

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JUSTIN L. STEWART,

APPELLANT

APPELLATE CASE NO 2017-001269

RECORD ON APPEAL

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State of South Carolina.,) In the Common Pleas
) Court of York
)
) Case No. 2015-CP-46-03790
County of York.)

In the Matter of the Care.,)
 and Treatment of)
 Justin L. Stewart.,)
) Transcript of Record
 -vs-)
)
 Justin L. Stewart.,)
)
 Defendant.)
 _____)

May 30, 31, 2017
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, judge, and a jury.

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To The Honorable John C. Hayes, III
Sixteenth Judicial Circuit
Union and York Counties

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-N

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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION TUESDAY, MAY 30, 2017 AT 10:26 AM IN
2 THE MATTER OF STATE V. BARRY ALAN BARRENTINE WITH ATTORNEY
3 GENERAL JAMES BOGEL AND MS. ANNA BROWDER.)

4 (COURT IN RECESS AT 10:41 AM.)

5 (JURY ENTERS COURTROOM AT 10:48 AM.)

6 (COURT BACK IN SESSION AT 10:52 AM.)

7 THE COURT: Members of the jury panel, I'm John Hayes.
8 I'm from Rock Hill and I am one of the two circuit judges
9 assigned to York and Union County which are the Sixteenth
10 Judicial -- Judicial Circuit in South Carolina.

11 We're starting a civil term today, we only have one
12 case. It's already a short week because we were off
13 yesterday, but we only have one case so if you are drawn on
14 the jury you'll probably be through by tomorrow afternoon.
15 That's quick looks like in my discussions with the
16 attorneys.

17 Now, first we're gonna start with the Clerk calling
18 the roll. She will call the roll and ask you just to stand
19 and tell us your name, and what you do for a living, and if
20 you are retired what you did for a living and if you're
21 married what your spouse does for a living. And after we
22 do that I will have certain questions to go over regarding
23 service as a juror, certain qualifications, exemptions, and
24 disqualifications. I'll tell you more about that after we
25 go through the roll call.

1 MADAM CLERK: Ladies and gentlemen, please stand and
2 raise your right hand for the jury oath.

3 (JURY SWORN AT 10:50 AM.)

4 (ROLL CALL BY THE CLERK OF COURT)

5 (JURY QUALIFICATIONS.)

6 THE COURT: Members of the jury panel, thank you. I'm
7 now going to go over this list of qualifications,
8 disqualifications and exemptions. What I will do is go
9 through these, and I'm not going to ask you to tell me if
10 you need to address any of the issues that I raise. How we
11 will handle this is, when I get the end and ask -- I will
12 invite those of you who need to discuss any of these
13 matters with me to come forward, form a line there at the
14 gate in the bar, and come up one at a time. And I will
15 step down by the court reporter, and you will be able to
16 discuss with me what issue you have based on the questions
17 I pose.

18 The attorneys will have the right to come up and
19 listen to what we say and what you say and what I say, and
20 the court reporter will take down our conversation. But
21 you won't have to stand up in front of everyone to tell me
22 if you fall into one of these categories.

23 First, you have -- to in order to serve as a juror in
24 this court, you have to fall into one of the following
25 categories. You must either be a qualified elector, that

1 is a registered voter; or hold a valid South Carolina
2 driver's license; or a South Carolina Department of Public
3 Safety Identification card. If you do not fall into one of
4 those categories, then please, in a few minutes, come
5 forward when I invite you.

6 If you are not a citizen of York -- the United States,
7 if you're not a resident of York County, please come
8 forward in just a moment.

9 If any of you work in this courthouse or our other
10 courthouses -- we now have three courthouses -- if you work
11 in any of the courthouses, or if you hold any elected
12 office in York County, please come forward in just a
13 moment.

14 If any of you hold a constable's license, either with
15 or without pay, please come forward in just a moment.

16 If any of you have been convicted or pled guilty in a
17 state of a federal court to a crime for which you could
18 have received imprisonment exceeding one year in jail, and
19 if your civil rights have not been restored by pardon or
20 amnesty, please come forward in just a moment.

21 I call your attention that the question addresses
22 offenses that carry a penalty exceeding one year. It is
23 not tied to any sentence one may have received.

24 If any of you have less than a sixth grade education
25 or its equivalent, or if you are unable to read, write,

1 speak, or understand the English language, please come.
2 forward in just a moment.

3 If any of you are sixty-five or older, you have an
4 exemption. You can serve if you wish, or you can
5 automatically be excused if you wish. So if you are sixty-
6 five or older and you wish to be excused, please come
7 forward in a moment. If you're sixty-five or older and
8 wish to stay, just simply keep your seat.

9 If any of you have any mental or physical health
10 issues that would prevent you serving with us as a juror
11 this particular week, please let us know. Please come
12 forward when I invite you.

13 If any of you are the caregiver for a child under the
14 age of seven and do not work outside the home, or if you
15 are a caregiver for anyone of any age; that is, if you
16 because of friendship or family relations, assist somebody
17 on a day-to-day basis, please come forward in just a
18 moment.

19 If any of you are teachers or students and serving
20 with us this week would interfere with that, please come
21 forward, and we can change you to another term of court.
22 Keep in mind, this is going to be a short week.

23 If any of you have served on a jury within the last --
24 jury such as this, a circuit court jury in the last three
25 calendar years, or if you have served on a circuit or state

1 grand jury within the last five calendar years, please come
2 forward in just a moment.

3 If any of you have any particular reason why you could
4 not serve with us as a juror this week, please come forward
5 in just a moment.

6 I'm going to invite you now, those of you who need to
7 talk with me, Mr. Hamilton will station himself at the
8 opening in the bar, please come forward if you need to
9 discuss any of these matters with me.

10 (COURT LEFT THE BENCH.)

11 THE COURT: Okay.

12 MR. HAMILTON: All right. This is Juror Number Three,
13 Mr. Baki. Juror Number Three.

14 (INDIA MALE COMES FORWARD.)

15 THE COURT: Good morning, Doctor. How are you?

16 MR. BAKI: Good morning, Judge. I am a cardiologist
17 and I canceled my office -- the office for today. And --
18 but it would be a hardship for my patients whenever we
19 cancel offices.

20 THE COURT: Do you practice by yourself?

21 MR. BAKI: I -- I practice with Carolina, Carolina
22 Cardiologist and Associates, which is next door to Piedmont
23 Medical Center.

24 THE COURT: Are you --

25 MR. BAKI: With other cardiologist that is other people

1 that can cover. However we usually have two to three weeks
2 of wait time at any time during the year so --

3 THE COURT: I'll excuse you. I'll excuse you for
4 today.

5 He'll be excused.

6 Thank you.

7 MR. BAKI: Thank you.

8 MR. HAMILTON: This is Juror Number One twenty-three,
9 Healy Singleton. Juror Number One twenty-three.

10 THE COURT: Good morning.

11 MS. SINGLETON: Good morning. How are you?

12 THE COURT: I'm good. How are you?

13 MS. SINGLETON: Fine. I am a care giver and I live in
14 Rock Hill and am a care giver and I take care of elderly at
15 home.

16 THE COURT: You take care of an elderly home? All
17 right. I'll excuse you.

18 She'll be excused.

19 MR. HAMILTON: This is Juror Number Ninety-seven,
20 Lindsay O'Neal.

21 THE COURT: Good morning.

22 MS. O'NEAL: I'm a certified nursing assistant at
23 Chester Regional Medical Center. I'm currently the only
24 night-shift CNA at Chester Regional Medical Center on the
25 med surge, ER, and ICU floors.

1 THE COURT: We can transfer you to another time if
2 that would be better.

3 MS. O'NEAL: If it's only going to be two days,
4 though?

5 THE COURT: That's -- I think it's just going to be
6 two days.

7 MS. O'NEAL: Then, I just --

8 THE COURT: All right. Just stay with us.

9 MS. O'NEAL: Yeah, that's good.

10 THE COURT: All right. Thank you.

11 MS. O'NEAL: Thank you.

12 MR. HAMILTON: This is Juror Number Seventy-one,
13 Anthony Lowry. Juror Number Seventy-one.

14 THE COURT: Good morning. How are you?

15 MR. LOWERY: I'm fine.

16 THE COURT: Good.

17 MR. LOWERY: I got a charge twenty years ago, it was a
18 felony.

19 THE COURT: You do have a felony?

20 MR. LOWERY: Yeah.

21 THE COURT: All right, I'll excuse you.

22 He'll be excused.

23 MR. HAMILTON: This is Juror Number One forty-six,
24 Cynthia Williams. Juror Number One forty-six.

25 THE COURT: Hey, good morning, Ms. Williams. How are

1 you?

2 MS. WILLIAM: I have a felony drug charge.

3 THE COURT: Okay. I'll excuse you.

4 She'll be excused.

5 MS. WILLIAMS: Thank you.

6 MR. HAMILTON: Juror Number Eighty-two is Sherri
7 Mobley. Again, Juror Number Eighty-two.

8 THE COURT: Good morning.

9 MS. MOBLEY: Good morning. I picked up a drug charge
10 and I did PTI.

11 THE COURT: Okay. You can remain with us. All right.
12 She'll remain with us.

13 MR. HAMILTON: Juror Number Thirty-nine is Larry
14 Goforth. Again, Juror Number Thirty-nine.

15 THE COURT: Good morning.

16 MR. GOFORTH: Good morning. I just had a total hip
17 replacement done.

18 THE COURT: Me, too.

19 MR. GOFORTH: On January the 30th.

20 THE COURT: Mine was January 31st. Who's your doctor?

21 JUROR NUMBER: Dr. Mason, in Rock -- in Charlotte.

22 THE COURT: I had Doctor

23 MR. GOFORTH: And I've got to have my other one done
24 this coming March. That'll be my left.

25 THE COURT: Bless you. I got to have my knee at some

1 point.

2 MR. GOFORTH: This is my fourth one and then I got to
3 have this one. This one is metal on metal up here. And it
4 hurts when I just sit long.

5 THE COURT: I know, I know. You're telling Noah about
6 the Flood, I tell you.

7 All right, he'll be excused.

8 MR. GOFORTH: Thank you, sir.

9 THE COURT: Thank you. I hope you recover - He and I
10 both had hip replacements two days apart so I know how he
11 feels.

12 THE CLERK: This is Juror Number Eighty-eight, Ouyen
13 Nguyen. Juror Number Eighty-eight.

14 THE COURT: Good morning.

15 MS. TUYEN:: I don't speak English very well, and I
16 don't understand anything.

17 THE COURT: I'll excuse you.

18 She'll be excused.

19 MS. TUYNE: Yes.

20 THE COURT: Thank you. You can be -- you can leave.
21 Thank you.

22 MS. TUYEN: Thank you.

23 THE COURT: I think, particularly with a case like
24 this, she would have trouble with ---

25 MS. BROWDER: Yeah.

1 THE COURT: --- with the medical terms and things.

2 MS. BROWDER: Yeah.

3 THE COURT: All right. Thank you.

4 What we'll do now is, we'll take about a ten-minute
5 break because once -- We can't draw our jury until we know
6 who all's left after everybody was excused. So we'll take
7 about a ten-minute break. Don't disappear on us. We'll
8 ask you to be back -- let's make it fifteen so we can use
9 the clock. Be back at eleven thirty, and we'll draw the
10 jury for this trial. Thank you.

11 (COURT IN RECESS AT 11:16 AM.)

12 (COURT BACK IN SESSION AT 11:32 AM.)

13 THE COURT: Thank you. You may take your seats.

14 Members of the jury panel, we're going to start the
15 first trial, and the only trial for this week, and it is
16 the case of the *State versus Justin Stewart*.

17 Mr. Stewart, will you please stand? This is Mr.
18 Stewart. He's represented by Anna Browder. You may be
19 seated. The State will be represented by Mr. Jim Bogle of
20 the Attorney General's Office.

21 Mr. Stewart has been alleged by the State, to fall
22 into a category that the legislature established called
23 sexually violent predators, and he is entitled to a jury
24 trial to determine whether or not the State can prove to a
25 jury beyond a reasonable doubt that Mr. Stewart falls into

1 that category. That's the issue in this case, so, that is
2 what you will be determining.

3 You will be hearing evidence presented by the State,
4 and if Mr. Stewart wishes, evidence presented on his
5 behalf. And from that, those of you who sit on the jury
6 will have to determine whether or not Mr. Stewart falls
7 into the category of sexually violent predator.

8 I will charge the jury that sits on this case exactly
9 what that term and that phrase means under South Carolina
10 law.

11 First, are any of you related by blood or marriage to
12 Mr. Bogle, Mr. Stewart, Ms. Browder; or any of you know any
13 of these three individuals; if so, please stand.

14 No one stands.

15 Have any of you ever been represented by the Attorney
16 General's Office in any manner whatsoever; if so, please
17 stand.

18 No one stands.

19 Have any of you been represented by Mr. Browder at any
20 time; if so, please stand.

21 No one stands.

22 Are any of you or a member of your immediate family,
23 now or in the past, have you or any member of your
24 immediate family been involved in law enforcement at any
25 level, or of the prosecution of cases at any level; if so,

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1 please stand.

2 No one stands.

3 Do you have any educational or experience in your
4 background which would involve the assessment of mental
5 evaluations? That is, have any of you been involved in the
6 mental health field; or have any of you or a member of your
7 family -- I'm not going to ask you to be particular about
8 this because I know it's somewhat sensitive -- but have any
9 of you or a member of your family had mental health issues
10 to the degree that they made some type of intervention or
11 help through doctors or otherwise; if so, please stand.

12 All right. No one stands.

13 Have any of you ever been involved -- Have any of you
14 ever been in the military, served in any branch of our
15 military, including the Coast Guard; if so, please stand.

16 All right. We'll start over here.

17 Your name and number?

18 (WHITE MALE STANDS.)

19 A. Kenneth Claiborne, Juror One twenty-one.

20 THE COURT: All right. And you served in the Army, I
21 believe you said?

22 MR. CLAIBORNE: Yes,, sir.

23 THE COURT: All right. You can be seated, then.

24 That's just simply information.

25 Yes, ma'am, your name and number?

1 (WHITE FEMALE STANDS.)

2 A. Cheryl Telk, One thirty-two.

3 THE COURT: What branch?

4 MS. TELK: Army.

5 THE COURT: Okay. You can be seated. Thank you.

6 Are any of you members of or contributors to
7 organizations such as Mothers Against Drunk Driving,
8 Citizens Against Drunk Drivers, law -- Mothers Against
9 Drunk Drivers, Students Against Drunk Drivers, or Citizens
10 Against Violence, or Sister Care; if so, please stand?

11 No one stands.

12 The following are possible witnesses in this case.

13 Dee Armstrong, Onisha Walker, Shenika Armstrong. Any other
14 -- that's -- what about the State?

15 Do I have your list??

16 MR. BOGLE: Yes, your Honor. It would be Doctor Marie
17 Gehle.

18 THE COURT: All right.

19 Additionally, Doctor Marie E. Gehle, and that's
20 spelled G-e-h-l-e, from the South Carolina Department of
21 Mental Health. So, that's Doctor Gehle, Dee Armstrong,
22 Onisha Walker, and Shenika Armstrong.

23 Are any of you related by blood or marriage, or do any
24 of you know any of those potential witnesses; if so, please
25 stand?

1 No one stands.

2 Are any of you familiar with Mr. Stewart, or have any
3 of you heard anything about this case from any source
4 whatsoever; or, have any of you formed or expressed any
5 opinion about any matter or issue which would be involved
6 in this case; if so, please stand?

7 No one stands.

8 Do any of you have any religious or philosophical or
9 theoretical, or any sort of feelings that would prevent you
10 from being fair and impartial to the State in this case,
11 and to Mr. Stewart in this case; if so, please stand?

12 No one stands.

13 Anything further from the State?

14 MR. BOGLE: May we approach, your Honor?

15 THE COURT: Yes, sir.

16 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
17 THE JURY AT 11:37 AM.)

18 THE COURT: Now, I've got a couple of questions that
19 do have sensitivity about the response. So, I'm not going
20 to ask you to tell me, if you have to discuss any of these
21 situations with me, what I'll do is, like I did earlier,
22 I'll step down by the court reporter, and invite you to
23 come up and tell me why you're standing. But I'm not going
24 to require you to make any statement out in front of ---

25 (COURT REPORTER SNEEZED.)

1 MADAM COURT REPORTER: Excuse me.

2 THE COURT: That's okay. --- in front of everyone,
3 because this is -- these are very sensitive.

4 Has any member of the jury panel or a close personal
5 friend or relative ever been the victim of a sexual
6 assault; if so, please stand?

7 All right. I'm going to ask you just -- all of you --
8 go ahead and stand, and stay standing because I'm only
9 going to step down, I'm not gonna do this but once, so just
10 remain standing.

11 Have any of you on the jury panel or a close personal
12 friend or acquaintance been charged or convicted of a
13 criminally sexual offense; if so, please stand?

14 Have any of you or a relative, or some of you know
15 close, ever been the subject of a civil -- to a civil
16 commitment, or been voluntarily or involuntarily civilly
17 committed; if so, please stand?

18 Finally, are any of you related to anybody else on the
19 jury panel; if so, please stand?

20 All right. I'm going to step down and ask you to form
21 a line again and Mr. Hamilton will let you come up one at a
22 time, and we'll talk about whatever it is it may be.

23 THE COURT: All right.

24 MR. HAMILTON: This is Juror One thirty-three.

25 (WHITE FEMALE COMES FORWARD.)

1 THE COURT: Good morning. Your name again?

2 JUROR ONE THIRTY-THREE: Andrea Thomas.

3 THE COURT: Okay.

4 MS. THOMAS: I was assaulted by my stepfather when I
5 was younger. And Leland worked on that predator thing so I
6 have knowledge of that too.

7 THE COURT: Well would you in spite of that be able to
8 be fair and impartial?

9 MS. THOMAS: I believe so yes, sir.

10 THE COURT: All right. Could you base your verdict on
11 the law and the evidence in the trial and not on your
12 background?

13 MS. THOMAS: Yes, sir.

14 THE COURT: Okay. Thank you.

15 MR. HAMILTON: Juror Number Sixty-three.

16 (WHITE FEMALE COMES FORWARD.)

17 THE COURT: Good morning. Your name?

18 JUROR NUMBER SIXTY-THREE: My name is Kayla Knight.
19 My brother Jason was charged with -- a few years ago he
20 beat a woman with a tree branch and left her for dead.

21 THE COURT: All right. Would that -- In spite of
22 that, would you be able to be fair and impartial to Mr.
23 Stewart in this trial?

24 MS. KNIGHT: Yes.

25 THE COURT: And base your verdict on the law and the

1 evidence, and not on what happened to your brother?

2 MS. KNIGHT: Yeah.

3 THE COURT: Thank you. You can stay with us then.

4 Thank you. She'll stay with us.

5 MR. HAMILTON: This is Juror Number Ninety-seven.

6 (WHITE FEMALE COMES FORWARD.)

7 THE COURT: Hello again. Your name again?

8 JUROR NUMBER NINETY-SEVEN: O'Neal. Lindsay O'Neal.

9 I am the product of a sexual assault, and I was
10 sexually assaulted three years ago.

11 THE COURT: All right. In spite of that, would you be
12 able to be fair and impartial to Mr. --

13 MS. O'NEAL: I can.

14 THE COURT: You can? And you can base your verdict on
15 the law and the evidence, and not on your past history?

16 MS. KNIGHT: I can.

17 THE COURT: Okay. You can stay with us, then.

18 Thank you.

19 MR. HAMILTON: This is Juror Number One thirty-six.

20 THE COURT: Good morning. Your name again?

21 JUROR NUMBER ONE THIRTY-SIX: Romena Thomas. My cousin
22 was falsely accused of molesting someone, so I don't know
23 if I will be able to properly --

24 THE COURT: You don't think you could --

25 MS. THOMAS: I don't think I can.

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1 THE COURT: Okay. Well, I'll excuse you, then.

2 MS. THOMAS: Thank you.

3 THE COURT: Don't leave yet. Just have a seat back
4 there.

5 We'll excuse her for this time. We got you. Thank
6 you.

7 MR. HAMILTON: This is Juror Number One twenty-four.

8 (BLACK MALE COMES FORWARD.)

9 THE COURT: Your name?

10 JUROR NUMBER ONE TWENTY-FOUR: Christopher Slaymon.

11 THE COURT: Okay.

12 MR. SLAYMON: One of my ex-girlfriends was raped and
13 my wife has had some things done to her.

14 THE COURT: Okay. In spite of that, would you be able
15 to be fair and impartial in this trial? Would that affect
16 you such that you couldn't be fair?

17 MR. SLAYMON: I wouldn't think I would, but.

18 THE COURT: You're hesitant. You don't think you
19 would be able to be fair?

20 MR. SLAYMON: I think I would be able to, but I don't
21 believe.

22 THE COURT: You don't know?

23 MR. SLAYMON: No.

24 THE COURT: Well, I'll let you go. I'll excuse you.
25 Thank you. Just have a seat. Don't leave.

1 MR. HAMILTON: Juror Number Fifty-eight.

2 (WHITE FEMALE COMES FORWARD.)

3 THE COURT: Good morning.

4 JUROR NUMBER FIFTY-EIGHT: Good morning.

5 THE COURT: Your name?

6 JUROR NUMBER FIFTY-EIGHT: Brittany Huffstetler.

7 THE COURT: Okay.

8 MS. HUFFSTETLER: My mother, whenever she was younger
9 she was molested and my sister has been raped.

10 THE COURT: Would that affect your ability in this
11 trial to be fair and impartial?

12 MS. HUFFSTETLER: Yes.

13 THE COURT: Okay. You can be excused and just have a
14 seat, don't leave. Just have a seat.

15 THE COURT: That's it.

16 MR. BOGEL: Thank you, your Honor.

17 MS. BROWDER: Thank you, your Honor.

18 THE COURT: Now, the way we draw a jury in this type
19 setting is, a list a twenty names will be drawn, and then
20 we'll draw an additional three. So, there will be twenty-
21 three and out of that first twenty, each side has the --
22 will remove -- we call it strike -- but will remove four
23 people, so that twenty, reduced by eight, giving us twelve
24 jurors.

25 Then, as to an additional three, the -- each side has

-23-

1 the right to excuse one so we'll end up with one alternate.
2 This will take a little while, because until we reach this
3 point, we can't make our list that the Clerk will, through
4 the computer, establish a list of those twenty-three names,
5 give it to the attorneys and I'll let them step out or
6 remain in here if they wish to, for about ten or so
7 minutes, and go over the list and then, we'll draw the
8 panel for that trial.

9 So, we'll just be at ease. We're not going to take a
10 break, we'll be at ease for a few minutes.

11 (COURT AT EASE AT 11:46 AM.)

12 THE COURT: Is the State ready?

13 MR. BOGLE: Yes, your Honor.

14 THE COURT: Using the numbers on the far left the
15 State strikes first and then Defense and then the State
16 again.

17 (JURY STRUCK AT 11:57 AM.)

18 MADAM CLERK: I'm ready to receive your first strike,
19 Mr. Bogle.

20 MR. BOGLE: Yes, ma'am. The State would strike Number
21 Five.

22 MS. BROWDER: Respondent strikes Number Four.

23 MR. BOGLE: The State would strike Number Sixteen.

24 MS. BROWDER: Respondent strikes Number Fifteen.

25 MR. BOGLE: The State would strike Number Six.

1 MS. BROWDER: Respondent strikes Number Seventeen.

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

3 MS. BROWDER: Respondent strikes Number Seven.

4 MADAM CLERK: And then using the last three numbers
5 off of -- I need to get your alternate, Mr. Bogle.

6 MR. BOGLE: The State would strike Number Twenty-one.

7 MS. BROWDER: Respondent strikes Number Twenty-three.

8 THE COURT: Anything from the State involving the
9 striking of the panel?

10 MR. BOGLE: There is nothing, your Honor.

11 THE COURT: Anything from the Defense involving the
12 striking of the panel?

13 MS. BROWDER: No, sir.

14 THE COURT: All right.

15 Members of the jury panel, if you hear your name
16 called, please come forward, and -- let's check the strikes
17 first.

18 MADAM CLERK: I'll verify the strikes on each side..
19 For the State, I have the following strikes: Number Five,
20 Sixteen, Six, Number Eight, and as your alternate, Number
21 Twenty-one. Is that correct?

22 MR. BOGLE: That is correct.

23 MADAM CLERK: For the Respondent, I have the following
24 strikes: Number Four, Fifteen, Seventeen, Seven, and as
25 your alternate Number Twenty-three. Is this correct?

1 MS. BROWDER: That's correct.

2 MADAM CLERK: Ladies and gentlemen, if you hear your
3 name called, if you'll please gather your personal
4 belongings and carry them down, and have a seat in the jury
5 box, to my left, at the direction of the bailiff.

