence if
9 not treated for their mental conditions is significant. So
10 that's the law we have.

11 Now I know when told your friends you were coming to
12 serve on a jury, they thought you might hear a medical
13 practice case or a wreck case or see something like that.
14 That's not what this is. And I'll give you -- I'll tell you
15 in advance you'll be hearing from Dr. Marie Gehle. She was
16 appointed by the Court to evaluate this guy, Mr. Busch, and
17 to explain her diagnosis and the risk that he presents to
18 the committee if he's let go. She'll have to go into some
19 of the underlying details of the crimes he was committing.
20 So be prepared. You're going to hear some stuff that might
21 not be that fun to hear. But that's the way the case is;
22 that's the nature of the case. To justify her diagnosis,
23 she has to explain how she got there, and how she got there
24 means reviewing the underlying details of the crimes he has
25 committed.

1 Now, what do we have to prove to you? First, has
2 Christopher Busch been committed -- been convicted of a
3 sexually violent crime? There are 16 sexually violent
4 crimes listed in this law, and he's been convicted of three
5 of them. He's got five convictions you'll be hearing about;
6 one in Charleston County and four in Dorchester County right
7 here. They involve a lewd act on a child; they involve
8 sexual exploitation of a minor; and they involve assault
9 with intent to commit criminal sexual conduct on a child.
10 The victims are all very young. And because of that, when
11 Dr. Gehle is diagnosing, the next thing is the second thing
12 we have to prove. First, has he been convicted of the right
13 kind of crime? We've got five of those. The next thing is
14 does he have a mental abnormality or a personality disorder
15 or both that makes him likely to engage in these types of
16 crimes again unless he's confined in a secure facility for
17 long-term control, care, and treatment? And can he control
18 these deviant sexual urges to where he's safe to be at
19 large? And State submits that the evidence will show that
20 he cannot. He did it over and over again. These are very
21 young children. Dr. Gehle diagnosed him with something
22 called pedophilic disorder. In other words, he's a
23 pedophile. And what she'll explain is that means a person
24 who has a sexual attraction to under-puberty children.
25 That's where this guy is. That's what he's got. And the

1 repeated acts that he has done suggests that he can't
2 control this. And that's why we're trying to leave him in a
3 secure place where he can get the treatment that he needs.

4 Now, the burden of proof that we have to prove this
5 case to you -- and normally in civil Court, like a wreck
6 case or something like that -- it would be the preponderance
7 of the evidence. Think of a scale of justice tipping one
8 way or the other. No so here. When the legislature wrote
9 this law they said no, the State's got to prove it's case
10 beyond a reasonable doubt. And that makes sense. Because
11 Mr. Busch's liberty is at stake here. No question about
12 that. And the Judge will explain to you later on exactly
13 what beyond a reasonable doubt means. I'll leave that to
14 her. She'll tell you exactly what that burden of proof
15 means. In cases in court, normally witnesses can only
16 testify about things they see, things they hear, things they
17 smell. Like a witnesses says, I heard the gun go off. I
18 saw the light turn red at the intersection. Things like
19 that. They can't give opinions. But in special cases where
20 a witness has the training and the education and experience
21 to assist you the jury in making findings of fact that
22 person can be qualified as what is called an expert witness
23 by the Judge. And we would submit that in this case Dr.
24 Gehle who evaluated this guy will be testifying as an expert
25 witness and giving you her professional opinion as to

1 whether or not he has this mental abnormality, he can't
2 control it, and he needs to be committed to a secure place
3 for treatment. So that's what the case is about. And
4 that's what you'll be hearing today. The best thing you can
5 do is keep your common sense open, your life experiences,
6 whatever you have at home that got you here today, whatever
7 employment you have, your job, your family, your friends,
8 use your common sense. Listen to all of the testimony and
9 then reach a fair verdict. Your Honor.

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

11 MR. BOGLE: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. FALK: Ladies and gentlemen, my name is James Falk.
14 I'll give you a little explanation of how I got here today.
15 The South Carolina Commission for Indigent Defense hired me
16 to represent Mr. Busch here today. Because there's a
17 recognition that this is not just not any civil action. If
18 this were, for example, if this were an automobile case and
19 Mr. Busch was accused of being the at-fault driver in an
20 automobile case, he's not necessarily entitled to an
21 attorney. However, this is not an automobile case. He's
22 entitled to an attorney because the outcome or the
23 consequences of your decision today is going to have a
24 significant impact on where my client has got to sleep and
25 where my client is going to live for the foreseeable future.

1 Because you today will determine whether or not he will
2 remain in confinement or whether he's gonna be let go. As I
3 said, this is not a car wreck case. You're not going to be
4 worried about how much medical expenses somebody had or
5 whether or not the light was red or whether or not the light
6 was green when the car entered the intersection. You're
7 going to have to make a determination about whether or not
8 my client fits the legal definition of something that's
9 called a sexually violent predator.

10 As we go through the case, I want you -- and I'm going
11 to talk to you more in the closing, but I just want you to
12 keep a couple of things in mind. When the State presents
13 its case, I believe the State is going to want you to focus
14 on sort of how my client was 16 years ago. Because they're
15 going to want you to focus on his past criminal conduct.
16 And there's no question that my client has a criminal
17 record. Certainly, admit that today. He certainly has a
18 criminal record and there's no question that my client has
19 done some awful things in the past. And the State is going
20 to want you to focus on that because they're going to want
21 you to make -- they're going to want you to assume that,
22 well, if he did that, he's a sexually violent predator. I
23 just want you to make that connection. But that's not what
24 you're decision is going to be about. I think you're also
25 going to notice that the State is not going to want you to

1 consider what my client has done for the past 16 years;
2 where he has been for the past 16 years; what he might've
3 learned about himself and what he might've learned about how
4 he can control his behavior going forward over the past 16
5 years. Because my client has been in custody for the past
6 16 years. And that's the issue. It's not who my client
7 was, but who my client is today. The issue is whether or
8 not -- the issue is not going to be whether or not he has a
9 criminal past. But the issue is going to be whether or not
10 he fits a legal definition of something that's called a
11 sexually violent predator.

12 This is going to be a very short case. It's only going
13 to be two witnesses, but your decision is going to be
14 extremely important. That's why I am hopeful and I expect
15 that you all will listen carefully to the evidence. Try to
16 put your prejudice aside about the stuff because everyone is
17 going to have strong opinions about what he had done in the
18 past. You need to focus on who he is today and what's going
19 to happen tomorrow. Thank you.

20 THE COURT: Thank you, Mr. Falk. Call your first
21 witness, please, sir.

22 MR. BOGLE: Thank you, Your Honor. If it pleases the
23 Court, we call Dr. Marie E. Gehle.

24 (MARIE E. GEHLE, was duly sworn and provided the
25 following testimony.)

Direct Examination of Dr. Ghele by Mr. Bogle

1 THE COURT: Your witness.

2 MR. BOGLE: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. BOGLE:

5 Q. Good morning, Dr. Ghele.

6 A. Good morning.

7 Q. What is your current occupation?

8 A. I'm a clinical psychologist.

9 Q. And who do you work for?

10 A. I work for the South Carolina Department of Mental
11 Health.

12 Q. How long have you been employed by the Department of
13 Mental Health as a psychologist?

14 A. I've worked there since November of 2009.

15 Q. Okay. And what advanced degrees do you possess?
16 Educational degrees.

17 A. I have a bachelor's degree in psychology, a master's
18 degree in clinical psychology, and a doctorate in clinical
19 psychology.

20 Q. When we use the word psychology, just very briefly,
21 what is the study of psychology?

22 A. It's the study of the science of the behavior and mind,
23 how people think, how they act. Just like that.

24 Q. Okay. And if you hear me use the word forensic
25 psychology, those two words together, what am I talking

1 about when I say forensic psychology?

2 A. It's applying the science of psychology to questions
3 that the law may have or to do evaluations for the court
4 primarily. So we do things like evaluate whether somebody
5 is competent to stand trial, whether they're not guilty by
6 reason of insanity, and then we also do evaluations like
7 this, risk assessments for the court.

8 Q. Have you had any additional specialized training or
9 experience within the field of forensic psychology beyond
10 your doctorate degree?

11 A. Yes. I did a postdoctoral fellowship at East Central
12 Region Hospital, which is a state psychiatric hospital in
13 Augusta, Georgia. There I worked with people who were sent
14 by the court for treatment to often restore their competency
15 to stand trial, or whether they were not guilty by reason of
16 insanity, they would be sent to that hospital. And then I
17 also did evaluations to see whether they were competent to
18 stand trial and not guilty by reason of insanity.

19 Q. Do you have any memberships in professional
20 organizations related to the things you're telling us about?

21 A. Yes. I'm a member of the Association of Psychology and
22 Law Society, the Sex Offender Civil Commitment Program
23 Network, and the Augusta Area Psychological Association.

24 Q. Now, does your work have you conducting forensic
25 psychological evaluations of people?

Direct Examination of Dr. Ghele by Mr. Bogle

- 1 A. Yes.
- 2 Q. Okay. About how many sex offenders have you evaluated?
- 3 A. I have evaluated approximately 200 people under the
- 4 Sexually Violent Predator Act in South Carolina.
- 5 Q. That's the law we're talking about today?
- 6 A. Yes.
- 7 Q. Okay. What types of evaluations have you done under
- 8 that law?
- 9 A. I've done precommitment evaluations. So I determine
- 10 whether somebody meets the criteria to be civilly committed
- 11 as a sexually violent predator. And then I also do
- 12 evaluations of people who have been committed to the program
- 13 and determine whether they need to remain there.
- 14 Q. Okay. Have you ever testified for a respondent in a
- 15 sexually violent predator case?
- 16 A. Yes.
- 17 Q. Like when you determine he does not meet the criteria?
- 18 A. Yes. Many times. I'm a neutral party. I'm appointed
- 19 by the Court. So I testify on whichever side my opinion
- 20 helps.
- 21 Q. Okay. Now, have you previously been recognized as an
- 22 expert witness by the courts of South Carolina with regard
- 23 to sexually violent predator cases like the one we're here
- 24 about today?
- 25 A. Yes.

1 Q. About how many times?

2 A. I counted the other day. It was -- it's been 95 times.

3 Q. Okay.

4 MR. BOGLE: At this time, Your Honor, I would like to
5 move to have Dr. Marie E. Gehle recognized as an expert in
6 the field of forensic psychology.

7 THE COURT: Any voir dire?

8 MR. FALK: May I ask a couple of questions, Your Honor?

9 THE COURT: You may.

10 VOIR DIRE EXAMINATION

11 BY MR. FALK:

12 Q. Dr. Gehle, you're not in private practice. Is that
13 correct?

14 A. I do some private practice work, but it's all treatment
15 of child and adolescence and families.

16 Q. But you're employed by the South Carolina Department of
17 Mental Health. Is that correct?

18 A. That's correct.

19 Q. So you're employed by a state agency. Is that correct?

20 A. Yes.

21 Q. Okay. And are you familiar with the Association for
22 the Treatment of Sexual Abusers -- IATSO Association?

23 A. Yes.

24 Q. Are you a member of that?

25 A. No.

Direct Examination of Dr. Gehle by Mr. Bogle (Con't)

1 Q. Can you become board certified in the field of
2 psychology?

3 A. Yes.

4 Q. Are you board certified?

5 A. No.

6 MR. FALK: I have no further questions and will accept
7 her as an expert.

8 THE COURT: Very well. Ladies and gentlemen, I want to
9 mention to you what's just occurred. What has happened is
10 that Dr. Gehle has now been qualified as an expert in the
11 field of forensic psychology. What that means is unlike
12 most witnesses who are not allowed to testify regarding
13 opinions or the reasons for those opinions, she will be
14 allowed to testify regarding her opinions and the reasons
15 for those opinions within the area of her expertise which is
16 forensic psychology. Now, I want to tell you that when I
17 give you the including instruction, I'm going to give you an
18 instruction about experts. But for now, I want you to know
19 that expert testimony is given for the purpose of helping
20 you understand the evidence. And it certainly isn't given
21 for the purpose of controlling your judgment. And we'll
22 talk more about that in the including instruction. You may
23 proceed.

24 MR. BOGLE: Thank you, Your Honor.

25 DIRECT EXAMINATION (CONTINUING)

1 BY MR. BOGLE:

2 Q. Dr. Gehle, how did you become involved in this
3 particular case involving Christopher Busch?

4 A. I was ordered by the Court to do an evaluation of him.

5 Q. Okay. And what type of evaluation did you of
6 Mr. Busch?

7 A. It's what I call a precommitment evaluation. So it was
8 determined whether Mr. Busch has a mental abnormality or a
9 personality disorder that makes him likely to commit acts of
10 sexual violence if he's not confined to a secure facility.

11 Q. Could you tell the jury briefly what your protocol is,
12 your step-by-step method is, in doing these types of
13 evaluations?

14 A. Yes. When I receive an order, I do one of these
15 evaluations that is accompanied with a packet of
16 information. Largely, that's the petition that the Attorney
17 General's office files, which is what they say their case
18 is. I review all of those records, and I request additional
19 records if I find things that are missing. I then schedule
20 an interview and I interview the person and I sit down with
21 them for a long time and ask them all kinds of questions
22 about their background: where they were born and raised,
23 what kind of kid they were, what kind of trouble they got in
24 as a kid. I ask them about their educational history,
25 employment history, their mental health history, their

1 medical history, substance abuse history. I ask them very
2 detailed and personal questions about their sexual history.
3 I ask them all kinds of intrusive things about what they're
4 into sexually and what they find arousing. I ask questions
5 about convictions that they have especially for sexual
6 offenses. I try to get their side of the story. And then I
7 ask questions about what they're going to do if they are
8 released and whether they've had treatment and what they've
9 learned from treatment and how they're going to keep
10 themselves for doing this type of thing again. I take all
11 of that information and all the records and then I write a
12 report and I submit that to the Court.

13 Q. Now, as part of this process, did you -- you said you
14 did interview and meet with Mr. Busch?

15 A. Yes.

16 Q. Okay. About how long was that interview? Do you
17 recall?

18 A. I interviewed him for about three hours.

19 Q. Okay. Is they guy you interviewed present in the
20 courtroom today?

21 A. Yes.

22 Q. Just for the record, will you point him out, identify
23 him for the record.

24 A. He's sitting in the black shirt over there at the
25 table.

1 MR. BOGLE: Okay. Let the record reflect she
2 identified Mr. Busch.

3 Q. Now, did you explain the purpose of this evaluation to
4 him when you were starting out with him?

5 A. Yes. When I sit down with somebody to do this type of
6 interview, they often have a lot of questions or very little
7 information about what's happening. So I do a very detailed
8 explanation of what's going on, exactly what my job is, and
9 how the law often precedes. So what can happen after my
10 evaluation with them. And then I ask them to willingly talk
11 to me.

12 Q. And do they sign a consent form agreeing to talk to you
13 and be interviewed?

14 A. Yes.

15 Q. Okay. And that happened here?

16 A. Yes.

17 Q. Now, in addition to meeting with and interviewing the
18 guy, you mentioned receiving a packet of information. Could
19 you basically summarize -- and I think it's on pages two and
20 three of your report -- summarize the type of documentary
21 information you received about Mr. Busch.

22 A. Well, I looked at court documents that were filed
23 pursuant to the Sexually Violent Predator Act. I looked at
24 investigative and court documents that were related to
25 sexual offenses. I looked at his national criminal history

1 report. I looked at SCDC or the South Carolina Department
2 of Corrections records. And I also looked at military
3 records.

4 Q. Is this the type of documentary information that is
5 typically and reasonably relied upon by experts in your
6 field?

7 A. Yes.

8 Q. And did you consider and rely upon that information
9 together with the interview of Mr. Busch and whatever
10 testing you did in reaching an opinion about him in this
11 case?

12 A. Yes.

13 Q. Can you explain to the jury how a person's past sexual
14 offense behavior relates to future sexual offense behavior?

15 A. Well, having past sexual offenses is a predictive
16 factor for future sexual offenses. So that's one way to
17 look at it. It's also important to look at, like, what kind
18 of things the person did, what they're sexually aroused by.
19 Because that's indicative of with they're going to do in the
20 future.

21 Q. Now, in this particular case based on -- well, going
22 back to the collection of records. Are you satisfied you
23 got enough documents, enough background information on him,
24 both the criminal records, the Department of Corrections
25 records, to do your job?

1 A. Yes.

2 Q. Okay. In this case, in your review of his file,
3 talking to him and everything, did you find whether or not
4 he had been convicted of sexually violent offenses as
5 defined in our law?

6 A. Yes.

7 Q. How many offenses was he convicted of that appeared to
8 be sexual in nature?

9 A. By my count -- let me make sure I'm on the right page
10 here. By my count, he was charged with eight sexual
11 offenses and convicted of six.

12 Q. Okay. And the first one there was indecent -- public
13 indecency in Georgia?

14 A. Yes.

15 MR. FALK: Objection, Your Honor.

16 Q. What ---

17 THE COURT: One second.

18 MR. BOGLE: I'm sorry.

19 THE COURT: Objection?

20 MR. FALK: To the relevancy of this particular charge
21 right here. We can speak at the bench.

22 THE COURT: Okay.

23 (A bench conference was held off the record and out of
24 the hearing of the jury.)

25 THE COURT: I'm going to ask you to step to your jury

1 room, and you can have a little break. Do not discuss this
2 matter now or allow anyone to discuss it with you. There is
3 a matter that I need to hear outside of your presence.
4 Please step to your jury room.

5 (The jury exits the courtroom at 11:13 a.m.)

6 MR. BOGLE: If the Court pleases, why don't I do a dry
7 run basically where I'm coming from here on this.

8 THE COURT: Yeah. Perfect.

9 MR. BOGLE: Okay.

10 (Examination of the witness continues outside the
11 presence of the jury.)

12 IN-CAMERA DIRECT EXAMINATION

13 BY MR. BOGLE:

14 Q. Dr. Gehle, I was approaching a minute ago. If I hand
15 you what's been certified by the Georgia courts, what is
16 this a copy of?

17 A. This is a copy of a charge for public indecency. And
18 it's a plea of guilty for public indecency.

19 Q. Okay. And when did this plea and this sentence happen?
20 How long ago?

21 A. It happened in -- the offense happened on February 18,
22 1990. And the conviction happened in May, May 3rd of 1990.

23 Q. Now, Dr. Gehle, is a crime like this a sexually violent
24 crime under South Carolina law?

25 A. No.

1 Q. Okay. Was it important to you in developing your
2 opinion about Mr. Busch to look at a crime like this?

3 A. Yes.

4 Q. Why is that?

5 A. Well, it's important for a couple of different reasons.
6 One, it's an indecent exposure, which could be relevant to
7 the diagnosis of exhibitionistic disorder which is a
8 paraphilic disorder?

9 Q. Was that one of diagnoses you got on Mr. Busch?

10 A. Yes.

11 Q. Because you have him diagnosed with pedophilic disorder
12 and exhibitionistic disorder. Is that correct?

13 A. Yes. It's also important because this is the first
14 known sexual offense that he committed. And it's always
15 important to look at whether somebody, after they've been
16 caught one time, whether they went on to commit other sexual
17 offenses. I also found that important because I talked to
18 him about it in the interview and I got an account from him
19 which was relevant.

20 Q. Okay. What did he say about it in the interview?

21 A. Well, he said that he had stopped at a rest stop in
22 Georgia on his way driving to Florida. He said he had been
23 drinking and that he undressed in the car completely, and
24 got in the back seat and covered up and was taking a nap.
25 And that he must have accidentally exposed himself to the

1 police. He said that the cover came off. He didn't have an
2 explanation as to why he undressed in February to take a nap
3 in his car.

4 Q. What did you find relevant about this particular
5 conviction and the overall picture regarding Mr. Busch?

6 A. Again, it's the first incident of indecent exposure.
7 So it's the first marker of the presence of arousal to
8 exposing himself. And it was in a public setting. And, you
9 know, it was early in relation to the other offenses.

10 Q. And an eventual diagnosis you got was exhibitionistic
11 disorder and that relates to this type of crime. Is that
12 correct?

13 A. That's correct.

14 MR. BOGLE: Please answer questions counsel or the
15 Judge may have.

16 THE COURT: Go ahead.

17 IN-CAMERA CROSS-EXAMINATION

18 BY MR. FALK:

19 Q. He did provide you an explanation of why he took his
20 clothes off. Is that not correct?

21 A. Excuse me?

22 Q. He did provide you an explanation as to why he took his
23 clothes off. Is that not correct?

24 A. I don't believe that he did. But let me look.

25 Q. If I could look at the last sentence on . . .

1 A. Oh, you're right. I'm sorry. He said he had been
2 drinking a lot of hard liquor that night and he was sweating
3 really bad.

4 Q. Okay. Is there any indication that he was
5 intentionally trying to expose himself to anyone?

6 A. Whether it was intentional or not, I don't have those
7 records or the -- I don't have an investigative report to
8 determine, you know, the specific nature of where he exposed
9 himself or to whom he exposed himself. I just have the name
10 of the charge which is related to indecent exposure.

11 Q. And crimes of exposure is when somebody specific -- I
12 mean, isn't it common or is it what you're looking for
13 whether or not somebody purposely exposed themselves to
14 another person? Isn't that the essence of an indecent
15 exposure as far as being a sexual crime?

16 A. Yes. It's related to that, yes.

17 Q. Because, certainly, if somebody happen to be walking
18 through the front of their house and didn't realize that the
19 curtains were open and they got out of the shower and they
20 were naked and people could see them, that's not necessarily
21 indecent exposure unless he knew people could see him? Is
22 that not correct?

23 A. It is indecent exposure if the Court decides that it's
24 indecent exposure.

25 Q. Well, the Court didn't decide it was indecent exposure.

1 My client pled to a charge. He got four days time served
2 and was out the door.

3 A. They did decide it was indecent exposure because that
4 was the name of the charge: public indecency, indecent
5 exposure.

6 Q. Well, he was charged by a police officer. So a police
7 officer may have thought it was indecent exposure. My
8 client pled guilty, but there was no . . .

9 A. Yeah. So that would mean admitted to that --

10 Q. No jury made -- not jury made a determination that it
11 was indecent exposure.

12 A. No. He pled guilty to it.

13 Q. Right. And he had an explanation. He gave you an
14 explanation that he was drunk, intoxicated, and he was
15 sweating and he was sleeping in the backseat of his car.

16 A. Yes.

17 Q. And there's nothing from that explanation which would
18 say that he wanted people to look at him. Is that not
19 correct?

20 A. Well, I mean, he is in a public place and he decides
21 to, you know, undress but still need a cover. So I don't
22 think that that was necessarily good judgment and it could
23 mean that he was, you know, hoping someone would see him.

24 Q. It could mean, but you can't say with any degree of
25 medical certainty or psychological certainty that's what his

1 intended -- the intended consequences were. It's not like
2 walking through the park and opening up his raincoat.

3 A. I don't know that. It could be what he did.

4 MR. FALK: Your Honor, I have no further questions. I
5 would like to make sure my objection is on the record as to
6 the grounds.

7 THE COURT: Go ahead.

8 MR. FALK: Again, I can appreciate the latitude, and I
9 believe it's 704 as to the type of evidence that an expert
10 is allowed to discuss as forming a basis of their opinion.
11 However, I do think that this court still, and whether or
12 not it's relevant, her definition of relevance is certainly
13 going to be broader than the definition of relevance that I
14 think the Court would recognize as far as the legal
15 relevance. And I think you're the only judge of that as
16 being the gatekeeper. And you have to determine whether or
17 not it is more probative than prejudicial. I believe under
18 these facts -- I believe while I don't think it is highly
19 probative because there's nothing to show what his
20 motivation was. It could have been the fact that he was
21 drunk and sweating and got into the backseat of his car,
22 covered up, and for whatever reason, the police found him
23 there. It's not the same type of indecent exposure as would
24 be, as I made the example, walking through the park and
25 opening up your raincoat. However, there's plenty of other

1 evidence in here. I don't think this particular charge is
2 that important, and I do think it's highly prejudicial
3 because the Court is going to allow the jury to think this
4 is another charge of indecent exposure when there's really
5 no indication that there was any sexual motivation behind
6 it.

7 THE COURT: Let me ask you this question: What about
8 the testimony regarding that this is an early indicator of
9 exhibitionism, which I gather Dr. Gehle is going to talk
10 about? I gather she's going to talk about that as being a
11 personality disorder that contributes to her ultimate
12 opinion. I would suspect or none of it would be relevant in
13 that that is an opinion that she's going to give in addition
14 with pedophilia. And I gather she's going to link up in her
15 expert opinion why the exhibitionism is relevant to that.