6 Juror Number Sixty-two, Ellen M. Klixbull.

7 (WHITE FEMALE COMES FORWARD.)

8 MADAM CLERK: Juror Number One thirty-two, Cheryl B.
9 Telk.

10 (WHITE FEMALE COMES FORWARD.)

11 MADAM CLERK: Juror Number One forty-one, David W.
12 Wasilla.

13 (WHITE MALE COMES FORWARD.)

14 MADAM CLERK: Juror Number One thirty-seven, Jaycee E.
15 Totherow.

16 (WHITE FEMALE COMES FORWARD.)

17 MADAM CLERK: Juror Number Forty-nine, Elizabeth A.
18 Hendrick.

19 (WHITE FEMALE COMES FORWARD.)

20 MADAM CLERK: Juror Number One twenty-one, Lauren L.
21 Sims.

22 (WHITE FEMALE COMES FORWARD.)

23 MADAM CLERK: Juror Number One forty-three, Sharon
24 K.Whited-Stanck.

25 (WHITE FEMALE COMES FORWARD.)

1 MADAM CLERK: Juror Number One twenty-six, Lester E.
2 Stauffer.

3 (WHITE MALE COMES FORWARD.)

4 MADAM CLERK: Juror Number One twenty-eight, Crystal
5 L. Stickel.

6 (WHITE FEMALE COMES FORWARD.)

7 MADAM CLERK: Juror Number Fifty-three, Pauline J.
8 Hinson.

9 (WHITE FEMALE COMES FORWARD.)

10 MADAM CLERK: Juror Number Twenty-one, Kenneth G.
11 Claiborne.

12 (WHITE MALE COMES FORWARD.)

13 MADAM CLERK: Juror Number Thirteen, Desiree L. Brown.

14 (BLACK FEMALE COMES FORWARD.)

15 MADAM CLERK: Serving as alternate is Juror Number
16 Sixty-four, Mark R. Cones.

17 (WHITE MALE COMES FORWARD.)

18 THE COURT: Those of you who were not chosen, you can
19 leave, and you'll be mailed a check. As I told you, this
20 is the only case we're gonna try this week, so this will
21 excuse you from serving this particular week with us as a
22 juror. So, thank you for being here, and we appreciate you
23 coming.

24 (JURY DISMISSED AT 12:02 PM.)

25 THE COURT: Those of you who were chosen, if you will

1 stand and raise your right hand, we will administer the
2 oath.

3 (WHEREUPON, PETIT JURY BEING
4 DRAWN AND SEATED, IS DULY SWORN AT 12:02 PM.)

5 THE COURT: I'm going to chat with you for a little
6 bit, and then I'm going to let the attorneys make for you
7 opening statements. Then, we'll break for lunch, and we'll
8 start the witnesses after lunch.

9 Mr. Claiborne, I'm going to ask you to be the
10 foreperson. When we reconvene, we're not going to switch
11 around now, you will sit in the first seat on the first
12 row, and the alternate Mr. Konez, you will always sit in
13 that seat. There's no other assigned seats. Just the
14 bailiff will tell you how to get in and out.

15 I've told you what this case is about. The attorneys
16 will, before you -- come before you in just a few minutes
17 and explain a little bit more about the case, the nature of
18 the case, and what they see developing in the case, giving
19 you an outline or a blueprint of the trial. They're not
20 arguing their case, they are simply outlining the case for
21 your consideration.

22 The State must prove what they allege, and that is
23 that Mr. Stewart falls within the guide -- the definition
24 of a sexually violent predator as our legislature has
25 defined it and enacted it into law. That would be the

1 obligation of the State. They must do that beyond a
2 reasonable doubt, and I'll explain that burden of proof to
3 you at a later time.

4 I have three primary jobs in a trial such as this.
5 One is, I'm the logistics person. We take -- I have to
6 make sure we take breaks, that you can hear what is being
7 said, and that you can see what needs to be seen. That's
8 the logistic part of the trial that I am in charge of, the
9 mechanical part of the trial.

10 I'm also charged with ruling on questions of admission
11 of evidence. If one side believes certain evidence should
12 be admitted for the record and the other does not, it is up
13 to me to determine what evidence is admissible under the
14 laws and rules of our state, and what is not admissible.

15 I also am the sole judge of the law in this case. It
16 is my duty to give you a charge on the law which you are to
17 apply to the facts as you determine them to be. I'm giving
18 you some legal principles now. I may, during the trial,
19 give you some, and at the end of the trial I will give you
20 a concise and comprehensive charge on the law.

21 It is solely up to you to examine the evidence and
22 give to the evidence the effect, the value, and the weight
23 you believe it should have. Do not infer from anything I
24 say or do at any time as my having an opinion on the facts.
25 Our law does not allow a judge trying a case to formulate

1 or express to a jury any opinion about the case. That is
2 solely your job.

3 In analyzing the evidence you must determine the
4 believability of the witnesses. Use what you find in your
5 day-to-day life as indicating believability in a witness,
6 and apply that. And you may also look at the demeanor of a
7 witness, how the witness acts on the stand. You can
8 determine, in assessing a witness's testimony, the
9 opportunity that witness had to actually know those things
10 the witness testified to. You can look at any bias or
11 prejudice a witness may have. Look at whether a witness
12 wishes to help or hurt one side or the other. And look at
13 whether the witness is hesitant or straightforward in
14 answering questions.

15 In this case we'll have testimony of someone called an
16 expert witness, Doctor Gehle. Generally an individual can
17 only testify as to something they've observed with one of
18 their five senses. It's usually something they've seen or
19 heard, but it could be taste, touch, or smell.

20 However where an individual has certain training,
21 education, or experience in a certain field, that person
22 may be qualified as an expert to render an opinion; take
23 facts, and from those facts reach an opinion. The opinions
24 of the experts are allowed into evidence to assist you.
25 They're not binding in you. Look at that witness's -- the

1 expert witness here is Doctor Gehle, Doctor Gehle's
2 testimony, just as you use the lens that you look at other
3 witnesses. But also, as to an expert, even though I may
4 qualify her as an expert, you determine whether you believe
5 her credentials give her the expertise to render an opinion
6 to the -- on the subject that she renders an opinion to.

7 You also can look at the reasons she gives for
8 reaching the opinion she reached. So, keep in mind that
9 expert testimony is different from regular layperson
10 testimony, and its given to assist you; it is not binding
11 on you.

12 Now, you are not to discuss the case among yourselves
13 or try to make up your own mind until we reach the point in
14 the trial where I instruct you to jointly deliberate and
15 return a unanimous verdict. Prior to that time, you are
16 not equipped with all the tools you need to make a fair and
17 reasonable decision.

18 Do not let anyone discuss the case with you outside
19 the courtroom. Tell anyone that tries to discuss this case
20 with you that you are serving as a juror, and report back
21 to me if anyone tries to discuss this case with you because
22 that person would be in contempt of court.

23 I do not believe there will be any news coverage of
24 this case, but if there is don't let yourself be exposed to
25 it. Don't read, watch, or listen to anything that would

1 remotely deal with this trial. Do not access any
2 information outside the courtroom. Don't go to the Cloud,
3 don't Google. Don't do any independent research on
4 anything that could remotely deal with this trial, the
5 issues in this trial, Mr. Stewart, Ms. Browder, Mr. Bogle,
6 myself, court rules, court procedure. Don't Google or go
7 to the Cloud or use any means whatsoever to access any
8 information that could remotely deal with this trial
9 outside of the Court.

10 Do not even go online to a social media and indicate
11 that you are serving on a jury. That seems innocent
12 enough, but if you do that someone may respond to your
13 Tweet or email with information, or Face book entry or
14 anything like that. Someone may respond with something
15 that would not be healthy for your service as a juror in
16 this case.

17 We take breaks about every fifteen minutes. I'm
18 sorry. Like my friend with the bad hip. We take breaks
19 about every hour and a half. Sometimes we wish we could
20 take a break about every fifteen minutes, but we take a
21 break every hour and a half. I find that's a good breaking
22 time for jurors, and for Mr. Bogle, Ms. Browder, and Mr.
23 Stewart.

24 However, if any of you need a break at any time,
25 simply raise your right hand and, no questions asked, we'll

1 take a break. We would like to move the case along, but
2 we're not in such a hurry that we would not take a break if
3 it's needed; and I extend that to Mr. Bogle, Ms. Browder,
4 and Mr. Stewart. If they need a break they will simply
5 raise their right hand or ask for a break, and we will take
6 a break.

7 Now, I'm going to turn over to the attorneys for them
8 to make, again, what are not arguments. At the end of the
9 case they will take the facts as they see them, they will
10 apply the law as I charge it, and tell you why your verdict
11 should be a certain verdict. Now, they're just outlining
12 or blueprinting the trial for you.

13 MR. BOGLE: May we approach, your Honor, briefly?

14 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
15 THE JURY, AT 12:10 PM.)

16 THE COURT: All right. I need to take up some law
17 issues right now with the attorneys. I'm going to let you
18 go to the jury room. Do not start deliberating. When you
19 come back the foreman will take that seat, and the
20 alternate that seat. So, we'll take a short break before
21 we get into opening statements.

22 (JURY EXITS COURTROOM AT 12:11 PM.)

23 THE COURT: All right. The jury has exited.

24 I saw two motions in limine by the State. One dealt
25 with what's going to be the -- what's going to happen to

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1 Mr. Stewart if he is adjudged a sexually violent predator.
2 I can't remember what the other one was, but let me hear
3 the State first.

4 MR. BOGLE: The first one's about -- the first motion
5 in limine is what I call the location. As your Honor knows
6 from previous trials, if he's found to be a predator, he
7 will be sent to the treatment facility. Right now, it's
8 located behind the wire at Broad River Corrections
9 Institution, and I've had cases where the people -- the
10 Defense counsel might refer to it as a prison, the old
11 death row, that sort of thing. We only have to prove the
12 what. Does he have a mental abnormality? Does he have a
13 personality disorder? Does he have both? And is this
14 likely to make him offend to the degree that he has to be
15 confined to long-term control, care, and treatment. And
16 that's all we have to prove. Anything, any reference to
17 where he might go would distract the jury, not be relevant,
18 and could prejudice the jury against the State, or even
19 against the Defense.

20 THE COURT: All right.

21 MR. BOGLE: Now, for your information --

22 THE COURT: Well, let's see if she --

23 MS. BROWDER: I have no objection to that, your Honor.

24 THE COURT: Okay. Also, words committed for life ---

25 MR. BOGLE: Yeah. Something like that.

1 THE COURT: --- same thing. She's nodding.

2 MR. BOGLE: Yeah. Correct.

3 THE COURT: All right.

4 MR. BOGLE: For your information, Judge, and this is
5 not part of the motion, since December 1st a private
6 company called Correct Care is now handling the treatment.
7 And they will be building a new facility on Department of
8 Corrections property at some point in the future.

9 THE COURT: All right.

10 MR. BOGLE: That may change things. But anyway, the
11 second motion in limine has to do with treatment. Again,
12 the only things we're supposed to prove is the crime, the
13 mental abnormality, and the likely to re-offend. Any
14 evidence as to the type of treatment, how long it'll be,
15 what's involved in treatment, would not be an element we
16 would have to prove. It would also be something that's
17 speculative, at best.

18 THE COURT: Even though --

19 MR. BOGLE: We don't know what he's gonna need until he
20 gets out.

21 MS. BROWDER: Your Honor, I would just ask -- I won't
22 go into the type of treat -- or the details, but I would
23 like to be able to differentiate between inpatient and
24 outpatient treatment, because it's long-care and control.
25 I would like to be able -- because the doctor's going to

1 testify that he should have inpatient long-term care and
2 control treatment. I would be -- ask just to be able to
3 ask the difference between inpatient and outpatient.

4 MR. BOGLE: That's fine.

5 THE COURT: Okay. All right. Any other motions in
6 limine by the State?

7 MR. BOGLE: The only other thing I can think of, and
8 this isn't written down, but when you did the earlier
9 hearing on the other guy, you mentioned that one of the
10 things you might charge would be that he has the right to
11 remain silent, and his silence can't be used against him.

12 THE COURT: That's not correct in this case.

13 MR. BOGLE: Okay. In this case --

14 THE COURT: I -- I was doing my colloquy, and I -- so.

15 MR. BOGLE: Okay.

16 THE COURT: I was wrong.

17 MS. BROWDER: We understand, your Honor.

18 We would ask, your Honor -- I've done several of these
19 cases with Mr. Bogle. I move at this time to exclude him
20 from discussing anything regarding the legislative findings
21 under Section 44-48-20. I do know in his openings
22 sometimes he likes to quote the legislative findings, and
23 why the legislature decided to make this *Sexually Violent*
24 *Predator Act*, and he goes into the fact that there's an
25 extremely dangerous group of sexually violent predators who

1 exist, who require involuntary civil treatment -- civil
2 commitment and that the likelihood these sexually violent
3 predators will re-engage in repeated acts of sexual
4 violence is significant. I ask your Honor that that be --
5 he not be allowed to discuss that. The jury's here to
6 determine if Mr. Stewart is a sexually violent predator,
7 so, he doesn't fall into that category, and I believe it's
8 prejudicial at this point to place him in that, and say why
9 the legislature made this law.

10 MR. BOGLE: What I do, your Honor, is I read verbatim
11 -- excuse me -- I read verbatim the first two paragraphs of
12 Section 44-48-20, the legislative findings. I can hand up
13 a copy if you want to see it right now.

14 THE COURT: Well, what relevance is that as to whether
15 or not this individual falls into a sexually violent
16 predator definition?

17 MR. BOGLE: I'm setting the stage for what this law --
18 what this law was created for. And then, I'll argue why
19 this guy fits into those categories.

20 THE COURT: So, if this were a case involving an
21 automobile wreck, based on statute that says you can't run
22 a stop sign, you would have to tell the jury why the
23 legislature decided you can't run a stop sign?

24 MR. BOGLE: Well if they put a legislative intent in
25 there, and I've never tried a stop sign case, Judge, so, I

1 don't know about that.

2 THE COURT: Well, I'm gonna agree with Ms. Browder and
3 I'm gonna ask, you'll have to stay away from it.

4 MR. BOGLE: Okay. Thank you, your Honor.

5 MS. BROWDER: And finally, your Honor, I ask a little
6 background on Mr. Stewart's history, we're going to ask
7 that -- he was charged when he was nine-years-old with a
8 CSC with a minor under eleven years of age, your Honor.
9 That was April 21st of 1997. That charge was ultimately
10 dismissed. We would ask that the State and the State's
11 witnesses not be able to go into that charge as, one, he
12 was nine years old; two, it was dismissed, and I believe it
13 would be prejudicial to the jury to bring that in.

14 In addition, your Honor, when he was thirteen years
15 old, there was an ABHAN from 2002 that was dismissed, that
16 was somewhat sexually-related. In Doctor Gehle's report,
17 she mentions that as well as to the fact that there's no
18 treatment notes available to that, so she's not able to
19 look at anything regarding that. So we would ask that
20 those two be excluded, and the State's witness not be able
21 to go into those two arrests, your Honor, as they were
22 ultimately dismissed; and I believe they would be
23 prejudicial, especially in this type of case, a sexually
24 violent predator case, to the jury that it would -- they
25 would not understand -- be able to take that part away from

1 anything that he was actually convicted of.

2 THE COURT: All right. Mr. Bogle.

3 MR. BOGLE: Thank you, your Honor. We have a
4 memorandum of law that was submitted to the Court earlier.
5 I can hand up a copy right now if you'd like another one.

6 One of the diagnoses that Doctor Gehle came up with on
7 this man is Anti-Social Personality Disorder. Now, to make
8 that diagnosis, you have to find misconduct, just plain not
9 following the rules of society, and document it prior to
10 age fifteen. So, that would make any bad things he did
11 prior to age fifteen, whether it results in an arrest or a
12 conviction or not, fair game for that diagnosis. And
13 she'll explain that when she's on the witness stand.

14 As far as prior -- And in making that diagnosis, as
15 well as the sexual diagnosis she came up with him, the
16 other specified paraphilic disorder, she has to look at
17 all crimes that are sexual in nature, whether they are
18 convicted or not. The case --

19 THE COURT: I'm looking at your brief, and I see here
20 now that it has to do with Doctor Schwartwatts-Maddox
21 talking about past crimes.

22 MR. BOGLE: Right.

23 THE COURT: What about past charges?

24 MR. BOGLE: That was with one case. Also, there's a
25 case called *In The Matter Of The Care and Treatment Of*

1 *Ettel*, E-t-t-e-l-, on page two of our brief, where Doctor
2 Cameron Crawford testified about prior sexual offenses, as
3 well as prior non-sexual offenses, some of which didn't
4 even result in convictions. And this is to get the overall
5 calculation, evaluation of the person, and the diagnosis
6 they have to make.

7 In addition, when it comes to scoring the actuarial
8 tests on likely to re-offend, the Static-99, they have to
9 also look at -- these experts also have to look at arrests,
10 as well as -- as well as convictions.

11 And Doctor Gehle will be quite candid when she
12 testifies. If she can't find documentary -- like an
13 incident report or something like that, she'll talk about
14 the crime or the arrest or the charge, but she'll give it
15 whatever weight is appropriate. And I think this objection
16 goes more to weight than it does to the admissibility of
17 these things. But the case law in *Ettel*, the case law in
18 *Corley*, *Corley* also dealt with prior convictions, some of
19 which were not sexual.

20 THE COURT: Let me do this. Let me look at *Ettel* over
21 lunch.

22 MR. BOGLE: Uh-huh

23 THE COURT: Just stay away from it in opening.

24 MR. BOGLE: Okay.

25 THE COURT: Can you do that?

1 MR. BOGLE: I can do that.

2 THE COURT: Because I'd like to look at Ettel. Cory --
3 Corey or Corlee, looks to deal with convictions which I
4 don't think there's much question about that. But let me
5 look at the -- Ettel over lunch.

6 All right. We ready?

7 MR. BOGLE: Yes, your Honor.

8 THE COURT: All right. Bring in the jury.

9 (JURY RE-ENTERS COURTROOM AT 12:21 PM.)

10 THE COURT: Mr. Bogle.

11 OPENING STATEMENT BY MR. BOGLE:

12 MR. BOGLE: Thank you, your Honor. May it please the
13 Court? Ms. Browder.

14 Ladies and gentlemen, I introduced myself, or the
15 judge introduced me earlier, my name is Jim Bogle; I'm with
16 the Attorney General's Office in Columbia. While people
17 sometimes wonder in cases of this nature why it's not your
18 solicitor or your county attorney doing them, the reason
19 is, when they passed this law back in 1998, they gave the
20 job to the Attorney General's Office. There's two of us.
21 Christopher Morrow and I. They had the state divided up,
22 we do the different counties. I have the Sixteenth
23 Circuit, so it's my honor to be here in York County for
24 these types of cases.

25 When you told your family and friends that you were

1 going to be coming to court for jury duty, I'm sure you
2 were thinking it might be an auto wreck case, maybe a
3 medical malpractice case, a contract case or something like
4 that, well this is not. This is very different. And I
5 will tell you in advance to just give you some preparation,
6 in order for the case to be made for the State, you may
7 hear some testimony by the State's expert, Doctor Gehle,
8 which is kind of disturbing to hear. But here's the nature
9 of this case, and here's what it's about. I

10 In 1998, the General Assembly passed this law called
11 the *Sexually Violent Predator Act*. What this means is,
12 people who have been convicted of a sexually violent
13 crimes, and there's sixteen of them listed in the statute,
14 Mr. Stewart, Justin Stewart, the guy who's on trial today,
15 has two.

16 If they're convicted of that type of crime they'd be
17 reviewed and the case can be brought to Circuit Court, like
18 we are today. And the purpose of this case is to determine
19 whether or not he's got a mental abnormality or a
20 personality disorder. In this case, Mr. Stewart has both.
21 He has a mental abnormality, and Doctor Gehle, our
22 psychologist appointed by the Court to evaluate the guy,
23 will explain to you exactly what that is.

24 He also has the personality disorder of what's called
25 Anti-Social Personality Disorder, which is basically a

1 lifelong history of not following the rules. Doing things
2 that could get him arrested, it's not following the rules,
3 as well as getting arrested. So, we have to prove that.

4 We also prove that, because he has these conditions,
5 he is likely to commit more crimes of sexual violence if
6 he's released from prison, or from confinement, unless he's
7 confined to a secure facility run by the Department of
8 Mental Health for what they call long-term control care and
9 treatment. So, that's what this is.

10 Basically, this is a civil commitment case. The State
11 is going to present evidence to you about Mr. Stewart
12 indicating he's got these types of convictions, he's got a
13 long history of this type of conduct, and this makes him
14 likely to re-offend to the extent that he can't control his
15 actions, and needs to be confined for treatment.

16 Now, he's finished his prison term, so let there be no
17 mistake, we're not trying to punish him. This is not a
18 conviction or trial of conviction for crimes. He's already
19 been convicted of certain crimes. You'll hear about those
20 later on as the testimony goes on. He's already done his
21 time for those crimes. The question is, is he of such a
22 danger he needs to be confined to what they call long-term
23 control care and treatment.

24 Now, in most cases in the Court of Common Pleas, like
25 an auto wreck case or a contract case, you have to decide

1 whether or not one side has proved its case by what's
2 called the preponderance of the evidence. Think of a scale
3 going to fifty-one percent.

4 In this case it's different. When the General
5 Assembly passed this law, they said no, the State has to go
6 further. The State has to prove that Mr. Stewart is a
7 sexually violent predator, with the crime of mental
8 abnormality, the things I've talked about already, beyond a
9 reasonable doubt. So, that's our burden of proof.

10 The judge will explain to you at the end of the case
11 exactly what that means. I would suggest to you now that,
12 listen to what you hear from the witness stand, listen to
13 all the evidence from the State and from the Defense. And
14 if, at the close of this, you are firmly convinced that he
15 meets this definition of a sexually violent predator, then
16 you're obligated to return a verdict for the State. If
17 not, then a verdict for the Defense.

18 The judge also talked about how you'll be hearing from
19 what's called an expert witness, and how normally, people
20 can't testify about opinions. They can testify about facts
21 -- I saw the light turn red; I heard the gun go off; I
22 smelled gunpowder after I heard the shot; I saw the person
23 hit somebody, facts that they saw or perceived with their
24 senses. They can't give opinions.

25 But if a person, through their training and expertise

1 and education can be qualified by the Court as an expert
2 witness, like Doctor Gehle, then she can give an opinion.
3 And her opinion will be that he has this mental condition
4 that makes him likely to re-offend sexually, and he needs
5 to be confined for treatment. So, that's what the case is
6 about.

7 Now, like anything -- anything in court, use your
8 common sense. Listen to what you hear on the witness
9 stand. Decide the case by using your common sense and your
10 ordinary life experiences. And I would suggest to you
11 that, when it's all over, I would think that you will be
12 able to find that beyond a reasonable doubt that Justin
13 Stewart is a sexually violent predator.

14 Your Honor.

15 THE COURT: Ms. Browder.

16 MS. BROWDER: Thank you, your Honor.

17 OPENING STATEMENT BY MS. BROWDER:

18 MS. BROWDER: Good afternoon.

19 Lao Xu was a philosopher has a quote that *those who*
20 *predict have no knowledge; and those who have knowledge do*
21 *not predict*. Yet, today's society, all we do is predict
22 things. Predict who's going to win a football game, who's
23 going to win a baseball game. If you're going to gamble,
24 predict is it going to land on black, or is it going to
25 land on red.

1 Everything that we do in today's society is based on
2 predicting the future. And what you're going to hear from
3 the State, that's exactly what they're going to ask you to
4 do is predict the future. Whether Mr. Stewart is going to
5 re-offend and commit another -- another sexual crime.

6 As you heard Mr. Bogle state, Mr. Stewart's previously
7 pled guilty to two sexually violent crimes under the
8 statute. There's going to be no dispute as to that
9 whatsoever. There's two things that the State has to
10 prove: That he has those previous crimes, which we agree
11 that he does, and that he is likely to re-offend.

12 You're going to hear how he pled to those crimes, how
13 the government had a recommendation as to what the sentence
14 for that should be. And yet, now the government is back
15 again, asking to commit him, despite the fact that he has
16 done everything that they asked him to do under the plea
17 deal that they had.

18 As you heard Mr. Bogle state, it's for them to prove
19 beyond a reasonable doubt, and I will get to that more in
20 my closing argument about exactly what that is, and kind of
21 how to put it in your terms. And you're going to hear from
22 Judge Hayes as to what beyond a reasonable doubt is.

23 But what they're going to have to show to you is,
24 they're going to have to show that Mr. Stewart, beyond a
25 reasonable doubt, will re-offend. And they're going to

1 give you one witness and one witness only to determine
2 that. That's going to be Doctor Gehle.

3 And I'm not going to go into the details of
4 everything now, because I want you to hear everything from
5 the stand from Doctor Gehle, and any other witnesses that
6 there may be.

7 However, I want you to pay attention to the
8 statistics. They're going to throw a lot of facts at you
9 about what happened previously in these crimes that Mr.
10 Stewart took responsibility for. They're going to want you
11 -- they're going to bank on you listening to those, and
12 letting that be all that you hear, and not looking at to
13 what you're really supposed to figure out, which is, is he
14 likely to re-offend or not.

15 And that's going to come from Doctor Gehle. And she's
16 run tests, she's done actuarial risks of factors, and that
17 sort of thing. And I want you to listen to those
18 statistics, when she testifies as to people in his
19 category, whether they're likely to re-offend or not. And
20 that's what you need to focus on, ladies and gentlemen.

21 So, at the end I'm going to come back to you. I'm
22 going to ask that you find him not to be a sexually violent
23 predator, based on all the facts that you're going to hear,
24 and all the statistics that you're going to hear.

25 THE COURT: Members of the jury, we're going to break

1 for lunch 'til two o'clock. That's an hour and a half. I
2 find if I break it up to the fifteen minutes I talked about
3 earlier, it gets confusing. I want you to have a little
4 more than an hour because we don't have any place that you
5 can walk to to eat. You have to get in your car and drive
6 somewhere, so we'll take a little longer lunch than usual.

7 So, we'll reconvene at two o'clock. Be back, the
8 bailiff will tell you how to get in and out of the building
9 while you're serving as a juror. We'll see you back at two
10 o'clock and start into the evidence.

11 (JURY EXITS COURTROOM ON LUNCH RECESS AT 12:30 PM.)

12 THE COURT: Let me just make two observations, and we
13 can talk about them now, or we can talk about them later.

14 You may need to proffer Doctor Gehle. I have not read
15 over her report, and that may answer the question -- one
16 question I have. Looks like in Ettel he, Ettel himself
17 related to the examiner his past non-conviction offenses.
18 I don't know that Mr. Stewart did that. So that's one
19 element that I have to look at and ask both sides to
20 address.

21 The other is, Doctor Crawford testified that, even
22 without those non-convictions, they were three in the
23 Ettel, case, her opinion be the same, based on the other
24 accumulation -- or the cumulative effect of the other
25 evidence.

1 So, those are two things that I -- I don't have -- I
2 don't know whether we do or do not have those in this case
3 or not. Maybe one or both of you may be able to help me
4 out on those two now; or I could give you over lunch to
5 look at it, and we can reconvene about a quarter 'til two.

6 MR. BOGLE: Let's do that. I think she interviewed
7 him at length and went over everything. And then, she has
8 records -- she was asking him about the things she found in
9 the hard-copy records about his past history.

10 THE COURT: Well, that's why her report -- and it may
11 be we need to proffer from her as to -- I think -- and I'm
12 not saying how I'm going to rule -- but I think it would
13 make a -- I'm not gonna use the word substantial, but it
14 would make a difference in my analysis if these are non-
15 convictions that only were -- Well, if there are instances
16 admitted to by Mr. Stewart, I would look at them one way.
17 If they were not admissions, I might look at it another
18 way.

19 And also, if -- only if -- Well, it wouldn't matter
20 which way. It would be a question of whether or not Doctor
21 Gehle -- or the question in my mind -- could reach the same
22 opinion she reached without those other non-convictions if
23 I determine they're admissible, so.

24 MR. BOGLE: One thing to keep in mind, and you correct
25 me if I'm wrong on this, when he was nine and assaulted the

1 four-year-old, wasn't that the same Minor he later
2 assaulted when she got older? So, one of the sexually
3 violent convictions, I believe, is the same girl. So we
4 have --

5 THE COURT: Well, again, we may have to have a
6 proffer.

7 MR. BOGLE: Yes, your Honor.

8 THE COURT: So I can piece together. Let's break for
9 lunch 'til a quarter 'til two, and we'll talk about it more
10 then. But I did look at Ettel and those two things popped
11 out at me.

12 MR. BOGLE: Okay.

13 THE COURT: Now of course in weighing the prejudicial
14 versus probative, Number one, whether it's relevant or not
15 just telegraph now and I think it would be relevant. And
16 then I would have to look at the probative versus
17 prejudicial value. So we'll break for lunch 'til a quarter
18 'til two.

19 MR. BOGLE: Thank you, your Honor.

20 (COURT ON LUNCH RECESS AT 12:34 PM.)

21 (COURT BACK IN SESSION AT 01:03 PM.)

22 THE COURT: Thank you. You may take your seats. Good
23 afternoon.

24 All right. Mr. Bogle, and we need to get Mr. Stewart
25 in here.

1 (DEFENDANT JUSTIN STEWART ENTERS COURTROOM.)

2 THE COURT: We were talking about the Ettel case and
3 the admission by Doctor Gehle of three prior non-conviction
4 -- arrests, but non-convictions.

5 Mr. Bogle, how do you think we should proceed? I have
6 looked at the forensic psychological evaluation that I
7 thought was an exhibit, but it doesn't have an exhibit
8 number on it.

9 You've seen this of course, Ms. Browder?

10 MS. BROWDER: Yes, sir.

11 THE COURT: And --

12 MS. BROWDER: And I guess, just for purposes of the
13 record, if you want to make it a Court exhibit.

14 THE COURT: Yeah. I do. I will. Obviously the
15 reason I thought you had already handed it up. But I did
16 note that on page five of thirty-two, this is a quote, he,
17 referring to Mr. Stewart, *acknowledged a history of three*
18 *juvenile arrests and a history of fighting.*

19 And then, that's the end of what she said. And then,
20 she goes into some of his acknowledgment of the fights,
21 some more particularities about his fighting.

22 This appears to be somewhat in line, at least with
23 Ethel. Ettel admitted to Dr. Crawford, the psychiatrist
24 there, or psychologist, the psychiatrist she would be,
25 admitted to three sexual offenses that did not result in

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1 convictions. Here he just did not admit the nature of the
2 offenses, but he acknowledged the history of three juvenile
3 arrests. Mr. Bogle?

4 MR. BOGLE: Yes, your Honor. If you -- His legal
5 history this -- In addition to evaluating Mr. Stewart, one
6 thing that Doctor Gehle does, and I think they all do in
7 this profession is, they look at prior evaluations to see
8 what other people have evaluated.

9 Now, this guy -- and I can put her on briefly to
10 clarify this -- he's got a conduct disorder that pre-dates
11 age fifteen. He was diagnosed with Antisocial Personality
12 Disorder. You could only make that diagnosis after someone
13 turns eighteen. But it looks at conduct prior to age
14 eighteen.

15 On page fourteen of her report, she begins talking
16 about the legal history that he has.

17 THE COURT: I'm there.

18 MR. BOGLE: Yeah, you're there. And that's the things
19 that he and Ms. -- eventually she reviews the charge, and
20 turns to him and says, what do you have to say about it?
21 And she -- and there's things that he said to other -- in
22 the previous evaluations and also things that he said to
23 her. After each one you will see a paragraph that talks
24 about the words and in the current interview he explained
25 that. And it goes through that.

1 So, in addition, your Honor, so he's telling her about
2 all these things, and when she has to score him on the
3 actuarial tests, which predicts his likelihood to re-
4 offend, she has to count certain arrests, even though they
5 didn't result in convictions because that's the rules that
6 are used by the manufacturers of that scoring system.

7 Now, that's much later in her report, when she does
8 the estimate of risk.

9 So, I think what she's doing is basically -- and she
10 -- and she hasn't got incident reports, she explains that,
11 and she gives it such weight as is appropriate. But a lot
12 of this conduct I think he's admitting to her. He may
13 characterize it differently like, I was caught on top of
14 the girl, when the police report provided more detail.

15 THE COURT: Well, looking at -- starting on page
16 fourteen of thirty-two, going through at least seventeen
17 ---

18 MR. BOGLE: Uh-huh

19 THE COURT: --- he does articulate his take on these
20 various offenses.

21 MR. BOGLE: He does.

22 THE COURT: So Ms. Browder, it appears to me that this
23 would be admissible under the Ettel decision. I'd be glad
24 to hear from you before I rule though.

25 MS. BROWDER: Only one I really want to discuss, your

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1 Honor, is the one where he was thirteen years old, at the
2 bottom of page fifteen, regarding Ettel admitting these
3 things, your Honor. Doctor Gehle says in her report that
4 he was charged with assault and battery of a high and
5 aggravated nature, and it was noted in the DJJ report that
6 it was related to alleged sexual violations, but she has no
7 details about what this is or not. Then, she proceeds to
8 ask him about it, and he denies the allegations. He says
9 what the allegations were, but he denies that the
10 allegations ever occurred, and that the charge was nol
11 prossed.

12 So, I would argue on that one shouldn't be allowed
13 under Ettel, just because she has no -- nothing to compare
14 it to. She has no idea what this sexual offense was
15 because there's no records regarding it, and he denies the
16 allegations.

17 THE COURT: Well, I don't see where he denies it, but
18 you'll have to show me that.

19 Page sixteen he says ---

20 MS. BROWDER: Page --

21 THE COURT: --- he says --

22 MS. BROWDER: At the bottom of page fifteen, your
23 Honor, it says in 2000 -- and it's the last paragraph, it's
24 -- he reported what was reported; and then, he says, but he
25 denies these allegations. The charge was nol prossed.

1 MR. BOGLE: Yeah, but on the top of page sixteen --

2 THE COURT: Yeah. But see, at the top of page sixteen
3 it picks back up when he explains what he was accused of.

4 MS. BROWDER: He's telling them what the allegations
5 were, but he denies the allegations, whereas in the nine-
6 year-old charge, where he was nine, he may have a different
7 view of what the allegations were, basis his perception of
8 it versus what the reports by the mother reported. But
9 with the thirteen-year-old charge, your Honor, he's denying
10 it altogether.

11 MR. BOGLE: Well, not really, at the top of page
12 sixteen. He says he was accused, and now knows he was
13 accused of raping her. So, that's not really a denial to
14 Doctor Gehle.

15 MS. BROWDER: It is, your Honor, because at the bottom
16 it says he denies these allegations, and then in the
17 current evaluation he says that who the alleged Minor was,
18 what he was accused of doing, and that he was accused of
19 raping her. But still, the previous sentence below says he
20 denies the allegations. Just because he tells her ---

21 THE COURT: But did he --

22 MS. BROWDER: --- what the allegations were doesn't
23 mean he admits the allegations.

24 THE COURT: Mr. Bogle.

25 MR. BOGLE: Well, I think on that particular charge,

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1 again, she is looking at prior psychological evaluations to
2 see what other people have come up with on the guy. She
3 knows that it's an alleged violation. She then quotes from
4 the report saying what it was reported that happened and
5 how he denies it, and on the top of page sixteen what he
6 tells her in a current evaluation just a few months ago,
7 where he says he identifies who the alleged Minor was;
8 said he remembered being charged with something; and now
9 knows -- and also knows he was charged with rape.

10 So, she's not handing that out as a conviction. She's
11 handing it out as a charge and as a part of his overall
12 conduct to look at. She's looking for a pattern here.
13 Whether he was convicted or not, she's trying to discern a
14 pattern that keeps, in this case, he's repeating himself
15 over and over and over again. And I think she -- it not
16 being a conviction, she'll readily testify that she gave it
17 such weight or lack of weight as it deserves. And the
18 jury's free to do that, as well.

19 THE COURT: Well, it doesn't look like in Ettel that
20 Ettel admitted that he -- admitted to three sexual offenses
21 that he did not result -- and this is not a sexual offense
22 -- admitted to three sexual offenses that did not result in
23 convictions.

24 MR. BOGLE: Uh-huh. Now like the court went on to say
25 in Ettel what Doctor Crawford was looking for was prior

1 sexual assaults. Because as we all know, future behavior
2 is best predicted based on past behavior. But the pattern
3 of assaults, whether or not they're convicted or not.

4 And then, for the overall diagnosis of Antisocial
5 Personality Disorder, you look at anything the person could
6 have done that is enough -- would have been enough to have
7 gotten him arrested. Even if they weren't arrested, they
8 looked at their entire lifetime of conduct, and of course
9 this guy's got a history of it, particularly if you look
10 very -- the appendices to the report, where it talks about
11 the school issues that he had.

12 THE COURT: Well, I don't find fault with Judge
13 Williams in his opinion. It doesn't really say he admitted
14 to committing three sexual offenses, and that all it says,
15 admitted to three sexual offenses which did not result in
16 convictions. So, it would be nice to have had that fleshed
17 out as to whether or not he admitted to having been ---

18 MR. BOGLE: Uh-huh.

19 THE COURT: --- having those offenses imposed on him.

20 But Mr. Browder, I'm going to allow the State to go
21 into all three. I find that they are relevant. I feel
22 that the probative value outweighs the prejudicial value.
23 We're in a little -- sort of like impeachment, impeaching
24 prior crimes that have not -- were not -- did not result in
25 convictions using the clear and convincing evidence

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1 standard. I don't know if that applies -- if I'm supposed
2 to apply that or not, but I find -- I can find by clear and
3 convincing evidence that Mr. Stewart did have three
4 offenses that did not result in convictions, as per Doctor
5 Gehle's report; and I find that they are relevant, and that
6 the evidence substantially outweighs -- I find that the
7 prejudicial effect does not substantially outweigh the
8 probative value of the offenses. So over objection, I'll
9 allow Doctor Gehle's report to be used.

10 MR. BOGLE: Thank you, your Honor.

11 THE COURT: You ready for the jury?

12 MR. BOGLE: Yeah. We have gone ahead and pre-marked,
13 I've got the sentencing sheet and the indictment, no
14 warrants, on his prior sexually violent convictions.
15 State's One is a CSC with a minor second degree, sentenced
16 in October of '07. And State's Two is CSC third degree,
17 sentenced the same day.

18 THE COURT: All right.

19 MR. BOGLE: So.

20 THE COURT: Any objections?

21 MS. BROWDER: No, sir.

22 THE COURT: All right. And I'm going to put -- ask
23 you to hand this to the court reporter.

24 MR. BOGLE: Sure.

25 THE COURT: It's a forensic psychological evaluation

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1 that I've been referencing and it needs to be made a
2 Court's exhibit.

3 MR. BOGLE: Okay. Thank you, your Honor.

4 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE AND TWO,
5 IDENTIFIED AND REMARKED FOR IDENTIFICATION.)

6 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
7 MARKED, RECEIVED INTO EVIDENCE.)

8 THE COURT: Bring in the jury.

9 (JURY RE-ENTERS COURTROOM AT 02:07 PM.)

10 THE COURT: Mr. Bogle.

11 MR. BOGLE: Thank you, your Honor.- May it please the
12 Court. The State would call Doctor Marie E. Gehle.

13 MADAM CLERK: Doctor Gehle, if I could have you stop
14 here to be sworn.

15 DOCTOR GEHLE: Sure.

16 (WHEREUPON, MARIE GEHLE,
17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 DIRECT EXAMINATION

19 DOCTOR MARIE GEHLE MR. BOGLE:

20 Q. Would you please state your full name and county of
21 residence for the Court, please?

22 A. My name is Marie Gehle. It's G-e-h-l-e. And I live
23 in Columbia, South Carolina. It's Richland County.

24 Q. What is your -- okay. What's your occupation at the
25 present time?

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1 A. I'm a clinical forensic psychologist, a chief
2 psychologist at the Department of Mental Health.

3 Q. How long have you worked in that capacity?

4 A. Seven and a half years.

5 Q. What advanced degrees do you possess?

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

9 Q. Basically, what is the study of psychology?

10 A. Well, psychology is the study of human behavior and
11 the mind. It includes unconscious and conscious thinking
12 and feeling, emotions, all that kind of stuff. What makes
13 us who we are.

14 Q. And when we hear the word forensic along with
15 psychology, as in forensic psychology, what does that word
16 mean when you're attaching it to the word psychology?

17 A. Forensic psychology is -- it's a type of clinical
18 psychology which involves evaluating and treating
19 individuals. And forensic psychology is the application of
20 the science, and profession of psychology, the questions
21 and issues related to the law.

22 So, forensic psychologists do things like evaluate
23 whether somebody is competent to stand trial; or whether
24 they're not guilty by reason of insanity; or if they have
25 suffered an injury from a car accident, a psychological

1 injury from a car accident or something like that.

2 Q. Have you had any additional training or experience in
3 the field of forensic psychology beyond your degree?

4 A. Yes. I completed a post-doctoral fellowship in
5 forensic psychology at a psychiatric hospital dealing with
6 inpatient and outpatient individuals, doing forensic
7 evaluations and treatment at a hospital in Augusta,
8 Georgia.

9 I also attend many seminars, conferences. Almost
10 every day I read case law that might be related to forensic
11 psychology, or articles, research things like that. So,
12 I'm constantly educating myself about topics related to
13 these evaluations.

14 Q. Now, in the overall field of forensic psychology, what
15 categories of evaluations have you done in your career?

16 A. I have done competency to stand trial evaluations;
17 criminal responsibility, such as whether somebody was not
18 guilty by reason of insanity. I've done risk assessments.
19 I've done many sexually violent predator evaluations, both
20 to determine if somebody is -- meets criteria for a
21 commitment, and whether they continue to need to stay in
22 the sexually violent predator program after they have been
23 committed. And those would be the majority of the
24 evaluations that I've done.

25 Q. Is it possible to estimate about how many sex

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1 offenders, under the *Sexually Violent Predator Act*, you
2 have evaluated of both categories, both pre-commitment,
3 like today, and the annual reviews for guys already there?
4 How many have you done totally, roughly?

5 A. I have -- I have done more than two hundred of these
6 evaluations in South Carolina under the *Sexually Violent*
7 *Predator Act*.

8 Q. Okay. Now, have you previously been recognized by the
9 courts in South Carolina -- Well, let me back up a second.
10 What states are you licensed to practice psychology in?

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

13 Q. Have you previously been recognized by the courts of
14 South Carolina as an expert witness in the field of
15 forensic psychology, specifically with regard to the
16 sexually violent predator law?

17 A. Yes.

18 Q. About how many times, roughly?

19 A. It's almost a hundred times. It's approaching that
20 number.

21 Q. Okay.

22 MR. BOGLE: At this time we'd like to move for Doctor
23 Gehle to be recognized as an expert witness in the field of
24 forensic psychology.

25 THE COURT: Any voir dire?

1 MS. BROWDER: No, sir.

2 THE COURT: I find she is qualified.

3 MR. BOGLE: Thank you, your Honor.

4 BY MR. BOGLE:

5 Q. Doctor Gehle, how did you get involved in this case
6 involving Justin Stewart?

7 A. Well, I was appointed by the Court, the -- the York
8 County Court of Common Pleas, to evaluate Mr. Stewart under
9 the *Sexually Violent Predator Act*.

10 Q. And what type of evaluation were you doing, were you
11 asked to do?

12 A. I was asked to determine whether he met the criteria
13 to be considered a sexually violent predator. I refer to
14 that as a pre-commitment evaluation, so it's -- it's before
15 they've been committed.

16 Q. Would you describe for this jury what your protocol
17 is, your step-by-step process in doing evaluations like the
18 one you did on Mr. Stewart?

19 A. Yes. I reviewed the records that I received. That's
20 multiple types of different records that I'll talk about in
21 a minute. I requested additional records. I interviewed
22 Mr. Stewart for a little over three hours. I asked him
23 hundreds of questions about his history, including his
24 family, his childhood, his school history, his medical
25 history, mental health, substance use, relationships, his

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1 sexual history. I asked him to give an account of his
2 criminal history, so I asked him about all the charges that
3 he knew about. I asked him about his sexual offense
4 history.

5 I asked him about any past sex offender treatment that
6 he participated in, and what he had learned from that
7 treatment. I asked him questions related to his beliefs
8 about his risk to re-offend if he was released from these
9 proceedings. I asked him about plans for his future. I
10 scored an actuarial risk assessment tool that is designed
11 specifically to estimate the risk that a sex offender will
12 commit another sex offense. I took all of that
13 information, and then I summarized it into a report, and
14 submitted that to the Attorney General's Office, per the
15 law.

16 Q. Now, is the guy that you conducted the interview on,
17 just for the record, is the person that you interviewed,
18 the person that is the subject of these proceedings, is he
19 in the courtroom today?

20 A. Yes.

21 Q. Would you point him out, for the record?

22 A. He's in the blue shirt, over there.

23 Q. Okay.

24 MR. BOGLE: Let the record reflect she has identified
25 the respondent.

1 (WITNESS IDENTIFIED DEFENDANT JUSTIN STEWART.)

2 BY MR. BOGLE:

3 Q. Now, when you interviewed Mr. Stewart, did you explain
4 the purpose of this whole thing to him?

5 A. Yes. When I sit down to do one of these evaluations,
6 people often don't have much information about what they're
7 there for.

8 Q. Uh-huh.

9 A. So I explain exactly what's going to happen, what type
10 of questions I'll ask in the interview. And I explain
11 what's going to happen in the general course of the
12 proceedings, like what happens if my opinion is they are a
13 sexually violent predator, or if my opinion is they are not
14 a sexually violent predator, things of that nature. I
15 explain all of that to them, and then ask them to -- if
16 they want to consent to answer questions.

17 Q. About how many -- I asked you earlier -- how many
18 evaluations had you've done under this law. Is it possible
19 to give an estimate of how many pre-commitment evaluations
20 you've done?

21 A. Yes. I think it's around a hundred and twenty-five or
22 so pre-commitment evaluations. It's roughly there.

23 Q. Is it possible to estimate of those hundred and
24 twenty-five, more or less, how many times you have -- what
25 percentage you've recommended commitment in versus what

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1 percentage you've found did not meet the criteria to be
2 committed?

3 A. Well, all the evaluations that I've done, pre-
4 commitment evaluations, I've recommended commitment in
5 about one-third of the cases. So, two-thirds I have not
6 recommended commitment, and one-third I have.

7 Q. Now, when you sat down to talk with Mr. Stewart and
8 explained what this was about, did he consent to be
9 interviewed by you ---

10 A. Yes.

11 Q. --- for an interview? Okay. You mentioned a minute
12 ago looking at prior information. What type of written
13 documentation and prior information did you look at?

14 A. Well, I had a lot of information. I looked at --
15 First off, I received a petition that -- that your office
16 filed. That includes basically what the State says is the
17 case against the person. I looked at all those records. I
18 looked at school records that I requested. I looked at
19 Department of Mental Health records that were available. I
20 looked at a lot of records from the Department of Juvenile
21 Justice. That included past evaluations and his juvenile
22 criminal history.

23 I looked at his National Criminal History Report,
24 which includes all his adult criminal arrests and
25 convictions. I looked at police reports, investigative

1 records, witness statements, victims' statements. I looked
2 at sexual assault examination records of a victim. Arrest
3 warrants, indictments, sentencing sheets, records from the
4 Department of Corrections to see how he's done in prison.
5 I looked at all the interview data that I got for him, as
6 well.

7 Q. Now, is this the type of information, documentary
8 information, that is typically relied upon by experts in
9 your field?

10 A. Yes.

11 Q. And did you consider and rely upon this written
12 documentary information we just talked about, along with
13 your evaluation, you're talking to Mr. Stewart, and the
14 score you did of him, did you rely on all of these things
15 in rendering an opinion about whether he should be
16 committed?

17 A. Yes.

18 Q. Now, can you explain to the jury what a person's past
19 sexual offense behavior, how that figures into their future
20 sexual offense behavior?

21 A. Well, having a prior sex offense is a predictive
22 factor for sexual recidivism, which means, you know,
23 committing another sexual offense, recidivism.

24 When I conduct these evaluations, I'm looking for
25 patterns of sexual behavior. I'm looking for his level of

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1 deviant sexual behavior, the age and gender of the Minors ,
2 his relationship to the -- to the victim, how he got -- how
3 he accessed the Minor , the circumstances of the sexual
4 assault, what sexual acts he engaged in with the Minor ,
5 and what kind of barriers he had to overcome in order to
6 sexually assault the Minor . I'm looking for patterns in
7 those areas to see if that stuff culminates in a mental
8 abnormality, such as a paraphilia disorder.

9 Q. Now, you just used a word, I'm going to ask you about
10 that. Paraphilia, generally speaking, what is a
11 paraphilia?