16 MR. FALK: She's indicating it could be. And she
17 certainly said she couldn't say with any degree of
18 psychological certainty that it was. And, certainly, I
19 think if I could ask further?

20 THE COURT: Go ahead. Go ahead. Ask further.

21 BY MR. FALK: (continuing)

22 Q. If the facts were that he walked through the park and
23 opened up his raincoat, would you believe that he was
24 intending to expose himself?

25 A. Most likely.

1 Q. And you would be highly certain that that was his
2 intended consequences of that act?

3 A. He was naked underneath.

4 Q. That's, of course, what I meant. That's what I'm
5 talking about. Opening up his raincoat, naked under the --
6 the typical flasher kind of thing. You would be quite sure
7 that that was the intended consequence would be to expose
8 himself to other people?

9 A. Yes.

10 Q. Can you say with that same degree of certainty that
11 that was his intended consequences of the facts as you know
12 them, the limited facts that you know them in this case?

13 A. No, I don't think so.

14 MR. FALK: Your Honor, because she has less certainty
15 on that and because this is not just any other charge,
16 because the connection that they jury could draw, I think
17 it's more prejudicial than probative.

18 THE COURT: Yes, sir. Mr. Bogle, any redirect?

19 MR. BOGLE: Your Honor, we've got what we've got with
20 these records and these records --

21 IN-CAMERA REDIRECT EXAMINATION

22 BY MR. BOGLE:

23 Q. Dr. Gehle, you mentioned this is an early sexual type
24 conviction; right?

25 A. Yes.

1 Q. And the crime he pled guilty was public indecency?

2 A. Yes. Indecent exposure; it said both on the ---

3 Q. Right. Right. Says both things on here.

4 A. Yes.

5 Q. And it involved the exposure -- it's says lewd exposure
6 of his sexual organ.

7 A. Yes.

8 Q. Okay. Now, you mentioned earlier he did this crime.
9 When people get arrested for a crime and put in jail, what
10 kind of message is that sending to them?

11 A. Well, is should send to them that, you know, you've
12 broken the law. There are consequences. This is not a good
13 behavior to engage in and change your ways.

14 Q. Okay. And yet in this guy's case, we have him breaking
15 the law and going to jail again for offenses in 1996 and
16 2003. Five more offenses in South Carolina all of which are
17 sexually violent; correct?

18 A. Yes.

19 Q. So that suggests that he didn't learn his lesson for
20 whatever happened in Georgia?

21 A. Right.

22 Q. Now whether or not he was intending, what his intent
23 was, what he told you, the bottom line is these records show
24 that he was convicted of public indecency for lewdly
25 exposing his sexual organ?

1 A. That's correct.

2 Q. That's what he pleaded guilty to?

3 A. That's correct.

4 Q. Okay. And that's what his conviction was for?

5 A. Yes.

6 Q. Now one of your diagnoses is exhibitionistic disorder.

7 What are the criteria for that?

8 A. For exhibitionistic disorder?

9 Q. Uh-huh.

10 A. It's over a period of at least six months, recurrent

11 and intense sexual arousal from the exposure of one's

12 genitals to an unsuspecting person as manifested by

13 fantasies, urges, or behaviors. The individual has acted on

14 these sexual urges with a nonconsenting person or the sexual

15 urges or fantasies cause clinically significant distress or

16 impairment in social, occupational, or other important areas

17 of functioning.

18 Q. Okay. And that's from the Diagnostic and Statistical

19 Manual, addition five; correct?

20 A. That's correct.

21 Q. Okay. Now, is this 1990 public indecency in the State

22 of Georgia, is that the first sign of that diagnosis you're

23 staring to see?

24 A. Yes. It's clearly a behavior of that type.

25 Q. Okay. And did you later see enough evidence of that to

- 1 meet the criteria you just described?
- 2 A. Yes.
- 3 Q. And that's based on the other crimes he's convicted of
- 4 here in South Carolina; correct?
- 5 A. Yes. And his self-report.
- 6 Q. And his self-report?
- 7 A. Yes.
- 8 Q. And he told you?
- 9 A. Yes.
- 10 Q. Okay. So this 1990 conviction is the beginning if you
- 11 will?
- 12 A. Yes.
- 13 Q. And there's no question that it's called public
- 14 indecency and there's no question that he lewdly exposed his
- 15 organ? That what it says here?
- 16 A. That's correct.
- 17 Q. Okay.
- 18 MR. BOGLE: Your Honor, we would submit ---
- 19 THE COURT: I understand. Yeah.
- 20 MR. BOGLE: The relevancy is there. It's part of her
- 21 diagnosis. They can give whatever weight they want to to
- 22 it. The fact that we don't have any more details than we do
- 23 is just a fact of life.
- 24 MR. FALK: One more point.
- 25 THE COURT: Yeah.

1 IN-CAMERA RECROSS-EXAMINATION

2 BY MR. FALK:

3 Q. Dr. Gehle, what evidence do you have that there was
4 arousal?

5 A. Excuse me?

6 Q. What evidence do you have in any of the facts, whatever
7 reports you have about this incident in Georgia, that he was
8 aroused?

9 A. I have no evidence that he was aroused.

10 Q. Do you have evidence of arousal on some of the other
11 indications. Is that not correct? Some of the other ---

12 A. Yes.

13 Q. So as far as fitting a pattern, he's in a -- he's not
14 out in public. He's inside the backseat -- he's in the
15 backseat of his car and he's not aroused. You don't have
16 any evidence that he's aroused?17 A. I don't know if any of that's true. I mean, he told me
18 many lies during the evaluation. He mischaracterized
19 offenses. I mean, the ones that I had the facts on. So I'm
20 not sure that's actually what happened. I don't if his
21 account is accurate.

22 Q. And you have no police officer account?

23 A. It is minimal. It says that he exposed his, you know,
24 genitals.

25 MR. FALK: Nothing further, Your Honor.

1 THE COURT: Very well. I'm going to overrule the
2 objection. And I believe that it does have relevance. Just
3 to reiterate what is relevance. Relevance is testimony
4 which tends to contribute to the establishment of that which
5 is of consequence to the litigation. And based upon what I
6 have heard, I do believe that this evidence does that.

7 MR. BOGLE: Thank you, Your Honor.

8 THE COURT: Based upon what I've heard. Now, I think
9 it's appropriate for cross-examination, clearly. But I do
10 believe that it is relevant. And I do not believe that the
11 probative value outweighs -- I mean, that the prejudicial
12 effect outweighs the probative value. One of the
13 difficulties in this particular kind of case is that all of
14 the evidence is prejudicial. It's tough. But the question
15 is whether or not this evidence is relevant to the -- to
16 the State's version which is to establish that the
17 Respondent has a mental abnormality which would tend to make
18 him likely to reoffend. And I believe that -- I believe
19 that it is relevant on that issue. So, respectively, I
20 overrule the objection.

21 MR. FALK: On a new matter, before the jury comes back
22 in -- and I've talked to Mr. Morrow about this which is why
23 I did not raise them in a pretrial.

24 THE COURT: Sure.

25 MR. FALK: He has some driving offenses, some DUIs.

1 And Mr. Morrow had told me he was not interested in bringing
2 those in. He was only focusing on the Georgia offense. And
3 I don't know if that's still the point, but maybe we can
4 discuss that.

5 THE COURT: Sure. Just so you know, driving offenses,
6 you don't care about driving offenses, DUI?

7 MR. BOGLE: No.

8 THE COURT: Got it.

9 MR. FALK: Okay.

10 THE COURT: Okay. Yes? Cool? Cool? Very well.
11 Let's have the jury please.

12 (The jury enters the courtroom at 11:31 a.m.)

13 THE COURT: All right. You may proceed as soon as the
14 jury is seated.

15 MR. BOGLE: Thank you, Your Honor.

16 THE COURT: Yes.

17 (Examination of the witness continues in the presence
18 of the jury.)

19 DIRECT EXAMINATION (RESUMING)

20 BY MR. BOGLE:

21 Q. Dr. Gehle, let's back up a little bit. I think the
22 question I started out with was based upon your interview
23 with Christopher Busch, you're looking at all of the records
24 that were provided to you that you got, had him convicted of
25 the offenses that were sexual in nature, and you said the

1 first one was this public indecency in the State of Georgia?

2 A. Yes.

3 Q. Okay. That occurred in -- what year did that occur in?

4 A. 1990.

5 Q. Okay. What was the next sexual offense? Just going
6 down the list. We'll go into detail later on. Just going
7 down the list of the sexual offenses, what was the next one
8 after that?

9 A. The next one was lewd act upon a child in Charleston
10 County, South Carolina in 1996.

11 Q. Okay. And then after that?

12 A. Then he was charged in 2003 with assault with intent to
13 commit criminal sexual conduct in the first degree, sexual
14 exploitation of a minor, at least two counts of lewd act
15 upon a child. And those were all in South Carolina.

16 Q. Okay. And that last group, the first one you said in
17 1996 was a lewd act in Charleston County.

18 A. That's correct.

19 Q. The other crimes after that, sexual exploitation, the
20 assault with intent to commit criminal sexual conduct, and
21 the two lewd acts, were they here in Dorchester County?

22 A. Yes, they were.

23 Q. Okay. Now why is it important for you to look at the
24 underlying details and the facts of each individual offense
25 in cases like this?

1 A. Well, I have to look at those things because I need to
2 see who the person -- who Mr. Busch offended, under what
3 circumstances he offended, were they -- like, what was the
4 age of victims? Were they children? Were they adults?
5 Were they males? Were they females? And how much force was
6 used? Things of that nature so I can make a determination
7 as to whether he has a mental abnormality related to sexual
8 offending. I also have to look at those things in order to
9 score an actuarial risk assessment.

10 Q. Okay. Well, let's start with the first one. I hand
11 you this certified copy from Georgia and ask you what that's
12 a copy of?

13 A. Okay. This is a copy a charge for public indecency and
14 a conviction of public indecency. He pled to that. He pled
15 guilty to that.

16 Q. About when did this conviction happen? This guilty
17 plea?

18 A. He pled guilty on May 3, 1990.

19 Q. Now these documents you looked at in the course of
20 investigation?

21 A. Yes.

22 Q. Are these the type of things that are typically and
23 reasonably relied upon by experts in your field?

24 A. Yes.

25 Q. Now, public indecency in the State of Georgia, what he

1 did, is this a sexually violent crime here?

2 A. No.

3 Q. Okay. Why was it important to look at this particular
4 crime in the State of Georgia so long ago?

5 A. Well, it's important because I have to look at all the
6 sexual offenses to see what sort of behaviors he has been
7 accused of. And that's for a couple of different reasons.
8 I want to see if there's a pattern of behaviors that would
9 lead to a diagnosis of a mental illness that's related to
10 those behaviors. It's also important to score an actuarial
11 risk assessment which tells me if he's likely to commit
12 these types of offenses in the future. This is the first
13 offense that we know that he's committed. It's a sexual
14 offense. It's is indecent exposure. So it's exposure of
15 his private parts to people. And so that's important
16 because I want to see if he has a pattern of that type of
17 behavior.

18 Q. Now, looking down the road, and I'll get to this at the
19 end of your testimony, what were the two mental
20 abnormalities you had diagnosed this guy with?

21 A. I diagnosed him with pedophilic disorder and
22 exhibitionistic disorder.

23 Q. Is a crime like public indecency, exposing his sexual
24 organ, is that related to exhibitionistic disorder?

25 A. Yes.

1 Q. Okay. What did you find out about this particular
2 crime based on what you saw in the report and what he told
3 you that you found important?

4 A. Well, he was convicted of the offense. He pled guilty
5 to it, so he admitted to engaging in that behavior. When I
6 asked him about that, he said that he had stopped at a rest
7 area in Georgia on his drive to Florida. He said that he
8 had been drinking a lot of hard alcohol and that he was
9 sweating really badly. And that he undressed completely,
10 covered up, and was taking a nap in his car. He said that
11 he -- the cover must have come off and he was accidentally
12 exposing himself to a police officer.

13 Q. Based on your interview with him on this and the other
14 things we talked about to him as well, did you find this
15 response had any credibility?

16 A. Well, it's unclear if it's true. Because I don't have
17 a police report on it. I have the conviction documents, but
18 that was all I that I had to go on. So I don't have a
19 description of the offense other than that it happened in
20 Chatham County, Georgia. It occurred on February 18, 1990.
21 And that he committed an act of public indecency in a public
22 place by a lewd exposure of a sexual organ. There are a
23 couple of witnesses from the state. And one of them is with
24 the police department and two of them are with the Georgia
25 Visitor Center in Port Wentworth, Georgia.

1 Q. Okay. Okay. Now, let me take this back. Next you
2 mention the list a minute ago, a 1996 lewd act conviction in
3 Charleston County.

4 A. That's correct.

5 Q. Okay. I'd like to hand you these documents here and
6 ask you if you identify what these are.

7 A. This is a sentence sheet for a lewd act upon a child in
8 Charleston County. And an indictment for a lewd act upon a
9 child that occurred in Charleston County. It's related to
10 the sentencing sheet. And it's for an offense that occurred
11 between November 1995 and January 1996, and it involved a
12 victim whose initials are WH.

13 Q. Okay. And is a lewd act on a child a sexually violent
14 crime under the South Carolina law?

15 A. Yes, it is.

16 Q. Okay. In this particular -- for this particular crime,
17 did you review the documents related to this, the police
18 reports and things like that, as part of your investigation?

19 A. Yes.

20 Q. And are these the type of things typically relied upon
21 by experts in your field?

22 A. Yes.

23 MR. BOGLE: Okay. At this time, Your Honor, I'd like
24 to introduce in evidence as State's Exhibit 1, the certified
25 copy from Charleston County of the lewd act conviction on

1 March 18, 2004. The 1996 indictment number.

2 THE COURT: Very well.

3 MR. FALK: Without objection other than what we spoke
4 about in pretrial.

5 THE COURT: All right. Very well.

6 MR. BOGLE: That would be State's 1.

7 (State's Exhibit No. 1, 1996 Indictment, was received
8 into evidence.)

9 BY MR. BOGLE: (continuing)

10 Q. Now, Dr. Gehle, looking at the sentencing sheet right
11 here, what sentence did the judge give? What were the date
12 of the conviction down at the bottom?

13 A. I believe it's March 18, 2004.

14 Q. Okay. And what sentence did the judge give him for
15 this crime?

16 A. He was sentenced to 15 years of incarceration.

17 Q. Okay. Now, in this particular case, describe for the
18 jury the underlying details behind this crime. Did you find
19 significant in developing a diagnosis about Mr. Busch?

20 A. Okay. This offense involved a ten-year-old girl. Call
21 her by her initials which are WG. The girl was staying with
22 her father at Mr. Busch's house. And I guess she went to
23 his house for weekend visits with her father who was living
24 with Mr. Busch at the time. Mr. Busch took off his clothes
25 and sat next to the ten-year-old girl several times. And he

1 took her hand and placed it on his penis and forced her to
2 stoke his penis on multiple occasions. And this happened
3 over the course of three months. It was also noted that he
4 failed court dates related to that charge. And so he was
5 not convicted until later, or he was not convicted of that
6 charge until later.

7 Q. Okay. Now, I'd like to -- did you interview him about
8 this?

9 A. Yes.

10 Q. Okay. What did he say about this particular crime?

11 A. Well, he said that he only exposed his penis to her.
12 He said he had been drinking. He said that he drove her
13 somewhere and exposed his penis to her. He said that he was
14 sexually aroused. He said that he did this without
15 thinking. He said he didn't plan it meaning he acted on
16 impulse.

17 Q. Okay. And how old was the little girl in this
18 particular case?

19 A. Ten.

20 Q. She was ten. Okay. Now, I'd like to approach you
21 right now and hand you a copy of this next document. Can
22 you tell us what this is?

23 A. This is a sentence sheet for assault with intent to
24 commit criminal sexual conduct with a minor in the first
25 degree. And it is the associated indictment for assault

1 with intent to commit criminal sexual conduct with a minor
2 in the first degree. And this involves the offense of the
3 victim whose initials are AH. And the offenses occurred on
4 or between March 15, 2003, and March 16, 2003.

5 Q. Okay. And is assault with intent to commit criminal
6 sexual conduct on a minor in the first degree, is that
7 classified as a sexually violent crime under the South
8 Carolina law?

9 A. Yes, it is.

10 Q. Okay. What was the sentencing date on this one? Far
11 right-hand corner.

12 A. March 18, 2004.

13 Q. And this was in what county?

14 A. This was in Dorchester County.

15 Q. And the sentence he got for the crime?

16 A. Fifteen years of incarceration.

17 Q. Okay.

18 MR. BOGLE: And move to introduce into evidence as
19 State's Exhibit 2 the 2003 indictment, 2003-GS-18-634, for
20 assault with intent to commit criminal sexual conduct with a
21 minor in the first degree here in Dorchester County.

22 THE COURT: Subject to the earlier ruling, any
23 objection?

24 MR. FALK: No objection.

25 THE COURT: Very well.

Direct Examination of Dr. Gehle by Mr. Bogle (Con't)

1 (State's Exhibit No. 2, 2003 Indictment, was received
2 into evidence.)

3 BY MR. BOGLE: (continuing)

4 Q. Okay. Same questions as last time. Did you review
5 these documents and the underlying police reports as part of
6 your investigation?

7 A. Yes, I did.

8 Q. And are these the kinds of things typically and
9 reasonably relied upon by experts in your field?

10 A. Yes, they are.

11 Q. Okay. What are the underlying facts of this case that
12 you found significant in developing an opinion about Mr.
13 Busch?

14 A. Well, this involved a nine-year-old girl. The girl was
15 in the care of Mr. Busch along with a friend of hers. He
16 grabbed this little girl, kissed her on the chest or breast
17 area. He told her that these were sunshine kisses. He put
18 his hands in her pants, in her underpants. He rubbed her
19 buttocks and then he rubbed her vagina.

20 Q. Was this girl related in any way by blood or marriage
21 to Mr. Busch?

22 A. No, not that I can find.

23 Q. Okay. And when you interview him -- how old was she
24 again?

25 A. She was nine.

1 Q. Okay. When you interviewed him, what did he say about
2 this crime?

3 A. Well, he said a lot of things. And there are more
4 offenses involving this victim. But I can tell you what he
5 said.

6 Q. Okay.

7 A. So he also was charged with sexual offenses involving
8 another nine-year-old girl at the same time with this. And
9 all that stuff was intertwined. So he said that he kissed
10 both girls on their chest, on their breast area. He said he
11 exposed his penis to the girls while they were naked in the
12 bathtub together. He said he got sexually aroused. He said
13 that the girls were dancing around and asked him to take
14 pictures of them. He said he took nude pictures of two
15 nine-year-old girls. He said he was sexually attracted to
16 the nine-year-old girl, AH. The one I just talked about
17 that offense. He said that AH had flirted with him, kissed
18 him on the cheek, flashed her eyes at him, and he took this
19 to mean that it was okay for him to make sexual moves on her
20 and that she wanted him to do that.

21 Q. And this AH girl was how old?

22 A. She was nine. He also said that he didn't plan the
23 offenses. He acted without thinking and, essentially, he
24 was acting on impulse.

25 Q. Okay. Now, Doctor, he pleaded guilty to these

1 offenses. Is that correct?

2 A. That's correct.

3 Q. Okay. I'd like to show you another set of documents
4 and ask you to tell us what these are.

5 A. This is sentence sheet for sexual exploitation of a
6 minor in the first degree. And it's the associated
7 indictment for sexual exploitation of a minor in the first
8 degree for an offense involving a minor who is not named.
9 And it occurred on or between March 15, 2003, and March 16,
10 2003. Let me double check and make sure her name is not on
11 it.

12 Q. Now, this particular crime, sexual exploitation of a
13 minor in the first degree, is that on the list of sexually
14 violent crimes by law?

15 A. Yes, it is.

16 Q. Okay. And is this a document you reviewed as part of
17 your investigation along with the underlying police reports?

18 A. Yes.

19 MR. BOGLE: Your Honor, at this time, we'd like to move
20 to introduce State's Exhibit Number 3, Dorchester County
21 indictment 2003-GS-18-635 for sexual exploitation of a minor
22 in the first degree, sentencing date of March 18 of '04?

23 THE COURT: Subject to the earlier ruling?

24 MR. FALK: No objection.

25 THE COURT: Very well.

1 (State's Exhibit No. 3, 2003 Indictment, was received
2 into evidence.)

3 BY MR. BOGLE: (continuing)

4 Q. Now, Dr. Gehle, you've reviewed the documents relating
5 to this conviction as part of your investigation. Is that
6 right?

7 A. That's correct.

8 Q. And you interviewed him about it? Mr. Busch about it
9 as well?

10 A. Yes.

11 Q. Okay. And this is something typically and reasonably
12 relied upon the reviewing of such documents by experts in
13 your field. Is that correct?

14 A. Yes.

15 Q. What underlying details -- and I don't know if we're
16 mixing up the same girls and all. Let me know. But what
17 underlying details are you finding about this particular
18 crime that you found significant?

19 A. Well, this involved two nine-year-old girls together
20 and they were forced to engage in sexual acts with each
21 other. And he took pictures of them while they were doing
22 sexual things to each other.

23 Q. And this is two nine-year-old girls that are not
24 related to him?

25 A. That's correct?

Direct Examination of Dr. Gehle by Mr. Bogle (Con't)

1 Q. Okay. How did he happen to be in their company?

2 A. I understand that his dad was staying with them, I
3 believe. I think that's what he told me. But let me double
4 check. I know that the legal documents said that they were
5 in his care.

6 Q. Okay.

7 A. I don't think I have it in my report exactly why they
8 were in his care.

9 Q. Okay. Now the taking of photographs of these girls
10 performing sexual acts, is that the crime of sexual
11 exploitation under our law?

12 A. Yes.

13 Q. Okay. And what did he say about this to you that you
14 found significant?

15 A. Well, he said that he did take pictures of them nude. I
16 believe that he denied that he had them do anything, you
17 know, that he had them engage in sexual acts with each
18 other. He said that they were the two girls, AH and TD,
19 they were dancing around and the girl AH said that she
20 wanted --

21 MR. FALK: Objection, Your Honor.

22 MR. BOGLE: I think she can --

23 Q. Based upon your review of what you read, what
24 conclusion did you draw from what happened with these girls?

25 A. Well, he pled guilty to having these two girls -- into

1 forcing them to engage in sexual acts with each other while
2 he photographed it. That's what he pled guilty to.

3 Q. Okay. And the girls were nine years old?

4 A. That's correct.

5 Q. Okay. What did he say about the conduct of these
6 girls? The way he perceived them acting towards him? Did
7 he say anything like that?

8 A. Well, he indicated that it was their idea that he take
9 pictures of them.

10 Q. Okay.

11 A. And he indicated that at least AH was flirtatious with
12 him and that she kissed him on the cheek. She batted her
13 eyes at him and that he took this as, I guess, it was okay
14 for him to make sexual advances towards her. He took that
15 as her inviting that.

16 Q. Now, he would've been about 31 years old or 30 years
17 old when this all happened; right? I've got a date of birth
18 in 1963 on the sentencing sheet.

19 A. Yes. You're making me do math here. Yes, I believe
20 that's true.

21 Q. All right. And the crimes happened in '03, 2003.

22 A. Yes, that's correct.

23 Q. So he's about 30-something years old?

24 A. That's correct.

25 Q. You got a 30-something-year-old man saying that

1 nine-year-old girls are coming on to him. Is that what I'm
2 hearing here?

3 A. Yes.

4 Q. Okay. And is that credible to you?

5 A. No. And even if they were, it's still not okay to act
6 on that. But, no, I wouldn't think that that would be
7 credible.

8 Q. Okay. Was that the excuse he seemed to be giving you?

9 A. Yes.

10 Q. Okay. I'd like to hand you another copy of some
11 documents and ask you if you can tell us what these are.

12 A. This is a sentence sheet for a lewd act upon a child
13 and the associated indictment for lewd act on a child for
14 offenses that involve AH on or between March 15, 2003, and
15 March 16, 2003.

16 Q. Okay. And on this particular sentencing sheet, was it
17 also a sentence handed down in Dorchester County?

18 A. That's correct.

19 Q. And the date of sentencing would've been about when?

20 A. March 18, 2004.

21 Q. And much time did he get?

22 A. We was sentenced to 15 years in prison.

23 Q. Okay.

24 MR. BOGLE: Now, move to introduce into --

25 Q. Is lewd act upon a child a sexually violent crime under

1 our act?

2 A. Yes, it is.

3 MR. BOGLE: Okay. Move to introduce this as State's
4 Exhibit Number 4, Your Honor.

5 THE COURT: Subject to the prior?

6 MR. FALK: No objection.

7 THE COURT: All right. Very well.

8 (State's Exhibit No. 4, 2003 Indictment, was received
9 into evidence.)