12 A. A paraphilia is generally a deviant sexual interest.

13 Q. Okay. And there's all kinds of paraphilias; is that
14 right?

15 A. Yes.

16 Q. Like one, for example, might be Pedophilia, which is a
17 deviant interest in pre-pubescent children?

18 A. That's correct.

19 Q. Okay. Not that that's -- That's an example; is that
20 right?

21 A. Yes.

22 Q. Okay. Now, I noticed beginning on or about page seven
23 of your report, you look at other mental health evaluations
24 of the respondent. Why is that necessary?

25 A. Well, it was necessary to see how he looks -- like,

1 how he presented back then; what his behavior was like as a
2 child, as an adolescent; if he got into trouble; if he was
3 a, you know, a model kid; that kind of thing.

4 In his case, he got into a lot of trouble and so those
5 -- those records were really indicative of behavior
6 problems that he has had since a young age. He started
7 getting in trouble, at least it was documented that he was
8 getting in trouble, in the first grade. And that continued
9 on throughout his child and adolescent years, into his
10 adulthood.

11 Q. So, these school records, stuff that happened prior to
12 age eighteen, high school, grammar school, stuff like that,
13 why is looking at that type of record important in this
14 type of case?

15 A. Well, it's important because I'm looking for mental
16 abnormalities or personality disorders when I do -- when I
17 do these evaluations. And one disorder that's been
18 significantly related to sexual recidivism or the reasons
19 why people commit sex offenses, is Antisocial Personality
20 Disorder.

21 In order to diagnose that disorder, you have to have
22 some evidence of conduct disorder or conduct problems prior
23 to age fifteen. So, I want to see records related to
24 somebody's behavior prior to age fifteen, to see if they
25 meet that criteria for Antisocial Personality Disorder.

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1 Q. Okay. Well, just jumping ahead for a second, looking
2 at this case, did you diagnose Mr. Stewart with a
3 personality disorder?

4 A. Yes.

5 Q. And what was it?

6 A. Antisocial Personality Disorder.

7 Q. And what are the criteria, the definition if you will,
8 for Antisocial Personality Disorder?

9 A. I'm going to read -- this is -- this is a book that we
10 use to diagnose, and I'm going to read the criteria out of
11 here, just so that I'm very thorough. "Antisocial
12 Personality Disorder is a pervasive pattern of disregard
13 for and violation of the rights of others, occurring since
14 age fifteen years, as indicated by three or more of the
15 following: Number one, failure to conform to social norms
16 with respect to lawful behaviors as indicated by repeatedly
17 performing acts that are grounds for arrest.

18 Number two, deceitfulness as indicated by repeated
19 lying, uses of aliases, or conning others for personal
20 profit or pleasure.

21 Number three is: impulsivity or failure to plan
22 ahead. Number four is irritability and aggressiveness, as
23 indicated by repeated physical fights or assaults.

24 Number five is reckless disregard for safety of self
25 or others.

1 Number six is consistent irresponsibility, as
2 indicated by repeated failure to sustain consistent work
3 behavior or honor financial obligations.

4 Number seven is a lack of remorse, as indicated by
5 being indifferent to or rationalizing having hurt,
6 mistreated, or stolen from another.

7 And then, there's a couple other criteria. B is the
8 individual is at least age eighteen years old; C, there is
9 evidence of conduct disorder with the onset before age
10 fifteen years; and D is the occurrence of Antisocial
11 Behavior is not exclusively during the course of
12 schizophrenia or bipolar disorder.

13 That's the full criteria for Antisocial Personality
14 Disorder.

15 Q. Okay. At the very beginning you talked about one of
16 those criteria. It mentioned looking at stuff he's done
17 which would have been grounds for arrest. So, to make this
18 type of diagnosis, are you looking at things where he might
19 have done something bad, but wasn't arrested, but it could
20 have been grounds for arrest?

21 A. Yes. You want to see if somebody is repeatedly acting
22 in unlawful ways. Most of us conform our behavior to the
23 law, and you want to see if somebody is repeatedly, you
24 know, conducting themselves in a different way that -- that
25 we wouldn't -- that society would not expect, or think that

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1 was okay. That deviates from norm, and that's what we're
2 looking at.

3 Q. Okay. So, things he did which might be a crime, if he
4 was arrested and the charge got dismissed, if he was not
5 arrested, if he was -- it was looked into but not pursued,
6 those would all still be valid things for you to pursue
7 under this diagnosis; is that right?

8 A. Yes.

9 Q. Okay. And that's what you did here?

10 A. Yes.

11 Q. Did he have -- Did you find evidence of this conduct
12 disorder occurring prior to age fifteen?

13 A. Yes.

14 Q. Did you find records of him committing multiple acts
15 of misconduct, until he finally gets expelled from school,
16 like year, after year, after year?

17 A. Yes.

18 Q. Okay. Now, regarding his legal history beginning at
19 page fourteen of your report, is looking at convictions and
20 charges, is this something done by other experts in your
21 field?

22 A. Yes.

23 Q. Okay. And do you rely upon this information basing in
24 forming your report about a guy, like, Mr. Stewart?

25 A. Yes.

1 Q. And is it necessary to review the underlying details
2 of what the offense was in order to explain how you got to
3 your diagnosis?

4 A. Yes.

5 Q. Okay. In this particular case, the earliest thing I
6 could find is something when he was nine years old. There
7 was a charge that was investigated. Can you just tell the
8 jury what it was briefly you found in the records you
9 looked at? And what he told you.

10 A. Yes.

11 MS. BROWDER: Your Honor, objection to the prior.

12 THE COURT: I overrule the objection, base on prior
13 ruling.

14 MR. BOGLE: Thank you, your Honor.

15 Q. When he was nine years old, what do you find?

16 A. Okay. When he was nine years old he was charged with
17 criminal sexual conduct of a minor under age eleven, in the
18 first degree. The -- the Minor was a four-year-old
19 female. Her initials are Minor1 And it was reported that he
20 was found lying on top of the girl, and he was charged.
21 When I asked him about it, he told me that he was found
22 lying with the girl, and that he used to hunch, which is
23 simulating intercourse. So, he used to basically get on
24 top of her and simulate intercourse, or hump her, or
25 however else you want to describe it.

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1 He told me that they did this frequently, and that he
2 was introduced to this behavior, this sexual behavior, by
3 another kid in the neighborhood; and that he and Minor 1 were
4 caught outside on the grass, beside -- beside his house,
5 engaging in this behavior.

6 He said that at times she initiated the sexual
7 activity, and that she seemed to like it and want to do it.
8 And he was charged. He said that, after that, he was still
9 allowed to see her, though they were not left alone.

10 Q. And that case was disposed of by what? How did it get
11 disposed of?

12 A. Well, officially it was diverted with a behavior
13 contract.

14 Q. Okay. Now, there's another matter after that. He's
15 thirteen, there's an assault and battery of a high and
16 aggravated nature on a girl -- this is page fifteen of your
17 report -- that occurs in 2002. Tell us about that, and how
18 you found it significant to your evaluation of Mr. Stewart.

19 A. Well, at -- So he was thirteen years old. He was
20 charged with assault and battery of a high and aggravated
21 nature. The charge was dismissed, and in reports that I
22 found, it said that this incident was related to alleged
23 sexual violations.

24 He had reported that he and a neighborhood girl were
25 playing video games, alone in his bedroom. They got into

1 an argument. She took the remote control away from him.
2 He reportedly pushed her off the bed. She began crying,
3 and then he was accused of trying to do something to her.
4 That's what he reported back then.

5 When I asked him about it, he said he -- he gave a
6 similar explanation, and said that he was accused of raping
7 her.

8 Q. So, there was -- there was a sexual allegation as part
9 of this assault and battery?

10 A. Yes. According to him, yes.

11 Q. Okay. In 2004, he's fifteen. There's an assault and
12 battery at school, which leads to an expulsion. Was that
13 also something you looked at as part of your antisocial
14 diagnosis?

15 A. Yes.

16 Q. What did you find out there?

17 A. So, at age fifteen he was charged with assault and
18 battery, and he was convicted of that as a juvenile.
19 Essentially what happened was, he was at school, and he was
20 playing around with another kid, and this kid had recently
21 had surgery on his genitals and Mr. Stewart kicked the boy
22 in the groin and choked him.

23 This seemed to be a rather unprovoked attack. They
24 were just -- they were playing around with each other, and
25 Mr. Stewart wanted to stop playing. And when the friend

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1 continued to play around, he got angry and he struck the
2 friend in the genital area and then choked him.

3 So, he was charged with that, convicted of that, and
4 also expelled from school.

5 Q. Now, the next thing I'm seeing on page sixteen to
6 eighteen of your report is a 2005 criminal sexual conduct
7 charge of criminal sexual conduct with a minor in the first
8 degree. The Minor was about thirteen when this happened.
9 Do you see that, as well?

10 A. Yes.

11 Q. Is this -- what's the initial -- Going back to the one
12 when he was nine years old, what were the initials of that
13 Minor ?

14 A. Her initials were Minor 1, and this Minor is actually
15 the same person. So, he --

16 Q. Then, turning ahead to the 2005 thing, when he's --
17 he's much older, and she's thirteen, that's the same
18 Minor , Minor 1 ?

19 A. Yes.

20 Q. Okay. What details did you find out about this
21 criminal sexual conduct charge that you found significant?

22 A. Well, for one it was the same Minor that, I guess, is
23 significant in some ways. Basically, in this incident, he
24 got into -- this girl got into an argument with her mom,
25 and he came -- she went down to her cousin's house where

1 Mr. Stewart was hanging out. Or I guess it -- I'm sorry,
2 it was Mr Stewart's cousin. He was hanging out with his
3 cousin, and this girl came down to the house. She was
4 essentially hiding from her mother, because they had gotten
5 into this fight.

6 She said that when she tried to leave the house, she
7 stepped out the back door, and he grabbed her from behind,
8 put his arm around her neck, pulled her into the living
9 room, slapped her several times, pushed her face-down on
10 the couch, held his arm on her neck to hold her down. She
11 said she had to turn her head in order to -- to be able to
12 breath. He bit her on the cheek, and he pulled her pants
13 down and sexually assaulted her for several minutes.

14 Q. Now, when this happened, was he still on probation for
15 the prior offense, the assault and battery at school that
16 got him expelled?

17 A. Yes.

18 Q. Is there any significance to somebody being on
19 probation for a prior offense, and then committing another
20 one while they're on probation?

21 A. Yes. Probation is, you know, heightened scrutiny and
22 supervision. Also, you'd expect somebody, when they're
23 being monitored that closely, to try to watch their
24 behavior, and try to engage in lawful behaviors while
25 they're being, you know, closely watched; because the

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1 consequences will be higher if you -- or can be higher if
2 you commit another offense while you're on probation.

3 Q. Okay. Now, the next thing I have is a 2005, just two
4 months after being charged with that CSC on the girl's
5 whose initials are Minor 1, we have an assault and battery and
6 disturbing schools. This is page eighteen of your report.

7 A. Yes.

8 Q. All right. Why was that significant to look into, and
9 what did you find out?

10 A. Well, this one was, you know, shortly after the other
11 incident. It was just two months after he was charged, and
12 -- and this was what I would consider a very significant
13 incident. Basically, he and two other students hid out in
14 the bathroom and decided that they were going to jump and
15 physically assault whoever walked through the bathroom
16 doors next.

17 So, it was completely random who that victim was. It
18 didn't -- you know, it wasn't about any sort of anger
19 incident. It wasn't about, you know, somebody fighting
20 over something significant. This was just, they decided to
21 beat up whoever walked through the door. And I think that
22 they beat up that person pretty significantly, and he was
23 again in trouble at school. It happened at the beginning
24 of the school year, and he was expelled.

25 Q. Now, the next thing I have is that, while that charge

1 is still pending, we have two counts of criminal sexual
2 conduct in the first degree. This is page nineteen and
3 twenty of your report. At least that was the charge
4 brought against him. What do you find there? What did you
5 find there that was significant?

6 A. So now, we have him -- he's on probation and all those
7 charges are pending. So, we have two -- two different
8 incidents that are pending.

9 Q. Uh-huh.

10 A. And he's charged with another criminal sexual conduct
11 in the first degree. This involved a seventeen-year-old
12 female acquaintance. He was charged with -- actually, he
13 was charged with two counts of criminal sexual conduct in
14 the first degree. One count was for penile/anal
15 penetration of the Minor , and one count was for
16 penile/vaginal penetration of the Minor .

17 The Minor reported that she met Mr. Stewart, and that
18 they were walking down the street together, and that he put
19 his arm around her neck and asked her if she would rather
20 be raped or killed. She told him to stop joking, said it
21 wasn't funny, and he added pressure to her neck with his
22 forearm, so he began choking her. He said he wasn't
23 playing. He pulled her into a wooded area, threatened her
24 with a knife. He took his shirt off and then laid it on
25 the ground, and told her to lay down on the shirt.

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1 The Minor began praying out loud, and he told her
2 that God can't help you now. She repeatedly told him to
3 stop, and he said that he was going to take her virginity,
4 and he then vaginally raped her, and then anally raped her.

5 Q. Now, this -- what was the initials of this girl?

6 A. Minor 2

7 Q. So, we have Minor 2, and previously have the criminal
8 sexual conduct with a minor for someone named Minor 1 Her
9 initials were Minor 1

10 A. That's correct.

11 Q. And Minor 1 is the one that was assaulted when she was
12 four years old, back when he was nine?

13 A. Yes.

14 MR. BOGLE: Now, if I may approach the witness.

15 Q. I'd like to hand you a sentencing sheet and an
16 indictment. Case Number 2005-GS-46-4334, York County
17 conviction for Justin L. Stewart, for criminal sexual
18 conduct with a minor in the second degree. Is this a
19 document you've seen before?

20 A. Yes.

21 Q. Are these documents you reviewed? You were listing
22 stuff you looked at as part of this evaluation. Is this
23 some of that?

24 A. Yes. I've looked at copies of these.

25 Q. Okay. Which conviction -- which girl are we talking

1 about here, Minor 1 or Minor 2 ?

2 A. This is the conviction for Minor 1

3 Q. Okay. So, he was allowed to plead guilty; is that
4 right?

5 A. Yes, he pled.

6 Q. To criminal sexual conduct with a minor in the second
7 degree?

8 A. That's correct.

9 Q. Okay. And what was the date of that conviction, where
10 the judge sentenced him, down in the right-hand corner?

11 A. October 19th, 2007.

12 Q. Okay. And the sentence he got?

13 A. Ten years in prison.

14 Q. Okay... So that's Minor 1 Now, turning to Minor 2, I hand
15 you a copy of another sentencing sheet, this one for
16 Indictment Number 2007-GS-46-911, also in York County. Is
17 that a document you looked at as part of your preparation
18 and your investigation of this case?

19 A. I looked at copies of this, yes.

20 Q. Okay. And what are you looking at there? Is that a
21 conviction?

22 A. Yes. It's a sentence sheet for criminal sexual
23 conduct in the third degree.

24 Q. Okay. And what was the sentence he received on that?

25 A. Ten years in prison.

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1 Q. And the sentencing date?

2 A. October 19th, 2007.

3 Q. Okay. And the initials of the Minor here would have
4 been?

5 A. Minor 2

6 Q. Minor 2

7 MR. BOGLE: Your Honor, I move to introduce into
8 evidence copies of these two convictions on both -- the one
9 on Minor 1 and the one on Minor 2

10 MS. BROWDER: No objection.

11 THE COURT: In, without objection.

12 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE AND TWO,
13 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

14 BY MR. BOGLE:

15 Q. Now, Dr. Gehle, these crimes he was convicted of,
16 criminal sexual conduct with a minor in the second degree,
17 and criminal sexual conduct in the third degree, are these
18 classified as sexually violent crimes under our law?

19 A. Yes, they are.

20 Q. Okay. Now, Doctor, while he was at SCDC in prison,
21 did you also find misconduct that resulted in a conviction
22 there?

23 A. Yes.

24 Q. Okay. What happened -- what happened -- What kind of
25 misconduct was open to conviction while he was in prison?

1 A. Well, while he was in prison, he was charged in
2 criminal court with assault and battery of a high and
3 aggravated nature, and he was convicted of that. And that
4 was for throwing hot baby oil and water on the face, eyes,
5 and upper body of another inmate, and he was -- he pled
6 guilty, and was sentenced to twelve years, to be served
7 consecutive to the sentences that he received in the 2007
8 convictions.

9 Q. Okay. Now, these previous documents, State's One and
10 State's Two, right here, the convictions for sexually
11 violent crimes, why is it necessary to go into the
12 underlying details you talked about behind each of these
13 crimes?

14 A. Well, I want to look again at the age and the gender
15 of the **Minor**. Look at the circumstance of the offenses,
16 what type of offense it was. Was it a rape, or was it
17 something that was more along the lines of, you know, a
18 very young child. Those are the primary types of offenses
19 that we see in -- in sexually violent predator cases.
20 Convictions related to pre-pubescent children, and then
21 sexual assaults. So, I'm ---

22 Q. And --

23 A. --- I need to look at all those details in order to
24 see if there is a mental abnormality or personality
25 disorder.

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1 Q. Okay. And as we've gone through these things today,
2 when you found crimes that did not result in a conviction,
3 either the charges were dropped, they were nol prossed or
4 something like that, is it still necessary for you, in your
5 expertise, to look at crimes where he was charged or had
6 did something bad, but it didn't necessarily result in a
7 conviction?

8 A. Yes.

9 Q. And why is that?

10 A. Well, these are very complicated evaluations. And
11 almost every piece of information that you look at, or
12 looked at, for a variety of different reasons, so, when I
13 look at information I'm not just looking for a mental
14 abnormality or personality disorder. I'm also looking at
15 how it impacts their risk to commit another sexual offense.
16 Whether this offense indicates that -- that they have a
17 dynamic or a static risk factor to re-offend. And it also
18 -- I'm looking at whether their -- whether their volition
19 or their will to act is impaired, so, whether his offenses
20 were repetitive, whether his offenses showed a lack of
21 control of his behavior.

22 Q. Is it also necessary -- and you already talked about
23 one thing he did in prison he got convicted for. Throwing
24 the hot oil on the other person. Is it also necessary to
25 look at other types of prison disciplinary history, things

1 he's disciplined for while he's in prison?

2 A. Yes.

3 Q. Why is it important to look at that?

4 A. Well, it's important for a variety of reasons. For
5 the risk assessments, it's important to see if he has had
6 any sexual misconduct in prison, because that can change
7 the score of the actuarial risk assessment that I
8 performed. So, it was important to see that. In terms of
9 whether he has Antisocial Personality Disorder, his
10 behavior in a secure confinement situation, where he is
11 highly supervised, is also important. I want to see what
12 kind of behavior he's engaging in, or is he a model inmate.
13 So, in his case he had many infractions, including an
14 exhibitionism or public masturbation, which is a sexual
15 misconduct infraction in prison..

16 Q. Now, this sexual infraction he did while in prison,
17 was this connected to his being absent from the prison for
18 another reason?

19 A. Well, when I looked at this one, this -- this was an
20 interesting situation. He actually was sent to the courts
21 for sentencing in that assault and battery, where he threw
22 the baby oil on the other inmate. So, he was in the county
23 jail for that, disposition of that charge for a couple a
24 days. And when he came back, before he had even been
25 processed back into the prison, while he was waiting to be

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1 processed back into the prison, that's when he masturbated
2 publicly.

3 So to me, that was significant because that was
4 probably a disappointment that he got convicted for that
5 behavior. He got an extra, you know, additional time on
6 his sentence. That was probably disappointing. And the
7 way he handled that disappointment was by masturbating.
8 So, that shows me that he likely copes with stress in a
9 sexual way.

10 Q. Is it necessary, also, to look at whether or not a
11 person got sex offender treatment while in prison?

12 A. Yes.

13 Q. Is sex offender treatment offered by the prison
14 system?

15 A. Yes.

16 Q. Why is it necessary to look at that, see if he got it?

17 A. Well, I want to see if he's had any treatment, what
18 he's learned from that, if he's learned anything. Did he
19 learn a lot, did he learn nothing. Did he take sex
20 offender treatment if it was offered?

21 Q. Uh-huh.

22 A. I mean, it's -- it can be important, depending on the
23 case.

24 Q. Okay. What did you find out regarding the review of
25 Department of Corrections records as to whether or not Mr.

1 Stewart ever took any kind of sex offender treatment?

2 A. He did not take sex offender treatment when he was in
3 prison. It was offered to him, and he declined because he
4 said he would be required to do treatment if he was
5 released, so, he chose not to do it while he was in prison.

6 Q. Okay. But Doctor, we've been talking about -- we
7 talked about Antisocial Personality Disorder, and earlier
8 we talked about mental abnormality, and you mentioned
9 paraphilia.

10 A. Yes.

11 Q. So I guess my question now is -- I might have asked it
12 before, and I apologize, but what is a paraphilic disorder,
13 or a paraphilia that's a disorder? What does that term
14 mean?

15 A. Okay. Well, first I'm going to give you the
16 definition of a paraphilia, so. And I'm going to read it
17 right out of this book.

18 It's, "the term paraphilia denotes any intense and
19 persistent sexual interests, other than sexual interests in
20 genital stimulation or preparatory fondling, with
21 phenotypically normal, physically mature, consenting human
22 partners."

23 Q. So, a paraphilia involves non-consent?

24 A. Yes.

25 Q. Is it by definition something we might call deviant

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1 behavior?

2 A. Yes.

3 Q. Okay. Now, based upon -- You've already testified you
4 diagnosed him with Antisocial Personality Disorder. Based
5 upon your examination of Mr. Stewart, all the records you
6 looked at, the things we've talked about today, did you
7 also diagnose him with a mental abnormality?

8 A. Yes.

9 Q. Okay. What's it called?

10 A. I diagnosed him with other specified -- find that
11 page. Other specified paraphilic disorder, Biastophelia.

12 Q. Okay. So, there's different kinds of paraphilias out
13 there, right?

14 A. Yes.

15 Q. And some of them are listed by name in that book?

16 A. Yes.

17 Q. But there's hundreds of others?

18 A. Yes.

19 Q. And so, if you got one and got one in the book, it's
20 other specified paraphilic disorder, and then you identify
21 the particular disorder by name?

22 A. Yes.

23 Q. So, other specified paraphilic disorder, what?

24 A. Biastophelia.

25 Q. Biastophelia. Okay. What the criteria for

1 Biastophilia?

2 A. Well, Biastophilia is sexual arousal towards rape,
3 raping non-consenting individuals. It requires a deviant
4 sexual interest, which would be the rape in the non-
5 consenting individuals.

6 Q. Uh-huh.

7 A. And a pattern of six months of that behavior.

8 Q. And you found that here?

9 A. Yes.

10 Q. Okay. Now, what is this -- Now, is there something
11 about having a diagnosis of both a mental abnormality and a
12 personality disorder at the same time that increases risk?

13 A. Yes.

14 Q. Would you explain that, please?

15 A. Well, when we look at what makes somebody likely to
16 commit another sex offense, there's two broad categories
17 that have been shown to be related to that recidivism and
18 that is a deviant sexual interest, and antisociality. So,
19 having a paraphilic disorder, which is a deviant sexual
20 interest, and having Antisocial Personality Disorder means
21 that they have both pathways to offending. And those
22 things together increases somebody's risk to re-offend
23 sexually.

24 Q. Now, you mentioned a few minutes ago, you talked about
25 something called an actuarial score or an actuarial test.

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1 In doing these kinds of evaluations, is there something you
2 use to measure a person's likelihood to re-offend?

3 A. Yes.

4 Q. What's it called?

5 A. It's called the Static 99-R.

6 Q. Okay. And basically, what is the Static 99-R?

7 A. The Static 99-R is an actuarial risk assessment. It
8 consists of ten questions that are answered based on some
9 information provided by the individual, such as Mr.
10 Stewart, and then some information that you get from the
11 records; like the criminal history and things like that.

12 You have to score those ten questions, and you come to
13 a score. The scores range from negative three to twelve.
14 Most scores -- almost everybody scores at an eight or
15 below. Scores above that are pretty rare. You take that
16 score, and then you can look at tables that tell you
17 individuals with this score re-offend at this rate.

18 So, Mr. Stewart has a score of seven on that
19 instrument, and when I look at the actuarial tables, it
20 says that individuals with a score of seven in the big
21 research samples, twenty-seven point two percent of that
22 sample re-offended within five years.

23 Q. Okay. Let's back up a second. When you -- This
24 Static 99 thing that you're using to score him on, is it
25 based on studies of thousands of sex offenders from

1 multiple countries?

2 A. Yes.

3 Q. Okay. And is it -- it -- it looks at something called
4 static risk factors, right?

5 A. Yes.

6 Q. What is a static risk factor? You mentioned static
7 and dynamic a few minutes ago. What's a static risk
8 factor?

9 A. Static risk factors are things that are typically not
10 changeable. They're not things that you address through
11 treatment. It includes things like age; the number of
12 prior offenses; the number of prior convictions for sex
13 offenses; whether they have a previously violent charge;
14 whether they have any sexual offenses that did not include
15 contact with the victim such as like an indecent exposure,
16 that type of thing; whether they had male victims, female
17 victims; family member victims, non-family member victims.
18 Things like that.