10 BY MR. BOGLE: (continuing)

11 Q. And again, Doctor, have you seen these documents and
12 the related police reports, victim statements, things like
13 that, relating to them?

14 A. Yes.

15 Q. And are these the type of documents typically relied
16 upon by experts in your field?

17 A. Yes, they are.

18 Q. What are the underlying details of this crime that you
19 found significant that you can tell this jury about?

20 A. Again, this involved a nine-year-old victim, fondled
21 her chest, kissed her chest, her breast area. He told her
22 that these were sunshine kisses. He did this while she was
23 sitting on his lap. He stood naked in front of this victim
24 and exposed his penis to her. And then he took nude
25 photographs of her.

1 Q. Okay. Was this the same girl that was involved in the
2 sexual exploitation we talked about earlier?

3 A. Yes. This was AH.

4 Q. AH; okay. Okay. And his response you about these sort
5 of things?

6 A. He admitted that he kissed both of the girls on the
7 chest. He said that he exposed his penis to the girls while
8 they were naked in the bathtub together. He admitted that
9 he took nude photographs of the victims.

10 Q. Did he admit to getting aroused by all of this?

11 A. Yes, he did.

12 Q. Okay. Now, Doctor, I'd like to approach you and if you
13 could tell the jury what this is a copy of.

14 A. This is a copy of the sentence sheet for lewd act upon
15 a child and the associated indictment for a lewd act upon a
16 child for an offense against the nine-year-old girl, TH, are
17 her initials, that occurred on or between March 15, 2003,
18 and March 16, 2003.

19 Q. Okay. And, again, like the last crime, lewd act on a
20 child, the time his conviction occurs, that was a sexually
21 violent crime under our law?

22 A. That's correct.

23 MR. BOGLE: Move to introduce Dorchester County
24 indictment 2003-GS18-6363, lewd act on a child with a
25 sentencing date of March 18, 2004. This is State's

1 Exhibit 5.

2 THE COURT: Subject to the . . .

3 MR. FALK: Exactly. Without objection.

4 THE COURT: Very well.

5 (State's Exhibit No. 5, 2003 Indictment, was received
6 into evidence.)

7 BY MR. BOGLE: (continuing)

8 Q. Now, did you review the documents related to this
9 conviction for lewd act like you had all the others?

10 A. Yes.

11 Q. And that would be the witness statements, police
12 reports, things like that?

13 A. Yes.

14 Q. And these are things that are typically relied upon by
15 experts in your field?

16 A. Yes, they are.

17 Q. What underlying details about this crime that you found
18 significant that you can please tell the jury about?

19 A. Well, this involved the nine-year-old victim TH. He
20 fondled her chest, her breast area, kissed her chest, stood
21 naked in front of her and exposed his penis to her, and took
22 nude pictures of her.

23 Q. Okay. And what was his response when you talked to him
24 about these things?

25 A. Again, well, he said that -- in regard to TH, he said

1 that he didn't mean to or that he wasn't intending to offend
2 her. He said that he kissed AH on her breast and that TD
3 was there, but he wasn't intending to be with TD. But he
4 said that he exposed himself to both girls and that he took
5 pictures of them while they were nude and that he didn't
6 plan the offenses. That he was sexually aroused, but acted
7 without thinking. It was rather impulsive.

8 Q. And he tried to say that he was intoxicated or on drugs
9 when this all happened?

10 A. Let me check. Just a second here. (Brief pause.) I
11 don't believe so.

12 Q. Okay. Now, Doctor, and the sentence he got for this
13 crime, this is State's Exhibit 5, lewd act on a child. I
14 forgot to ask you, I believe. What was the sentence he got
15 for this one?

16 A. Fifteen years in prison.

17 Q. Okay. Now, and again, the girl was nine years old?

18 A. That's correct.

19 Q. Is it important in cases of this nature to look at
20 charges that were brought but dismissed or nolle prossed by
21 the State?

22 A. Yes.

23 Q. Why is that important to look at cases that there were
24 brought but didn't get convicted of? Why is that important
25 in cases like this?

1 A. Well, it's important for a couple of different reasons.
2 In some cases, charges can still be or they're still
3 important to the actuarial risk assessment. It depends on
4 when they have it if they were the last offenses that
5 happened or if they were prior offenses. In this case, they
6 are part of the offenses that occurred last. So they're not
7 necessarily calculated in. But they're important to see
8 other things that they were accused of and to really get his
9 account of what happened.

10 Q. Okay. So that's part of the interview process with him
11 about charges that were brought but got dismissed or nolle
12 prossed or went away for whatever reason?

13 A. That's correct.

14 Q. Okay. And did you find that in this particular case
15 that you found of enough interest to look at it and to talk
16 to him about?

17 A. Yes.

18 Q. Okay. What type of crime did you find that were
19 brought and then got dismissed or got nolle prossed? I
20 that's the legal word we use for it.

21 A. He was charged with contributing to the delinquency of
22 a minor. I believe it was a couple of counts of that.

23 Q. Okay. Was that involving the same young girls we've
24 talked about so far?

25 A. Yes, it was.

1 Q. Okay. Why was that important to look at?

2 A. Well, it's important because it talks about other
3 accusations that were there and it can provide more context
4 for the sex offenses that occurred. So it's important to
5 look at all of that especially so I can ask him about it.

6 Q. Okay. So what were the underlying details of these
7 things that you found significant that you talked to Mr.
8 Busch about?

9 A. Well, these details, again, include the nine-year-old
10 girls. It was reported that he had them drink alcohol.
11 That he had them pose for nude pictures. That he had one of
12 the nine-year-old girls touch the other girl on her vagina.
13 That he exposed his penis to the girls while taking their
14 pictures. And also that he had the girls watch an X-rated
15 movie showing two females performing oral sex on each other.

16 Q. And were these additional charges that were dismissed
17 as part of a plea agreement to plead to the other charges?

18 A. Yes. That's my understanding.

19 Q. Okay. And what did he say about all of this? He's
20 talked about everything so far. Did he say anything
21 significant that you haven't covered already about these
22 particular additional charges?

23 A. Yes.

24 Q. What did he say?

25 A. Well, he denied that he showed the girls pornography.

1 But he said that he was watching a movie that had a topless
2 scene in it and that at least one of the girls saw this. He
3 said that he did not give the girls alcohol but that he had
4 some beer in the house and that they drank some of that. He
5 said I didn't give it to them, but I didn't stop them from
6 getting it. He said that they may have drank beer instead
7 of the alcohol that they said that they drank. So that was
8 a discrepancy. And he didn't agree with some other things
9 that they had said about the offenses. So it's important
10 for me to look at all those details.

11 Q. Are you finding some discrepancies in what he tells you
12 versus with the factual record, the guilty pleas and the
13 convictions, seem to indicate?

14 A. Yes.

15 Q. Tell the jury about those.

16 A. Well, when I talked to him about these offenses, he
17 initially characterized them he just exposed himself. It
18 was just that simple. Like that was his only problem. And
19 he left out the parts that he fondled them or had them
20 fondle him, that he took nude pictures, things of that
21 nature. So he minimized that which is indicative of lack a
22 insight into his behavior or he's not really taking full
23 ownership of what he did. Even though when I confronted him
24 with those facts, he admitted to many of them.

25 Q. Okay. So you had to confront him with what happened

1 before he starts admitting the facts?

2 A. That's correct.

3 Q. Is it important in cases like this to look at whether
4 not the person got any sex offender treatment while at the
5 Department of Corrections?

6 A. Yes.

7 Q. Why is that important? Why is that necessary to look
8 at?

9 A. Well, it's necessary to see if they've had any
10 treatment and if that's changed any of their thinking or the
11 way that they portray things to me. It's just always good
12 to see what they've done in prison whether they volunteer
13 for treatment or not.

14 Q. Okay. Is that something done by experts in your field?
15 Looking at prior sex offender treatment.

16 A. Yes.

17 Q. Okay. Based on that idea, what did you find out? Had
18 he had any?

19 A. Well, in the records that I received from the
20 Department of Corrections, there was no information to say
21 that he had participated in sex offender treatment there.
22 And there was no information to say that he had participated
23 in sex offender treatment in the community after a charge
24 where he didn't go to prison such as after maybe the 1990
25 offense. I don't believe that any treatment was required.

1 He said that he did go to a group called Breaking Free
2 Ministry which was in prison. And he said that that was
3 related to his sexual offenses. But my understanding is
4 it's a faith-based program to help general criminal
5 offenders.

6 Q. So it's a faith-based thing. It's not specifically
7 targeted at sex offenders learning how not to sex offend
8 again?

9 A. That's my understanding.

10 Q. Okay. And the Department of Corrections does have such
11 a program; does it not? A sex offender treatment program.

12 A. They have a sex offender treatment program, yes.

13 Q. Was there any record in what you saw of him ever going
14 to any part of that program?

15 A. No.

16 Q. Okay. Now, as we've been talking today, the term
17 mental abnormality and personality disorder came out. What
18 kinds of mental abnormalities are you looking for and what
19 did you find in this particular case?

20 A. Well, the primary mental abnormalities that I'm looking
21 for are call paraphilic disorders.

22 Q. What does paraphilic mean? Okay ---

23 A. I was going to get to that. A paraphilia is really a
24 pattern of deviant sexual interest. So they're interested
25 in victims who are prepubescent, victims who are not

1 consenting. They're interested in hurting victims without
2 their consent or things of that nature.

3 Q. Okay. In this particular case, did you diagnose
4 Christopher Busch with a paraphilic disorder? One of those
5 paraphilias you just talked about.

6 A. Yes, I did.

7 Q. What did you diagnose him with?

8 A. I diagnosed him with exhibitionistic disorder and with
9 pedophilic disorder.

10 Q. Okay. What are the criteria -- what does the rule book
11 say about what you have to find to diagnose exhibitionistic
12 disorder?

13 A. Okay. Exhibitionistic disorder, the diagnostic
14 criteria for that is over a period of at least six months,
15 recurrent and intense sexual arousal from the exposure of
16 one's genitals to an unsuspecting person as manifested by
17 fantasies, urges, or behaviors. The next criteria is an
18 individual has acted on these sexual urges with a
19 nonconsenting person or the sexual urges or fantasies cause
20 clinically significant stress or impairment in social,
21 occupational, or other important areas.

22 Q. Okay. And to support that diagnosis, what did you
23 find?

24 A. Well, I have the 1990 indecent exposure. That goes
25 into the diagnosis. But more importantly are the 1996

1 offenses and the 2003 offenses and his self-report. So he
2 told that me that he exposed himself to young girls, that he
3 was sexually aroused when he did it. And that is supported
4 by the evidence in the convictions.

5 Q. Okay. The South Carolina convictions we talked about
6 this afternoon?

7 A. That's correct.

8 Q. Okay. Now when you say when he told you, did he tell
9 you about any victims other than the ones we have down for
10 convictions?

11 A. Let me check. (Brief pause.) No. He just -- he
12 actually, when I asked him about this -- so when I do the
13 evaluation, I go through the sexual history questions before
14 I go to the offenses. So before I ask for their account of
15 their criminal convictions, their criminal charges, I just
16 ask them questions like, you know, have you ever exposed
17 yourself to somebody who, you know, wasn't expecting it or
18 somebody other than a sexual partner. When I asked him that
19 question, he told me that he had done that kind of thing
20 four times. He said that he exposed himself to the victim
21 from 1996 which is WG. And then he said that he exposed
22 himself to the victim AH three times. He said that he
23 didn't know why he did those things and that he didn't think
24 before acting.

25 Q. So does he meet the criteria you just read to us a

1 minute ago for a diagnosis of exhibitionistic disorder?

2 A. Yes.

3 Q. And that's a mental abnormality?

4 A. That's correct.

5 Q. And it's a paraphilia. It's a deviant type sexual
6 thing; right?

7 A. That's correct.

8 Q. Okay. Now, what other mental abnormality did you
9 diagnose him with? You mentioned a few minutes.

10 A. I diagnosed him with pedophilic disorder.

11 Q. Did that diagnosis come with any qualifiers like
12 sexually attracted to whatever?

13 A. I believe it was sexually attracted to females.

14 Q. Okay.

15 A. Nonexclusive type.

16 Q. Okay. So what is -- when you sexually attracted
17 females, what are you saying there? Is it what it sounds?

18 A. Yes. That he's sexually attracted to prepubescent
19 females.

20 Q. Okay. And the word nonexclusive, what does the word
21 nonexclusive mean in the context of this diagnosis?

22 A. That means that his arousal, his sexual arousal, is not
23 exclusive to children. He reports that he is also sexually
24 aroused by adult women.

25 Q. Okay. And what is the definition -- to get to the

1 pedophilic diagnosis or pedophilia, what do you have to find
2 to diagnose that?

3 A. Okay. The criteria includes over a period of at least
4 six months, recurrent, intense sexually arousing fantasies,
5 sexual urges or behavior, involving sexual activity with a
6 prepubescent child or children, which is generally age 13
7 years or younger. The next one is the individual has acted
8 on these sexual urges or the sexual urges or fantasies cause
9 marked distress or interpersonal difficulty. The next one
10 is the individual is at least age 16 and at least five years
11 older than the child or children in criterion A. It says do
12 not include an individual in late adolescence involved in an
13 ongoing sexual relationship with a 12- or 13-year-old. And
14 then it gives the specifiers.

15 Q. Okay. And that didn't happen here?

16 A. That's correct. He was an adult so we was definitely
17 over 16 and he was more than five years older than the
18 victims. The victims were under age 13 and, you know, they
19 were nine. So that's more likely that they were
20 prepubescent given their young age. And he acted on these
21 urges in a period of years, which a much longer period than
22 six months.

23 Q. Okay. So for the 1996 conviction for lewd act, State's
24 Exhibit 1, if he was born in '63, it happened in '95, he's
25 about 20, 23 years old?

Direct Examination of Dr. Gehle by Mr. Bogle (Con't)

1 A. Yes.

2 Q. And the girl is about nine or so?

3 A. Yes. she was ten.

4 Q. Ten. Okay. And all the other crimes that happened in
5 Dorchester County, State's Exhibit 2, 3, 4, and 5, the
6 sexual exploitation, the assault with the intent to commit
7 criminal sexual conduct, and the two lewd acts, these are
8 all on nine-year-old girls?

9 A. That's correct.

10 Q. And he's in -- he's about 30, over 31 years old?

11 A. Yes.

12 Q. Okay. When doing these types of things, how do you --
13 is there a technique or an instrument you can use to measure
14 a person's risk to reoffend?

15 A. Yes.

16 Q. What's it called?

17 A. Well, I use the Static-99R. So that's an actuarial
18 risk assessment.

19 Q. Can you explain to the jury how that works and give us
20 like an everyday example we might run into.

21 A. I can try. So an actuarial risk assessment, in this
22 terms, so we're looking at whether somebody is going to
23 commit another sex offense. So what they do is they take
24 large groups, thousands of sex offenders, who have committed
25 sex offenses. So it's that. It's not just the general

1 population. It's a population of sex offenders. And they
2 look at who went on to commit future sexual offenses, who
3 went on to reoffend, and who didn't. And they compare them
4 on certain factors. So the Static-99R has ten questions and
5 it's based more on more historical, static factors that
6 don't necessarily change. And these factors are all related
7 to sexual recidivism or reoffending. Recidivism is another
8 word for reoffending. So it's a ten-question item -- or
9 ten-question test that I score in my office. And it's based
10 on part on his self-report and part on the records. And it
11 includes things about, like, his age that he would be when
12 he's released; whether he has committed violent nonsexual
13 offenses; whether he has been previously convicted of sexual
14 offenses prior to the last sexual offense, cluster; whether
15 he has been convicted at least four previous times of
16 crimes. So whether he's been sentenced at least four times
17 before this. Whether he has committed noncontact offenses.
18 So things like exposing yourself, like where there is no
19 touching involved. Whether he has been convicted of
20 offending stranger victims, people he didn't know; whether
21 he's been convicted of offending nonfamily members; and
22 whether he has been convicted of offending male victims.

23 Q. Now, the Static-99R, you explained how it relates to
24 estimating risk for sex offenders. Can you give us an
25 example an actuarial thing that we might sign in our

1 everyday lives that is very similar to this?

2 A. Well, this type of instrument it really comes from the
3 insurance field and that they use in the general population
4 and they want to look at like who's most likely to get into
5 an accidents and what factors are associated with somebody
6 who's likely to get in accidents. And that helps them set
7 their rates. So they're not looking at it as a yes or no
8 for the most part. But they'll look at things like what's
9 your age, what's your driving record history, things like
10 that from my understanding.

11 Q. Okay. Okay. Now, is the Static-99R, was it part of
12 the basis for your opinion?

13 A. Yes.

14 Q. Okay. What was his score in the Static-99R?

15 A. He had a score of four.

16 Q. And what does that tell you based on the research done
17 on this thing about his risk to reoffend sexually?

18 A. Well, a score of four is in the moderate-high risk
19 category when you compare them to other sex offenders, adult
20 male sex offenders. And on average, if you look at the
21 group that has a score of four on this instrument,
22 11 percent of them go on to reoffend within five years. And
23 if you compare his score to just the average sex offender,
24 he is almost twice as likely or his rate of reoffending is
25 almost twice as high. So he's higher than the average sex

1 offender by twice.

2 Q. Okay. Now, this thing looks at -- is this particular
3 scoring, the Static-99R, is this something used by experts
4 in your field?

5 A. Yes.

6 Q. Okay. Now, did you run any other tests or scorings on
7 him besides the Static-99R?

8 A. No.

9 Q. Why not?

10 A. Well, I looked at the research before I started doing
11 these evaluations long ago. And the research says that this
12 is what most experts use and that they use this test more
13 frequently than anything else in terms of risk assessment
14 because it's the most accurate approach. It removes the
15 bias that a evaluator such as myself can have when you're
16 determining whether something, somebody, is likely to do
17 this again. Unfortunately, experts are just like everybody
18 else and we can be biased. So this takes that out. We can
19 be affected by things that maybe seem more important than
20 they actually are or by personal feelings, thing like that.
21 So it's better to use this type of approach. It's
22 objective and it's consistent between people.

23 Q. Okay. Now, you mentioned at the very beginning,
24 because the very name of this thing is called the
25 Static-99R. Static means unchangeable factors in your

1 history; right?

2 A. Essentially, yes.

3 Q. Is there another type of risk factors that a guy might
4 have called dynamic risk factors?

5 A. Yes.

6 Q. What's the difference? What does that mean?

7 A. Well, dynamic risk factors are other factors that have
8 been associated with increased risk to commit another sex
9 offense. But these factors are changeable and they're more
10 related to somebody's psychology and they can be addressed
11 in treatment.

12 Q. Did you find from Mr. Busch some dynamic risk factors
13 that you found significant?

14 A. Yes.

15 Q. Could you please list those for us.

16 A. He has a sexual preference for prepubescent and
17 pubescent children. And that's based on his criminal
18 convictions. And he also told me that he has looked at
19 child pornographic pictures of 14- to 15-year-old girls a
20 couple of times. So that indicates that he has a preference
21 for prepubescent and pubescent children. He has multiple
22 paraphilias. So he has that pedophilic disorder and
23 exhibitionistic disorder. And then he has a lack of
24 emotionally intimate relationships with adults. He had a
25 relatively few long-term relationships and they were marked

1 with repeated conflict and infidelity and that's related to
2 recidivism.

3 Q. And are these dynamic risk factors also something
4 looked at by experts in your field in cases like this?

5 A. Yes.

6 Q. Now, Doctor, at this point, let me ask you this, and we
7 kind of covered this, but very quickly: Do you have an
8 opinion based upon your interview with the guy, your
9 research in his convictions, the criminal records, the lack
10 of sex offender treatment, all the stuff you testified
11 about, do you have an opinion to a reasonable degree of
12 psychological certainty as to whether or not Christopher
13 Busch suffers from a mental abnormality or a personality
14 disorder?

15 A. Yes.

16 Q. And that's the pedophilic disorder and the
17 exhibitionistic disorder. Is that correct?

18 A. That's correct.

19 Q. Okay. Now, do you also have an opinion, again, to a
20 reasonable degree of psychological certainty, do these two
21 mental abnormalities affect Mr. Busch's emotional or
22 volitional control so that he is predisposed to commit
23 future sexually violent crimes?

24 A. Yes.

25 Q. Okay. When I say the word volitional, what am I saying

1 there?

2 A. Volition is whether you have the capacity to choose
3 your behavior or whether you do not. So I look at
4 volitional impairment, what evidence is there that he was
5 acting on impulse, that he wasn't thinking about his
6 behavior, or that he couldn't control his behavior.

7 Q. What did you find here that supports that conclusion?

8 A. Well, he told me that he acted on impulse. He told me
9 that he did not think about offending before he did it. He
10 had the opportunities and then he, you know, acted on the
11 behavior. He also lacks insight because he doesn't
12 understand why he committed these offenses. He minimized
13 his behavior which also indicates a lack of insight. He
14 also said that he wasn't concerned that he's going to do
15 this again. But he said that he needed to avoid young girls
16 altogether to keep himself from sexually offending them.

17 Q. So did he recognize that he's at risk by saying that?

18 A. Well, he told me that he was at absolutely no risk.
19 One question that I typically ask in these evaluations is
20 for them to rate their belief of what their risk is on a
21 scale of 1 to 10. One being very low risk, then being very
22 high risk. And he rated his risk a zero. But he said that
23 he just wasn't going to be around young girls, that he
24 wasn't going to let these fathers with young girls live with
25 him anymore.' So that to me says that on one hand he wants

1 to deny that he has any risk, but on the other hand, he
2 admits that he has to stay away from young girls in order to
3 control his behavior.

4 Q. Do you also have an opinion, again, to a reasonable
5 degree of psychological certainty as to whether or not based
6 on the diagnosis and the stuff you talked about and the
7 stuff you found, Mr. Busch has the propensity to be
8 dangerous and commit future sexually violent offenses?

9 A. Yes.

10 Q. Is that a yes, he does have that propensity?

11 A. It's my opinion that he does have that propensity and
12 that he's likely to commit these kinds of offenses if he's
13 not committed as a sexually violent predator.

14 Q. And, again, to a reasonable degree of psychological
15 certainty, does this propensity to commit future sexually
16 violent offenses, is it at such a degree it poses a menace
17 to the health and safety of others?

18 A. Yes. It's my opinion that it is.

19 Q. And do you also believe based on your research, your
20 interview with him and all that, to a reasonable degree of
21 psychological certainty, does Christopher Busch have serious
22 difficulty in controlling his behavior and his propensity to
23 be dangerous?

24 A. Yes. It's my opinion he does.

25 Q. And the proof of that is all of this?

1 A. Yes.

2 Q. Okay. Do you also have an opinion, again, to a
3 reasonable degree of psychological certainty, does Mr.
4 Busch's mental abnormalities you've talked about so far, do
5 they make him likely to engage in acts of sexual violence
6 unless he's confined in a secure facility for long-term
7 control, care, and treatment?

8 A. Yes. It's my opinion is that they do.

9 Q. Do you have an opinion to a reasonable degree of
10 psychological certainty based upon your research here that
11 Mr. Busch, whether or not he meets the legal criteria to be
12 found to be a sexually violent predator at this time?

13 A. It's my opinion that he meets that criteria of a
14 sexually violent predator.

15 Q. Now, the sentencing sheets all said 15 years; right?

16 A. I believe that the sexual exploitations might have been
17 ten years if I'm remembering correctly.

18 Q. Okay. Was there any probation on the sentencing
19 sheets? Want to look again?

20 A. No. I don't recall there being any probation.

21 Q. Let me just -- to be safe, let's look at all of them.
22 This 15 years or 10 years. Any sign of probation by the
23 sentencing court on any of those?

24 A. No.

25 Q. Okay. So if he's released, who would be at danger?

1 A. I believe that, you know, younger girls that are in his
2 proximity would be in danger.

3 Q. Is there anything -- there's no probation on the
4 sentencing sheets. Is there anything you know of that could
5 require him to get the sex offender treatment that he needs?

6 A. Well, it's my understanding that he would be been on or
7 he would've bee on, I'm not sure which it is at this point,
8 community supervision which is similar to probation. And in
9 that -- that could force him to go to sex offender
10 treatment.

11 Q. Okay. But that would be outpatient treatment; right?
12 In the community.

13 A. That's correct.

14 Q. Is this guy's condition, the diagnosis, what you found,
15 the inability to control himself, is this the kind of
16 situation where he needs to be confined for sex offender
17 treatment?