19 Q. Can you give us an everyday example what we might
20 encounter in our -- our lives, relating to a actuarial risk
21 assessment?

22 A. I can try. If you have -- if you've had a heart
23 attack and you're at the hospital, the doctor can -- can
24 look at risk factors related to your age, whether you
25 smoke, how much you drink, your family history, things

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1 like that, and give you an estimate of what your likelihood
2 is to do this again, or to have another heart attack.

3 So, that's looking at a smaller sample than just the
4 general population, because these are people who have
5 already had a heart attack, or already been convicted of a
6 sex offense. And it'll say these are the risk factors that
7 we know are predictive of who's going to go on and have
8 that happen again.

9 Q. Okay. Now, what was his score on the Static 99-R?

10 A. It was a seven.

11 Q. Okay. And again, you gave us a number, twenty-seven
12 point two percent likely to commit another sexual act in
13 then next, what, five years?

14 A. Yes. Five years.

15 Q. Okay. How does -- what's another way of stating his
16 likelihood, his risk to re-offend compared to other -- the
17 average sex offender?

18 A. Well, there's a couple. You can say like, the
19 category that he's in that's well above average. His risk
20 is well above average, compared to a big sample of sex
21 offenders. And also, I can compare his score to the
22 average sex offender. The average sex offender scores two
23 on the Static 99. And when you score a seven, that means
24 that your risk is five point two times higher than the
25 expected recidivism rate of the average sex offender. So,

1 it's significantly higher, five times higher than the
2 average sex offender.

3 Q. So, he's a little more than five times more likely to
4 commit a sexual crime than the average sex offender in this
5 study?

6 A. Yes.

7 Q. The thousands of guys, the people that they looked at?

8 A. Yes.

9 Q. You also mention something called dynamic risk factors
10 a few minutes ago. What's a dynamic risk factor?

11 A. Dynamic risk factors are also things that have been
12 shown to be related to who goes on to commit another sex
13 offense. And these factors are more changeable through
14 treatment and things like that. So, there are -- there was
15 a large meta-analyses done. That's when they take a big --
16 a whole bunch of research studies, and then they pool the
17 results. And those are the risk factors that I look at,
18 the ones that were identified to be significant --
19 significantly related to sexual recidivism in that study.

20 Q. So, committing a sex crime again?

21 A. Yes.

22 Q. What type of dynamic risk factors, looking on page
23 twenty-five and twenty-six of your report, what types of
24 dynamic risk factors did you find existed for Justin
25 Stewart?

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1 A. Well, he has a history of sexualized violence. He has
2 very poor problem-solving abilities; a resistance to rules
3 and supervision. He's sexually preoccupied. He has
4 lifestyle impulsiveness, and he lacks a history of
5 emotionally intimate relationships with adults. And those
6 are the specific names of risk factors that were identified
7 in that study.

8 Q. Okay. Now, just to kind of wrap things up, let me ask
9 you a series of questions right now. Based upon the
10 evaluation you did of this man, do you have an opinion to a
11 reasonable degree of psychological certainty, as to whether
12 or not Mr. Stewart suffers from a personality disorder, or
13 a mental abnormality, or both?

14 A. Yes. I believe he suffers from both.

15 Q. Okay. And the mental abnormality is called what?

16 A. Other specified paraphilic disorder, Biastophilia.

17 Q. And the personality disorder is called what?

18 A. Antisocial Personality Disorder.

19 Q. Do you also have an opinion, again to a degree of
20 psychological certainty, as to whether these two diagnoses,
21 the mental abnormality and the personality disorder, do
22 they affect Mr. Stewart's emotional or volitional control,
23 so that he is predisposed to commit future sexually violent
24 offenses?

25 A. Yes. It's my opinion that those two disorders do

1 affect his volitional control.

2 Q. And when I say volitional control, what's another way
3 of saying that in plain English?

4 A. It's whether he can control his behavior, and whether
5 he can act in ways that benefit him.

6 Q. Okay. Do you also have an opinion, again to a degree
7 of psychological certainty, does Mr. Stewart have the
8 propensity to be dangerous and commit future sexually
9 violent offenses?

10 A. It's my opinion that he does.

11 Q. Do you have an opinion, again to a degree of
12 reasonable psychological certainty, as to whether or not
13 this propensity to commit future sexually violent offenses
14 is of such a degree it poses a menace to the health and
15 safety of others?

16 A. Yes. My opinion is that it does.

17 Q. Do you also have an opinion, again to a reasonable
18 degree of psychological certainty, does Mr. Stewart have
19 serious difficulty controlling his behavior and these
20 propensities to be dangerous?

21 A. Yes. My opinion is that he does.

22 Q. Also, to a reasonable degree of psychological
23 certainty, does Mr. Stewart's diagnoses you've talked about
24 today make him likely to engage in acts of sexual violence
25 if not confined in a secure facility for long-term control,

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1 care, and treatment?

2 A. Yes. My opinion is that he is likely to commit acts
3 of sexual violence if not confined in a secure facility for
4 long-term control, care, and treatment.

5 Q. Do you also have an opinion based upon your analysis
6 of Mr. Stewart, again to a reasonable degree of
7 psychological certainty, does Mr. Stewart meet the legal
8 criteria to be found by this jury to be a sexually violent
9 predator at this time?

10 A. My opinion is that he does meet the legal criteria.

11 Q. If he were to be released, who would be at risk?

12 MS. BROWDER: Objection, your Honor.

13 THE COURT: I sustain the objection.

14 BY MR. BOGLE:

15 Q. Okay. If you look at his sentencing sheets, is he
16 facing any kind of probation? Do you know of any
17 probation, or?

18 A. If I could look at them again.

19 Q. Yes.

20 A. I don't think so, but just to be thorough.

21 Q. Okay.

22 A. No. He was not given any probation.

23 Q. Okay. Do you know of anything you could get him the
24 sex offender treatment that he needs, other than committing
25 him to a place for long-term confinement, care, and

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1 treatment?

2 A. I don't know of anything that could give him the
3 treatment that he needs, besides the sexually violent
4 predator program.

5 Q. Now, a person's free to get outpatient treatment at a
6 private practitioner somewhere in the county, aren't they?

7 A. Sure.

8 Q. Okay. And is this guy a candidate for outpatient
9 treatment, or does he need to be confined for treatment?

10 A. I think that he needs to be confined for treatment,
11 and that's based on his history. He has very little
12 control of his behavior. He offended while he was on
13 probation. He offended while he was, you know, under --
14 while he had just committed another offense. So, he was on
15 bond from -- from jail, and he still offended. He also
16 committed another criminal offense while he was in prison.
17 So, I don't know what sort of supervision could protect the
18 community from him. I think that he's too risky to be out
19 during treatment.

20 MR. BOGEL: Thank you, Doctor. Please answer any
21 questions the Court may have, or Ms. Browder.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 DOCTOR MARIE GEHLE BY MS. BROWDER:

25 Q. And who do you currently work for, the Department of

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1 Mental Health?

2 A. The Department of Mental Health, yes.

3 Q. And that's the South Carolina Department of Mental
4 Health?

5 A. Yes.

6 Q. Okay. And do you have a contract to do these cases,
7 or how did you come about to be the doctor who does pre-
8 commitment evaluations?

9 A. Well, I am a salaried employee there. I had some
10 experience in a sexually violent predator program before
11 coming to the Department of Mental Health. When I first
12 started working there, I supervised the treatment providers
13 in the sexually violent predator program, and then did
14 annual reviews. And then, I was put into the role of doing
15 pre-commitment evaluations.

16 Q. Okay. And so, you're -- you stated that you are a
17 salaried employee. So, you were paid by the State of South
18 Carolina?

19 A. That's correct.

20 Q. Okay. So, essentially the same treasurer who pays Mr.
21 Bogle, and the Attorney General's Office pays you, too,
22 correct?

23 A. I would assume.

24 Q. Okay. You stated -- okay. Forensic psychology,
25 you've done approximately two hundred evaluations. You

1 said you've testified close to a hundred times, correct?

2 A. Yes.

3 Q. Is that in sexually violent predator cases?

4 A. Yes.

5 Q. Okay. However you testified that only forty-one of
6 the cases you found commitment on. So, are you saying that
7 in eighty-four of the cases you actually went to a jury
8 trial where you found that you did not find him to be a
9 sexually violent predator?

10 A. Well, I didn't -- I don't think that I said forty-one.

11 Q. Well, that's roughly one-third of a hundred and
12 twenty-five ---

13 A. Okay.

14 Q. --- pre-commitment cases.

15 A. No, some of those -- I think that I have testified,
16 and this might be my fortieth trial, and I'm not sure the
17 percentage of time that I've testified for the respondent,
18 such as Mr. Stewart, but there have been plenty of times
19 where I have testified for the respondent.

20 The other cases would be when I have not recommended
21 commitment, I have testified in summary judgment hearings
22 where they would put my testimony on the record, and then
23 essentially the person's -- or the judge would dismiss the
24 proceedings, and the person would be free to go.

25 I've also testified in a number of annual review

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1 hearings for those evaluations that I've done.

2 Q. Forensic psychology, can you -- you testified earlier
3 it's the study of human behavior and the mind, correct?

4 A. Psychology, yes.

5 Q. Okay. And with that, do you learn about the
6 development -- the development of brains in both females,
7 males, throughout ages?

8 A. Yes. There's -- there's a lot of information that you
9 learn in psychology, and that's one piece.

10 Q. Okay. In general, a male human brain, at what point
11 is it completely developed, to make problem-solving skills,
12 responsibility, that sort of thing? At what age is it
13 fully developed?

14 A. Well, the recent research would say that roughly
15 around age twenty-five, that's when somebody is at mature
16 development, their brain is at mature development. We also
17 know that the brain changes over time as we age, and
18 probably throughout the lifespan, in various ways. But as
19 far as executive functioning which would be planning,
20 problem-solving, that appears to occur roughly until age
21 twenty-five, and then change after that would be less
22 significant.

23 Q. Okay. So essentially, in general, at the age of
24 twenty-five, is when the problem-solving skills,
25 responsibility, that sort of thing should be developed at

1 that point by the time you're twenty-five?

2 A. Should, yes.

3 Q. Okay. And like I say in general. How old is Mr.
4 Stewart?

5 A. He is, I believe, twenty-eight.

6 Q. Okay. So essentially, three years ago is when his
7 brain would have been finally fully developed, correct?

8 A. According to that research.

9 Q. And I'll get to that more later, but when you started
10 this, your protocol, you said that you explained to Mr.
11 Stewart what was going to happen, how you were going to ask
12 him questions, that sort of thing; the whole outline of the
13 interview, correct?

14 A. Yes.

15 Q. Okay. And he was cooperative with you, correct?

16 A. Yes, he was cooperative.

17 Q. Okay. And he agreed to participate with you?

18 A. Yes..

19 Q. And be up-front with you?

20 A. I don't know if he agreed to be up-front, but he
21 agreed to participate and answer questions.

22 Q. Okay. I'm gonna go through his legal history first,
23 before we get to the Static 99 and everything. You stated
24 the first thing that he has was when he was nine years old,
25 correct?

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1 A. Yes.

2 Q. In the scale of where brains are developed for male
3 humans, at nine years old, do nine-year-olds have the same
4 type of problem-solving skills, or ability to see what
5 consequences or something would be, as a twenty-five-year-
6 old or a twenty-eight-year-old would have?

7 A. Most likely, no.

8 Q. Okay. And to be fair, in that case he was nine, and
9 the other girl was four, correct?

10 A. Yes.

11 Q. Okay. And based on the information that you received,
12 they were found outside in the backyard, just on top of
13 each other, correct?

14 A. Yes.

15 Q. Okay. So, there was no penetration of any kind, or
16 him trying to have intercourse with her in any way, based
17 on the records that you were able to observe, correct?

18 A. I don't know if there was penetration of any kind. It
19 -- The charge would seem to indicate that there was
20 penetration, because criminal sexual conduct in the first
21 degree typically involves penetration. But there was
22 nothing in the records that I saw that said definitively
23 that's what he was accused of doing.

24 Q. Okay. And again, this is outside on the grass, two
25 children, essentially ---

1 A. That's --

2 Q. --- just on top of each other?

3 A. That's what was reported, yes.

4 Q. And that charge was dismissed, correct?

5 A. Well, it was diverted with a behavioral contract.

6 Q. And after that, this Minor , the Minor1, she continued
7 to hang around with him throughout the next, I guess, six,
8 seven years, correct?

9 A. That's what he told me.

10 Q. Okay. And that would be consistent with the fact that
11 she was hanging out with him, with the second incident that
12 had to do with her, correct?

13 A. Well, I don't know what happened in the intervening
14 years. He said that they continued to hang out. I don't
15 know if that's actually true.

16 Q. Okay. And this was somebody who he actually knew,
17 correct? It wasn't some stranger he randomly met on the
18 street?

19 A. That's correct.

20 Q. The next incident when he was thirteen years old, that
21 there's no real facts about at all, the assault and battery
22 of a high and aggravated nature, at that point when he was
23 thirteen years old, where's the mental development with the
24 brain at that point? Where it comes to problem-solving
25 skills, consequences, that sort of thing.

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1 A. Well, you know, those things change over time.
2 They're always increasing, so it would probably be better
3 when he was thirteen than when he was nine. So, it would
4 be increasing.

5 Q. Okay. And stated as in your report, you have no idea
6 what the allegations on that one was, because there's no
7 records on that, correct?

8 A. No. The only records that I had about that was a
9 description of what -- what he described to an evaluator,
10 when he was evaluated in 2005. So, -- and then what he
11 told me. There was no incident report given the -- how old
12 the charge was.

13 Q. And this charge was also dismissed, correct?

14 A. This charge was dismissed, yes.

15 Q. And again, in this case it was somebody he knew,
16 correct; the neighborhood girl?

17 A. That's my understanding.

18 Q. So again, it was not a stranger or anything of that
19 nature?

20 A. That's correct.

21 Q. Okay. And are you aware -- he was thirteen. Are you
22 aware of how old the other girl was? Or is that -- were
23 you not able to determine that based on your records?

24 A. I did not include that information in my report, so
25 I'm not sure if it exists in the records. But I didn't

1 include it, which I normally would. So, I -- probably, it
2 wasn't included in the records.

3 Q. Which takes us to the next incident, which is one of
4 the ones he pled guilty to in October of 2006. How old was
5 he at that time?

6 A. In -- in which offense are we talking about? The --

7 Q. The one with Minor 1

8 A. Okay. I believe that he was sixteen at the time.

9 Q. Okay. And she was how old?

10 A. Thirteen.

11 Q. Okay. So, there are only three years apart at that
12 point?

13 A. They are about four years apart, but based on the date
14 that it happened, they were thirteen and sixteen at the
15 time.

16 Q. Okay. And again, at sixteen he's still a teenager,
17 correct?

18 A. Yes.

19 Q. And his brain is not fully developed when it comes to
20 understanding consequences, necessarily -- of course, it's
21 more than a nine-year-old, but it's still in the
22 developmental stage, for purposes of psychology, correct?

23 A. Yes.

24 Q. Okay. Regarding the fights that he got in, you just
25 look at those as prior instances of behavior disorder,

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1 correct?

2 A. In terms of which fights?

3 Q. Any of the fights.

4 A. Well, I look at it, yes, in terms of conduct disorder.
5 I also look at it in terms of, you know, how repetitive was
6 his behavior. You know, can he learn from his mistakes;
7 can he learn from consequences; do consequences have an
8 effect on him; those sorts of things.

9 Q. And in the majority of these things happened when he
10 was a teenager, correct? Other than the one when he was in
11 SCDC with the other inmate?

12 A. He was involved in many fights as a teenager, yes.

13 One second here.

14 And he engaged in some behaviors, not just the one
15 assault while he was in prison.

16 Q. And I'll get to the prison in just a minute. I want
17 to look at the sentencing sheets first for this second --
18 or I guess for both of them when he was sentenced. I'm
19 going to show you what's marked as State's Exhibit One and
20 State's Exhibit Two.

21 A. Thank you.

22 Q. Did he plead guilty to those, or did they go to trial
23 and he denied all allegations?

24 A. No, he pled.

25 Q. Okay. So, he pled guilty. And when he pled guilty,

1 does it indicate on the sentencing sheets whether he pled
2 what's called a straight-up plea, or whether it was
3 negotiated, or whether there was a recommendation by the
4 State?

5 A. Yes, it does.

6 Q. Okay. And which one is checked?

7 A. Okay. For the criminal sexual conduct with a minor in
8 the second degree, he pled as-indicted, and it was on a
9 recommendation by the State.

10 Q. Okay.

11 A. On the criminal sexual conduct in the third degree, he
12 pled to the lesser-included offense, on a recommendation by
13 the State.

14 Q. Okay. And based on your knowledge of these offenses,
15 he could have gotten up to thirty years in prison, correct?
16 Twenty years on one, and ten on the other, together would
17 have been thirty?

18 A. Yes.

19 Q. Okay. And -- But there was a recommendation by the
20 State, and he only received ten, correct?

21 A. Yes.

22 Q. Okay. And on State's -- I believe it was State's
23 Exhibit One, did the judge order anything else regarding
24 sex offender treatment after hearing all the facts of this
25 case?

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1 A. It says he is to register as a sex offender, and to
2 receive sex offender counseling as part of community
3 supervision.

4 Q. Okay. And what is community supervision?

5 A. Community supervision is a program with the Department
6 of Probation, Pardon, and Parole super -- Probation,
7 Pardon, and Parole Services, in which there are certain
8 crimes, when somebody's released from prison, they will
9 have two years of community supervision to serve. It's
10 similar to probation. And I'm not sure which crimes it
11 affects. I have been told various information about that,
12 and I'm not sure what it is.

13 Q. But in this case, he would have community supervision
14 for two years, once he's released, correct?

15 A. Well, it's when he's finished his prison sentence.
16 So, anytime that he's been waiting in the jail pending
17 these proceedings, his time would have been counting.

18 Q. Okay. So, he will still have community supervision if
19 he were released?

20 A. I would have to look and see when his release date was
21 and things of that nature. Do you want me to do that?

22 Q. If you would like to, yes.

23 And in the meantime, while you're looking for that,
24 that was a recommendation by -- well, you don't know if
25 that was a recommendation by the State or not, but the

1 judge ordered that as part of the sentence, correct?

2 A. Yes.

3 Q. Okay. So, it's something he's required to do, or else
4 he would go back to prison on a probation or a parole
5 violation, correct?

6 A. That would be my understanding.

7 Q. I'm going to get to his disciplinary history now in
8 SCDC. You stated he had many infractions, correct? Since
9 he was incarcerated?

10 A. He had twenty-seven.

11 Q. And his last infraction was in 2014, correct? Three
12 years ago?

13 A. Yes. He had several in 2014.

14 Q. And he hasn't had any to your knowledge since then,
15 correct?

16 A. Well, the records that I had from SCDC were retrieved
17 from their system in Oc -- on October 13, 2015. So, those
18 records were current up to October 13, 2015. And the last
19 incidents were in 2014.

20 Q. And so basically, since you got them in 2015, all of
21 2015 he did not have one up until that point, correct?

22 A. That would be correct.

23 Q. And on your knowledge right now, you don't know if he
24 had any from 2014 present, correct?

25 A. That's correct.

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1 Q. Okay. So, his last one was in 2014, that we are aware
2 of, and he is twenty-eight years old now. That would have
3 made him approximately twenty-four or twenty-five years old
4 at that time, correct?

5 A. Yes.

6 Q. Which corresponds with the age a male brain develops,
7 and finally learns problem-solving skills, consequences,
8 that sort of thing, correct?

9 A. Well, that age is the age that we think that
10 development is essentially completed, but people are
11 learning those problem-solving skills and consequential
12 thinking and all those things, I mean we start teaching
13 that to, you know, babies, and they learn it all throughout
14 childhood, adolescence, and adults.

15 Q. Correct. But based on the information you have, at
16 the age of twenty-five is when his last disciplinary was,
17 correct?

18 A. Well, it was in 2014.

19 Q. Which would have been when he was twenty-five,
20 correct? Approximately.

21 A. It -- approximately, yes.

22 Q. And to the sex offender treatment, when you asked him
23 about the sex offender treatment, while in SCDC, his
24 response to you was he knew he was going to get it on
25 community supervision, what the judge ordered him to, so he

1 didn't do it while he was in SCDC, correct?

2 A. Yes.

3 Q. Okay. So, he knew he was going to have to do sex
4 offender treatment at some point, and it was already
5 ordered for him to do on supervision, correct?

6 A. That's what he said.

7 Q. Okay. And you actually discussed with him about some
8 of his sexual offenses, and whether he understood what
9 happened, correct? When you were discussing sex offender
10 treatment with him?

11 A. And whether he understood -- what do you mean, what
12 happened? I'm not --

13 Q. Like how he felt about the offenses now, and whether
14 he would re-offend, how he's different now versus how he
15 was when he offended ten years ago.

16 A. Yes.

17 Q. Okay. And what did he tell you about that?

18 A. Well, he said that he -- When I asked him why he
19 committed the offenses, he said that he didn't really know.
20 And that he said, back then it was probably for pleasure in
21 the moment, he guessed. He said that he wished they hadn't
22 happened. He said that he doesn't have problems with his
23 sexual behavior now that he's older. That he has a better
24 understanding of things now, and that he regret --
25 regretted that the offenses happened. He said he

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1 understood that there are consequences for everything you
2 do, and now he has a better understanding of -- of life.
3 He said he now understands right from wrong, and that --
4 that he fully understood that what he was doing back then
5 was wrong.

6 Q. Okay. And didn't he also admit to you that he was
7 glad he got locked up?

8 A. Yes, he said that.

9 Q. Okay. Because it helped change him, and basically set
10 him on a course that he believes helps him?

11 A. Yes.

12 Q. Okay. And in addition, you're aware he has a child,
13 correct?

14 A. Yes. He told me he did, yes.

15 Q. And he had -- it's a daughter?

16 A. Yes.

17 Q. And how old is she?

18 A. I believe she is maybe a young teen now, but I'm not
19 -- let me look here. He said he had a daughter that was
20 born in 2000, so.

21 Q. Okay. And did -- didn't he make a comment to you
22 that, looking back on it now, now that he has a daughter
23 that age, he can't believe what he did to Minor 1, because he
24 sees it differently now?

25 A. Well, I need to correct myself here. I'm sorry. He

1 said that he had daughter that was born in 2004 or 2005,
2 I'm sorry.

3 Q. Okay. So, she's approximately thirteen?

4 A. Yes.

5 Q. Yeah, thirteen.

6 A. Yes. Twelve or thirteen, yes.

7 Q. So, about the same age Minor 1 was, the second offense?

8 A. Yes.

9 Q. And he made the comment to you that he said he thinks
10 back in disbelief that he had sex with her, now that he has
11 a daughter her age?

12 A. Yes.

13 Q. Okay. So, he understands now the difference as to
14 what happened back then, as to who he is now at twenty-
15 eight, correct? Based on -- based on his statement to you
16 regarding that?

17 A. Well, you know, I don't know, because what he told me
18 about that offense with Minor 1, the second offense with Minor 1,
19 was that he basically had consensual sex with her, and that
20 was not at all what she described. And she had injuries.
21 She had, you know, marks on her neck. She had a bite mark
22 on her cheek. Her genitals had injuries that were more
23 consistent with a sexual assault than with consensual sex.

24 Q. But based --

25 A. So, I'm not sure if he was telling me the truth.

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1 Q. Okay. But based on his statement, he understands now
2 that what he did was wrong back then; he sees it
3 differently now that he's older and has a child her age,
4 correct?

5 A. He said that having sex with a girl that young back
6 then, he sees that differently because of his experience
7 having a child around that age, yes.

8 Q. Regarding the Antisocial Personality Disorder, you
9 mentioned many things that could be part of that disorder.
10 I want to go through them with you and, I guess, find out,
11 one, if you associated that particular trait to him, and
12 how you came to that. First you said was failing social
13 norms, correct? Doesn't follow social norms?

14 A. Hold on a second. Let me find that spot in my report.
15 Okay.

16 Q. All right. So, the failure to follow the social norms
17 and the law, correct, is one of them?

18 A. Yes.

19 Q. And part of looking at that is his disciplinaries in
20 SCDC, correct?

21 A. Part of it, yes.

22 Q. And -- But as far as we know, the last three years
23 that pattern has changed, because he hasn't had any
24 disciplinaries as far as anybody knows since 2014, correct?

25 A. I don't have information that he's had them, but I --

1 I don't know if it exists or not.

2 Q. Okay. And the same thing regarding physically
3 assaulted behavior. The last anybody ever knows of any
4 physically assaulted behavior was, I guess, 2010, when he
5 got in the fight with the inmate? I forgot what date that
6 was. 2012. Oh, 2010.

7 A. Yes.

8 Q. Okay. So, the past seven years, he hasn't had any
9 physical assault behavior?

10 A. Not that I have a record of.

11 Q. As far as you're aware of. Okay. Regarding
12 irresponsibility. Can you state again, you said it related
13 to work and finance?

14 A. Well, there's impulsivity, or failure to plan ahead,
15 and then I think the one that you were talking about was
16 consistent irresponsibility, as indicated by repeated
17 failure to sustain consistent work behavior, or honor
18 financial obligations.

19 Q. And did you apply that one to him when it came to
20 antisocial disorder?

21 A. I don't believe so.

22 Q. Okay.

23 A. He's not really had an opportunity to work outside the
24 prison setting.

25 Q. And that's where I was going with that. But while he

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1 was in prison, he worked in the kitchen, correct?

2 A. Yes.

3 Q. And one of the reasons you showed the pattern with the
4 Antisocial Personality Disorder, was based on evidence that
5 the conduct disorder prior to age fifteen, correct?

6 A. Yes.

7 Q. And that's something that will never change for him.
8 That will always be there, correct?

9 A. Yes.

10 Q. Okay. Which kind of takes me to, I guess, the Static
11 99. You stated he got a seven on this scale. Can you
12 explain where the setting came from?

13 A. Yes.

14 Q. And if you could please go through each category as to
15 whether he got a zero, one, negative one. However it's
16 determined, where you got the setting.

17 And while you're looking at that, the Static 99, other
18 than the age, which we'll get to in a minute, that number
19 will never change, correct?

20 A. It absolutely can change. It can get worse.

21 Q. Well, I meant, I guess, better. It can't get better,
22 other than the age, correct?

23 A. It can get better by age, but there are some weird
24 circumstances where it could potentially get better. I
25 don't know if those circumstances would apply to his case,

1 but generally, no.

2 Q. Okay. And was he --

3 A. Just give me another second. I've got to go through
4 this.

5 Q. You're fine. Which is why the Static, the word static
6 comes in, because it essentially stays the same. Nobody
7 can really ever change that number?

8 A. That's correct. Okay. I found it. Okay. So, you
9 want -- are you ready?

10 Q. Yeah.

11 A. So, the first item is age at release from index sex
12 offense. And he gets a score of one on that item, because
13 he is between ages eighteen and thirty-four point nine.

14 Q. Okay. So, that's -- Essentially, once he turns
15 thirty-five, that will go down to zero, at that point?

16 A. Yes.

17 Q. Okay. Go ahead.

18 A. Number two is, ever lived with a lover. Ever lived
19 with a lover for at least two years, and based on his self-
20 report, that answer is no, so, he gets a one point for
21 that.

22 Q. Okay. And but to be fair, he went into prison at the
23 age of eighteen, correct?

24 A. Yes. That doesn't matter, based on the scoring rules
25 of the Static 99. It's not that he's -- it doesn't matter

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1 if he's had the opportunity to live with a lover for at
2 least two years as an adult, because that was factored into
3 the original sample of individuals that they evaluated.
4 Many of those people were in the same circumstance. And
5 having lived with a lover for at least two years is
6 potentially a protective factor, so that could be something
7 that's a positive for them. And even lacking that, even if
8 they haven't had that opportunity because they've been in
9 prison, still impacts their risk.

10 Q. And I understand that. But at the age of eighteen,
11 essentially he hadn't had the opportunity, correct?

12 A. That's correct.

13 Q. He's -- I know it's worked into the --

14 A. Yes, that's correct. He's not had that opportunity.

15 Q. And to kind of touch on that, not that he's lived with
16 her, you're aware that he has a fiancée, correct?

17 A. That's what he told me, yes.

18 Q. Okay. And they've been together four years now?

19 A. I believe that he told me six years, but ---

20 Q. Okay.

21 A. --- you might be correct.

22 Q. Okay. But that -- that's all occurred while he's been
23 in prison, essentially, the last four years, while he's
24 been in prison, correct?

25 A. Yes.

1 Q. Okay. All right. What's the next one?

2 A. The next one is index non-sexual violence, any
3 convictions.

4 Q. Okay.

5 A. So, that's on their last offense, the index offense.
6 Were they also convicted of non-sexual violence. He gets a
7 zero for that, because he was not.

8 Q. Okay.

9 A. Number four is prior non-sexual violence, any
10 convictions, and he gets a one for that.

11 Q. Okay. And why does he get a one for that?

12 A. Because he had prior assault and battery convictions.

13 Q. Okay. And which one -- I guess when you give him a
14 point on that, is there a certain range, and I don't know
15 the answer to this, I'm asking like if there's one plus,
16 you get one. If there's three plus, you get two. Does
17 that make sense?

18 A. Yes. No. Most of these items are either a zero or a
19 one. So you get zero points or one point, and this is also
20 -- I mean, there are -- there are two exceptions, and that
21 is based on their age and their prior sex offenses. That's
22 weighted a little bit differently.

23 Q. Okay.

24 A. But on prior non-sexual violence, any convictions, if
25 he has one conviction or a hundred convictions ---

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- 1 Q. Okay.
- 2 A. --- he's gonna get one point. It doesn't matter.
- 3 Q. So, that's not a sliding scale?
- 4 A. That's correct.
- 5 Q. Okay.
- 6 A. On number five. Prior sex offenses, and he gets a two
- 7 on that.
- 8 Q. And why does he get a two on that?
- 9 A. Okay. Because in 1997 he was charged with one offense
- 10 and no convictions.
- 11 Q. Okay.
- 12 A. So, this looks at the number of charges and the number
- 13 of convictions.
- 14 Q. Okay. Hold on. Go through each one. So, the 1997,
- 15 that was the one when he was nine years old?
- 16 A. Yes.
- 17 Q. Okay. And that was dismissed, correct?
- 18 A. Yes. So, he gets one charge, no convictions.
- 19 Q. Go ahead.
- 20 A. 2005 offense, he gets two charges, one convictions.
- 21 Q. And what is that one?
- 22 A. That is the offense involving Minor 1
- 23 Q. Okay.
- 24 A. The second one.
- 25 Q. Okay.

1 A. 2006, he gets two charges and one conviction, and
2 that's the offense involving Minor 2

3 Q. Okay.

4 A. And so, that, you add up how many charges and how many
5 convictions, and that is a total of five charges and two
6 convictions, which corresponds to a score of two. And you
7 can get -- on that item you can get a zero, one, two, or a
8 three.

9 Q. Okay.

10 A. He got a two.

11 Q. And now, I understand it's worked into it, but for
12 purposes of this, you said it's five charges, two
13 convictions, correct?

14 A. Yes.

15 Q. But two of those charges are also the convictions,
16 correct? One for Minor 1 and one for Minor 2?

17 A. Yes. You -- you -- you choose whichever -- whichever
18 is higher. Whichever is higher, based on this table, which
19 is -- it's a little bit confusing, but under charges it
20 says zero charges, and then zero convictions; or you can
21 have one or two charges -- let me go back.

22 If you have zero charges and zero convictions, you get
23 a zero on that item.

24 Q. Okay.

25 A. If you have one or two charges, or one conviction, you

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1 get a one point on that item.

2 Q. Okay.

3 A. If you have between three and five charges, or two or
4 three convictions, you get a two on that item.

5 Q. Okay.

6 A. If you have six-plus charges or four-plus convictions,
7 you get a three on that item.

8 Q. So, you pick either/or on those, essentially?

9 A. Yes.

10 Q. Okay.

11 A. Whichever -- whichever is -- whichever gives them the
12 higher score.

13 Q. Okay.

14 A. For the scoring rules.

15 Q. Okay. So, this one you would have, I guess, done the
16 five charges?

17 A. Well, it doesn't matter on this one, because ---

18 Q. They're both in the same year??

19 A. --- three to five charges or two to three convictions
20 ---

21 Q. Okay.

22 A. --- still results in a score of two. What would
23 happen is, somebody might be charged with, let's say,
24 twelve sex offenses, but they only have one conviction.

25 Q. Correct.

1 A. In that case he would be in the six-plus charges, and
2 that would be higher than the one conviction, so he would
3 get a score of three.

4 Q. Okay. That --

5 A. That -- that's just an example. But he got five
6 charges and two convictions, which puts him in the score of
7 two.

8 Q. Okay. Which is the same either way, correct?

9 A. Correct.

10 Q. Okay.

11 A. Number six is four or more prior sentencing dates,
12 excluding the index offense. And so, he had convictions in
13 2004, 2005, 2007, and 2010, and that results in a score of
14 one, because he had at least four -- four or more
15 sentencing dates. So I counted at least four sentencing
16 dates, he get a point on that.

17 Q. Okay. And that 2005, what is that one?

18 A. That would have been an assault and battery.

19 Q. Okay. The fight?

20 A. Yes.

21 Q. Okay. All right. What's the next one?

22 A. Number seven is any convictions for non-contact sex
23 offenses. That's things like indecent exposure, peeping
24 Tom, where they're -- where they didn't make contact with
25 the Minor .

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1 Q. Okay.

2 A. He doesn't have any of those convictions, so he got a
3 zero on that.

4 Q. Okay.

5 A. Number eight is any unrelated victims, so there's a
6 specific way that you figure out whether somebody's
7 considered a family victim or a non-family victim, and he
8 had unrelated victims, non-family victims, so he got a
9 score of one on that.

10 Q. Okay.

11 A. One point on that. And number nine is whether he had
12 any stranger victims, so people that he did not know for
13 more than twenty-four hours before the sexual assault
14 occurred. He did not have any stranger victims. He got a
15 zero on that.

16 Q. Okay.

17 A. And the last one is any male victims, and he did not
18 have any male victims, so he got a zero. And it's male
19 victims of sexual offenses.

20 Q. Okay.

21 A. So he got a zero.

22 Q. Okay. And once you got to this seven, based on all of
23 these things, you stated on direct that twenty-seven
24 percent re-offend within five years, correct?

25 A. Yes. With people with a score of seven.

1 Q. Okay. And so, while twenty-seven percent re-offend,
2 approximately seven -- seventy-three do not re-offend,
3 correct?

4 A. That's correct.

5 Q. And is there statistics for within ten years? Like,
6 that's within five years. Within ten years?

7 A. No. The new Static normative data doesn't give
8 estimates on ten years, based on the routine samples, or
9 the large samples.

10 Q. Okay.

11 A. Which is the ones that I use.

12 Q. And when did that come about? The new standards.

13 A. That -- Well, that's a good question. There was an
14 update to the scoring rules in 2016, but I think that -- I
15 think that the -- the drop of the ten-year on -- on the
16 standards proceeded that. I couldn't give you a specific
17 date but basically, you can get ten-year estimates if you
18 compare them to a very specific group of sex offenders that
19 are considered to be high-risk or high-need and those are
20 sex offenders who have been referred for treatment
21 programs. But I don't use those norms. Other people might
22 use those norms, but I stopped using those norms because
23 there's no American samples left in that pool of
24 individuals. So, I don't believe that you should use that
25 one any more, so I avoid that.

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1 Q. So, the standards that you go on are based within five
2 years, where seventy-three percent do not re-offend,
3 correct?

4 A. Well, that's ---

5 Q. Approximately?

6 A. --- that's the estimate.

7 Q. Okay. And so, you also look at this, the dynamic
8 factor, correct?

9 A. Yes.

10 Q. And you stated with the dynamic that these are more
11 changeable, correct?

12 A. That's correct.

13 Q. And why are they more changeable?

14 A. Well, they're things that are -- they have more to do
15 with, I guess, somebody's deviant sexual interests or their
16 antisocial attitudes, or their behaviors. That can be
17 targeted in treatment. They're still difficult for some
18 people to change, for some people they're easier. But
19 there are targets of treatment, essentially.

20 Q. And is another way it can be changed is as a result of
21 growth and maturity, as well? Understanding consequences
22 and problem -- working on problem --

23 A. Potentially, yes.

24 Q. Okay. And in this case, you stated that his, Mr.
25 Stewart's dynamic problems were poor problem-solving

1 ability, and that he lacks consequential thinking, and
2 tends to select the course of action that has a high
3 probability of failure, correct?

4 A. Yes.

5 Q. And that is something that could be changed by the
6 idea of somebody maturing, and the brain completely
7 developing by the age of twenty-five, correct?

8 A. It could.

9 Q. Okay. And you also have resistant to rules of
10 supervision, in that he has a history of defiance and
11 oppositional behavior, correct? And that's -- that's based
12 on violating schools and prison infractions, correct?

13 A. Hold on one second.

14 Q. On page twenty-six of your report.

15 A. Thank you. I appreciate that.

16 Q. If that's --

17 A. Yes.

18 Q. Okay. Yet, in the last three years he showed the
19 ability to stay away from not getting in trouble while in
20 prison, correct?

21 A. I don't have records to say that he has been in
22 trouble, so he -- I hope those -- I hope that's accurate.

23 Q. And part of it you said he repeatedly violated rules
24 at school, that was, to be fair, approximately ten years
25 ago, correct? That his last violation in school?

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1 A. Yes, roughly.

2 Q. Okay. And he lacks a history of emotionally intimate
3 relationship with adults. But in fact, in the last four
4 years he has now got a fiancée, and has some type of
5 emotional relationship with an adult, correct?

6 A. Yes, but by the -- by the rules of this, by that risk
7 factor, it appeared that that was a problem for him. You
8 know, it's been -- a relationship that's been conducted
9 while he's been incarcerated, so, how they would do day-to-
10 day together in a living environment is undetermined.

11 Q. Okay. So, it's fair to say that we -- with these
12 dynamic factors that are more changeable, in the last three
13 years he has shown progress in not being oppositional,
14 following rules and norms, and that nature, correct?

15 A. I would say that there has been some improvement,
16 largely because his history was so -- I mean, he was just
17 in so much trouble as a kid. I've never seen anybody --
18 anybody's disciplinary history that significant before from
19 school.

20 Q. And with the Static 99, the twenty-three percent that
21 re-offend within five years, and the seventy-three percent,
22 or seventy - I don't do math.

23 A. Twenty-seven.

24 Q. Twenty-seven and seventy-three percent, while you have
25 an idea of what you predict, there's no way you can say

1 yes, he is going to re-offend, and he is in that twenty-
2 three percent, can you?

3 A. I can absolutely not predict the future with a hundred
4 percent certainty. I look at his past and see that he's
5 had significant problems controlling his behavior in the
6 past. And in the evaluations, he presented very similarly
7 than, you know, as I -- as I saw him in my evaluation. So,
8 my -- Really, what I can do is estimate the risk, and
9 that's what I've done.

10 Q. Okay. And this case, you estimated the risk at
11 twenty-three percent, correct? Twenty-seven percent.

12 A. That's what the actuarial risk assessment shows, which
13 is the most accurate estimation of sexual recidivism that
14 we found in the research. So, it's better than going on
15 your gut, it's better than looking at other instruments.
16 It's the most valid, accurate instrument that we have.

17 Q. Okay. And based on that instrument, your opinion,
18 based on that, is that approximately there's a twenty-seven
19 percent chance that he will --

20 A. It's -- it's not twenty-seven percent chance. It's
21 that of individuals with a score of seven, twenty-seven
22 percent of those individuals were -- I mean, re-offended
23 sexually within five years.

24 Q. And seventy-three did not, correct?

25 A. That's correct.

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1 MS. BROWDER: No further questions, your Honor.

2 THE COURT: Redirect?

3 MR. BOGLE: Just very briefly, your Honor.

4 REDIRECT EXAMINATION

5 DOCTOR MARIE GEHLE BY MR. BOGLE:

6 Q. Doctor Gehle, I've heard all this questioning of you
7 about this age twenty-five and developmental behavior in
8 the human male. In South Carolina we have a Department of
9 Juvenile Justice and a Family Court system for adjudicating
10 or convicting guilty teenagers of crimes, do we not?

11 A. Yes.

12 Q. And we have plenty of people who get convicted of
13 crimes, very serious ones sometimes, who commit these
14 things before age seventeen under that Family Court system,
15 right?

16 A. Yes.

17 Q. So, I guess what I'm saying is, we're not trying -- is
18 there a -- is there some kind of pass you get for all the
19 criminal conduct before age twenty-five because you're not
20 mentally developed yet? You get a free ride for all that?

21 A. No. Certainly not past, what, seventeen you're
22 typically charged as an adult?

23 Q. Uh-huh.

24 A. Certainly, after eighteen you're charged as an adult.

25 So, you can be sentenced, you know, you can be sentenced to

1 the death penalty at eighteen.

2 Q. But if you committed all these crimes before turning
3 twenty-five, you don't -- we can't just wipe those off the
4 face of the Earth, can we? Like in Mr. Stewart's case.
5 They didn't -- they exist, don't they?

6 A. Yes.

7 Q. And they factor into your evaluation; is that right?

8 A. Yes.

9 Q. Okay. You're not giving him a clean slate just
10 because he was under twenty-five?

11 A. No. I mean, he also expressed some attitudes in his -
12 -- you know, attitudes about sex related to the way he
13 views the world and those were still problematic.

14 Q. Okay. Such as?

15 A. Well, he sees sex only for pleasure, and as a stress
16 relief.

17 Q. Okay.

18 A. That's --

19 Q. Is that a healthy way to view it, in your opinion,
20 based on your experience?

21 A. No, that's problematic. That's what the research
22 says, that that's a problematic view of sex.

23 Q. Why is it problematic?

24 A. Well, it can -- it can indicate that he is sexually
25 preoccupied, that he uses sex as a way to cope with stress,

DOCTOR MARIE GEHLE: REDIRECT BY MR. BOGLE

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1 that it's not about intimacy. It's not about a respected
2 trustful relationship with somebody. And if he's having
3 sex with -- you know, just for pleasure, that doesn't seem
4 like it would be reciprocal, and that's where he could get
5 in trouble with, you know, other people because it might be
6 pleasurable for him, but not for them. And if he's not
7 attuning to their needs and desires and things like that,
8 then you know, that's -- that could be a circumstance where
9 he could be accused of rape. So ---

10 Q. Which -- which happened --

11 A. --- it's problematic.

12 Q. Which happened with one of these girls. One -- He
13 said it was consensual, but it went down as a rape
14 conviction.

15 A. Yes.

16 Q. And he pled guilty to the criminal sexual conduct in
17 the third degree with that girl; is that right?

18 A. Yeah. He said that, that both of those rapes were
19 consensual to a degree.

20 Q. Uh-huh.

21 A. He said that the second incident with Minor 2 was --
22 started off as -- as consensual.

23 Q. Uh-huh.

24 A. And that he wanted to try anal sex with her, and that
25 after she started saying no, he continued. But that's not

1 at all how she reported it. She reported it as a violent,
2 brutal, you know, he was ---

3 Q. And at a --

4 A. --- drug her into the woods and raped her.

5 Q. And at a typical guilty plea, usually at a guilty
6 plea, after the judge determines that the guy is pleading
7 guilty freely and voluntary, the prosecutor then summarizes
8 what happens, reads the indictment, tells what the facts
9 are, correct?

10 A. Yes.

11 Q. And those facts in both these cases don't indicate
12 anything remotely close to consent, do they?

13 A. Correct.

14 Q. Doctor, the records in our petition show a max-out
15 date, meaning he finished his prison term sometime in June
16 of 2016.

17 A. Correct.

18 Q. So the clock for his two years of community
19 supervision would begin ticking then?

20 A. Yes.

21 Q. And now, it's almost June of 2017, so about one year
22 of that two years has been used up while we're waiting on
23 this trial, right?

24 A. Yes.

25 Q. Can't help that, right?

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RECROSS BY MS. BROWDER

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1 A. Correct.

2 Q. Okay. So, whatever community supervision he's facing
3 is basically one more year?

4 A. Yes.

5 Q. Thank you, Doctor.

6 THE COURT: Re-cross?

7 MS. BROWDER: Very briefly.

8 RECROSS-EXAMINATION

9 DOCTOR MARIE GEHLE BY MS. BROWDER:

10 Q. So, he has one year left on a community supervision,
11 correct?

12 A. That's my understanding.

13 Q. And as part of that, under the judge's order, he's got
14 to do sex offender treatment while on community
15 supervision, correct?

16 A. That's what the judge ordered. As to whether -- I
17 mean, I'm not sure what his end date is for community
18 supervision.

19 Q. I think we're all --

20 A. But I esti --

21 Q. --- approximately a year, correct?

22 A. Yes.

23 Q. And when someone's on community supervision, they have
24 somebody from the Department of Probation, Parole and
25 Pardon supervising them, correct?

1 A. Yes.

2 Q. Okay. And you're aware that he is going to be on GPS
3 monitoring, as well as the sex offender, correct?

4 A. I'm -- I'm not aware of that.

5 Q. Okay. But you just don't know if he has to be on GPS
6 or not?

7 A. Are you saying that he has to be on GPS, based on the
8 type of conviction? Because --

9 Q. Correct.

10 A. I don't believe that he has the right convictions for
11 GPS monitoring, for lifetime GPS monitoring.

12 Q. But you're not aware if he had -- if he's gonna be
13 required to or not?

14 A. Well, it would be on the sentencing sheets. So, I
15 could look at those, but. Sometimes people have to do a
16 short-term GPS monitoring on community supervision, but I
17 do not believe that he has the lifetime community
18 supervision because that's based on a conviction of
19 criminal sexual conduct with a minor in the first degree,
20 or lewd act, which is also now called criminal sexual
21 conduct with a minor in the third degree.

22 He was convicted of criminal sexual conduct with a
23 minor in the second degree, which does not qualify him for
24 GPS monitoring under, I believe it's *Jessie's Law*. And he
25 does -- and the other convictions was criminal sexual

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1 conduct in the third degree, not with a minor. So, that
2 would also not qualify him for that conviction.

3 Q. But you are aware --

4 A. That's my understanding.

5 Q. But you are aware on community supervision, sometimes
6 they do have to have GPS monitoring?

7 A. Sometimes they do, and they typically have six months
8 of that. And it's my understanding that that would start,
9 that six months would start from the time they maxed out of
10 prison. So, his time would have passed, if I understand
11 that correctly.

12 MS. BROWDER: No further questions, your Honor.

13 THE COURT: You can step down. Can this witness be
14 excused?

15 MR. BOGLE: Yes, your Honor. Thank you.

16 THE COURT: You can step down and be excused. Thank
17 you.

18 (WITNESS LEAVES WITNESS STAND.)

19 THE COURT: And members of the jury panel, we'll take
20 about a fifteen-minute break. If you'll follow the
21 bailiff, he'll take you out for a break.

22 (JURY EXITS COURTROOM ON RECESS AT 03:46 PM.)

23 THE COURT: Is the State resting?

24 MR. BOGLE: Yeah, I'd like to do it in front of the
25 jury.

1 THE COURT: I know you do.

2 MR. BOGLE: But at this time the State rest.

3 THE COURT: But while the jury is out go ahead and ---

4 MR. BOGLE: Uh-huh.

5 THE COURT: --- let you rest on the record. Any
6 motions now that the State is resting?

7 MS. BROWDER: Yes, sir. At this time, I make a motion
8 for a directed verdict, your Honor. I don't believe the
9 State, even in the light most favorable to the State, has
10 proved or put enough to the jury that Mr. Stewart could be
11 a sexually violent predator, due to the fact that the
12 majority of his convictions were when he was a juvenile,
13 especially one when he was nine years old, and one when he
14 was thirteen years old. And I would renew all my prior
15 objections, your Honor.

16 THE COURT: Well, I will deny the motion. I think the
17 testimony was directly in point by the witness. The
18 issues you raised certainly go to, I guess, the weight of
19 Doctor Gehle's testimony. But she emphatically stated to a
20 reasonable degree of psychological certainty that Mr.
21 Stewart failed within the parameters and definitions of
22 what constitutes, under our law, a sexually violent
23 predator, so, I deny the motion. We'll take a break.

24 MS. BROWDER: Thank you, your Honor.

25 MR. BOGLE: Thank you, your Honor.

1 (COURT IN RECESS AT 03:47 PM.)

2 (COURT BACK IN SESSION AT 04:07 PM.)

3 THE COURT: Thank you. You may take your seats.

4 Is the State ready?

5 MR. BOGLE: Yes, your Honor.

6 THE COURT: Ready, Ms. Browder?

7 MS. BROWDER: Yes, your Honor.

8 THE COURT: Bring in the jury.

9 Since it's already after four I think -- I believe we
10 can finish -- maybe finish this testimony, but we're not
11 going to argue and charge today.