18 A. It's my opinion that he does need to be confined.

19 MR. BOGLE: Okay. Thank you, Doctor. Please answer
20 any questions counsel may have or the Court.

21 THE COURT: All right. We'll wait until after lunch.
22 We'll go ahead and take lunch now. Ladies and gentlemen,
23 prior to cross-examination, before that -- we will take our
24 lunch break. And it's a little bit early, but I just think
25 that -- it just makes sense to go ahead and do that now.

1 We're going to take an hour and what's going to be 20
2 minutes. Probably closer to an hour and 15 minutes. I'm
3 gong to ask you to be back in your jury room at a quarter
4 til two ready to continue with this matter. Now, this is
5 one of the things that is interesting for me. How many
6 people live below the swamp? Summerville, Ladson? How many
7 people live above the swamp? That's St. George,
8 Harleyville, Rosinville.

9 (No response.)

10 THE COURT: Okay. We used to have one. Okay. So let
11 me talk to you about your culinary opportunities in
12 St. George. You will go out the front where you came in.
13 And you will take a right. That will put you on Highway 78.
14 Now, that's probably the most difficult maneuver because all
15 of your culinary opportunities lie along Highway 78. Let me
16 tell you what they are: Kentucky Fried Chicken, McDonald's,
17 Hardee's, Pizza Hut. You can go to the grocery store if you
18 want to. Becky's just -- you're giving me that information.
19 Georgios; I like to say Georgios of Beverly Hills. Yes.
20 Shugs. Now, and then there's a Denny's at the truck stop.
21 And there's Skynard's right at the interstate.

22 Now, if you come to the Taco Bell, which is right on
23 the other side of the overpass of I-95, you have your last
24 culinary opportunity. Now, if you go beyond Taco Bell,
25 there's nothing for you until you get to Orangeburg. So

1 Taco Bell is the end of the line as they say. So unless you
2 want to pull in somebody's house and toot the horn and say,
3 I'm here. So in any event, ladies and gentlemen, just know
4 that that will be your culinary opportunities. I know. I
5 have this like thought that maybe what I need to do is get a
6 big bag of Chick-Fil-A's and get me like a little umbrella
7 and set up at lunch on the corner of the courthouse
8 property. In any event -- so, ladies and gentlemen, those
9 will be your culinary opportunities.

10 Now, because St. George is small, if you happen to see
11 anyone that has anything to do with this case at lunch and
12 they don't even say hello to you, if they look like they're
13 dodging you, that's because they know they're not supposed
14 to have any interaction with you at all. So please know
15 that. They're not being rude to you. They just know
16 they're not suppose to interact with the jury. And be
17 mindful that you cannot discuss this matter or allow anyone
18 to discuss it with you. Don't blog, don't Tweet, don't go
19 to Facebook, don't do any investigation, don't communicate
20 about this matter at all. And that, of course, includes
21 your fellow jurors, your family, your friends, and anyone,
22 of course, that has anything to do with this matter. Should
23 anybody try to talk to you about this case, just if you
24 think you can get their name. If not, a description and
25 report that to me upon your return and then I'll be happy to

1 get that person. And remember to leave your cell phones
2 somewhere than the courthouse. But if you forget and it
3 follows you in the courthouse, no worries. Just be sure you
4 give it to one of our bailiffs, and they'll keep your phone
5 good and safe until your afternoon break or at the
6 conclusion for today. Have a very, very pleasant lunch, and
7 I'll look forward to seeing you at a quarter til two. Have
8 a good lunch.

9 (The jury exits the courtroom at 12:30 p.m.)

10 THE COURT: Dr. Gehle, I know I don't need to tell you
11 thin because you testified 96 times before. But in
12 abundance of precaution, I'm going to remind you do not
13 discuss your testimony with anybody during the lunch break.
14 And enjoy your lunch break. Did you get the lineup?

15 THE WITNESS: I did.

16 THE COURT: Your culinary opportunities. You probably
17 came in from 95, so you probably you saw ---

18 THE WITNESS: Yes, I did.

19 THE COURT: You may not have saw the Taco Bell, but you
20 certainly saw the other ones. Have a good lunch.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you so much. I look forward to
23 seeing you back. All right. Anything from the Respondent
24 -- I mean, the Petitioner?

25 MR. BOGLE: No, Your Honor.

1 THE COURT: From the Respondent?

2 MR. FALK: No, Your Honor.

3 THE COURT: See you all back. Thank you.

4 (A break was taken at 12:31 p.m. The proceedings
5 resumed at 1:52 p.m.)

6 (The jury enters the courtroom at 1:52 p.m.)

7 THE COURT: All right. Ladies and gentlemen, I so hope
8 that you all had a very pleasant lunch. At this time we
9 will continue with the Petitioner's case and the
10 cross-examination of Dr. Gehle. Mr. Falk?

11 MR. FALK: Thank you.

12 CROSS-EXAMINATION

13 BY MR. FALK:

14 Q. Dr. Gehle?

15 A. Yes.

16 Q. Part of your opinion is whether or not my client is a
17 sexually violent predator. Is that correct?

18 A. That's correct.

19 Q. Okay. And that term has some special meanings in it.
20 Does it not?

21 A. It's defined.

22 Q. And so one of the partially being a sexually violent
23 predator is that unless he receives treatment in a secure
24 facility. Is that not right? Something to that effect.

25 A. Well, it is --

1 Q. Unless committed to a secure facility for care and
2 treatment.

3 A. The definition is whether the person has been convicted
4 of sexually violent offenses and has a mental abnormality or
5 personality disorder that makes them likely to commit acts
6 of sexual violence if not confined in a secure facility for
7 long-term control, care, and treatment.

8 Q. So what is your understanding of a secure facility as
9 it would apply to this case?

10 A. A secure facility is a locked facility. In this case,
11 it would be a facility that is run by the Department of
12 Mental Health or it is now run by Correct Care Solutions
13 under a contract with the Department of Mental Health.

14 Q. But there are people under that secure facility,
15 they're living in a dorm -- I mean, they're living in a
16 cell. Is that not correct?

17 A. They're living -- most of them are housed on two units
18 at Broad River Correctional Institution in Columbia.

19 Q. And I don't -- the location isn't really important.
20 What I just want to get is, I mean, they're not free to come
21 and go, are they?

22 A. To go where?

23 Q. To leave the facility.

24 A. No. They're not free to leave the facility.

25 Q. All right. So, I mean, it's not like they can get a

1 job somewhere else and just come back?

2 A. No. It's an inpatient treatment program in a locked
3 facility.

4 Q. Okay. All right. Does the -- is the term predator
5 defined as part of the Sexually Violent Predator statute?

6 A. Well, the law defines a sexually violent predator.
7 They don't define the word predator separately to my
8 knowledge. It's sexually violent predator.

9 Q. Because I would think it would be easy to sort of a
10 connotation of somebody who is, you know, going through the
11 park offering little girls candy to try and get in their
12 car. I mean, really prey on little girls; hunting them out
13 and seeking them.

14 A. There's nothing in the law to say that they need to be
15 hunting or seeking to be considered a sexually violent
16 predator.

17 Q. Okay. Because I think you described it, a lot of his
18 behavior, was impulsive.

19 A. Yes.

20 Q. As opposed to sort of planning out and stalking
21 somebody.

22 A. That's what he said.

23 Q. Now, your report doesn't really talk about what he did
24 from the time that he was sentenced until the time that you
25 evaluated him. Is that correct?

1 A. It talks about things that occurred in Corrections,
2 whether he had infractions or things that he told me about,
3 treatment.

4 Q. Well, did -- I'll come back to the infractions in a
5 second. But did you discuss with him any of the programs
6 that he took while he was in sexually violent predator -- I
7 mean, while he was at the South Carolina Department of
8 Corrections?

9 A. Yes. He told me that he had been in the Breaking Free
10 Ministry at McCormick Correctional Institution.

11 Q. And what's your understanding of the Breaking Free
12 Ministry?

13 A. Well, it's my understanding that it's a faith-based
14 group and that it's within the correctional system but it's
15 run by volunteers.

16 Q. Do you know many days a week that it would meet?

17 A. No.

18 Q. So you don't know anything. Hours in the day, whether
19 there's homework, or anything how the class would be
20 structured?

21 A. No. This program is not run by the Department of
22 Corrections. And so there's very limited information in the
23 Department of Corrections records about it.

24 Q. How about programs like WorkKeys? Do you know anything
25 about that program?

1 A. WorkKeys?

2 Q. Yes.

3 A. I think I've heard of it before, but I don't know much.

4 Q. How about any anger management classes that he may have
5 taken while he was at SCDC?

6 A. I don't know.

7 Q. You know anything about Jump Start?

8 A. I have evaluated other people who have been involved
9 with the Jump Start program. So I have some knowledge about
10 that.

11 Q. And what is your knowledge?

12 A. My understanding is that it is a program where
13 volunteers work with individuals who are incarcerated and
14 then they often work with them when they are released. It's
15 my understanding that that program is -- at least in my
16 experience because I've heard another per person testify
17 about this. But it was that it was prior inmates who have
18 not gone on to commit criminal acts. They are primarily
19 leading that program.

20 Q. Breaking Free? Is that one we just discussed that he
21 said he did?

22 A. Yes. That's the only one that he told me about.

23 Q. Okay. Did you do any further investigation into that
24 program?

25 A. No.

1 Q. Kairos? Are you familiar with that program?

2 A. Vaguely.

3 Q. What is your vague understanding of it?

4 A. Well, it's my understanding that that is -- I think
5 it's a Catholic-based program. Volunteers from the Catholic
6 Church go in and work with people in the prison.

7 Q. Do you know whether it's Breaking Free, whether it's
8 Jump Start, Kairos, do know what the subject matter it
9 covers?

10 A. I think that they cover various subject matter, but I
11 don't know specifically everything they cover.

12 Q. What is your understanding of the type of treatment he
13 would get if he were committed under this statute?

14 A. Well, recently the Department of Mental Health
15 contracted with Correct Care Solutions, which is a private
16 organization. And they are now running the Sexually Violent
17 Predator Treatment Program. And I was provided with some
18 information about their program. Something that they
19 provided to the Department of Mental Health and it was
20 forwarded to me. But that is the extent of my knowledge of
21 their program is what was contained in the information that
22 they sent, which is basically a write-up talking about what
23 they -- what treatment they provide.

24 Q. And without getting into the specifics, but, I mean, in
25 general, is this treatment like counseling and therapy and

1 talk therapy and cognitive development ---

2 MR. BOGLE: Your Honor, may we approach?

3 THE COURT: Sure.

4 (A bench conference was held off the record and out of
5 the hearing of the jury panel.)

6 BY MR. FALK (continuing):

7 Q. The type -- I'm just trying to get a general
8 description of the type of treatment. And maybe the better
9 way to ask it is what it is not. There is no injections or
10 any type of medicine that these people are given as part of
11 their treatment. Is that correct?

12 A. It could be.

13 Q. They're not -- this is not like -- what type of
14 medicine might that be?

15 MR. BOGLE: Objection, Your Honor, as to relevancy.
16 It's the basis of pretrial motion regarding treatment for
17 testimony that ---

18 THE COURT: I know. I understand.

19 MR. BOGLE: The ground would be speculation and
20 relevancy.

21 THE COURT: I know. I understand that. I understand
22 that. Mr. Falk, if you wanted to lay the other foundation
23 and then ask those questions, I certainly think you can do
24 that. That's based on the prior ruling of the Court that
25 this is sort of backing into it. Yeah. Sustained.

1 MR. BOGLE: Thank you, Your Honor.

2 BY MR. FALK (continuing):

3 Q. Let's go to the one that you do have some understanding
4 of. Well, at Jump Start, is it your understanding that
5 people would meet and they would discuss elements of the
6 crime in front of a group of people and they would get
7 feedback from that group of people?

8 A. I'm not sure.

9 MR. FALK: Your Honor, may I approach?

10 THE COURT: Sure.

11 (A bench conference was held off the record and out of
12 the hearing of the jury panel.)

13 BY MR. FALK (continuing):

14 Q. Let me move on. But maybe you can answer this, because
15 I think it is part of your -- is there anything about the
16 treatment that you think he would get that the treatment
17 itself would be more effective if it were done in a confined
18 environment?

19 A. I don't know that I can answer that question.

20 Q. Well, Mr. Bogle -- let me try this -- Mr. Bogle asked
21 you about he could get outpatient treatment. I believe that
22 was one of his questions.

23 A. I'm not sure.

24 Q. I think there was a question asked to you that if he
25 were on probation or community service would there be

1 anybody -- any way to make sure he could get -- or sign up
2 for outpatient treatment. Do you recall that question?

3 A. Yes.

4 Q. Okay. So you do acknowledge that there is outpatient
5 treatment available?

6 A. There is outpatient treatment available for sex
7 offenders, yes. Depending on which community you're in
8 because it's not widely available so it would depend.

9 Q. But is there anything about the type of treatment that
10 you could get on the outside that would be more effective,
11 the treatment itself, if it was in a confined environment?

12 A. I mean, it would depend if they're doing the exact same
13 treatment program on the outside versus the same treatment
14 program on the inside. Is that what your question is?

15 Q. Yes.

16 A. There is some research, and I can't remember which
17 article that came from, to say that if you're looking at the
18 exact same treatment program whether it's inpatient or
19 outpatient, it would be about equal.

20 Q. Thank you. Let me ask you one question. Was there, in
21 your investigation during your three-hour interview with
22 him, was there some mention whether or not my client had a
23 drinking problem?

24 A. He told me that he had a drinking problem in the past,
25 yes.

1 Q. And he admitted to being an alcoholic. Did he not?

2 A. I think that that's how he described himself, yes.

3 Q. And I think in your recount of the least two of the --
4 his prior sexual offenses, there's a reference that alcohol
5 is present.

6 A. That was per his report. I don't believe that it was
7 in or that I recall that it was in the legal records
8 indicating that. I know that it wasn't mentioned in the
9 1990 incident, the records I reviewed. I don't believe it
10 was mentioned in the 1996 records, but it may have been.

11 Q. Because I think he indicated he told you that he was
12 drinking.

13 A. That's what I said. He told me that.

14 Q. And in one of those charges there was an allegation
15 that he made alcohol available to the victims?

16 A. That's correct.

17 Q. So there would have been alcohol sort of in that
18 environment as well?

19 A. Yes.

20 Q. Now, are you able to reach an opinion about whether or
21 not my client meets the definition of sexually violent
22 predator based solely on his Static-99 score?

23 A. No.

24 Q. And is it not true that people can commit crimes
25 against children, be convicted of them, but still not meet

1 the definition of a sexually violent predator?

2 A. Yes.

3 Q. And there are people who can commit multiple crimes
4 against children and not fit the definition of a sexually
5 violent predator. Is that true?

6 A. That's correct.

7 Q. Okay. So in order to go from the Static-99, we talk
8 about the dynamic risk factors. Is that fair? Is that one
9 of the other things you look at?

10 A. Yes. It's something I look at.

11 Q. Okay. What role do the dynamic factors play in
12 reaching your opinion this case?

13 A. For me, the dynamic risk factors help you decide if the
14 person is likely. When I look at the Static-99R, you get a
15 score from that and it gives you a relative risk ratio and
16 it gives you a recidivism rate. But one thing that I also
17 look at as a tipping point is how many of those dynamic risk
18 factors are involved. But it doesn't factor into like
19 change in the score of the actuarial or do anything like
20 that.

21 Q. So really because you've got a couple of components
22 here, somebody can have a mental disease or defect and have
23 it diagnosed as one. And it could even be sexually based
24 and not be a sexually violent predator. Is that correct?

25 A. That's correct.

1 Q. So you could have a mental health diagnosis of
2 pedophilia and not be a sexually violent predator. Is that
3 correct?

4 A. That's correct.

5 Q. Okay. And so one of the things you're looking for is
6 the likelihood to reoffend. Is that correct?

7 A. That's correct.

8 Q. And I think you said that the dynamic factors are one
9 of the things that plays a role in that likelihood to
10 reoffend component. Is that correct?

11 A. That's correct.

12 Q. As I review your report, you list four -- there's
13 several dynamic risk factors that would be possible, but you
14 list four that you thought were present in this case. Is
15 that accurate?

16 A. Yes.

17 Q. And one of them was looking at pornography of 14- to
18 15-year-old girls. Is that correct?

19 A. Well, that's related to one of the risk factors.

20 Q. And as I read that paragraph, it look like you listed
21 off four risk factors.

22 A. Yes. The risk factors that I look for are included in
23 a meta-analysis research paper. And these people looked at
24 hundreds of studies and looked at four common risk factors.
25 And so those are the risk factors that I look for when I do

1 sexually violent predator evaluations.

2 Q. And one of the ones that you listed was looking at
3 pornographic images of -- ages 14 to 15. Is that correct?

4 A. That plays into one of the risk factors.

5 Q. Okay.

6 A. That is evidence that he is sexually attracted to
7 prepubescent or pubescent girls.

8 Q. Well, now the definition certainly of a pedophile,
9 isn't the cut off -- when they're looking at the criteria
10 that's the definition of a pedophile under the DSM-5, it's a
11 13-year-old that's sort of the cutoff, isn't it?

12 A. Yes. They should be prepubescent, yes.

13 Q. Because if it is a person who is showing, I guess the
14 term is secondary sexual characteristics, breast
15 development, et cetera, curves, that's not necessarily a
16 sign of an interest in -- that's not necessarily a deviant
17 interest, is it?

18 A. I'm not sure what your question is.

19 Q. Is an attraction to a 15-year-old girl or a 14-year-old
20 girl, is that a -- a clearly criminal conduct in the State
21 of South Carolina -- but is that a sign of mental health
22 disease?

23 A. Not typically.

24 Q. You had also indicated that he had a preference for
25 prepubescent children. Is that correct?

1 A. Yes. I said he's sexually aroused by prepubescent
2 children.

3 Q. And I think you use the term preference. Do you not?

4 A. Sometimes I use the term preference.

5 Q. This suggests a sexual preference for prepubescent or
6 pubescent children. Is that how you wrote it?

7 A. Well, the preference that I think you're referring to
8 is part of what the risk factor is. The risk factor is
9 called preference for prepubescent or pubescent children.
10 That's what the risk factor is called.

11 Q. I see. So does preference have a definition other than
12 the normal definition as used in this context is the word
13 preference?

14 A. No.

15 Q. So preference means liking one more than the other?

16 A. Yes.

17 Q. Okay. So what evidence is there of a preference for
18 prepubescent children? Well, let me back up. He had
19 indicated to you that he had other girlfriends and had lived
20 with other women of the same age. Is that not correct?

21 A. Are you talking about adults?

22 Q. Adults.

23 A. Same age as him?

24 Q. Yes.

25 A. Yes.

1 Q. He had several girlfriends. Is that not correct?

2 A. That's what he told me.

3 Q. Okay. Well, did you try and reach out to any of those
4 as part of your investigation?

5 A. I did not have contact information for any of those,
6 no.

7 Q. Did you ask for any contact information for them?

8 A. I do not recall.

9 Q. So now, again, what specific evidence you have of a
10 preference for -- I mean, I can accept an interest. I mean,
11 he committed the crimes. But as far as a preferential
12 interest, what specific evidence do you have?

13 A. Well, he completed these crimes after sanctions. Or,
14 you know, he was charged in 1996, and he knew that this was
15 wrong and he did it again. So he's taking a lot of risk,
16 which that can indicate preference.

17 Q. Well, it certainly indicates criminal conduct, but what
18 we're looking for is a mental health disease. Are we not?

19 A. That's correct.

20 Q. And, again, one of them was a lack of relationships --
21 let me see -- emotional, intimate relationships with adults?

22 A. The risk factor is lack of emotionally intimate
23 relationships with adults.

24 Q. But you testified before you did not reach to any of
25 those or do any further investigation at least speaking with

1 those people.

2 A. That's correct.

3 Q. The final risk factor I see here is that he has some
4 history of resistance to rules and supervision. He failed
5 to attend court hearings related to 1996.

6 A. That's not the final risk factor for him. But, yes, I
7 said that there was a possibility that he has that risk
8 factor because he missed those court hearings and he was in
9 contempt and things like that related to the 1996. So per
10 the definition of that risk factor, there was some
11 indication that that could be present.

12 Q. You said that's not the final one. We talked about
13 pornographic interest, whether or not he had a preference,
14 emotional intimate relationships with adults, and this last
15 one how you define it. Is there another one that you used?

16 A. Yes. And it's a sexual preference for prepubescent and
17 pubescent children. That's what the risk factor is called.
18 So it's not just pornographic images. But the last one is
19 multiple paraphilia's.

20 Q. Okay. Let me talk about some history of resistance to
21 rules and supervision. Now, first of all, he was arrested
22 in '96, but he was sentenced in -- on all these charges at
23 the same time. Is that your understanding?

24 A. Yes.

25 Q. So there was no intervening prison time between '96 and

1 2004. Is that correct?

2 A. No prison time to my knowledge.

3 Q. There was only an arrest. Is that correct?

4 A. Yes.

5 Q. Okay. Is there any explanation why they didn't pursue
6 this case from '96 to 2004?

7 MR. BOGLE: Objection. Relevancy.

8 THE COURT: Sustained.

9 Q. Okay. And in order to support this dynamic risk
10 factor, this last one as far as some history of rules, not
11 following the rules, you talked about the fact that he
12 missed -- there was some evidence that he missed court
13 hearings in 1996.

14 A. Related to that charge, yes.

15 Q. Okay. However, as far as looking at the last 12 years
16 or 13 years or since 2004, did you find that he had any
17 violations of disciplinary infractions while at SCDC?

18 A. No. He didn't have any. That's what my -- that's what
19 the records show.

20 Q. So that would actually be -- wouldn't that tend to
21 negate that last dynamic risk factor there?

22 A. It could, yes. That's why I said it was possible.

23 Q. And there was no -- there were no disciplinary
24 infractions while at the Dorchester County Detention Center.
25 Is that correct?

1 A. I don't know.

2 Q. Did you seek out those records?

3 A. No.

4 Q. Now the last part of the definition is likely to
5 reoffend. Is that -- we talked about whether or not they
6 have a mental disease or a personality defect, whatever that
7 term is, makes it likely to reoffend, more likely. Does
8 that have a specific meaning?

9 A. Yes. It's defined in the law.

10 Q. Because you're saying that he has a 10 percent chance
11 reoffend?

12 A. I'm saying that people with the same score as him on
13 the Static-99, score four, 11 percent of them reoffended
14 within five years.

15 Q. And it's your opinion that a 10 percent chance of
16 something happening is a likely chance that it's going to
17 happen?

18 A. In this case, that's the opinion that I came to.

19 MR. FALK: One moment, Your Honor.

20 THE COURT: All right.

21 (Brief pause.)

22 MR. FALK: We have no further questions.

23 THE COURT: Redirect?

24 MR. BOGLE: Yes, ma'am. Thank you. May it please the
25 Court?

1 REDIRECT EXAMINATION

2 BY MR. BOGLE:

3 Q. Just a couple of things to be sure. Counsel was
4 talking to you about the 1996 arrest and then the conviction
5 wasn't had until 2004. But During that time, he reoffended
6 while out on bond for the first one. Did he not?

7 A. That's correct.

8 Q. Okay. The victims that he offended against, these
9 little girls we talked about earlier, where these people
10 that knew him, could identify him?

11 A. Yes.

12 Q. Okay. Is that a risk factor to you the fact that, a
13 dynamic risk factor, that a person would offended against
14 someone who could easily identify him. Is that a big deal?

15 A. Well, it's related to their volitional impairment. So
16 if they take the risk to offend somebody who could readily
17 identify them, that increases the risk that they'll be
18 caught. And so it speaks to their volitional impairment as
19 to whether they are taking risks in this regard. Are they
20 doing things that are likely to end up or their likely to
21 end up in prison.

22 Q. So does this relate then to the series of difficulty to
23 control his behavior?

24 A. Yes.

25 Q. Okay. Now, when you talk to him about whatever program

1 he attended while in prison, how many did he tell you about?

2 A. He told me about one.

3 Q. And that would be this thing called Breaking Free?

4 A. Yes.

5 Q. So when you asked that kind of question about all the
6 -- whatever you went to while in prison, what are you trying
7 to find out?

8 A. Well, I want to hear what they remember and if that's
9 consistent with the records or -- if those records are
10 available.

11 Q. Okay.

12 A. But I want to hear -- I generally ask them, you know,
13 have had they had any treatment in prison and what they've
14 gotten out of that and how they've changed. So how they
15 changed from the person they were when they committed the
16 offenses to the person that they are now.

17 Q. And all these different groups that Mr. Falk named,
18 WorkKeys, anger management, Jump Start, Kairos, did Mr.
19 Busch tell you of attending any of those things?

20 A. No.

21 Q. Did you give him a chance to?

22 A. Yes.

23 Q. Okay. And of all the programs that Mr. Falk mentioned,
24 do any of those programs, as far as you, know deal
25 specifically with sex offender treatment?

1 A. To my knowledge, none of them do; not specifically.

2 Q. Okay. Does SCDC have a specific program for sex
3 offender treatment?

4 A. Yes. They have one program. It's in Columbia. And
5 it's, to my knowledge, only offered at the prison in
6 Columbia; at one of the prisons in Columbia. And that's the
7 program that the Department of Corrections runs and
8 sanctions as their sex offender treatment program.

9 Q. And did you find any record of him attending that
10 program in all the SCDC records that you looked at about
11 this guy?

12 A. No. There was no record of that.

13 Q. Mr. Falk asked you if a person can be a pedophile and
14 yet not be a sexually violent predator?

15 A. That's correct.

16 Q. Well, isn't one of the requirements that they act on
17 this conduct for at least a six-month period?

18 A. That's correct.

19 Q. Have you had cases where there was just one incident
20 and you couldn't prove the six months?

21 A. Yes. Plenty.

22 Q. Okay. And so they wouldn't meet the diagnosis; right?

23 A. That's correct.

24 Q. Now, finally, there was a question about treatment on
25 the outside versus treatment on the inside. Is it your

1 opinion that this man needs to be confined for long-term
2 control, care, and treatment?

3 A. Yes.

4 Q. Okay. Why does he need to be confined versus turned
5 loose to get it?

6 A. Well, I think that if he's in the community that he is
7 likely to do this kind of thing again. And if he's in an
8 outpatient treatment program, he'll be free to, you know, go
9 wherever he likes and he won't have -- anybody necessarily
10 controlling those movements but him. And I don't think that
11 he has good control of his behavior. I think his volition
12 is impaired and that he is likely to do this again.

13 MR. BOGLE: Thank you, Doctor. Nothing further.

14 THE COURT: Counsel, let me see you a second.

15 (A bench conference was held off the record and out of
16 the hearing of the jury.)

17 RECROSS-EXAMINATION

18 MR. FALK:

19 Q. Just a moment ago, Mr. Bogle asked you whether or not
20 he committed another offense while he was out on bond.

21 That's the '96 to 2004?

22 A. The 2003 offenses were ---

23 Q. Yeah, okay.

24 A. --- were committed, my understanding, while he was out
25 on bond for the 1996 offense.

1 Q. And it was your testimony that these people could
2 readily identify? These victims could identify my client?

3 A. Well, they were known to him; yes.

4 Q. Is there any -- do you have any understanding as to why
5 the Dorchester County Solicitor's Office waited or didn't
6 pursue the '96 charge?

7 MR. BOGLE: Objection on relevancy, Your Honor. It
8 goes to speculation.

9 THE COURT: He's just asking if she has any
10 information. I'll allow the question. The door is open.
11 You may proceed. You may answer the question.

12 A. No. I don't know.

13 Q. Thank you. One of the other questions that Mr. Bogle
14 asked you is he asked you whether or not he had any of the
15 sex offender treatment that's offered by the South Carolina
16 Department Corrections. Is that correct?

17 A. Yes.

18 Q. Is there any information in the record as to whether or
19 not it was offered to my client?

20 A. I don't recall. But I did note it in my report, so I'm
21 not sure.

22 Q. Do you recall seeing other reports where people had
23 been offered the program and then withdrew from it or didn't
24 complete it?

25 A. Do I recall other reports ---

1 Q.. Have you seen other -- you testified, what? You said
2 96 times.

3 A. Yes.

4 Q. And you've done many of these evaluations. Is that
5 correct?

6 A. Yes.

7 Q. Have you not seen -- have you not ever seen indications
8 from the South Carolina Department of Corrections that
9 somebody was offered the program and then didn't complete it
10 for one reason or the other?

11 A. Yes. That's happened. I've seen that in the records,
12 yes.

13 Q. Okay. But you haven't seen anything in this whether or
14 not this program was even offered to my client?

15 A. I don't recall seeing that information. And I did
16 bring his original file up here with me that I could look.

17 MR. FALK: Could I ask the Court if she can go and
18 retrieve her file and look.

19 THE COURT: Sure.

20 MR. FALK: Please?

21 THE WITNESS: Okay.

22 (Witness briefly exits stand.)

23 A. There's nothing in the records -- sorry. There's
24 nothing in the records that I have here, the Department of
25 Correction records, to say that he was ever offered

1 treatment.

2 Q. And do you have any information as to how South
3 Carolina Department of Corrections determines who's eligible
4 for that class?

5 A. No.

6 MR. FALK: No further questions.

7 THE COURT: All right.

8 FURTHER EXAMINATION

9 BY MR. BOGLE:

10 Q. At the same time, Dr. Gehle, is there anything in your
11 records to indicate that he sought out sex offender
12 treatment and was turned down?

13 A. No.

14 MR. BOGLE: Thank you.

15 THE COURT: All right. Is this witness free to leave?

16 MR. BOGLE: We would rest our case at this point and
17 ask that she be excused.

18 THE COURT: All right. She may be recalled. Is that
19 correct?

20 MR. FALK: We may ask for a recall. Yes, Your Honor.

21 THE COURT: All right. All right. Don't leave us
22 quite yet.

23 THE WITNESS: Okay.

24 THE COURT: All right. Very well. Counsel let me see
25 you just a second.

1 (A bench conference was held off the record and out of
2 the hearing of the jury. A motion was made that will
3 be placed on the record later in the proceeding. The
4 State rests.)

5 THE COURT: Now, ladies and gentlemen, you have now
6 heard the witness and received the evidence which you
7 will -- from the Petitioner who is the State in the case in
8 chief. We will now turn to the defense. Mr. Falk?

9 MR. FALK: At this time I would call my client to the
10 stand.

11 THE COURT: Yes, sir. If you'll come along please and
12 be sworn.

13 (CHRISTOPHER DEWAYNE BUSCH, was duly sworn and provided
14 the following testimony.)

15 THE COURT: Just when you get situated, if you'll put
16 the microphone just a little bit towards you, and state your
17 full name for the record, spell your last name for us,
18 please.

19 THE WITNESS: Christopher Dewayne Busch, B-u-s-c-h.

20 THE COURT: Your witness.

21 DIRECT EXAMINATION

22 BY MR. FALK:

23 Q. Mr. Busch, when did you get sentenced to the Department
24 of Corrections?

25 A. March of 2014.

1 Q. So and after your arrest in 2003, were in the
2 Dorchester County Detention Center?

3 A. Yes, sir.

4 Q. So from 2003 until today, have you either been at the
5 Dorchester County Detention Center or the South Carolina
6 Department of Corrections?

7 A. Yes, sir.

8 Q. Now, you have -- there was some mention of Dr. Gehle
9 talked to -- I asked her some questions about some of your
10 girlfriends in the past. Can you tell me your romantic
11 relationship history.

12 A. I dated Andrea Martin back in before -- whenever I was
13 in high school. Then I dated Angela Bowman and I dated
14 Andrea Martin again. I dated ---

15 Q. Over what period of time were you with ---

16 A. This was back in high school on up. And then up until
17 I was in my wreck in '83. I was in my wreck in July of '83.
18 And I was severely injured. And whenever I got out of the
19 hospital -- thanks to Andrea Martin, she stuck by me or I
20 probably would've never got out of the bed. She stuck by me
21 and got me back where I was up walking again.

22 Q. Let me just interrupt you real quick. I don't think
23 there's been any mention before about your wreck. What was
24 the wreck?

25 A. I was in a real -- you have to excuse me. I do get

1 emotional about this. I was in the wreck back in July 20,
2 1983. I was delivering newspapers. I was working for the
3 Charleston Evening Post. I was waiting to turn cross to go
4 to Highway 17-A. I was in my pickup truck. There's a dump
5 truck coming towards me. It was loaded down. They estimate
6 I was stopped as he was coming towards me, go cross traffic.
7 They estimated the man, after he slammed on the brakes, he
8 was doing 85 miles per hour. It slammed me into the dump
9 truck. I went out the back window of my pickup truck. This
10 lady that was a cafeteria worker at the school I went to --
11 this was after I graduated high school -- Ms. Corrine (ph).
12 She's the one that found me in the field. They said I went
13 85 feet through the air and landed in this field. They
14 said, they tell me, my calf muscle is cut in half. She
15 found me. She was saying that I looked dead. They tell me
16 that I sat up and I scared her. They say I died in the
17 ambulance. They say I died on the operating table. Next
18 thing I know, I woke up in the hospital. Now, I do have a
19 lot of -- when I say I tell you what I can remember, a lot
20 of my memories before then is -- I don't remember what
21 people told me before my wreck. I gotta go by what people
22 told me before my wreck. So I can't tell you what people
23 told me. Some stuff after my wreck still does where I talk
24 with Ms. Gehle does get mixed up for me. I'm not going to
25 lie with you. Stuff gets mixed up for me. I've had bad

1 head -- when I get excited, I have a hard time talking
2 sometimes. So I'll do the best I can. I'm nervous. I'm
3 excited. I'm gonna talk the best I can for you. So please
4 bear with me right now.

5 Q. So you had some -- so you went head first through the
6 windshield?

7 A. I went through -- whenever I hit, the car hit me and
8 hit me into the dump truck. I went through the back --
9 small pick up truck. You remember them little tiny pickup
10 trucks we used to have? That's what I was in. Little
11 window. I went through the back window. They said if I
12 would've had my seatbelt on, I would've been cut in half
13 because the steering wheel was on the back all the way to
14 the seat. So they said I went 85 feet through the air and
15 landed in the field. So I ain't trying to do this to be
16 emotional with you or get you on my side ---

17 Q. So you said Ms. Martin helped you get back on your
18 feet.

19 A. Andrea stuck by me. And she stuck by me and gave me
20 back. She wouldn't let me just quit.

21 Q. How long were y'all together?

22 A. Three years together. We was together at least three
23 years or four years.

24 Q. Were y'all intimate?

25 A. Yes, we were.

1 Q. And so you had Ms. Martin for three or four years.

2 Now, you weren't living together. Is that correct?

3 A. No, we wasn't. Because we was in school.

4 Q. Yeah, okay. Then after ---

5 A. After that, I started dating Tracy Jordan. We got
6 engaged to be marriage. After the wreck, that's when I
7 started drinking. I'm an alcoholic. I couldn't deal -- I
8 couldn't deal with a lot of stuff. I got real shook up. We
9 was engaged -- we was engaged. She asked me to marry her on
10 February 28, '84. We was going to get married. We was
11 together for a year. She finally got fed up with my
12 drinking and said -- just about a month before we were
13 supposed to get married, said she couldn't handle it no more
14 and so she broke up with me. I can't blame the woman. She
15 couldn't handle my drinking. Wasn't long after that I
16 joined the Army, and I went in the Army.

17 Q. So you and Ms. Jordan, y'all were intimate as well. Is
18 that correct?

19 A. Yes.

20 Q. Okay. And then after the Army, did you have romantic
21 relationships?

22 A. Yeah. I dated several -- I dated several women while I
23 was in the military. I dated -- the one main one was a lady
24 Jennifer. She was in the military with me. I dated her
25 about the whole three years I was in the Army. She ended up

1 going to Korea just before I got out the Army. And so --
2 and when I got out of the Army, that's when I met Joanne. I
3 dated Joanne from '89 -- I met her in February of '89. I
4 dated her until '95. So we dated right at six years. On
5 and off we were dating. When I get down, I get mad. I
6 drink. When I get down, I may run off, what not. But we
7 always would get back together. She was the best thing I
8 had in my life. She stood by me. But my drinking ended up
9 busting that up permanently. She got pregnant. And she
10 just started working at Westvaco. And she said -- we was
11 talking about it and she told me about it. And she said I
12 don't know whether or not I want to keep the kid since
13 you're such a bad alcoholic. I don't know if I want to take
14 a chance with that. Plus, I just started -- she just
15 started. She was less than 60 days into her new job. She
16 finally got a job where she was making something more than
17 minimum wage. She wasn't having to go to these different
18 companies, this warehouse, that -- busting her butt working
19 hard, doing what not, going to temporary service here,
20 temporary service there.

21 Q. So, Mr. Busch, so again, the girl in the military,
22 Joanne, y'all were intimate as well?

23 A. Yes, sir.

24 Q. And then after Joanne, were there?

25 A. Yes. That's when I started getting Cricket. I met her

1 when I was working at the warehouse, at the cheese
2 warehouse.

3 Q. How long were you and Cricket together?

4 A. I met her in '85. She's the one I moved to Arkansas
5 with. She knew what I was going through even with the
6 charges. She knew what I was going through even with me
7 moving to Arkansas with her. I dated her from '95 to '97
8 when I was in Arkansas [sic]. When I got to Arkansas, I
9 started dating her sister Bobby Joe. I dated Bobby Joe from
10 '97 to '98. And I dated several other women on and off.
11 But I got to real bad drinking while I was out there. I
12 didn't really have one -- I was dating several of them on
13 and off. I didn't have no real steady out there. I just
14 dated a bunch of them on and off while I was out there.

15 Q. So these were, again, women in Arkansas. So after
16 2000, that brings you up to about 2003, I guess when you got
17 arrested again. Were you in a relationship with somebody at
18 that time?

19 A. When I come back, I didn't really get in a steady when
20 I come back. I started working. I was working like 12, 16
21 hours a day. So basically I was trying to get my job going.
22 So at that point and time, I went out with a few women. I
23 was dating a few women on and off. But I didn't really have
24 a steady relationship after I come back. I was working a
25 lot at that point in time. Because when my mama died in

1 February of 2000, that's when I moved back to Arkansas.

2 Q. Did your parents stay here?

3 A. Both of them was from here. They both passed -- my
4 daddy passed away in '86 when I was in the military, and my
5 mama died in 80 -- in 2000.

6 Q. Did she go to Arkansas with you?

7 A. Who? My mama?

8 Q. Yeah.

9 A. No, she died here.

10 Q. Okay.

11 A. I moved to Arkansas with Cricket.

12 Q. Did you have other family up here?

13 A. All my family is from here.

14 Q. Okay. You heard Dr. Gehle say that you have a
15 preference prepubescent children, girls. Is that true?

16 A. No, sir.

17 Q. Now you committed crimes against prepubescent children.
18 Isn't that correct?

19 A. Yes, sir.

20 Q. But is that your preference?

21 A. No, sir.

22 Q. It sounds like alcohol certainly played a role in the
23 dissolution of some of your romantic interests. Did it play
24 a role in some of these offenses?

25 A. Yes, sir.

1 Q. When did you decide to go sober?

2 A. I stayed sober for a while when I first come back from
3 Arkansas. And I started hanging out with some friends from
4 work. And I picked back up the bottle. That's where I
5 messed up. I didn't know when I started back drinking, I
6 messed up. When I was incarcerated, I started going to AA.
7 I hooked up with them. And I've been going to AA ever
8 since. And I know I can't drink no more. And I've been
9 doing that. I hooked with them. And I know when I get out,
10 I got to go find me a good AA group and all of that. So I
11 can't mess with alcohol no more. That's my downfall.
12 Because I know if I start drinking, I'm getting back in
13 trouble. Alcohol ain't nothing but trouble for me.

14 Q. Your family knew where you were living in Arkansas,
15 didn't they?

16 A. Yes, sir.

17 Q. Did they ever tell you that people were looking for you
18 here?

19 A. I knew people was looking for me.

20 Q. You did?

21 A. Yes, sir. It's on my own I'm saying this. I got a DUI
22 when I was in Arkansas. I was held overnight. They did the
23 NCIC check when I was in Arkansas. They held me overnight.
24 If South Carolina wanted me, they could've come got me. I
25 was scared. Scared. I don't know why they didn't come get

1 me. They had the opportunity to come get me.

2 Q. Okay.

3 A. But I was in jail overnight.

4 Q. Now let's talk about some of our classes. What is Work
5 Care?

6 A. Work Corp.

7 Q. Work Care?

8 A. Work Corp.

9 Q. Work Corp, excuse me. Work Corp.

10 A. Work Corp it teaches you -- it teaches you so you learn
11 different people's personalities when you're working with
12 them: possessive, passive. So when you're working with
13 people, you know how to relate with people. So, you know,
14 the -- so the people -- you know who -- different people
15 work different. Different people work better. Like you got
16 a passive person, you know they got -- they working there to
17 take a job better. You got an aggressive person who is
18 going to take on this job better.

19 Q. How often would that class meet?

20 A. It met one to two times a week, and it was like six
21 weeks. And we learned also with the different math skills
22 and what not, all that there.

23 Q. And where was that?

24 A. That was at McCormick -- it was that faith and
25 character based program.

Direct Examination of Mr. Busch by Mr. Falk

- 1 Q. At McCormick dorm?
- 2 A. McCormick Correctional facility.
- 3 Q. Excuse me. McCormick Correctional.
- 4 A. Yes, sir.
- 5 Q. So what other part of McCormick was the Faith and
- 6 Character dorm?
- 7 A. We had one dorm. Well, actually we had one wing and
- 8 one dorm. Because it was -- we started out it was on a
- 9 level three yard. I had to leave a level two yard to go
- 10 back to a level three yard for this. We was trying to get
- 11 -- they was trying to get the whole yard. But with it being
- 12 a level three yard, they had complications. So they ended
- 13 up with a character-based program down at Allendale. They
- 14 was having problems with the murderers and the violent
- 15 offenders.
- 16 Q. Let me just kind of sort some stuff out for the jury
- 17 here. Level two yard, what does that mean?
- 18 A. Level two yard ---
- 19 Q. What's your understanding of it?
- 20 A. Level two yard is just medium and people in and out, in
- 21 and out, in and out, in and out. People come in and go out;
- 22 in and out, in and out, in and out.
- 23 Q. And so that's where you were. You were in that dorm?
- 24 A. I was in that custody yard.
- 25 Q. Okay. And then you went to -- in order to get to the

1 character dorm, you went to a level three. Is that ---

2 A. For the initial -- the initial program, they put a
3 special stipulation in the rule. Because if you wasn't a
4 level three, the maximum security, you wasn't even supposed
5 to be on a level three yard.

6 Q. So it's your understanding that level three yards are
7 for the more serious offender? People with a longer
8 sentence.

9 A. Let me explain this. Me being a sex offender, for me
10 to go to a maximum security yard, I put my life in serious
11 danger.

12 Q. Why do you say that?

13 A. Because that's on the yards, they will kill a sex
14 offender.

15 Q. And then why did you go to that yard?

16 A. To get in the programs. Because there was no programs
17 offered anywhere in SCDC for us.

18 Q. So what kind of programs did you have in the character
19 dorm in McCormick?

20 A. Whenever this program -- when the Faith and Character
21 program started, they gave us a pamphlet. It listed 30
22 programs. Thirty programs. Mind you, I'm over 25 when I
23 went in. If you're over 25, SCDC didn't offer us nothing.
24 They didn't have nothing for you. If you was over 25, you
25 couldn't go to school. You couldn't take Voc Rehab. You

1 couldn't do nothing. I couldn't -- the only way I got anger
2 management when I was at Ridgeland yard is the psychiatrist
3 that taught it, he went -- and he got that -- he had to
4 resign his job because they gave him a stipulation that they
5 told him for the class I was in, they said either you get
6 there and you let that class go or you got to resign your
7 job. He said right there, at the end of my class, he
8 resigned his job. And they told him he had us in his class
9 that was too old for him to be teaching. Because SCDC said
10 that we was too old. We was over 25. So when they started
11 up -- now this here man him that was the over up in
12 headquarters -- I don't remember his name -- that started
13 the Faith and Character program, he was under Osmond (ph).
14 He pushed for this program. But to get it started, they had
15 to put it on McCormick yard.

16 Q. Okay. So now when you're at the dorm, what kind of
17 classes were you able to take when you were at the character
18 dorm at McCormick?

19 A. We had to go -- we could take -- like I said, we had to
20 Work Corp. We had WorkKeys. We had the Breaking Free.
21 That was for the sex offenders. That's for sex offenders
22 that was convicted on the streets and convicted in the
23 prison. We had ---

24 Q. So let's talk about that, Breaking Free. That was
25 taught when you were at McCormick. Is that correct?

1 A. Yes, sir.

2 Q. And that was part of the character dorm?

3 A. That's part of the faith -- that was also backed by the
4 people in headquarters. Headquarters pushed for that. They
5 gave us -- they picked the people who run it.

6 Q. So Breaking Free, what does that mean? Breaking free
7 from what?

8 A. Breaking free from your sexual addictions.

9 Q. Okay. So what type of stuff would you learn from that?

10 A. Whenever we was going through that, they helped them
11 come up with questionnaires. We had to go through and
12 answer these questionnaires so they could -- whenever we
13 answered these questionnaires, before we start, they
14 evaluate the questionnaires. And we had to -- they got your
15 records, your street records. The people from headquarters
16 had your street records. And they get them. They go
17 through -- they got the preachers, the chaplains, what I
18 call preachers, they got the chaplains. They go through and
19 they read over your questionnaires and then they come to --
20 and they interview you.

21 Q. Okay.

22 A. And then they -- they get like 20, 30 of us and then
23 they call y'all in and they talk to you, personal
24 interviews. Then they say, okay, we got up to 90, they
25 elect 20 of us. And then they bring in -- and then they

1 give you more questionnaires. Because they want to get you
2 to where you're going to open up and they do -- the
3 questionnaires help you look inside. So you can find out
4 what's inside you. It's not easy. Because then you got
5 some of these, like I said, it's the ones from the yard.
6 And I'm on a level three yard. You got the ones that what
7 we call the Jackers (ph). I don't know you know what I
8 mean. People in the pink that jacks on the COs; the
9 rapists. The rapists that been raping the women. Then you
10 got us what they call the child molesters. We the ones that
11 got to be worried about being killed. Because I don't know
12 if y'all remember a few years ago when y'all heard about the
13 one up there at McCormick. It was all over the Internet.
14 They -- him. This man had ten years. Ten years. They put
15 them in the room with this man ---

16 Q. Mr. Busch, let me just bring you back here for a
17 minute.

18 A. Okay. Breaking Free.

19 Q. Breaking Free. So ---

20 A. We get to open up. We get group discussions. Group
21 discussions.

22 Q. And so would there be people holding your accountable
23 to your answers in these group discussions?

24 A. You can tell the ones that were bored.

25 Q. And was there, like, homework in between?

1 A. We had homework. We always had more questionnaires we
2 had to answer all the time.

3 Q. And was there stuff that you read?

4 A. We always had -- we had books we had to read. They
5 gave us books to read.

6 Q. And how often would this meet? How many times a week
7 would it meet?

8 A. Twice a week.

9 Q. For how long ---

10 A. Three hours a day.

11 Q. And over how many weeks?

12 A. That was six months.

13 Q. Okay. And everybody in this particular class was?

14 A. Sex offenders.

15 Q. And actually you said it got down to a group of 20?

16 A. It started out with 20. By the time we got done there
17 was seven of us left that finished it. Because a lot of --
18 like I said, 20 of us started. You got the counselors and
19 the chaplains, they see people that wasn't being honest.
20 They realized. A lot of them didn't want to open up and be
21 honest or they were scared, they would quit. Because they
22 didn't really want to heal. They didn't want to open up.
23 They didn't want to find out -- they didn't want to try to
24 get honest with themselves. They quit.

25 Q. What did you learn about yourself?

1 A. I learned that -- I learned -- that's when I really
2 learned that alcohol was a part of my problem. And I
3 learned that -- when I was talking to Ms. Gehle, I said, I
4 told her that I need to make sure I wasn't around the young
5 people. That's why I tell her, I said, I say, I had not be
6 around them. I learned what -- make sure I did no more.
7 Because -- and whenever I said I knew -- I know it scares
8 me. I know what I got to watch for.

9 Q. So do you know what trigger ---

10 A. My triggers.

11 Q. What would be one of your triggers?

12 A. My triggers -- it's like with AH, what it was? It
13 wasn't her batting her eye. She didn't bat her eyes at me
14 and kiss me on my cheek. It's -- she showed love to me like
15 I was her uncle. Okay. I was like a uncle to her. I was
16 like an uncle to her and -- what it was? I failed. I
17 failed her. I failed her and her two brothers. I failed
18 them. That was my fault. I failed her. She got -- I was
19 like her uncle. She put her love in me as a uncle. I let
20 her down. I mis-abused that love. Because that was the
21 love she put in me. I mistook that love for the wrong thing.
22 Got me? That was me being wrong. She put her trust and her
23 love in me and I mistook that love. That was what was wrong.
24 Q. So you and some distorted thinking?
25 A. I mistook -- I mis-distorted the thinking in my head.