12 MR. BOGLE: Yes, sir. Argue and charge in the
13 morning?

14 THE COURT: Yes.

15 MR. BOGLE: Yes, sir. We were --

16 (JURY RE-ENTERS COURTROOM AT 04:08 PM.)

17 THE COURT: Mr. Bogle?

18 MR. BOGLE: Thank you, your Honor, may it please the
19 Court. At this time the State would rest.

20 THE COURT: All right. Members of the jury panel, the
21 State is resting, that means they have presented their
22 case. So now, the Defense has a right, but no obligation,
23 to present any witnesses that he deems -- any witnesses he
24 wishes.

25 MS. BROWDER: We call Deanna Armstrong.

DEANNA ARMSTRONG: DIRECT BY MS. BROWDER

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1 THE COURT: All right. Please come up, and you'll see
2 a Bible up here. Put your left hand on it, and raise your
3 right.

4 (WHEREUPON, DEANNA ARMSTRONG,
5 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

6 MADAM CLERK: Thank you. You can have a seat and just
7 watch your step up there.

8 DIRECT EXAMINATION

9 DEANNA ARMSTRONG BY MS. BROWDER:

10 Q. Can you state your name for the record?

11 A.. Deanna Armstrong.

12 Q. Ms. Armstrong, how do you know Justin Stewart?

13 A. I have been dating his brother for the last twenty-
14 four years.

15 Q. Okay. And so, it's fair to say you've known him for
16 the last twenty-four years?

17 A. Well, actually I've known Justin longer than his
18 brother.

19 Q. Okay. So, you've known him essentially all his life?

20 A. Yes.

21 Q. Okay. And what do, or do you currently work?

22 A. I am assistant store manager at new Belks.

23 Q. Okay. And how long have been there?

24 A. I have been there three years.

25 Q. Okay. And do you have any children?

DEANNA ARMSTRONG: DIRECT BY MS. BROWDER

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1 A. Yes, ma'am.

2 Q. And how many children do you have?

3 A. I have one daughter.

4 Q. Okay. And how old is she?

5 A. She is two years old.

6 Q. Okay. And have you kept up with Justin while he's
7 been in prison?

8 A. Yes, ma'am.

9 Q. Okay. And you stated you've known him essentially his
10 entire life. Since he's been in prison, you're aware of
11 what his sentence was?

12 A. Yes, ma'am.

13 Q. And you're aware of the crimes that he's committed?

14 A. Yes, ma'am.

15 Q. Okay. And at this point in your life and in his life,
16 are you prepared to help support him?

17 A. Yes, ma'am.

18 Q. And have you made steps prior to his release to help
19 him in any way?

20 A. Yes, ma'am.

21 Q. And what have you done?

22 A. So, I have talked to my store manager so that he will
23 also have a place for employment upon release. I have
24 contacted Catawba Mental Health in Rock Hill, so that he
25 could get outside treatment there. I also contacted the

1 SORT program in Gastonia, North Carolina for outside
2 treatment.

3 Q. Okay. And I'll get to that in a second. When you
4 talk about employment, what would he be doing if he were
5 released and working at the store??

6 A. He would be working in the stock room. He would be
7 ringing up customers, and assisting with helping stock the
8 sales floor, and interacting with the guests within the
9 store.

10 Q. And regarding the treatment, the Catawba Mental Health
11 and the other place, what type of treatment is that that
12 you had set up for him?

13 A. It would be like, psychological treatment, where he
14 talks to a psychologist, to go through different things
15 that he's had happen. Like, basically his charges, so that
16 they can help him learn to cope and deal with society now.

17 Q. And is sex offender treatment? Is it sex offender
18 treatment?

19 A. Yes, ma'am.

20 Q. And with Catawba Mental Health, based on your
21 investigation of them and setting all this up, would he
22 have an appointment available once he is released?

23 A. Yes, ma'am.

24 Q. Okay. And they're ready to accept him?

25 A. Yes, ma'am.

DEANNA ARMSTRONG: DIRECT BY MS. BROWDER

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1 Q. Okay. And what was the other program that you
2 mentioned?

3 A. The SORT program is actually a sexually violent
4 predator program, but it's in Gastonia, North Carolina,
5 where they have to come in at least three days a week for
6 outside treatment, to help them. They also help with like,
7 building resumes. They give them on-the-job training, how
8 to interact with other people to help them readjust.

9 Q. Okay. And based on these things that you've set up
10 for him, would you help him get to those?

11 A. Yes, ma'am.

12 Q. Okay. And how would you do that?

13 A. I would transport him to them myself.

14 Q. Okay. And you would help support him in any other
15 way?

16 A. Yes, ma'am.

17 Q. All right. If he were to do something wrong, or not
18 follow the rules that he was supposed to follow when he's
19 on community supervision, would you protect him in any way?

20 A. No, ma'am.

21 Q. Okay. And why not?

22 A. Because if wrong is wrong, and right is right. And if
23 he does something wrong, then he has to suffer the
24 consequences for his actions.

25 Q. And as you've stated, you've known him essentially all

1 his life. Since he's been in prison, since he was eighteen
2 years old, ten years ago, have you seen a change in him?

3 A. Yes, ma'am?

4 Q. And how have you seen a change in him? What have you
5 observed?

6 A. His attitude has changed. He's not so quick to have a
7 temper or just fly off the handle. He's more now to where
8 he can go and sit down, even if he has to cry. He'll call
9 me to talk to me on the phone if he's available for the
10 phone. If he can't call, he writes me a letter to express
11 his feelings, but he's not like, angry, wanting to go on a
12 rampage and fight, or do other things now.

13 Q. So, it's fair to say you've seen him mature?

14 A. Yes, ma'am.

15 Q. And when did this change essentially occur, that you
16 -- that was noticeable to you?

17 A. He started to change like, around 2009, is when it
18 really started with him changing. And then, it has gotten
19 better over time.

20 Q. Okay. And at this point, based on your relationship
21 with him, do you believe this is the most mature he's ever
22 been, based on what you have observed?

23 A. Yes, ma'am.

24 Q. And has he coped, I guess, the way he copes is he
25 talks to you.

DEANNA ARMSTRONG: DIRECT BY MS. BROWDER
CROSS BY MR. BOGLE

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1 A. Yes, ma'am.

2 Q. He gets his feelings out to you, instead of acting
3 out?

4 A. Yes, ma'am.

5 MS. BROWDER: No further questions, your Honor.

6 THE COURT: Mr. Bogle.

7 MR. BOGLE: Yes, sir, very briefly.

8 CROSS-EXAMINATION

9 DEANNA ARMSTRONG BY MR. BOGLE:

10 Q. Ma'am, you said you were employed at the present time.
11 Where, again, do you work?

12 A. I work at New Belks Factory Store.

13 Q. Okay. Is that a full-time job?

14 A. Yes, it is.

15 Q. Thank you.

16 MS. BROWDER: No further questions.

17 THE COURT: You can step down. Appreciate your time.

18 DEANNA ARMSTRONG: Thank you.

19 THE COURT: Thank you, Ms. Armstrong.

20 (WITNESS LEAVES WITNESS STAND.)

21 THE COURT: Call your next witness.

22 MS. BROWDER: Call Justin Stewart, your Honor.

23 THE COURT: Please come up and be sworn.

24 MADAM CLERK: Mr. Stewart, if I can have you place
25 your left hand on the Bible and raise your right.

JUSTIN STEWART: DIRECT BY MS. BROWDER

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1 (WHEREUPON, JUSTIN STEWART,
2 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 MADAM CLERK: Thank you. Have a seat and just watch
4 your step up there.

5 DIRECT EXAMINATION

6 JUSTIN STEWART BY MS. BROWDER:

7 Q. Can you state your name for the record?

8 A. Justin Stewart.

9 Q. Okay. Mr. Stewart, I'm going to get right to it. All
10 these things that we've heard, your crimes that you
11 committed, did you do those?

12 A. Yes, ma'am.

13 Q. And when you pled back in 2007, you pled guilty to
14 those?

15 A. Yes, ma'am.

16 Q. Okay. Not no contest?

17 A. No, ma'am.

18 Q. Okay. And you've heard this discussed before
19 regarding that plea, the recommendation by the State. What
20 was the original recommendation by the State?

21 A. Ten years.

22 Q. It was ten years?

23 A. Yes, ma'am.

24 Q. Okay. And so, they recommended that, and that's what
25 the judge sentenced you to?

JUSTIN STEWART: DIRECT BY MS. BROWDER

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1 A. Yes, ma'am.

2 Q. Okay. And as part of that, they sentenced you -- or
3 the judge sentenced you to sex offender treatment while on
4 community supervision?

5 A. Yes, ma'am.

6 Q. Okay. And what is your understanding of what
7 community supervision is going to be, based on documents
8 you've received, your understanding of what you're going to
9 have to do on your super -- supervision?

10 A. Well, from my understanding, I was going to be placed
11 on community supervision for a term of two years, and I
12 would be on GPS monitoring for a term of, I think six
13 months, if I'm not mistaken.

14 Q. Okay.

15 A. And I would have to attend sex offender counseling.

16 Q. Okay. And have you looked into sex offender
17 counseling, for when you are released?

18 A. Yes, ma'am.

19 Q. Okay. And how did you do that?

20 A. Through my sister.

21 Q. Okay. And she helped you set up sex offender
22 treatment for when you were released?

23 A. Yes, ma'am.

24 Q. Okay. And if you were released, who would you live
25 with?

1 A. My mother.

2 Q. Okay. And what's your mother's name?

3 A. Linda Stewart.

4 Q. Okay. And is she in the courtroom today?

5 A. Yes, ma'am.

6 Q. Okay. Can you point her out?

7 A. Back there with the light blue shirt on.

8 Q. Okay. Wearing the glasses?

9 A. Yes, ma'am.

10 Q. Okay. And we've mentioned earlier that you have a
11 daughter, correct?

12 A. Yes, ma'am.

13 Q. What's your daughter's name?

14 A. Ashiana.

15 Q. Okay. And how old is she?

16 A. She's twelve.

17 Q. Okay. And what is your relationship with your
18 daughter?

19 A. It's good. I love her to death.

20 Q. Okay. And how often do you get to speak with her?

21 A. Almost every day.

22 Q. Okay. So, you call her on the phone?

23 A. Yes, ma'am.

24 Q. And does she have her own cell phone?

25 A. Yes, ma'am.

JUSTIN STEWART: DIRECT BY MS. BROWDER

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- 1 Q. Prior to her having her own cell phone, how would you
2 get in touch with her?
- 3 A. Through letters.
- 4 Q. Okay. And would you speak with her on the phone prior
5 to that?
- 6 A. Yes, ma'am.
- 7 Q. Okay. And who would you call?
- 8 A. Her mother.
- 9 Q. Okay. And you're not still with her mother, correct?
- 10 A. No, ma'am.
- 11 Q. Okay. But you get along with her mother?
- 12 A. Yes, ma'am.
- 13 Q. And her mother obviously knows that you're -- you were
14 in prison, because ---
- 15 A. Yes, ma'am.
- 16 Q. --- you would call from there. And she still let you
17 have contact with your daughter?
- 18 A. Yes, ma'am.
- 19 Q. When you're released, what kind of contact are you
20 going to have with her?
- 21 A. Whatever is within the limits that I can.
- 22 Q. Okay. And that's based on your community supervision,
23 and what you're allowed to do and not allowed to do?
- 24 A. Yes, ma'am.
- 25 Q. And other than your child's mother, is there another

1 woman in your life?

2 A. Yes, my fiancée.

3 Q. Okay. And what is her name?

4 A. Onisha Walker.

5 Q. Okay. And how long have you been with her?

6 A. We've been together four years now.

7 Q. Okay. And can you explain a little bit how you ended

8 up -- how you have a relationship in prison, while she's

9 out of prison?

10 A. Well, we've been together, but we just reunited while

11 I was in prison, when she moved back down here from

12 Chicago.

13 Q. Okay. And how often do you speak with her?

14 A. Every day.

15 Q. And do you have a good relationship with her?

16 A. Yes, ma'am.

17 Q. I assume if you're engaged to her, you do. And what

18 are your plans with her if you were to be released?

19 A. We're going to get married, if I get released, next

20 month.

21 Q. Okay. And then, where would you live at that point?

22 A. With her.

23 Q. Okay. And does she work?

24 A. Yes, ma'am.

25 Q. And where does she work?

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1 A. Brooksdale Assistant Lawn -- I mean, Home Living.

2 Q. Okay. So, she deals with assisted living?

3 A. Uh-huh.

4 Q. Okay. And if you were to be released, where would you
5 work?

6 A. With -- a job with my sister, at New Balance Company.

7 Q. Okay. And while you were in SCDC, what were you doing
8 while in there for work?

9 A. Working in the kitchen.

10 Q. And how long did you work in the kitchen?

11 A. For years.

12 Q. How long?

13 A. For years.

14 Q. For years?

15 A. Yes, ma'am.

16 Q. Okay. And there's been a lot of discussion regarding
17 your disciplinary infractions while you were in prison.

18 When was your last disciplinary infraction in SCDC?

19 A. In 2014.

20 Q. Okay. And since 2014, have you had any while in SCDC?

21 A. No, ma'am.

22 Q. And also, while you were in SCDC, did you get your
23 GED?

24 A. Yes, ma'am.

25 Q. At what age did you finally get your GED?

1 A. I was twenty-two.

2 Q. Okay. And it took you four years to get it?

3 A. Yes, ma'am.

4 Q. Okay. You were also given the opportunity to do sex
5 offender treatment while you were in SCDC. Why did you
6 decline that?

7 A. Well I really didn't decline. When I did try to get
8 in, they told me I didn't have to, because it was part of
9 my community supervision.

10 Q. Okay. And would you have done it if you'd known you
11 had to do it then?

12 A. Yes, ma'am.

13 Q. Okay. But it was your understanding that, as part of
14 the community supervision, that you were going to have to
15 do sex offender treatment, anyway?

16 A. Yes, ma'am.

17 Q. Okay. And you stated earlier, you think you're going
18 to be on GPS monitoring, as well, correct?

19 A. Yes, ma'am.

20 Q. Are you also going to be required to register as a sex
21 offender?

22 A. Yes, ma'am.

23 Q. Okay. Do you know what the consequences of that are?

24 A. Yes, ma'am.

25 Q. And what are those?

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1 A. That I have to register every year, basically saying
2 where I'm staying at, where I'm working at, give them all
3 the information so they will be able to know where I'm at
4 at all times.

5 Q. Okay. And that's -- anybody in the public would be
6 able to know where you are at all times?

7 A. Yes, ma'am.

8 Q. Okay. And since 2014, when you haven't had any
9 disciplinarys since then, what changed? Why all of the
10 sudden no more disciplinarys?

11 A. Well, I started -- when I started maturing, I realized
12 it was time for me to make a change, or that's why I was
13 going to end up staying there for the rest of my life
14 behind -- behind the fences in jail.

15 Q. And how did you do that? How did you start staying
16 out of trouble?

17 A. Starting hanging around better people, the people who
18 I was hanging around with.

19 Q. Okay. And when you said better people, like,
20 different inmates who didn't get in trouble?

21 A. Yes, ma'am.

22 Q. That were more supportive?

23 A. Yes, ma'am.

24 Q. Okay. And when you did have issues where you would
25 become angry or something in these last three years, how

1 did you cope with those?

2 A. By talking it out instead of acting out I just talk.

3 Like about anytime I have a problem, I talk to my sister,

4 or I talk to my fiancée ---

5 Q. Okay.

6 A. --- instead of acting out.

7 Q. And when you say your sister, that's Deanna Armstrong?

8 A. Yes, ma'am.

9 Q. Okay. And she's actually dating your brother, which
10 you consider your sister?

11 A. Yes, ma'am.

12 Q. Okay. And you're not sitting here denying anything
13 that you've done, correct?

14 A. No, ma'am.

15 Q. And you agree that everything you've done was not
16 right?

17 A. Yes, ma'am.

18 Q. And when -- If you were released, how would you deal
19 with anything if it came up?

20 A. I would think before I act this time.

21 Q. Okay. And when you were young, you didn't think
22 before you act?

23 A. No. No, ma'am.

24 Q. Okay. And why not?

25 A. Because I didn't care. I was young and stupid. I

JUSTIN STEWART: DIRECT BY MS. BROWDER
CROSS BY MR. BOGLE

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1 just didn't care.

2 Q. Okay. And at this point, do you care?

3 A. Yes, ma'am.

4 Q. What's made it change so that you care now?

5 A. Because I knew that everything I was doing back then
6 was wrong, so I don't want to live -- I didn't want to live
7 that life no more.

8 Q. And you're how old now?

9 A. Twenty-eight.

10 MS. BROWDER: No further questions, your Honor.

11 CROSS-EXAMINATION

12 JUSTIN STEWART BY MR. BOGLE:

13 Q. So, just to talk about the sequence, the order in
14 which these things happened, and you've acknowledged a few
15 minutes ago these past crimes. You did them?

16 A. Yes, sir.

17 Q. Okay. All right. One of the things Doctor Gehle
18 talked about was a 2004 assault and battery. It happened
19 at school, and led you to be expelled; isn't that right?

20 A. Yes, sir.

21 Q. Okay. And then, while on probation for that, we have
22 the criminal sexual conduct charge against Minor1, the
23 witness by the name of Minor1 The same girl you'd attacked
24 back when she was like, four years old, right?

25 A. Yes, sir.

1 Q. And then, two months after that charge, we have an
2 assault and battery disturbing school charge, happened at
3 the beginning of a new academic year, and while that was
4 pending, we have the next CSC, criminal sexual conduct
5 against Minor2, right?

6 A. Yes, sir.

7 Q. So, you're either on probation, you're on bond, you're
8 awaiting a charge, and yet you're still offending. Bing,
9 bing, bing, right after each other. And you're telling us
10 -- and then, when you have the next criminal sexual conduct
11 happened in 2005. Okay? The assault against Minor2 Excuse
12 me, in 2006, Minor2, you stayed in jail from that point until
13 you pleaded guilty, right?

14 A. Yes, sir.

15 Q. Because on the sentencing sheet, he gives you credit
16 for three hundred and seventy-five days, sitting in jail
17 awaiting trial.

18 A. Yes, sir.

19 Q. So, what I'm seeing is crime, probation; crime,
20 awaiting that crime. Just one after the other. Despite
21 the fact you've just done one maybe a year or two, or six
22 months before. You're on probation for it, and you still
23 do it again. And the only thing that seems to have stopped
24 you was being locked up in jail, awaiting these charges; is
25 that right?

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1 A. Yes, sir.

2 Q. Okay. And when you did plead guilty to these two
3 crimes right here, when you pleaded guilty, the judge,
4 whoever the judge was, he asked you a series of questions,
5 did he not, to make sure you were pleading guilty freely
6 and voluntarily, and not being forced to plead guilty,
7 correct?

8 A. Yes, sir.

9 Q. He asked you questions like, are you satisfied with
10 the services of your lawyer, right?

11 A. Yes, sir.

12 Q. And then, once he finds that your plea was being done
13 freely and voluntarily, he turned to the solicitor, the
14 assistant solicitor who then told the judge what the crime
15 was.

16 A. Yes, sir.

17 Q. Which means he read what was in the indictment. And
18 then, the judge turned to you and said, just to confirm
19 with you, that's what you did, right?

20 A. Yes, sir.

21 Q. Okay. So, there's nothing remotely consensual about
22 what led to these two convictions is there?

23 A. No, sir.

24 Q. Now, you think you're facing two years of community
25 supervision, right?

JUSTIN STEWART: CROSS BY MR. BOGLE
REDIRECT BY MS. BROWDER

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1 A. Yes, sir.

2 Q. And you're aware -- are you aware that the clock that
3 began on that would have began when you maxed out in prison
4 back in June?

5 A. I wasn't aware of that.

6 Q. You didn't know that?

7 A. No.

8 Q. Okay. So, basically you've got about a year left.

9 MR. BOGLE: Nothing further, Judge.

10 MS. BROWDER: Very briefly.

11 REDIRECT EXAMINATION

12 JUSTIN STEWART BY MS. BROWDER:

13 Q. These crimes that you were talking about, that you did
14 one after the other, you were seventeen? Sixteen,
15 seventeen at the time?

16 A. Yes, ma'am.

17 Q. And that was eleven to twelve years ago?

18 A. Yes, ma'am.

19 Q. And in fact, didn't you tell Doctor Gehle that you
20 were glad that you got locked up?

21 A. Yes, ma'am.

22 Q. Because it stopped you, and it helped change you?

23 A. Yes, ma'am.

24 Q. And over the past, I guess, eleven -- eleven years --
25 you were seventeen, you're twenty-eight now, have you

JUSTIN STEWART: REDIRECT BY MS. BROWDER

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1 changed?

2 A. Yes, ma'am.

3 Q. Okay. And are you saying that today, that you're
4 perfect?

5 A. I'm not perfect, but I've changed.

6 Q. Okay. And you're willing to move forward with your
7 life, because at this point you know that's the only thing
8 you can do, correct?

9 A. Yes, ma'am.

10 MS. BROWDER: No further questions, your Honor.

11 MR. BOGLE: Nothing further, Judge.

12 THE COURT: All right. You can step down and have a
13 seat there at counsel table.

14 (WITNESS LEAVES WITNESS STAND.)

15 THE COURT: Call your next witness.

16 MS. BROWDER: Beg the Court's indulgence, your Honor.
17 No further witnesses, your Honor.

18 THE COURT: All right. Anything in reply?

19 MR. BOGLE: No, your Honor. Thank you.

20 THE COURT: All right. Members of the jury panel, now
21 all the evidence is in. It's almost four thirty, so it's
22 too late for us to try to finish up today, so, we're going
23 to stop for the day and start back at ten in the morning.

24 Keep in mind not to discuss the case among yourselves,
25 not to make up your mind. We're not there yet, because you

1 have not heard my charge on the law, and you haven't heard
2 the attorneys' closing arguments. Keep in mind not to use
3 anything like the Cloud, or Google, or any assisting
4 device, and don't let yourself be exposed to any news
5 coverage if there is any.

6 So, we'll -- have a pleasant evening, and we'll see
7 you back at ten in the morning.

8 (JURY EXITS COURTROOM ON EVENING RECESS AT 04:22 PM.)

9 THE COURT: Anything from the State?

10 MR. BOGLE: Nothing, your Honor.

11 THE COURT: Anything from the Defense?

12 MS. BROWDER: At this time, your Honor, I would just
13 renew any -- my motion for a directed verdict, as well as
14 all prior objections.

15 THE COURT: All right. Your motions are denied. I --
16 Again, I believe there's sufficient evidence from which the
17 jury could -- sufficient evidence to submit the case to the
18 jury and at least the jury could find beyond a reasonable
19 doubt that the State has carried its burden of proof.

20 Now, Mr. Bogle has sent me a proposed charge.

21 Have you seen that, Ms. Browder?

22 MS. BROWDER: I don't think so.

23 THE COURT: All right.

24 MS. BROWDER: I'm sure I have it somewhere on my --

25 THE COURT: Okay. Take a look at it tonight, and

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1 we'll -- we'll take a look at it. I did not get a verdict
2 form or we've drawn one up.

3 MR. BOGEL: We've got one. They're pretty basic.

4 THE COURT: All right. Anything else before we stop
5 for the day?

6 MR. BOGLE: Nothing from us, your Honor.

7 MS. BROWDER: No, sir.

8 THE COURT: I'll make an observation. I made an
9 observation about the court earlier, but a different court.
10 In the *Beatty* case which is a criminal case, they
11 admonished those of us to not tell the jury they're
12 supposed to seek the truth, which is what I thought the
13 whole business was about.

14 So, in the criminal cases from my charge I'm dropping
15 the word truth, or truthfulness wherever I find it. I
16 don't know that *Beatty* applies here. I think I can use the
17 word credibility or believability in place of the word
18 truth out of an abundance of caution, although *Beatty* was a
19 criminal case, and it does specifically say in -- in the
20 verbiage, in criminal cases you should not charge this.

21 Just throwing that out for anybody that has any
22 thoughts on it.

23 MR. BOGLE: When *Beatty* came out, we -- as you can
24 see, we had a kind of a standard jury charge. Every once
25 in awhile, we'll adjust it, based on something we hear that

1 we like. Like the part in my closing -- jury charge about
2 closing arguments. That came from Judge Newman in the
3 Slater case down in Charleston. It's -- I liked it, so I
4 stuck it in there. But as far as what I did was, when the
5 Beatty case came out, I went through my standard jury
6 charge and removed everything if it sounded like it would
7 contradict Beatty.