1 That's what it was.

2 Q. And how did you come to this realization?

3 A. Whenever we was going through this group. Like I said,
4 we got these questionnaires. It makes you really look
5 inside yourself. Makes you open up. And we got everybody
6 there talking. Like I said, and you talk. And you see what
7 this man has got to go through, what he went through. You
8 can see what you went through. And it helps you open up.
9 It's counseling. Because that man counsels you, you counsel
10 him. It's just like she says. You got counseling. We just
11 don't have to pay doctors. We have the counselor. But they
12 don't -- but we got counselors. We got -- we counseling
13 each -- it helps you open up. We don't have a paid doctor
14 counselor. But we got each other counseling because it
15 helps you open up.

16 Q. Did you have like a relapse prevention plan?

17 A. Yes, we do. But it's -- yes, I'm going to take -- I
18 have -- my achievement, a place I would enter up in
19 Spartanburg. You were talking about Jump Start. She says
20 -- now, like she said, we don't have a lot of the treatment
21 centers down in this area. They do have the Jump Start up
22 in the upstate. I knew I was going -- I went -- by me being
23 in that program, Jump Start was started up there. So I knew
24 I could go through Jump Start any time and get help. Jump
25 Start is there to help you. Say my brother hadn't got a

1 place yet. Jump Start helps you. Jump Start would help me
2 get counseling, therapy, and a job. Jump Start has helped a
3 lot of sex offenders because he's actually -- the man that
4 started it, he was in prison. His wife, she's got a lot of
5 financial backing because she knew a lot of people higher up
6 in the state. But he's actually had to fight to get
7 housing. But they actually got programs to help sex
8 offenders and get counseling and therapy.

9 Q. What did you do with Jump Start on the inside? Where
10 did you go? Jump Start comes to the different facilities,
11 does it not?

12 A. It started at McCormick because the man was from
13 McCormick. Now it's in all the prisons in the whole state.
14 He's doing that -- he's got houses now all over the state.
15 It's to help people that's incarcerated to get housing when
16 they get out, to get jobs, get therapy, and get help.
17 Whenever I first got incarcerated, if you got out, it was
18 difficult if not impossible to get -- you had to be lucky to
19 get in a halfway house. Now through Tim, he's got a program
20 going -- he pays. Say you in Jump Start, you get out -- you
21 can stay up to a year. You get a job. You pay him rent.
22 But say you stay out late, you pay a penalty. Say you on
23 food stamps, you're food stamps goes to the program and he
24 buys the food. He takes a part of your check. He puts in a
25 savings account for you for whenever your year is up to help

1 you get a house, buy a car. And in the process, he's got
2 you a job. You build up your job. You get -- he helps
3 build your credit. He helps -- they helping you. This past
4 year they opened up a place here in Charleston that I heard.
5 It's a good program. He's built something from -- he was a
6 convict at McCormick. And through him and his wife, he went
7 through -- Christ did this in his life helping him help
8 people expand, to help people when they're getting out of
9 prison to give them something to work for.

10 Q. What did you learn on the inside from Jump Start? You
11 went through classes. How often would the classes meet?

12 A. Twice a week, two to three hours a day.

13 Q. What type of things did y'all

14 A. We went through the purpose driven life book. I don't
15 if y'all seen it on the street. Tim ---

16 Q. A Purpose Driven Life?

17 A. A Purpose Driven Life. He also had a workbook. We had
18 homework. You had to search your life and try to make
19 changes in your life while you were locked up too. See, I
20 got down and I was -- I worked in horticulture. Now, A lot
21 of times say -- if I had a chance, I work PI. PI is prison
22 industry. I work to make money. My family, when they
23 could, hug me. I like to be self-sufficient. So I won't be
24 a strain on my family. But I try to work while I was in
25 prison. I was -- at McCormick, I worked horticulture.

1 Q. So do you have to complete Jump Start to be eligible to
2 go to the programs when you get out?

3 A. If you don't complete Jump Start, he can't do nothing
4 for you.

5 Q. Did you complete Jump Start?

6 A. I got a green folder. The only thing better than that
7 is to get a blue folder.

8 Q. What is Kairos?

9 A. Kairos -- Kairos is a prison ministry. Like he said,
10 Catholic prison ministry. When you first go in, they take
11 20 of us. It's a four-day walk the first time. And it's a
12 lot of love. Love. A lot of love. They say they tempt you
13 with the foods. They give you food, you walk out with God.
14 I mean, when you walking down -- it ain't another man. And
15 nobody -- you scared to hug another man. You got to be
16 hugging men, shaking hands. They feeding you. And they
17 teaching you the Bible. Teaching you Christian. And then
18 once you go through that -- there is some yard that is not a
19 real big -- you might go twice a month, three times a month,
20 four times a month. But then you go two hours a day on the
21 weekend -- sometimes it's two days on the weekend, four
22 times -- and they'll try to help you when you get out. It's
23 a Christian-based program. They try to help you.

24 Q. How long is that program?

25 A. Once you get in Kairos, you go every month or every

1 other month according to how many people. Like on the Tyger
2 River Yard I just left, we went every other month. Too many
3 people. We have, like, 120 people. We do like A through K,
4 120 people this month. They do -- 120 people that month.
5 You had to rotate you had so many people in the program.
6 And every -- twice a year, they do the walker. It's called
7 a four-day walk so more people can join. Wonderful program
8 helping people out.

9 Q. Now, is your family here today?

10 A. Yes, sir.

11 Q. Who's here?

12 A. My brother Paul, my sister Shirley, my niece Sandra,
13 and my grand-niece Krissy.

14 Q. Have you stayed in contact with them?

15 A. Yes, sir.

16 Q. And have you stayed in contact with your brother
17 specifically?

18 A. Yes, sir.

19 Q. Okay. If you were allowed to leave today, do you have
20 community supervision?

21 A. Yes, sir.

22 Q. And would you be required to wear an ankle monitor?

23 A. They said I would have to wear the ankle monitor for 90
24 days and do -- I'd have to take counseling and therapy.

25 Q. And you'd be -- did they tell you about any type of

1 registration requirements?

2 A. I'd have to register on the street every three months.

3 Q. Sex offender registry?

4 A. Yes, sir. I signed that paper after I talked with Ms.
5 Gehle. I was informed after I talked with her.

6 Q. Okay. What are you going to do for money?

7 A. I'm going through Jump Start to help me get a job.
8 They said they'd help me get a job when I get out.

9 Q. What kind of skills do you have?

10 A. I work warehouse. I do construction. I can do
11 carpentry. I can do butcher work. I was a -- I'm a
12 certified -- well, I was a licensed certified butcher. I
13 have to recertify. I can drive a forklift. I can do
14 carpentry. I'll do manual labor. I'll do anything I got
15 to. That's one thing, I'm not scared to work.

16 Q. As a result of the accident, we talked about it, did
17 you ever receive disability?

18 A. No, sir.

19 Q. Okay. And where would you live?

20 A. I'll move in with my brother. He bought a 12-acre pond
21 up on --

22 Q. Okay.

23 A. Because that's up -- all the programs that I took is
24 based up in the upstate. So I asked him to buy a property
25 up in the upstate so I could have access to all the programs

1 I can.

2 MR. FALK: One moment, Your Honor.

3 THE COURT: All right.

4 (Brief pause.)

5 MR. FALK: I have no further questions. Please answer
6 any questions Mr. Bogle has.

7 THE COURT: Cross-examination?

8 MR. BOGLE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. BOGLE:

11 Q. So, Mr. Busch.

12 A. Yes, sir.

13 Q. As I see this timeline, you get arrested back in 1996
14 for the crime that occurred back then?

15 A. Yes, sir.

16 Q. Lewd act charge?

17 A. Yes, sir.

18 Q. And you're out on bail?

19 A. Yes, sir.

20 Q. And you moved to Arkansas with one of the girls you
21 mentioned. Was that Bobby Joe or Cricket?

22 A. That was cricket.

23 Q. So you moved to Arkansas with Cricket?

24 A. Yes, sir.

25 Q. And you stayed out there to least 2000 when your momma

1 passed away?

2 A. Yes, sir.

3 Q. So the whole time you're out there, you're violating
4 your bond?

5 A. Yes, sir.

6 Q. And you know that?

7 A. Yes, sir.

8 Q. Okay. So you're out there. And then you come back to
9 South Carolina and we have the 2003 convictions which occur
10 then. You mentioned a minute ago that -- I guess my
11 question is: Do you have a preference for sexual activity
12 with nine- and ten-year-old girls?

13 A. No, sir.

14 Q. Well, you did in 1996 right here. That led to that
15 conviction; right?

16 A. Yes.

17 Q. And then in 2003 we have four more convictions all
18 involving nine-year-old; right?

19 A. Yes.

20 Q. And are you saying that they sent you some signal that
21 you misinterpreted? That they winked at you and you thought
22 they were coming on to you?

23 A. No, sir.

24 Q. Well you were 40 -- you were 40 years old?

25 A. I did not say they ---

1 Q. Well, you were 40 years old back then?

2 A. I didn't say that they winked at me.

3 Q. They winked at you. They did what?

4 A. I did not say they winked at me.

5 Q. Well, what did they do that made you suddenly think
6 this is ---

7 A. I misinterpreted the love that they showed me.

8 Q. And in 1996, you would have been 33. Because you were
9 born in 1963; right?

10 A. Yes, sir.

11 Q. And in 2003 when these things happened over here, you
12 would've been about 40?

13 A. 39.

14 Q. Thirty-nine.

15 A. Yes, sir.

16 Q. Okay. Are you saying you were drunk and that's what
17 caused in?

18 A. My judgment was impaired. I was drunk. But I didn't
19 say that caused it.

20 Q. You're not blaming it on alcohol, are you?

21 A. I said I was impaired. I didn't say I was blaming it
22 on it.

23 Q. Well, there's plenty people drinking don't commit sex
24 offenses against nine-year-old girls, aren't there?

25 A. Yes, sir.

1 Q. Now you went to this Breaking Free program while at the
2 Department of Corrections?

3 A. Yes, sir.

4 Q. And that sounds like a primarily faith-based thing.
5 These are ministers from the outside that come to the
6 prison. Is that right?

7 A. One of them, yes, sir.

8 Q. Okay. Now the actual sex offender treatment is taught
9 only at Broad River; correct?

10 A. I applied for that, but I did not get to go.

11 Q. Okay. You applied for it, didn't get to go. You
12 understand there's no record of it being offered to you or
13 you applying for it?

14 A. They did not offer it to me. It was Ms. Jim and Ms.
15 Lee when I was at McCormick?

16 Q. Well, Sylvia Roberts teaches the program. Does she
17 not?

18 A. I don't know who teaches because they didn't tell me
19 who teaches it.

20 Q. So you're saying it's the prisons fault that you didn't
21 get real sex offender treatment?

22 A. I put in. I put in my staff request to my caseworker.

23 Q. Okay.

24 A. And to the head caseworker at the prison I was at.
25 That's all -- that's as far as I could go.

1 Q. And was that done after you got notified that this
2 proceeding was beginning against you?

3 A. No, sir. I'd already left that prison. I did that
4 while I was at the Faith and Character program.

5 Q. Okay.

6 A. Then I was informed this was taking place in December
7 of 2015.

8 Q. Yeah. Because they notified you you were going to be
9 screened by the initial committee that looks at these cases;
10 right?

11 A. December; yes, sir.

12 Q. Okay. It's December of '15?

13 A. Yes, sir. I applied for that whenever I was at
14 McCormick in 2010.

15 Q. Okay. Did you reapply?

16 A. I asked them several times. They told me once I put in
17 my staff request that if it come up, they would let me know.

18 Q. Okay. So it's your position, you're blaming this on
19 the prison that you didn't get in.

20 A. They told me I had ---

21 MR. FALK: Objection to the form of the question.
22 Argumentative. He's not . . .

23 THE COURT: I gotcha. Overruled. Cross-examination.

24 BY MR. BOGLE: (continuing)

25 Q. It's your position you're blaming the prison for not

1 putting you in true sex offender treatment; right?

2 A. I applied for it.

3 Q. Okay.

4 A. Some of the people that was in the program with me,
5 they did get to go. That's when I found out that they was
6 getting it and I applied for it.

7 MR. BOGLE: Thank you, Your Honor. That's all.

8 THE COURT: All right. Redirect?

9 MR. FALK: No redirect.

10 THE COURT: All right. You can come on back down to
11 the table, sir. Call your next witness, please.

12 MR. FALK: We would rest.

13 THE COURT: All right. Will there be any response?

14 MR. BOGLE: No reply, Your Honor.

15 THE COURT: All right. Very well.

16 MR. BOGLE: Your Honor, may we release Dr. Gehle now?

17 THE COURT: I'm sorry?

18 MR. BOGLE: May I release Dr. Gehle now?

19 MR. FALK: Yes.

20 THE COURT: Yes.

21 MR. BOGLE: Thank you, Your Honor.

22 THE COURT: Thank you. All right, now, ladies and
23 gentlemen, you've now received the evidence that you will in
24 this case. What remains for us are the arguments of counsel
25 and then my or instruction on the law. It also signifies to

1 me that there are matters that I must take up outside your
2 presence. Therefore, it's also a good time for our
3 afternoon break. I'm going to ask you to please step to
4 your jury room. Do not discuss this matter. Do not allow
5 anyone to discuss it with you. And we'll be with you in
6 just a little bit.

7 (The jury exits the courtroom at 3:17 p.m..)

8 THE COURT: Now, motions?

9 MR. FALK: Yes, Your Honor. At this time we would like
10 to renew my motions -- I would like to renew my motion for a
11 directed verdict. And, specifically, I would like to
12 comment on the fact is, one, and I want to make this clear,
13 I think as a matter of law, a 10 percent likelihood to
14 commit to reoffend cannot be -- a 10 percent chance of
15 reoffense is not a likelihood to reoffend. And the
16 testimony was that he was a 10 percent chance to reoffend.
17 And I think that that cannot constitute a likelihood to
18 reoffend under the definition of sexually violent predator
19 statute. That's my first point.

20 THE COURT: I think it's 11 -- wasn't it 11 percent?

21 MR. FALK: It was.

22 THE COURT: As I recall, it was 11 percent.

23 MR. FALK: It was. It was 10.1 to 12. So it's
24 whatever that bracket was. Whether 10 percent or whether
25 it's 11 percent, I still think that should not, as a matter

1 of law, be considered a likelihood to reoffend. And then
2 going further, Dr. Gehle -- I think that the State has
3 failed to show any evidence or really an investigation as to
4 my client's current position. She gave the Static-99 which
5 talked about who he was in 2004. She really had disregard
6 for any of the type of stuff he had been doing for the last
7 12 years. The issue is whether or not today he is a
8 sexually violent predator, not whether or not at some point
9 in the past he was a sexually violent predator. So we think
10 the State has failed to put any substantial evidence of the
11 current status of being sexually violent predator.

12 THE COURT: Got it. All right. Yes, sir?

13 MR. BOGLE: Your Honor, we think looking at the case,
14 arguing both motions, the end of the State's case, the end
15 of the case right now.

16 THE COURT: Yes.

17 MR. BOGLE: There's sufficient evidence to go to a jury
18 right now on contested facts. In reality, the only
19 qualified expert the jury has heard from is Dr. Gehle. And
20 she had diagnosed both the convictions of the right kind of
21 crimes of the mental abnormality times two, and the
22 likelihood to reoffend. Now, admittedly, the Static-99R
23 score is fairly low. But that's one part of a comprehensive
24 evaluation, which I think she testified to. And it's -- so
25 it's one part of a full valuation. And we would submit

1 there's enough information using the correct directed
2 verdict standard either end of the State's case or where we
3 are right now for the case to go to the jury.

4 THE COURT: All right. Any response?

5 MR. FALK: No, Your Honor.

6 THE COURT: Very well. And I would respectfully deny
7 your motion. While that certainly was an element that was
8 testified to by Dr. Gehle, that was not the only element.
9 And in response to the questions by the State, by Mr. Bogle,
10 regarding each of the elements, she certainly offered expert
11 testimony with regards to each element. And on that basis,
12 I think it is appropriate to deny the motion for directed
13 verdict. Both at the conclusion of the State or
14 Petitioner's case as well at the conclusion of all the
15 evidence.

16 Now, I would appreciate you all doing -- I know you
17 need to take a short comfort break -- but then I did want to
18 go over the charge with you.

19 MR. BOGLE: What about redacting those exhibits?

20 THE COURT: Y'all got to do that?

21 MR. BOGLE: Just a thought. You want to take a black
22 sharpie and just black out the last times on each ---

23 THE COURT: Why wouldn't that work? And I've got one.
24 I replenished my pen bag last week.

25 MR. BOGLE: Thank you.

1 THE COURT: And then we'll take our break for purposes
2 of everybody in the courtroom. And when y'all have a chance
3 for a short break, y'all come on back in chambers, and I'll
4 have copies of the charge available.

5 (A break was taken at 3:22 p.m. The proceedings
6 resumed at 3:58 p.m.)

7 THE COURT: Did y'all see the verdict form?

8 MR. BOGLE: Yes.

9 THE COURT: Yes and yes?

10 MR. BOGLE: Yes. Looks fine.

11 THE COURT: Okay. Good.

12 MR. BOGLE: We have one too. It looks like ours.
13 Close enough.

14 THE COURT: All right. All right. Anything from
15 Petitioner/State before we bring the jury out?

16 MR. BOGLE: No, Your Honor.

17 THE COURT: From the Respondent?

18 MR. FALK: No, Your Honor.

19 THE COURT: Okay. Jury. And you will open in full?

20 MR. BOGLE: Open in full and reply if he brings up
21 something new is my understanding.

22 THE COURT: Gotcha. Got it. Got it.

23 (The jury enters the courtroom at 3:59 p.m.)

24 THE COURT: All right. Ladies and gentlemen, I want to
25 tell you how we're going to be proceeding. In just a few

1 moments, you're going to be hearing from Mr. Bogle on behalf
2 of the State in his closing argument. You're then going to
3 hear from Mr. Falk in his closing argument on behalf of Mr.
4 Busch. And then you may hear a reply argument from Mr.
5 Bogle. Once the closing arguments are finished, I will then
6 explain the law to you that applies to this matter. There
7 will then be a very short break, and then you will receive
8 this matter for your deliberations. So ladies and
9 gentlemen, at this time I ask that you please draw close as
10 we listen to the closing arguments from the attorneys. Mr.
11 Bogle.

12 MR. BOGLE: Thank you, Your Honor. May it please the
13 Court?

14 THE COURT: Yes, sir.

15 CLOSING ARGUMENTS

16 MR. BOGLE: Where we are right now is all the evidence
17 is in. Okay. You've heard all the testimony. The record
18 is closed. So you'll have the testimony you've heard from
19 the witness stand and these exhibits right here to take back
20 in the jury room with you. First off, I would like to thank
21 you for your time, your dedication. You spent two days down
22 here doing your job for both Mr. Busch and for the State of
23 South Carolina. It's very important to everybody here in
24 Dorchester County that we get this thing done. And no other
25 system, I think, works as well as this does. Twelve total

1 strangers come together and reach a unanimous about
2 somebody's future.

3 Now, I talked at the beginning about some things the
4 General Assembly wrote when they passed this law. Another
5 thing they said was they said because the existing civil
6 commitment process is inadequate to address the special
7 needs of sexually violent predators and the risks they
8 present to society, the General Assembly has determined that
9 a separate involuntary civil commitment process for the
10 long-term control, care, and treatment of sexually violent
11 predators is necessary. And that's what this is. This is a
12 civil commitment process. That's what we're doing here
13 today. Now, where are we? First off, remember what we have
14 to prove. We have to prove to you first has he been
15 convicted of a sexually violent crime. And the answer is
16 yes; he's got five. The next thing is does he have a mental
17 abnormality? In this case, like I told you at the
18 beginning, in certain cases a person can be qualified
19 because of their training and their education to give an
20 opinion about something. And that happened today. Dr.
21 Gehle has done some 90 of these things. She's done a lot of
22 them. She's an expert in this field. And she was qualified
23 by the judge to give an opinion about what happened. And
24 she did.

25 Her diagnosis, I think, is pretty much -- I don't see

1 where it's in dispute. This man has two mental
2 abnormalities. The first is exhibitionistic disorder. And
3 that seems to be based on a lot of things, but two things in
4 general. One, remember that old Georgia conviction, but
5 also remember that he told her that when he was offending
6 against these little girls in these other cases how he
7 exposed himself to them in addition to the touching and
8 everything, and he enjoyed it. He was aroused by it. So
9 there is the diagnosis for the exhibitionistic disorder.
10 The second disorder she found was pedophilic disorder. In
11 other words, he's a pedophile. What that means is he's
12 sexually attracted to young girls. It's pedophilic
13 disorder, sexually attracted to females, which means just
14 girls, not boys, nonexclusive, which means he also has
15 relationships with appropriate-aged women. But in this case
16 we have the pedophilia behavior with a ten-year-old girl and
17 these nine-year-old girls over and over again.

18 Another thing we have to show to you is does Mr. Busch,
19 can he control these sexual urges to where he's safe to be
20 at large? And I would submit that he cannot. And here's
21 how we know this. Number one, he gets charged with one back
22 in 1996. He's out on bond, awaiting trial. He leaves the
23 state in violation of his bond. Violates the rules right of
24 the bat. And stays out in Arkansas for almost four years
25 until 2000 when he comes back. When he gets back, what

1 happens? He offends again against these other nine-year-old
2 girls. He touches them, he takes pictures of them, he
3 attempts to assault them. That's the criminal -- that's
4 assault with intent to commit criminal sexual conduct in the
5 first degree. He's trying to sexually assault nine-year-old
6 girls and he does it over and over again. Four separate
7 convictions. All in the same day. They happen around the
8 same time, four little girls. So I would suggest to you
9 that shows that he cannot control his behavior.

10 Now, where has he been for the last 15 years or so? He
11 got 15 years on each of the crimes back when he was
12 sentenced back in 2004. He also, by law, had remained
13 confined when he finished his prison term. He's been in the
14 county jail until we can have his trial today. So he's been
15 confined for basically 14 or 15 years in a place where,
16 apparently by all records we have, he's gotten -- while he
17 did take advantage of certain types of treatment and things
18 like, there's no record of any sex offender treatment at
19 all. For whatever reason, he didn't get it.

20 Now, you may hear the argument that this case is not so
21 much about what this man was back then. We have plenty of
22 this here. It's what he is like right now? Where is he
23 like right now today? And that's true in some respects.
24 But at the same time, you can't ignore what he did back
25 then. Because I think it was -- it was testified to by Dr.

1 Gehle, and this also goes along with your common sense, the
2 best predictor of future behavior is past behavior. And the
3 best predictor of future sex offense behavior is sex
4 offenses in the past. And that's what we've got. Read
5 these indictments. See what he did. Look what he did to
6 those little girls. And that's the best predictor of what
7 we have right now. One of the scoring tools that she used,
8 and it wasn't the sole part of her evaluation, but one of
9 the tools she uses, it's very common in this industry, was
10 something called the Static-99R. Now think of it -- the
11 example she gave is very similar. She talked about
12 insurance industry. Suppose you're going to see a doctor
13 because you've got chest pains. And the doctor takes down a
14 whole lot of stuff about you. He gets X-rays; he gets your
15 blood pressure; talks about your family history. He looks
16 at a lot of different things to see if you're in danger of
17 having a heart attack. And it doesn't mean you're going to
18 have a heart attack. But based upon the studies of
19 thousands of people with these symptoms, are you likely to
20 have one? And that's what the Static-99R is. Based on
21 studies of thousands of sex offenders, if they score a
22 certain amount or a certain number, are they likely to
23 reoffend? And this thing, the guy scored a four.

24 Now, what does the four translate to? It makes him
25 twice as likely to reoffend as the average sex offender in

1 the pool. It also does gives him a score of chance of
2 reoffending in five years of about 11 percent. Now, I know
3 what you're thinking. You're thinking 11 percent doesn't
4 seem like much. Okay. Because my burden of proof is has
5 the State proven this guy a sexually violent predator beyond
6 a reasonable doubt. It doesn't ever require something
7 higher than 11 percent. And I would submit you've got to
8 look at the entire valuation, not just one number. But
9 also, put it in perspective. If you're about to fly to
10 Phoenix to see the Gamecocks play in the finals, and they
11 told you that plane had 11 percent chance of crashing, would
12 you get on the plane? No. Eleven percent chance of
13 reoffending sexually, not 11 percent chance of knocking off
14 a convenience store or shoplifting or something like that.
15 Eleven percent chance of a very serious crime against, his
16 preference, little girls. So you got to put in perspective
17 the entire valuation. That's what we have. We have these
18 sexually violent criminal convictions. We have two mental
19 abnormalities, not just one. We have a display of a sexual
20 preference for little girls, which was kind of distorted. I
21 think even he admitted on the witness stand to his credit
22 that he thought those girls were flirting with him in some
23 way. He misinterpreted what they were doing. Well, he was
24 40-something years old and the girl was nine. What is it a
25 nine-year-old girl can do that a 40-year-old man is going to

1 interpret that way? And that's where the mental abnormality
2 comes out.

3 That's what we got, ladies and gentlemen. The burden
4 of proof is beyond a reasonable doubt. The judge will
5 explain to you what that means. I would suggest one of the
6 meanings you may hear is if the evidence leaves you firmly
7 convinced, the State has proven it's case beyond a
8 reasonable doubt. Firmly convinced that he's a sexually
9 violent predator; that he has the mental abnormalities; that
10 he has the right kind of convictions; that he can't control
11 himself; then you're obligated to return a verdict for the
12 State. If you're not firmly convinced, if there's some real
13 possibility he's not a sexual predator, give him the benefit
14 of the doubt and return a verdict for him. But I would
15 submit to you the State has proven their case. We've met
16 that burden today. Thank you very much. Your Honor.

17 THE COURT: Thank you. Mr. Falk?

18 MR. FALK: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. FALK: One unfortunate thing about this case, and
21 not to make light of anything, but the only shirt my client
22 was able to get was a black shirt. I certainly don't want
23 any of y'all to make that association between he's the bad
24 guy because he's wearing the black shirt. Because he's not
25 the bad guy in this case.

1 Dr. Gehle, let's look at Dr. Gehle's testimony. Dr.
2 Gehle testified that having a mental diagnosis of being a
3 pedophile does not equal having a sexually violent predator.
4 Today, what we're focusing on is whether or not today my
5 client meets this sort of legal definition of what's called
6 a sexually violent predator. Dr. Gehle testified that the
7 fact that he could be diagnosed as a pedophile does not make
8 him a sexually violent predator. Dr. Gehle also testified
9 that even somebody -- she testified that anybody -- just
10 because somebody commits a crime against a child, a sexual
11 crime against a child, doesn't make somebody a sexually
12 violent predator. It was their expert. She also testified
13 that because somebody had multiple crimes against a child
14 does not necessarily make somebody a sexually violent
15 predator. Dr. Gehle went on to talk about the dynamic risk
16 factors. Because she said that you could not -- she could
17 not reach a diagnosis or an opinion that he's a sexually
18 violent predator based solely on his score on the Static-99.
19 That you had to look at something else. And one of the
20 things she looked at, and I think that she spent -- she put
21 some focus on is what she named dynamic risk factors. So
22 these are the things that she focused on to sort of put this
23 -- take this from being somebody who has a prior criminal
24 record, which my client is, he has a prior criminal record,
25 and being able to say that he's a sexually violent predator.

1 What did she focus on?

2 She said it looked to me that she was focusing on five
3 things. She said that one of the risk factors was the fact
4 that he looked at pornography of girls 14 to 15 years old.
5 And I think that shows -- that's one of the things I want
6 you to keep in mind. There's no question that that is
7 criminal. My client has a criminal record. But whether or
8 not that's a sign of a mental disease? She testified that
9 there is nothing deviant about that type of attraction to a
10 14-, 15-year-old girl. She said there was nothing deviant.
11 She certainly all acknowledged that that was criminal, but
12 that's not deviant. What we're looking for is whether or
13 not there's a mental health disease here.

14 She also talked about that she said that he had a
15 preference for prepubescent children. That seems to be --
16 and she said that preference doesn't have any type of
17 terminology. It's just what normally the word means,
18 preference. And now my client certainly has a long history
19 of romantic relationships with age-appropriate women. So
20 how she can say that he has a preference for this attraction
21 to prepubescent children? It's hard to imagine. It's five
22 instances over a period of time between '96 and 2005. But
23 whether or not that's a preference in his life, I guess
24 that's something that you have got to determine. She also
25 talked about he had a lack of intimate relationships with

1 age-appropriate children [sic]. That doesn't get him one of
2 the dynamic risk factors. He certainly had -- he testified
3 -- we didn't really hear any testimony to the contrary that
4 he had a long history of intimate relationships with women
5 his age. I think we also heard some testimony that he blew
6 up a lot of those relationships because of an alcohol
7 problem. But he did have long-term relationships with
8 females his age. If Dr. Gehle was really concerned about
9 that point, she could have tried to reach out to those
10 people. I mean, she investigated other parts of the case,
11 but she didn't really investigate -- presumably some of
12 these women live in Dorchester County. I don't know where
13 they live. But she didn't even try to get contact
14 information to talk to the women who would know him the
15 best; who would know whether or not what his sexual
16 preference was. She didn't do it. My client says that he
17 has his sexual preference is for the women he had
18 relationships with.

19 And the thing that really kind of bothered me the most
20 is she said that one of the factors she looked at was the
21 fact that in '96, this whole problem he had with leaving the
22 town and, you know, not abiding by the conditions of his
23 bond from '96, left and went to Arkansas. And she looked at
24 that. However, the fact that he spent all that time at the
25 South Carolina Department of Corrections while not picking

1 up any disciplinary offenses, and he spent about two years
2 at the Dorchester County Detention Center without picking up
3 any disciplinary offenses. I think that sort of shows
4 somebody -- I mean, that's the conduct that she should be
5 focusing on that he spent this period of but time, and he's
6 following the rules.

7 I want you to focus on whether or not you think today
8 my client is a sexually violent predator. As I predicted
9 and as I told you at the beginning, I thought the State was
10 going to focus a lot on his criminal record, and he has a
11 criminal record of committing some bad things. And there's
12 just no question that his conduct was bad. But who is he
13 today? Now, Dr. Gehle really didn't put too much time -- I
14 mean, there's like a 14-year period in his history -- I
15 think I said 16 in my opening. I apologize. It's probably
16 like more 14 years. There's 14 years of his most recent
17 history, and that's a time when he's in the South Carolina
18 Department of Corrections. And she spent very little time
19 trying to look at what happened during those 14 years. I
20 mean, granted, past conduct is a predictor of future
21 conduct. But, certainly, the most recent past conduct is a
22 predictor of future contract. What has he been doing for
23 the past 14 years? Has he just been sitting around or has
24 he been trying to rehabilitate himself with the help of
25 groups? He talked about the groups and the kinds of classes

1 he went to. Some the self-discovery that went to. You
2 know, where he learned how to, you know, sort of get to --
3 where he learned the truth about himself. He went to
4 classes that were focusing on sex offenders. Now, granted
5 it was not with, you know, somebody who is from the
6 Department of Corrections. It was an outside person. And
7 it might have been a faith-based program, but is still
8 doesn't mean in essence he didn't spend time in counseling
9 sessions talking with other people, telling, you know,
10 sharing his life, his sins with other people, getting
11 feedback from them, learning about himself. He has been
12 doing this. There's been no testimony that type of
13 counseling that he's already gone through over this period
14 of time, this last 14 years -- Dr. Gehle probably wouldn't
15 have said anything about that had I not asked her some
16 questions about it. He has done the work. Dr. Gehle -- one
17 other thing Dr. Gehle admitted is she said that the type of
18 treatment is no more effective done inpatient versus
19 outpatient. She said the types of treatment programs were
20 the same. The fact that it's done, you know, while he's
21 confined, in custody, or on an outpatient basis, she said
22 that history shows that there's no difference in one being
23 more effective than the other.

24 Now, we know that he's going to have a period of
25 community supervision. That's going to be two years. And,

1 you know, that's going to be over his head. He's gonna have
2 some accountability for two years. And, you know, I think
3 he indicated that he's going to have to register. He's
4 going to have to take classes. He's going to have to follow
5 the provisions of his community supervision. So this could
6 be a period of time where he's just not going to be out
7 running free. Now, he's gonna have somebody sitting on him
8 during his community supervision. That's going to be
9 watching him while he sort of reintegrates back into the
10 community.

11 Again, is he a sexually violent predator today? I
12 think most of what Dr. Gehle talked about is who he was in
13 2003; 2004 when he was sentenced. But is he a sexually
14 violent predator today? My best evidence I have as you saw
15 the man, you saw him testify. I asked him questions. He
16 shared himself with you. You have to be able to make your
17 determination of whether or not today he is a sexually
18 violent predator. What I don't like is the idea that we're
19 going to focus on these actuarial tables and comparing my
20 client to, you know, whether somebody runs a risk of, you
21 know, getting an automobile accident and making that same
22 kind of comparison. Because this is his life that we're
23 talking about right now. We're talking about where he's
24 going to live; what he's going to be doing over the
25 foreseeable future; whether or not he in effect goes back

1 living in a cell in a confined environment not able to leave
2 the premises, all kinds of restrictions just like he was in
3 a -- not much different probably than what he was like when
4 he was at Allendale and some of the other prisons.

5 That's the decision today. Where is he going to be
6 tomorrow? And to make the comparison, well, you know, let's
7 look at these actuarial tables and, you know, just like a
8 16-year-old kid is more likely to get into an automobile
9 accident than a 45-year-old man. That all may be true, but
10 we're just talking about that man right there. Whether or
11 not he is a sexually violent predator. I don't care about
12 bell curves and actuarial tables. I want you all to
13 consider whether or not you think that man today is a
14 sexually violent predator.

15 At the end of the day, I think the hardest thing to
16 reconcile is how you can possibly look at the fact that Dr.
17 Gehle says that there's a 10 or 12 percent chance of his
18 likelihood to reoffend. And that is a component of this
19 definition. Because it's whether not he has a mental
20 disease or defect that makes him likely to reoffend. That
21 is a component. You're going to be instructed on the law on
22 that. And it's whether not he is likely to reoffend. A 10
23 or 12 percent chance. Now, granted, Mr. Bogle, he gave a
24 good example of 10 or 12 percent chance. When you get on a
25 plane that there's a 10 or 12 percent chance of, you know,

1 crashing. Well, probably not. But that's from the wrong
2 point of view because you need to consider that man's civil
3 rights. You have to consider what your jury verdict is
4 going to mean for that man right there. This is an
5 important decision that you're making. You are holding this
6 to the same standard as though you are making a decision
7 whether or not to commit him or to convict him on a criminal
8 charge. You have to be convinced beyond a reasonable doubt.
9 And the reason why that is such a high standard is because
10 your decision -- we're not talking about who goes through
11 the traffic intersection first, whether the light was red or
12 green. We're talking about where my client is going to be.
13 So you have his life -- you have his rights in your hands,
14 where he's going to be. And that's why you have to be sure.

15 (So let's look at from the other point of view. Would
16 you risk taking a -- let's say your sick and the doctor says
17 you need surgery. The doctor says, well, there's a 12
18 percent chance that you're going to survive the surgery. I
19 don't think you would take the surgery. That's the way you
20 need to look at this. Whether or not that risk is so great
21 that you have to take away my client's rights or whether or
22 not you're comfortable with making that decision. I don't
23 think a 10 to 12 percent chance of reoffending will leave
24 you to believe beyond a reasonable doubt that my client is a
25 sexually violent predator. You're going to have to live

1 with this decision today. There's really no recourse in
2 this decision today.

3 You all need to be -- this was a quick trial. We
4 started about ten o'clock and I guess it's about 4:20 right
5 now. It's a very quick trial, but the implications are
6 extreme for my client. And I want you to consider whether
7 or not the State has proven their case beyond a reasonable
8 doubt. Whether or not you're convinced that my client is a
9 sexually violent predator, not that he could be diagnosed a
10 pedophile. Because their expert already that doesn't mean
11 they're a sexually violent predator. And not just because
12 my client has committed one or multiple crimes against
13 children because their expert said that doesn't mean they're
14 a sexually violent predator. You have to be convinced where
15 some of the other things that she testified to, whether or
16 not that gets you over the hump and say he fits in this
17 category of people that constitutes a sexually violent
18 predator. At the end of day, she says there's a 10 percent
19 chance he's going to reoffend. Don't treat my client like
20 he's some point on some actuarial table, whether or not
21 there's a likelihood he's gonna have an automobile accident
22 and whatever else the actuarial table is used for. Look at
23 my client. Think about the man who you saw testify there.
24 And you decide whether or not you think today he is a
25 sexually violent predator. I'm convinced that if you

1 consider everything that you heard, separate the prejudice
2 that you may have from your natural revulsion you're going
3 to feel that some of the crimes that he's committed.
4 Separate that. Because your job is not to punish my client
5 anymore. Your job is to determine whether or not he needs
6 treatment; whether or not that treatment needs to be in a
7 confined facility. You saw my client. He testified. I
8 think at the end of the day you'll determine that he's
9 committed crimes. He's spent 14 years in prison. He has
10 spent almost 14 years working on himself trying to
11 rehabilitate himself using whatever programs were available
12 to him. And that today, he is not a sexually violent
13 predator. Thank you.

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

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

16 THE COURT: Very well. All right. Ladies and
17 gentlemen, we're going to take a very short break. I just
18 wanted you to stand up. That's it. Stand up and stretch a
19 minute. Because I have to deliver the charge and I need you
20 to be awake. So I need you to stretch a minute. Get some
21 oxygen flowing please so that you can listen to me deliver
22 the charge to you. And when you are ready to be seated, be
23 seated. Do we have any members of our jury panel that you
24 need a comfort break? Because it will take me about 20
25 minutes to deliver the charge.

1 (No response.)

2 JURY CHARGE

3 THE COURT: Okay. Very well. Now, ladies and
4 gentlemen, it is my duty now as the trial judge under the
5 constitution of this state to charge and instruct you on the
6 law applicable to this case. It is your duty as jurors to
7 accept and apply the law as I am now going to state it to
8 you. The State has brought this case under the sexually
9 violent predator law in South Carolina. The State seeks the
10 civil commitment of Mr. Busch, Mr. Christopher Busch, the
11 Respondent, for long-term control, care, and treatment in a
12 secure facility. This is not a criminal proceeding seeking
13 incarceration. But rather, it is a proceeding seeking civil
14 commitment. The State of South Carolina alleges or claims
15 that the Respondent, Christopher Busch, is a sexually
16 violent predator under the law. Respondent, Mr. Busch,
17 denies that he is a sexually violent predator. And the
18 burden of proof is on the State to prove by evidence
19 sufficient to satisfy each of you beyond a reasonable doubt
20 that Mr. Busch is a sexually violent predator. If the State
21 is unable to meet that burden of proof as to one or more of
22 the elements of this claim, the Respondent, Mr. Busch, is
23 entitled to a finding that he is not a sexually violent
24 predator.

25 Ladies and gentlemen, I want to make sure that you

1 understand that Christopher Busch is not accused of
2 committing a crime in this proceeding. As you heard from
3 the testimony, he did have previous charges for which he was
4 sentenced by the Court. The Respondent has not completed
5 his sentence for those charges and the State is now alleging
6 that Mr. Busch is a sexually violent predator. The State
7 has the burden of proof in this case and must prove it's
8 case beyond a reasonable doubt. If you find the State has
9 not met this burden, Respondent will be released. If you
10 find that the State has met it's burden of proof and you
11 find the Respondent is a sexually violent predator, he will
12 not be released but will be committed to a secure treatment
13 facility in Columbia operated by the South Carolina
14 Department of Mental Health.

15 Now, during this trial, you and I have had separate
16 duties to perform. AS the trial judge, it is my
17 responsibility to preside over this trial, and I also have
18 the duty to rule on the admissibility of the evidence
19 offered during the course of this trial. In that regard, of
20 course, you are to consider the competent evidence before
21 you. And the evidence, of course, is the sworn testimony in
22 this case as well as exhibits which have been introduced
23 into court.

24 Ladies and gentlemen, I have the additional duty to
25 charge you regarding the applicable law in this case. But

1 in that regard, I am the sole judge of the law in this case.
2 It is your duty to accept and apply the law as I now state
3 it to you. If he have had any preconceived ideas to what
4 you think the law or what it ought to be, and it does not
5 agree with what I tell you the law is, you are obligated
6 under your oath to abandon these preconceptions because you
7 are sworn to accept the law precisely as I know state it to
8 you. Now in this trial, as we talked earlier today, you are
9 the sole and the exclusive judge at the facts. And I'm the
10 judge of law. Please do not infer that I have any opinion
11 about the facts in this case from anything that I have said
12 during the course of this trial in ruling on the
13 admissibility of the evidence or otherwise or from anything
14 that I say to you now during the course of this charge that
15 I have any opinion regarding the facts. The law doesn't
16 allow me to have any opinion. I have no opinion regarding
17 the facts. As jurors, it is your duty alone to determine
18 the effect, the value, and the weight of the evidence
19 presented during the course of this trial.

20 Now, ladies and gentlemen, while the arguments of
21 counsel certainly are a beneficial part of every trial, you
22 should remember that the statements made by counsel are not
23 evidence. In presenting arguments, counsel often refer to
24 the evidence. However, you should base your verdict on the
25 evidence as your remember it. Therefore, if there are any

1 conflicts between the recollection of counsel about the
2 evidence and your own recollection, you should rely on your
3 own understanding of the evidence.

4 Ladies and gentlemen, in most civil cases tried in the
5 Court of Common Pleas, the burden of proving a claim is by
6 what we call the greater weight of the preponderance of the
7 evidence. However, in this type of case under this
8 particular statute, the State's burden is greater than that.
9 It is more powerful than that. It's proof must be more
10 powerful than that. Here, it must be beyond a reasonable
11 doubt. As I've already stated to you, the State has the
12 burden of proof. And under the law of this state, according
13 to the sexually violent predator statute, the State must
14 prove it's case to the standard of proof which is beyond a
15 reasonable doubt. If the State fails to meet this burden,
16 then you must find that Mr. Busch is not a sexually violent
17 predator.

18 What then is reasonable doubt in the law? Proof beyond
19 a reasonable doubt is proof that leaves you firmly convinced
20 that the Respondent is a sexually violent predator. Ladies
21 and gentlemen, there are very few things in this world that
22 we know with absolute certainty. And in this type of case,
23 the law does not require proof that overcomes every possible
24 doubt. If based on your consideration of the evidence you
25 are firmly convinced that Christopher Busch is a sexually

1 violent predator then you must return a verdict for the
2 State. You must return a verdict indicating that
3 Christopher Busch is a sexually violent predator. If on the
4 other hand you think there is a real possibility that he is
5 not a sexually violent predator, you must give him the
6 benefit of the doubt and return a verdict for the Respondent
7 finding that he is not a sexually violent predator. Ladies
8 and gentlemen, reasonable doubt may arise from evidence that
9 is in this case or from the lack of evidence in this case.
10 It is up to you the jury to determine whether or not a
11 reasonable doubt exists in this case. Another definition of
12 reasonable doubt is the kind of doubt which would cause a
13 reasonable person to hesitate to act.

14 Now, ladies and gentlemen, typically there are two
15 types of evidence which are presented during a trial, direct
16 evidence and circumstantial evidence. Direct evidence is
17 the testimony of a person who claims to have actual
18 knowledge of the facts. It's just an eyewitness. It is
19 evidence which immediately establishes the main fact to be
20 proved. Circumstantial evidence is proof of a chain of
21 facts and circumstances indicating an existence of fact. It
22 is evidence which immediately establishes collateral facts
23 from which the main fact may be inferred. Circumstantial
24 evidence is based on inference and not on personal knowledge
25 or observation. It is proof that does not actually

1 establish the fact in question, but that asserts or
2 describes something else from which you may either
3 reasonably infer the truth of the fact or at least
4 reasonably infer an increase in the probability that the
5 fact is true. For circumstantial evidence to be sufficient
6 to warrant the finding of a fact, the circumstances must
7 lead to that fact with reasonable certainty. The facts and
8 circumstances should be considered in light of ordinary
9 experience and common sense. The existence of a fact cannot
10 be based upon speculation, surmise, guess, or conjecture.

11 Now, I'm going to give you a couple examples of what I
12 mean by direct and circumstantial evidence. But I need you
13 in your mind to go back with me to February. It's cold.
14 It's February. Snow is forecast. You walk outside, you
15 look up, and snow hits you in the eye. When you walk back
16 in and say, it's snowing outside, you literally are an
17 eyewitness to the fact that it is snowing outside when you
18 say that. That is direct evidence. You're an eyewitness,
19 literally. Now, talk about circumstantial evidence. Let's
20 go back to February. It's cold outside and snow is
21 forecast. You know that. You go outside right before you
22 turn in for the night, and all you see is you poor ol'
23 pitiful crunchy grass. It is cold. You wake up in the
24 morning, turn on the television set, everybody's talking
25 about what's been canceled. You look outside and snow

1 covers everything, although the sun is shining. Well, by
2 inference, you know it's February, snow is forecast, you
3 went to bed and all you saw was your brown, pitiful, crunchy
4 grass. When you woke up, snow covered everything. You know
5 that of your own knowledge. But through inference you know
6 that it snowed over night. Didn't see it snow over night.
7 But you know it snowed over night because of the other
8 things that you know. Circumstantial evidence. Now, the
9 law makes absolutely no distinction between the weight or
10 the value to be given to either direct or circumstantial
11 evidence nor is a greater degree of certainty required of
12 circumstantial evidence than of direct evidence. Ladies and
13 gentlemen, you should weigh all the evidence in the case.

14 Now, in determining what the facts are in this case,
15 necessarily you must judge the credibility of the witnesses.
16 Credibility, ladies and gentlemen, just means believability.
17 And I will tell you that you, and you alone, will determine
18 the force and the effect of the testimony. And you will
19 decide whether you believe the testimony. In making this
20 decision, there are many things that you may and you should
21 take into consideration. But this certainly is not an
22 exhaustive list. You did not leave your common sense at the
23 courthouse door as you judge the credibility and the
24 believability of what people tell you everyday. Certainly,
25 some of things which you may and you should consider would

1 be what was the appearance and the manner of the witness on
2 the witness stand. A characteristic often referred to as
3 the demeanor of the witness. Was the witness forthright or
4 hesitant in responding? Was the witness's testimony
5 consistent or inconsistent? Did it contain discrepancies?
6 What was the ability of the witness to know the facts about
7 which the witness testified? Was there some reason that a
8 witness would want to give testimony which would help or
9 hurt one side or the other? In other words, was the witness
10 biased or prejudiced? Was the testimony of the witness
11 reasonable when considering in light of all the evidence in
12 the case and in the light of your own experience and common
13 sense? Was the testimony of the witness corroborated or
14 made stronger by other testimony or evidence? Or was it
15 made weaker or impeached by other testimony or evidence?

16 Ladies and gentlemen, as jurors, please understand that
17 you have a right to believe a portion of a witness's
18 testimony and disregard other parts of a witness's
19 testimony. You may believe all of the witness's testimony
20 or you may reject all of a witness's testimony. And, of
21 course, I would tell you, you do not, of course, determine
22 the truth by counting witnesses presented. And I would will
23 also share with you that testimony which is not controverted
24 does not mean you must accept it as true and undisputed.
25 You still must gauge the credibility of the witness to

1 determine the believability of the testimony. In exercising
2 your mental processes and attempting to decide how to reach
3 a verdict, the law simply requires that you exercise your
4 good common sense and judgment. Your sense of logic and
5 reason and your experiences in life. You then apply these
6 attributes to the evidence and apply the law as I'm going to
7 state it to you now, and thus arrive at a verdict.

8 Ladies and gentlemen, during the course of this trial
9 you have heard testimony of a witness deemed to be an expert
10 witness. Our rules of evidence ordinarily do not permit
11 witnesses to testify regarding their opinions or conclusions
12 and the reasons for those opinions. And, typically,
13 witnesses can only testify as to facts they perceive such as
14 what they saw, what they smelled, what they heard, what they
15 touched. However, there is an exception for those witnesses
16 deemed to be expert witnesses. Those are witnesses who by
17 reason of their knowledge, skill, experience, training or
18 education in a particular area may state an opinion as to
19 relevant and material matters in which the witness claims to
20 be an expert. In determining the weight to be given to such
21 an opinion, you should consider the qualifications and the
22 credibility of the expert and the reasons given for the
23 opinion. You are not bound by such opinion. Rather, you
24 give it the weight that which you believe it deserves. The
25 value and the effect of expert testimony is a matter solely

1 to be determined by you. No opinion of an expert can be
2 accepted in and of itself as truthful or reliable, but must
3 be weighed by you and must convince your judgment beyond a
4 reasonable doubt and with the same force and effect as any
5 other fact proved in this case before you can rely upon it.
6 You must consider expert testimony in the same manner as you
7 do other testimony, and you give it the weight to which you
8 believe it is entitled when considered with all the other
9 evidence in this case. Such is testimony is given for the
10 purpose of helping you understand the evidence and not for
11 the purpose of controlling your judgment.

12 Now, the elements which the State must prove beyond a
13 reasonable doubt are number one, that the Respondent, that
14 Mr. Busch, has been convicted of a sexually violent offense.
15 I charge you that assault with intent to commit criminal
16 sexual conduct, sexual exploitation of a minor, and lewd act
17 on a child are sexually violent offenses. And, number two
18 the State must prove beyond a reasonable doubt that the
19 Respondent, Mr. Busch, suffers from a mental abnormality or
20 personality disorder that makes him likely to engage in acts
21 of sexual violence if not confined in a secure facility for
22 long-term control, care, and treatment. Inherent in these
23 two elements is that the State must prove the requirement
24 that the Respondent's, Mr. Busch's, mental abnormality or
25 personality disorder causes him serious difficulty in

1 controlling his behavior. In other words, the State must
2 prove beyond a reasonable doubt that the individual it seeks
3 to commit suffers from a mental illness which he cannot
4 sufficiently control without the structure and care provided
5 by a mental health facility rendering him otherwise likely
6 to commit a dangerous act.

7 In order for you to better understand the elements of
8 the State's cause of action, I am going to define for you
9 some of the terms that I just used. Mental abnormality
10 means a mental condition affecting a person's emotional or
11 volitional capacity that predisposes the person to commit
12 sexually violent offenses. This mental abnormality or
13 personality disorder must cause Mr. Busch serious difficulty
14 in controlling his behavior. Next, number two, likely to
15 engage in acts of sexual violence means the person's
16 propensity to commit acts of sexual violence is of such a
17 degree as to pose a menace to the health and safety of
18 others so that he is dangerous to others. Again, I remind
19 you, that the burden of proof is on the State to prove to
20 your satisfaction beyond a reasonable doubt that the
21 Respondent has been convicted of sexually violent offense as
22 I have instructed you and also suffers from a mental
23 abnormality or personality disorder that makes him likely to
24 engage in acts of sexual violence if not confined in a
25 secure facility for long-term control, care, and treatment.

1 If the State carries its burden of proof and convinces you
2 beyond a reasonable doubt as to each of the two elements of
3 its cause of action, it is entitled to a finding that Mr.
4 Busch is a sexually violent predator. If the State does not
5 meet that burden of proof as to one or both of these
6 elements, the Respondent is entitled to a finding that he is
7 not a sexually violent predator.

8 Now, ladies and gentlemen, your verdict in this case
9 cannot be based on sympathy, compassion, prejudice or
10 emotion, or some other consideration not found in the
11 evidence. And now I'm going to go over with you the verdict
12 form. Ladies and gentlemen, I want to remind you that your
13 verdict must be unanimous. That means that this verdict
14 must be the verdict of each and every one of you. The
15 majority doesn't rule, and no one juror's opinion rules.
16 This verdict must be the verdict of each of the 12 of you.
17 And that should be a hint for my alternates. The next time
18 my jury leaves. I'm going to let you be excused.

19 Now, ladies and gentlemen, it must be the verdict of
20 each and every one -- that's the 12. So I want you to
21 remain with me when the jury leaves me on this next
22 occasion. And I also want to share with you that on this
23 piece of paper, on the verdict form, there are two possible
24 verdicts. One is first and one is second. And it's just
25 reality that when you put two things on a piece of paper,

1 one has got to be first and one is going to be second. I
2 say that because I don't want you to take any hidden meaning
3 in which the order of these possible verdicts have been
4 placed on paper. It's just reality. I had to put one
5 first. I had to put one second. I could've just as easily
6 put the second one first and the first one second. So
7 please don't take any hidden meaning in which these verdicts
8 have been placed.

9 Now, ladies and gentlemen, the verdict form reads as
10 follows: In the matter of the care and treatment of
11 Christopher Busch, the Respondent, with regards to whether
12 Respondent is a sexually violent predator, we the jury
13 unanimously find that the Respondent, Christopher Busch --
14 and there are two possible verdicts. And I'm going to ask
15 whichever is the verdict, you check it, you check it and
16 circle it. As long as it's clear which of these two
17 possible verdicts is the unanimous verdict of this jury.
18 First possible verdict is a sexually violent predator or is
19 not a sexually violent predator. And, again, whichever is
20 the unanimous verdict of this jury, if you'd be so kind as
21 to just check and circle whichever is the unanimous verdict
22 of this jury. There's a place for you to sign your name.
23 And you are Mary Rigsby, our presiding juror. And I've got
24 that down here. And for your informational purposes, today
25 is that 29th day of March, 2017. I just give that to you

1 in terms of just a reference. I do need you to date the
2 verdict form. Now, once you have completed your
3 deliberations, sign your verdict form, then you'll knock on
4 the door and return to the courtroom. You will give the
5 verdict form to a bailiff who will in turn give that to me.
6 Do not publish the verdict.

7 Now, ladies and gentlemen, in a moment, I'm going to
8 ask you to step to your jury room with this instruction. Do
9 not discuss this matter or allow anyone to discuss it with
10 you. And I want to tell you why. When you step to the jury
11 room on this next occasion, I'm going to turn to these
12 lawyers. And they help me if there has been a part of the
13 law that I have failed to give to you that you may need for
14 your deliberations. And in the event that has occurred, I'm
15 going to ask you not to consider that part of the law with
16 any emphasis. Just know I didn't give you all of the law
17 that I should have. And please don't consider that part of
18 the law, that language, with any the emphasis. In the event
19 that I have made an error and need to bring you back out to
20 correct my error, I ask you advance to please let me do
21 that. Please allow me to correct my error in your minds.
22 Now, in the event that I do not need to bring you back out,
23 you will be brought the verdict form, the exhibits, and an
24 instruction to begin your deliberations.

25 Now, this staff and I, we've been doing this for a long

1 time. And if you have the verdict form and the exhibits and
2 whoever brings it to you doesn't say begin your
3 deliberations, begin your deliberations. Now, I need to
4 also tell you that it is important that all 12 of you be
5 present to deliberate. So if anybody needs to stop and take
6 a comfort break, that's fine. Stop your deliberations.
7 Take your comfort break. And then reconvene your
8 deliberations when all 12 of you are together again. Just
9 don't deliberate unless all 12 of you are together. Now,
10 ladies and gentlemen, with my alternate remaining in the
11 courtroom -- and my alternate is removed from the jury room?

12 (Bailiff affirms.)

13 THE COURT: Very well. I'm going to ask you to please
14 step to your jury room. Do not discuss this matter or allow
15 anyone to discuss it with you.

16 (The jury exits the courtroom at 4:54 p.m.)

17 THE COURT: Exceptions, additions from the State?

18 MR. BOGLE: None, Your Honor. But my verdict form has
19 a different case name on it. Is that just a typo? Is yours
20 right?

21 THE COURT: No. It's not.

22 MR. FALK: What does it say?

23 MR. BOGLE: It says Frank Saunders.

24 THE COURT: Yep.

25 MR. BOGLE: That's the guy we tried in September.

1 THE COURT: I think we'll get that right. Yeah. We'll
2 get that straight.

3 MR. BOGLE: Everything else looks okay and the charge
4 is fine as far as we're concerned.

5 MR. FALK: Might I ask what happened with the first
6 alternate?

7 THE COURT: IBS.

8 MR. FALK: Okay. No, I just wanted to know.

9 THE COURT: I know you needed to know. Now you gave me
10 a reminder to put that on the record. Yes. And since we
11 had two alternates, I just decided to keep going and let her
12 go. She was in distress.

13 MR. FALK: Thank you.

14 THE COURT: All right. Once we get the new verdict
15 form, I want y'all to take a look at the verdict form,
16 please. And look at the exhibits for me. And then we will
17 be in recess until we welcome the jury.

18 MR. BOGLE: Thank you, Your Honor.

19 (The jury begin deliberations at 4:58 p.m. The
20 proceeding resumes at 5:43 p.m.)

21 THE COURT: Let's have the jury and mark that as
22 Court's 1.

23 (Court's Exhibit No. 1, Jury Note, was marked for
24 identification.)

25 (The jury enters the courtroom at 5:43 p.m..)

1 THE COURT: All right. I have your note. And this is
2 how I would respond to it in two ways. First of all, I want
3 to tell you, you have all the evidence from which you will
4 make up your minds, which is the testimony and exhibits
5 which have been admitted into evidence. Now, I can replay
6 for you some or all of the testimony that you would like to
7 have played for you. That is absolutely not a problem.
8 That's why Heather takes it down. So we can certainly do
9 that. And I can recharge you all or a part of the charge as
10 you may like to have. If you wish for me to recharge you
11 with regards to the elements of this particular statute, I'm
12 happy to do that. But what I cannot do is I cannot
13 specifically answer the questions as you have posed them.
14 So with that in mind, I'm going to ask you to retire and
15 continue your deliberations. But if you need any of that,
16 please know I'm happy to do that. Just let me know what you
17 need and I will certainly do that. And if you want to
18 retire and caucus your jury and then let me know, that will
19 be find too.

20 (The jury exits the courtroom at 5:45 p.m. and
21 continues with deliberations. The Court is at ease.)

22 (The jury enters the courtroom at 5:52 p.m. and the
23 proceedings resume.)

24 THE COURT: All right. Ladies and gentlemen, I am
25 prepared to recharge you with regards to the elements that

1 you are to consider for which you are weighing the evidence
2 in the morning at 9:30. It's almost six o'clock. You all
3 have worked so hard today for many, many hours. And we will
4 pick up in the morning at 9:30. When you return in the
5 morning at 9:30, you'll go to your jury room. And then
6 you'll come out and I will do that for you in the morning
7 and then you will continue your deliberations.

8 Now, you are going to be going home tonight. Curiosity
9 is going to be heightened. So that in -- so be mindful now
10 that you are deliberating, you have to remember all 12 of
11 you have to be together to deliberate. So you can't get on
12 the phone, can't caucus each other, you can't Tweet, you
13 can't Facebook, you can't email, you can't message, you
14 can't communicate with each other. You've got to wait until
15 the morning when all 12 of you are together again. And you
16 cannot discuss this matter with anyone: family, friends,
17 spouses, anyone who is interested. Now you must stop
18 talking about it. Let me tell you what I tell jurors
19 because I find it to be helpful is that when there is an
20 evening break during deliberations: Don't think about it.
21 Go take a walk. Go back to your life. Go do your thing.
22 And just put it down. Rest your minds. And then pick it up
23 in the morning when you reconvene in the morning. It just
24 works better. Give yourselves a break. Because y'all, I
25 have watched you and you have been very, very intently

1 listening. And it's exhausting to do that. So, put it
2 down. Rest your minds. Take a walk if you can. And then
3 reconvene in the morning at 9:30. And, again, don't -- no
4 Columbo. And it's hard not to do that at this point. It's
5 hard not to do just a little tiny bit of research. You
6 cannot do that. Don't you go look up this statute online.
7 You must receive all of the information here in court while
8 court is in session. So remember to leave your cell phones.
9 And I'm supposed to remind you about a cell phone. But
10 leave your cell phones somewhere other than the courthouse.
11 If you forget, do exactly like you did this afternoon. Let
12 us know and we'll take good care of it while you are
13 participating on the jury. Have a very pleasant evening.
14 And I can't wait to see you in the morning at 9:30.

15 (Court's Exhibit No. 2, Jury Note, was marked for
16 identification.)

17 (The jury exits the courtroom at 5:55 p.m. for the
18 evening. The proceedings in the trial of this matter
19 adjourn for the day and resume on Thursday, March 30,
20 2017, at 9:58 a.m.)

21 THE COURT: All right. Obviously, this morning, as I
22 told the jury yesterday, I'm going to recharge them on the
23 elements of the statute. And hopefully that will satisfy
24 them. And I'm confident that if they need other
25 information, they will let us know. Anything before we

1 bring them out?

2 MR. BOGLE: No, Your Honor. Nothing from the State.

3 MR. FALK: Your Honor, could you just ask them about if
4 they were deliberating privately over -- there was a
5 conversation out in the parking lot that I witnessed between
6 one of the alternates and one of the jurors. It could have
7 been totally innocent. It just seemed -- just make sure
8 that they weren't. Either the alternate wasn't talking to
9 the juror or something like that about the case. Just that
10 there was no conversation about the case.

11 THE COURT: I understand. I understand. Will do.
12 Okay.

13 (The jury enters the courtroom at 10:00 a.m.)

14 THE COURT: All right. Good morning. Good morning.
15 Good morning. Ladies and gentlemen, in an abundance of
16 precaution in that you began your deliberations last night,
17 I'm going to inquire just be sure that you did not speak
18 with anyone about this matter or no one tried to speak with
19 you. If either of those matters occurred, I'm just going to
20 ask you to please stand for me or just raise your hand, I
21 guess, would be enough. Did anyone try to speak with you
22 about this matter or did you speak with anyone about this
23 matter? Just raise your hand.

24 (No response.)

25 THE COURT: All right. Very well. I find no one's

1 hands were raised. Now, again, I do that as a matter of
2 course when juries deliberate and then take a break and come
3 back to be sure nobody needs to tell me anything like, oh,
4 my gosh, you wouldn't believe this; somebody called me last
5 night. All right.

6 Now, ladies and gentlemen, I'm going to go over the
7 elements of what the State must prove. And, again, the
8 elements that must be proved by the State must be proven
9 beyond a reasonable doubt. We talked about that. That's
10 the kind of doubt that would cause a reasonable person to
11 hesitate to act. We went through the longer definition of
12 that as well. But here are the elements and there are two,
13 and then I'm going to give you the definitions again because
14 if you remember I talked about the two elements and gave you
15 some definitions.

16 All right. Number one, that the respondent has been
17 convicted of a sexually violent offense. That's the first
18 element, okay. Now, ladies and gentlemen, assault with an
19 intent to commit criminal sexual conduct, sexual
20 exploitation of a minor and a lewd act on a child are each
21 and all sexually violent offenses. Now, here's the second
22 element. The second element is that the respondent suffers
23 from a mental abnormality or personality disorder that makes
24 him likely to engage in acts of sexual violence if not
25 confined in a secure facility for long-term control, care,

1 and treatment. Now, some explanation about number two.
2 Inherent in these-- well, I guess, I should say in both
3 elements. Inherent in these two elements is that the State
4 must prove the requirement that the Respondent's mental
5 abnormality or personality disorder causes him serious
6 difficulty in controlling his behavior. In other words, the
7 State must prove beyond a reasonable doubt that the
8 individual that seeks to commit suffers from a mental
9 illness which he cannot sufficiently control without the
10 structure and the care provided by a mental health facility
11 rendering him otherwise likely to commit a dangerous act.

12 In order for you to better understand the elements of
13 the State's cause of action, I'm going to divide for you
14 some of the terms that I have used. What do we mean by the
15 term mental abnormality? What is that? Mental abnormality
16 means a mental condition affecting a person's emotional or
17 volitional capacity that predisposes the person to commit
18 sexually violent offenses. This mental abnormality or
19 personality disorder must cause someone, here, the
20 Respondent, serious difficulty in controlling his behavior;
21 likely to engage in acts of sexual violence means that a
22 person's propensity to commit acts of sexual violence is of
23 such a degree as to pose a menace to the health and to the
24 safety of others such that he is a danger, he is dangerous,
25 to others. And I remind you that the burden of proof is on

1 the State to prove to your satisfaction beyond a reasonable
2 doubt that the Respondent has been convicted of a sexually
3 violent offense as I've instructed you and that he suffers
4 from a mental abnormality or personality disorder that makes
5 him likely to engage in acts of sexual violence if not
6 confined in a secure facility for long-term care, control,
7 and treatment. If the State carries it's burden of proof
8 and convinces you beyond a reasonable doubt as to the two
9 elements of its of action, the State is entitled to a
10 finding that Mr. Busch is a sexually violent predator. If
11 the State does not meet the burden of proof, again, beyond a
12 reasonable doubt, as to one or both of these elements, the
13 respondent is entitled to a finding that he is not a
14 sexually violent predator.

15 Now, ladies and gentlemen, that is the charge. Again,
16 there was some questions yesterday that made me ponder
17 whether or not you needed testimony played. And that's when
18 I shared with you that if you need testimony played, some or
19 all, we're here. And all you need to do is let us know. We
20 certainly have that ability. If you need it, you need only
21 let us know, some or all of whatever of the testimony
22 replayed. We're happy to do that. Please retire to resume
23 your deliberations.

24 (The jury exits the courtroom at 10:07 a.m. and resume
25 deliberations.)

1 THE COURT: All right. Anything from the State
2 further?

3 MR. BOGLE: No, Your Honor. Nothing.

4 MR. FALK: Nothing, Your honor.

5 THE COURT: All right. We'll continue in recess until
6 we hear from the jury.

7 (The proceedings recessed at 10:09 a.m. and resumed
8 11:47 a.m.)

9 THE COURT: All right. Anything before we bring the
10 jury out?

11 MR. BOGLE: Nothing from the State, Your Honor.

12 MR. FALK: Nothing, Your Honor.

13 THE COURT: All right. Very well. Yes, ma'am.

14 (The jury enters the courtroom at 11:48 a.m.)

15 THE COURT: All right. Ms. Rigsby, it's my
16 understanding that the jury reached its verdict.

17 FOREPERSON: Yes, ma'am.

18 VERDICT OF THE JURY

19 THE COURT: If you'll pass it, please. All right. I
20 find that the verdict is in appropriate form and I'll
21 publish it. The State of South Carolina, County of
22 Dorchester in the Court of Common Pleas, First Judicial
23 Circuit, in The Matter of the Care and Treatment of
24 Christopher Busch, Respondent, with regards to whether
25 Respondent is a sexually violent predator, we the jury

1 unanimously find that the Respondent, Christopher Busch, is
2 a sexually violent predator. Signed by Mary Rigsby and
3 signed today's date March 30, 2017.

4 Ladies and gentlemen, if this was your unanimous
5 verdict in your jury room and it continues to be your
6 verdict here in the courtroom, please indicate by raising
7 your right hand.

8 (Jurors comply.)

9 THE COURT: Let me observe for our record that all of
10 our jurors have their hands raised -- their right hands
11 raised. Thank you. You can put your hands down and thank
12 you so much. Ladies and gentlemen, not only am I going to
13 be able to release you from your service on this jury but
14 also from your service on our jury panel. This is our
15 only -- this was our only case that we had for trial this
16 week. You remember when I was making the comments about Ms.
17 Graham, guess what? This roster really is in good shape.
18 Quite frankly, the rest of the cases on our roster aren't a
19 year old. We couldn't call them for trial. So our roster
20 actually is in very good shape here in Dorchester County.

21 Obviously, I want to thank you so much for every single
22 solitary tick of the clock that you have given to us in your
23 service on this panel and on this trial jury. I need to
24 give you just a little bit of instruction. First of all,
25 those of you who are dashing off to work and you need

1 something for your employer, we can get that for you.
2 Ms. Katherine has got those for you if you should need them.
3 When you receive your check for your jury service this week,
4 there will be something in that envelope. Obviously, for
5 you just to verify that you served on jury duty, and also to
6 serve as a reminder for you that you served on a jury in a
7 court of record for 2017.

8 Now, ladies and gentlemen, I will remind you should you
9 wish to exercise your exemption, you have an exemption for
10 your jury service for 2018 and 2019. So sort of keep that
11 in your mind in case you're summoned again to a court of
12 record. You are now not eligible to serve on a jury for the
13 balance of 2017 in a court of record. I know you're upset.
14 But there's hope for you in magistrate's court and municipal
15 court. So -- as well. Should you be summoned, I would just
16 call the clerk's office and let them know I served already
17 in 2017. Now, you are now at liberty to discuss this case
18 if you wish. And I share this with juries that I've had the
19 opportunity to work with and had I have had this happen
20 maybe once in 20 years. And I'm scared if I don't share it
21 with the jury panel, it will happen. Now, if you get
22 contacted and you wish to talk about this case, that's
23 perfectly fine for you to do that. The practice of law is
24 an art and not a science. And it may be that one or both of
25 these attorneys might contact you because they want to know

1 what was helpful, what could they do to get better and the
2 like. If you're comfortable talking about it, that's
3 perfectly fine. If you don't want to talk about it, just
4 tell them. They're not going to persist. I had a situation
5 many years ago where there was like a study group being
6 done. And I don't remember even what entity was doing the
7 study. But they were a little tiny bit more aggressive and
8 they persisted probably a little long than they should have
9 in asking a juror to talk about a case when they said I
10 don't want to talk to you about it. Should that happen, and
11 it won't, but should it, contact the clerk's office and she
12 will contact me. I will, of course, intercede on your
13 behalf. But you are at liberty now to talk about this case
14 if you want to.

15 Ladies and gentlemen, I'm trying to think of what else
16 I need to say. I really believe that that concludes my
17 comments other than one final reminder that your service is
18 important. It's been critical. I thank you all on behalf
19 of me personally as well as our court system. It has been
20 critical to our system of justice that you've given us so
21 much of your time. And when you receive your jury check,
22 you will realize that it really is a gift of your time
23 because our trip to Tahiti, your jury check will get you to
24 Jedburg, maybe. It is a very small token of all that you
25 have given to us. If you have any questions, if you have

1 any comments, if you have any concerns, goodness knows
2 you've given us so much of your time, if you'll just let one
3 of our bailiffs know, I'm happy to give you some of mine.
4 And so if you'll let them know, I'll just come back and meet
5 with you in your jury room. Just let them know. Otherwise,
6 I think we'll have you retire to your jury room and they
7 will retrieve your badges. And those of you that need
8 something for your employer, they'll get that for you. And
9 I will conclude by just saying, once again, thank you so
10 much. Have a very pleasant afternoon, and you're free to
11 go.

12 (The jury is released and exits the courtroom at 11:55
13 a.m.)

14 THE COURT: All right. Do you have an order?

15 MR. BOGLE: I do. May I approach, Your Honor?

16 THE COURT: Yes. Have you shown it to . . .

17 (Brief pause.)

18 THE COURT: Okay. I believe that -- motions,
19 certainly, Mr. Falk?

20 MR. FALK: We'll reserve our motion for -- we're going
21 to file an appeal. We'll file it in due course.

22 THE COURT: Very well. And do you have any motions at
23 this time or do you wish to reserve the ten days?

24 MR. FALK: Can I reserve for ten days?

25 THE COURT: You certainly may. Just in the event that

1 you, all need to argue them, I'm just going to ask you guys
2 to get together in due time. Or you may give it back to Mr.
3 Morrow to handle.

4 MR. BOGLE: I certainly will.

5 THE COURT: Y'all just get together. And we'll
6 probably -- I will share with you that I have general
7 sessions nonjury week which is better than just a civil
8 nonjury week just because the time is more available. And I
9 have that the last week of May and first couple days in
10 June. All right. If y'all will just get that and thank you
11 so much.

12 MR. BOGLE: Thank you, Your Honor.

13 And good luck to you, sir. All right.

14 (The proceedings in the trial of this matter concluded
15 at 11:59 a.m.)

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17 (End of Record)

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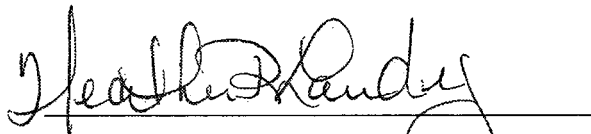
25

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF REPORTER
COUNTY OF CHARLESTON)

I, HEATHER R. LANDRY, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
trial of the captioned case, in the Court of Common Pleas
for Dorchester County, South Carolina, on the 27th, 29th and
30th day(s) of March 2017.

I do further certify that I am neither of kin, counsel,
nor interest to any party herto.

July 18, 2017

A handwritten signature in cursive script, reading "Heather R. Landry", written over a horizontal line.

Heather R. Landry, CVR
Official Court Reporter

This is a certified original of the Transcript of Record
requested by and provided to the following party: The S.C.
Commission for Indigent Defense

That is the ^{numeric} range on the test Static 99R
that he received a 4 on?

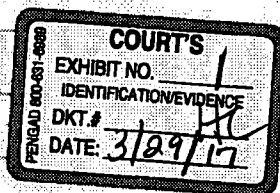
What does long-term mean?

~~Did the brother actually purchase property?~~

★ May we have a copy of the actual law?

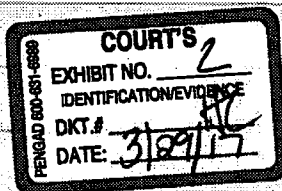
When did ~~we~~ he begin
Faith based treatment?
AA?

Closely monitored?



Restate law that
we're weighing the evidence
against.

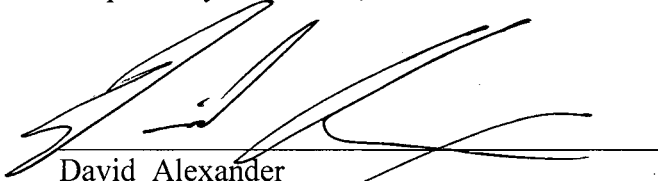
Thank You



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 17th day of January, 2018.

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