8 THE COURT: All right. Well, you got truth in there a
9 bunch.

10 MR. BOGLE: Well.

11 THE COURT: Anyway, we've got --

12 MR. BOGLE: That may be an issue.

13 THE COURT: I'm going to probably walk around it,
14 because I don't believe that it really applies in these
15 cases.

16 Now, Mr. Bogle, I do have to have one last question.

17 MR. BOGLE: Uh-huh.

18 THE COURT: What have you gotten from me?

19 MR. BOGLE: I'm sorry?

20 THE COURT: What have you gotten from me? You're
21 talking about you got these from Charleston and what have
22 you gotten from me?

23 MR. BOGLE: Not a thing, Judge.

24 THE COURT: Okay.

25 MR. BOGLE: My first memory of you had to do with a

1 case involving a horse trader.

2 THE COURT: All right. Take care.

3 (COURT IN EVENING RECESS AT 04:31 PM.)

4 (COURT BACK IN SESSION WEDNESDAY, MAY 31, 2017 AT
5 09:48 AM.)

6 THE COURT: Thank you. You may take your seats. Good
7 morning.

8 Ms. Browder, have you had a chance to review the
9 proposed charge that the State has handed up?

10 MS. BROWDER: Yes, sir.

11 THE COURT: Any issues regarding it?

12 MS. BROWDER: No, sir.

13 THE COURT: How about the verdict form? Have you seen
14 the State's --

15 MS. BROWDER: That's fine, your Honor.

16 THE COURT: Any issues with that? Any issues with the
17 verdict form?

18 MS. BROWDER: No, sir.

19 THE COURT: All right. And the State opens fully,
20 then respondent. And then, the State has the right to
21 reply.

22 MR. BOGLE: Yes, your Honor.

23 THE COURT: Anything further before the jury comes in?

24 MR. BOGLE: I think my reply is limited to any new
25 stuff.

CLOSING ARGUMENT: BY MR. BOGLE

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1 THE COURT: It is. That's why it's called reply
2 instead of ---

3 MR. BOGLE: Right.

4 THE COURT: --- second chance.

5 All right, let's bring in the jury.

6 (JURY RE-ENTERS COURTROOM AT 10:03 AM.)

7 THE COURT: Good morning. Now, the State will make
8 their first closing argument and unlike the statements
9 yesterday they were outlining a blueprint of the trial, at
10 this point the attorneys will be taking evidence in the
11 light they see it, and arguing why applying the law that
12 they understand out of the charge, why your verdict should
13 be a certain verdict.

14 So, the State will open, then the Respondent, Ms.
15 Broward, will have a chance to make her closing argument on
16 behalf of Mr. Stewart, and then the State can have a right
17 to reply to that argument. So, Mr. Bogle.

18 CLOSING ARGUMENT BY MR. BOGLE

19 MR. BOGLE: Thank you, your Honor. May it please the
20 Court? Ms. Browder. I'm not one of these TV lawyers. I
21 prefer notes so bear with me here.

22 I'm glad I was locked up, it stop me. Every case has
23 something that kind of leaps out, or a theme or something
24 like that. If you remember yesterday, during the
25 Respondent's testimony, he was being asked a question about

CLOSING ARGUMENT: BY MR. BOGLE

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1 what he told Doctor Gehle, and he said he told her, I'm
2 glad I was locked up, it stopped me. And it's kind of what
3 we have here, the theme of this entire case.

4 Now, first off, I'd like to thank you for doing your
5 job, both for the State of South Carolina and York County.
6 Taking time away from your family, your friends, and your
7 jobs, and doing your duty to serve as jurors here in York
8 County.

9 What's been the State's mission in this case? Our job
10 is to prove to you beyond a reasonable doubt that Justin
11 Stewart is a sexually violent predator. And to do that, we
12 have to meet several things.

13 First off, we have to show that he has been convicted
14 of sexually violent crimes. And there's no dispute there,
15 we have two of them, State's Exhibits One and Two, right
16 here, which you'll have back in the jury room, and I
17 suggest you read these, see exactly what he did because
18 what's printed in this indictment, the language in the
19 indictment, is what he had to acknowledge to the judge
20 that, yeah, I did that, when he pleaded guilty. There's
21 criminal sexual conduct with a minor in the second degree
22 and criminal sexual conduct third degree. So, there's the
23 sexually violent crimes.

24 The next thing we have to prove is, does he have a
25 mental abnormality or a personality disorder. Here, he's

1 got what I call the double whammy. He's got both. He's
2 got the mental abnormality of a paraphilic disorder,
3 deviant sexual disorder, what they call Biastophilia.
4 Something I hadn't heard of that much before I came to
5 court, but that's one that they often diagnose. This
6 involves the diagnosis of forced -- getting -- he's getting
7 off on the idea of forced sexual intercourse.

8 He also has a personality disorder called Antisocial
9 Personality Disorder, and I'll talk more about that in just
10 a minute. But this is basically a history, a lifelong
11 history of just not following the rules, and doing the
12 kinds of things that could get you arrested.

13 The burden of proof, like we talked about when this
14 case started, and the judge will tell you more about it
15 later on, is beyond a reasonable doubt. A much higher
16 burden of proof than you might normally find in Common
17 Pleas court, the same burden you find in criminal court.
18 And that kind of makes sense because basically, the State's
19 trying to take away his liberty. We want to confine him,
20 we want to lock him up. Let's not make any -- mince words
21 here. We want to confine him for treatment, because it's
22 the State's position that it's not safe to let him go right
23 now.

24 Now, how do we meet that burden of proof? Doctor
25 Marie Gehle testified yesterday she was appointed by a

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1 judge early on in the case to conduct an evaluation of
2 Justin Stewart. She's done this over a hundred times.
3 She's testified as an expert witness at least about that
4 many times here in South Carolina, and that's what her job
5 is, to look at these people and see whether or not they fit
6 the criteria.

7 And like the judge talked about the other day, she was
8 qualified based on her training, her education, and her
9 experience, and her being recognized as an expert in
10 previous cases to give an opinion, as opposed to just to
11 fact, in her testimony yesterday, and that's what she did.
12 She diagnosed him. Its kind of like a medical case.
13 You've got a medical expert saying what's wrong with
14 somebody from a medical point of view.

15 Now, she found a mental abnormality, what's called
16 Other Specified Paraphilic Disorder, Biasophelia. That's a
17 deviance. It involves forced sex, it involves non-consent.
18 She also found the personality disorder of Antisocial
19 Personality Disorder. Now, to document that, she's got to
20 show a history of conduct prior to age fifteen. And in
21 this young man, his history of antisocial conduct goes back
22 to, what did she say, first grade? We know about the
23 situation when he was nine years old, attacking the four-
24 year-old girl, who later comes up to be a **Minor** in one of
25 these cases. So, you have that.

1 Another thing we have to control is lack of control.
2 Can he control this sexual deviant diagnosis that he has?
3 And one way to illustrate that, I think, in the testimony
4 yesterday was, we have 2004 he commits an assault and
5 battery that is so bad it gets him expelled from school.

6 Now, he's on probation for that, and in 2005 he
7 commits a criminal sexual conduct with a minor. Okay?
8 Forced sex on a minor child. And that is Minor 1, our little
9 four-year-old. Well, now she's thirteen or so. So, that
10 happens in 2005.

11 Two months later, he's barely out on bond on that, two
12 months later he have the thing where he and the other guy
13 were laying in wait in the boys' restroom at school, just
14 attack whoever came in, and that led to an assault and
15 battery conviction and disturbing school. And while that
16 was pending, in 2006 we have the criminal sexual conduct on
17 Minor 2, the Minor Minor 2, and that's another one of those
18 convictions there.

19 Finally, he couldn't make bail or wasn't on probation,
20 and he got locked up, and remained in jail until he pled
21 guilty to both those charged in 2007. And as you look at
22 these, he mentioned that yesterday during his testimony;
23 but also, as you read the sentencing sheet, where it talks
24 about the time he got, consecutive to the other sentence.
25 And it also says credit for time served of three hundred

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1 and seventy-five days. And what that means is, he sat in a
2 jail here in York County awaiting either trial or guilty
3 plea in this case for about that much time. And so, you
4 get credit for time served. That goes toward his prison
5 time. And so, what happened is, in 2006 the assault on
6 Minor 2, he got locked up. For that, he was locked up because
7 it stopped him.

8 Now, the defense seems to be is all this talk about
9 mental -- about mental growth, or brain growth, or maturity
10 of young men, and how they don't get it until they're
11 twenty-five or twenty-six years old. Well, you apply your
12 own common sense about that. You decide what -- where to
13 go on that. I don't think there was any testimony from
14 Doctor Gehle that people get a pass on criminal conduct;
15 young men get a pass on criminal conduct just because
16 they're under twenty-five and their brain might be still
17 developing. Certainly in this case he was found guilty of
18 stuff he did when he was under twenty-five years of age.
19 And we all know from our common experience or read in the
20 newspapers that juveniles are found guilty in Family Court
21 for crimes. And to be found guilty in a family court, you
22 have to, by definition, be under seventeen years of age.
23 So, I'm not sure where that's going, but I don't think you
24 can accept that as a pass, a free ride, for criminal
25 conduct he did as a young man.

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1 Now, the Defense witnesses, one of the witnesses was
2 Ms. Armstrong. And I really think she has a -- my take on
3 it was, this lady's got a good heart, and she wants to help
4 him out. She's got a job lined up for him. She's also
5 looked into sex offender treatment for him on the outside,
6 and that's a real good thing. The question is, how
7 possible is it going to be; because one of the places she
8 looked into requires him to show up three times a week.
9 And yet, she's a -- and she's volunteered to take him.
10 Remember, she's working a full-time job. So, I'm not just
11 sure how realistic that's all going to be. That's
12 something -- Again, apply your common sense to what you
13 heard.

14 As far as community supervision, the testimony from
15 Doctor Gehle is, the rules are the clock for that two-year
16 supervision begins running when he finished his prison
17 term. So, we're about a year into that now. So, he has
18 about a year left of community supervision. Whether or not
19 he has to wear a GPS monitor was debatable on the witness
20 stand yesterday. Doctor Gehle didn't think he had to
21 because of the types of crimes he was convicted of. Some
22 crimes you do, some crimes you don't. There's a law called
23 *Jessie's Law* that covers that. He will have to register as
24 a sex offender, but again, think about that. He's wearing
25 a GPS monitor. That tells the State where you're going.

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1 You also have to register every six month or every nine
2 months as a sex offender. But none of that prevents you
3 from going where you want to and doing what you want to.
4 You might get caught after the fact for having been there,
5 but it won't stop you.

6 The final thing is, Doctor Gehle used a well-
7 recognized in her field a reliable assessment tool to
8 assess whether or not he was likely to re-offend. Like she
9 said, instead of relying on your gut, your instincts, or
10 what you might read, administer this test, this scoring
11 system called the Static 99-R. That's the revised version.

12 And what this is based on is thousands of sex
13 offenders who have committed sexual crimes and then gotten
14 in trouble again. And they've isolated these ten different
15 factors, and you go down these ten factors and look at this
16 history, and see whether or not he qualifies for any of
17 them and you add up the score. She got a score of seven.

18 The average sex offender scores about a two. So, what
19 that does is, that makes him five and a quarter times more
20 likely to commit another sexual offense than the other sex
21 offenders. He also has, she said, about a little over a
22 twenty-seven percent chance of committing another sex
23 offense within the next five years.

24 Now, I know what you're thinking. The State has to
25 prove this case beyond a reasonable doubt. Twenty-seven

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1 percent is a lot less than fifty, it's not even a majority.
2 But you got to put it in perspective. This is twenty-seven
3 percent chance of committing another sexual crime. Not
4 robbing a convenience store, shoplifting cigarettes, or
5 something like that. You've got to put it in perspective.
6 This is a twenty-seven percent chance of committing a very
7 serious crime. So, back up.

8 Have we met the burden of proof? What have we proved?
9 There's no contest about the convictions. They have the
10 diagnosis of the mental abnormality and the personality
11 disorder was not really contested, either. He's got those.
12 His lack of control can be shown by his prior history.
13 Okay? And on his statistical side, the score he got on the
14 Static 99 shows him in a high-risk chance of re-offending
15 again. Again, again, I'm glad I was clocked up because it
16 stopped me. And what the State's asking for today is for
17 you to find that we have indeed met our burden of proof,
18 and shown beyond a reasonable doubt that Justin Stewart is,
19 indeed, a sexually violent predator. Thank you.

20 Your Honor.

21 MS. BROWDER: Thank you, your Honor.

22 THE COURT: Yes, ma'am.

23 CLOSING ARGUMENT, BY MS. BROWDER

24 MS. BROWDER: Kirstie Shelley, an author, said all of
25 us who are worth anything spends our entire manhood

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1 *expediting any mistakes that we had in our youth.*

2 That's exactly what this case is today, are the facts
3 about what his sexual crimes were. Good? Absolutely not.
4 That's not what you're here to determine, ladies and
5 gentlemen.

6 What this case is, is a man who has admittedly has
7 made mistakes in his youth, much more egregious than most
8 other people in this world. Yet, he stood up, he pled
9 guilty at the age of seventeen, more than a decade ago, and
10 took responsibility for those actions. And then, he sat
11 there on the stand again today and said yes, I did those;
12 it was wrong; I shouldn't have.

13 But ladies and gentlemen, the State has to prove to
14 you beyond a reasonable doubt that he will do this again.
15 Not that he might, not that he could, but that he will.
16 And the way to kind of, I guess, put it in layman's terms
17 what beyond reasonable doubt is, and the judge will give
18 you an instruction to it as well, but I like to kind of put
19 it this way: My children get up in the morning, go feed
20 them cereal before school. I open the fridge, and I pull
21 out the milk to pour the milk into it. And I see the date,
22 today's date's May 31st, I see use by May 31st. Use it.
23 Say tomorrow is June 1st, and I pull it out and I say well,
24 it says May 31st, kind of smell it. I'm not sure, I don't
25 know. You can maybe put some milk in the cereal, I don't

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1 know. But I'll play it safe and just say I don't want to
2 chance it, I don't want to get a call at two o'clock from
3 the nurse saying he's throwing up.

4 So, ladies and gentlemen, if you have to say I'm not
5 sure, if you have to say well, I want to put him in this
6 program to lock him away, just to be safe, we need to try
7 to be safe; the tie always goes to the runner, just like in
8 baseball. If you need to play it safe, you have to find
9 him not to be a sexually violent predator.

10 As we discussed earlier, these two convictions, we
11 don't dispute these. He pled guilty in 2007, when he was
12 seventeen, more than a decade ago, and they want to look at
13 these and say these are two separate, really bad incidents.
14 Yes, they are two separate, bad incidents. But you have to
15 look at when they occurred. They occurred when he was
16 sixteen, and a couple months after that when he was
17 seventeen. These are not years apart. These all happened
18 essentially at the same time. And I'll get to the
19 development of the brain in just a little bit, but ladies
20 and gentlemen, they want you to look at these cases where
21 he was nine and did something, in the third grade when he
22 was thirteen and did something.

23 But I want you to look at the one where he was
24 thirteen, the testimony. There's no records as to what
25 happened with that. It was dismissed completely. So, that

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1 -- use your common sense as to why did nothing happen with
2 this? It's because it wasn't what it seemed. Not to
3 mention, he was thirteen. And all these thing are bad, so
4 bad that the government, on October 19th, 2007, and you
5 heard Doctor Gehle testify that he could have gotten thirty
6 years in prison. They recommended only ten. That's what
7 they determined was the best-case scenario for this, is
8 that they thought ten years was what he should do.

9 And in addition to that, the judge heard all the facts
10 of the case, heard the indictments, heard Mr. Stewart say
11 yes, I did this, I'm guilty, and said I think sex offender
12 treatment is needed, but I want it done while he's on
13 community supervision, after he's done with prison, when
14 he's out. The judge thought it was appropriate at that
15 time.

16 So, that takes us, ladies and gentlemen, to the
17 likelihood to re-offend. And they gave you Doctor Gehle, a
18 lady who works for the Department of Mental Health. And
19 that's her job, which is wonderful, I have nothing against
20 that. But she is paid by the same people who are trying to
21 put Mr. Stewart in this program as a sexually violent
22 predator. And if you look at this test, the Static 99, as
23 Mr. Bogle just explained, it is just for violent sex
24 offenders. But ladies and gentlemen, beyond a reasonable
25 doubt, only twenty-three percent will re-offend. Or

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1 twenty-seven, excuse me. Seventy-three percent do not.
2 So, three out of the four people who have the same exact
3 score of a seven, of Mr. Stewart, do not re-offend within
4 five years. And she said past that that there's research,
5 but she doesn't use it, so, she doesn't even want to tell
6 you about what that research is. I want you to think about
7 why.

8 And ladies and gentlemen, you look at a score of
9 seven, we went through how he got each point. Well, he
10 automatically gets a point just because of his age. So if
11 you take that out of it, he's down to six. He
12 automatically gets a point because he hasn't lived with a
13 lover for more than two years. Well, he went in jail when
14 he was seventeen.

15 Again, as Mr. Bogle said, use your common sense. What
16 seventeen-year-old has lived with a lover for two years
17 from the age of fifteen? And if you look at it, he does
18 have a fiancée. If he were to be released, he's going to
19 be living with somebody who now he has created a
20 relationship with. It might not be an ideal relationship
21 because he's been in prison the whole time, but it's
22 somebody he's known his whole life. Somebody who he's
23 reconnected with. Somebody who knows what he's done, and
24 still accepts it, and sees that he's changed; because she's
25 willing to be with somebody who has done these things.

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1 But another thing, you heard, I think Mr. Bogle said,
2 as well as Doctor Gehle, past behavior is the best
3 predictor of future behavior. Well, if you take that idea,
4 ladies and gentlemen, it means nobody could ever get
5 better. You're always going to be judged on what you did
6 in your past. Just like an alcoholic who drank a lot in
7 the past. They can be better at this point, but they're
8 always going to be judged because of that. Nobody's going
9 to care how they are now. That's the same situation here.
10 You can't necessarily predict somebody's future based on
11 what they did in their past, especially when they were
12 sixteen, seventeen years old.

13 And that takes me to what Doctor Gehle was discussing
14 about the male brain. Granted, everybody develops
15 differently. But in general, the main basis of her
16 expertise is psychology. That's what she went through
17 school for. That's what she learned for. The main basis,
18 is that at the age of twenty-five, that's when a male brain
19 is developed. Well, that goes exactly along with all the
20 evidence that you heard. He had all these disciplinaries
21 in prison, yes. Not good. But magically, at the age of
22 twenty-five, before any of this began, three years ago,
23 guess what? He stopped. It's consistent with the idea
24 that at the age of twenty-five, he thought what in the
25 world am I doing. I've got to grow up, I've got to mature,

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1 I've got to start taking responsibility. He got his GED
2 while he was in prison. He re-established this
3 relationship with this lady, who is now his fiancée. He
4 talks to his child every day. He's grown up and sees what
5 he has done, and how it has affected people in his past.

6 And the State has made this whole thing about I got
7 locked up, it stopped me. And that just because he did all
8 these things when he was a teenager, and not twenty-five,
9 he should get a pass. That's not what we're trying to say
10 at all. It does not excuse anything that he's done. He
11 doesn't need a pass. He's been in prison for ten years.
12 He knows he had consequences to that. But at the same
13 time, ladies and gentlemen, you have to look at the
14 evidence as to how he has grown and matured over those
15 years. You've heard from him, you heard it from his -- he
16 calls her his sister, but it's technically, I guess, his
17 sister-in-law, because she's been dating his brother for
18 pretty much all of his lifetime.

19 But that doesn't mean that he gets a pass for those
20 things. He's going to get sex offender treatment. They've
21 already got it set up with Catawba Mental Health. She
22 found another place in Gastonia for it. He's going to be
23 on community supervision. While there's dispute as to
24 whether it's two years, whether it's one year, what's going
25 on with that, the fact is nobody disputes that he will be

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1 on community supervision. It's just the fact of how long.
2 So, he's going to have somebody watching over him. He may
3 or may not be on GPS. There was a dispute as to that, but
4 it's his understanding he's going to be on GPS, and that's
5 what he expects. He's going to be in sex offender
6 treatment, and he's going to be on the sex offender
7 registry, where everybody's going to be able to see who he
8 is and what he's done, and where he lives. He's not going
9 to be able to go X amount of miles within a school or a
10 playground. He's going to be monitored.

11 This isn't somebody who should be out on his own,
12 doing whatever he wants to do in society. If he doesn't do
13 what he does -- or supposed to do on community supervision,
14 he can go back to prison. That's how it works.

15 I'm from Lexington, South Carolina, and what --
16 somebody's always -- one of my dad's family friends has
17 always says trying to predict the future is like trying to
18 look down a country road backwards at night, without your
19 headlights on. You can't do it. Predicting the future is
20 impossible. You can have an idea of what might happen.
21 But if you look at somebody who, like the weatherman, they
22 can say there's seventy percent chance of rain today, and
23 it would be raining outside right now.

24 Well, ladies and gentlemen, that's a hundred percent
25 chance of rain, not seventy percent, because it's actually

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1 raining. People who do this all the time can't even
2 predict exactly what's going to happen. There's no way
3 Doctor Gehle, or the State, or Mr. Stewart, or anybody can
4 predict what's going to happen in the future. Doctor Gehle
5 said the best thing to look at is not to trust your gut,
6 but to look to this test. Well, this test says that
7 seventy-three percent of the people just like Mr. Stewart
8 do not re-offend. That is way more than reasonable doubt,
9 ladies and gentlemen.

10 The State gave you a flawed young man. Somebody who
11 made mistakes before he was in -- aware of what was going
12 on. But ladies and gentlemen, he has matured, and the
13 evidence has showed that. Since he's been twenty-five
14 years old, it shows that he's been able to conform to these
15 norms over the past three years. He's been able to control
16 his impulses. He's been able to stay out of trouble. It
17 shows the maturity, it shows how he has grown. He has a
18 family who can support him, who can help him setting up the
19 sex offender treatment. He's going to have a probation,
20 parole, somebody watching him while on community
21 supervision. He's going to get the help that the judge
22 ordered he needed, which was outpatient sex offender
23 treatment.

24 As my daddy always said, sometimes the right thing to
25 do ain't always the easiest thing to do. It's not easy to

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1 look at his crimes and his past and his youth more than a
2 decade ago and think yeah, it hurts me what he did to
3 somebody else. But ladies and gentlemen, that's not what
4 you're here to look at. The right thing to do with these
5 facts, with what has happened over the past eleven years
6 while he's been incarcerated, and how he has grown to find
7 that he is not a sexually violent predator. Thank you.

8 MR. BOGLE: Nothing in reply, your Honor. Thank you.

9 CHARGE TO THE JURY:

10 THE COURT: Members of the jury panel, thank you for
11 the attention you've given me and the attorneys and the
12 witnesses. It is now my duty to instruct you on the law
13 that you are to apply, and it is your duty to accept and
14 apply the law as I charge it to you.

15 The State has brought this case under what is called
16 the *Sexually Violent Predator Law* of South Carolina. The
17 State seeks the commitment of Justin L. Stewart,
18 Respondent, for long-term control, care, and treatment in a
19 secure facility. This is not a criminal proceeding. It
20 does not seek incarceration, but rather it is a proceedings
21 seeking civil commitment.

22 The State of South Carolina alleged or claims that the
23 respondent, Justin L. Stewart, is a sexually violent
24 predator under the law, and I will charge you what that law
25 is in a few minutes. Respondent denies that he is a

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1 sexually violent predator, and this places on the State the
2 burden of proving by evidence sufficient to satisfy each of
3 you beyond a reasonable doubt that Mr. Stewart is, in fact,
4 a sexually violent predator as the law defines that.

5 If the State is unable to meet that burden of proof as
6 to one of more elements of the claim by the State, the
7 respondent is entitled to a finding that he is not a
8 sexually violent predator. I want to make sure that you
9 understand that Mr. Stewart is not accused of committing a
10 crime in this proceeding. Now you heard from the testimony
11 he did have previous charges for which he has been
12 sentenced by the Court. The respondent has now completed
13 those sentences, and the State is now alleging that Mr.
14 Stewart is a sexually violent predator, again, as defined
15 by our law.

16 Here, the State has the burden of proving, and must
17 prove its case against Mr. Stewart beyond a reasonable
18 doubt. If you find the State has not met this burden of
19 proof, respondent will be released. If you find the State
20 has met its burden of proof and find the respondent is a
21 sexually violent predator, he will not be released, but
22 will be committed to a secure treatment facility in
23 Columbia, operated by the South Carolina Department of
24 Mental Health.

25 Now we have had separate duties to perform in this

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1 trial, and I told you about those yesterday. It was my
2 responsibility to preside over the trial and to rule on
3 questions of admissibility of evidence. If I have told you
4 to disregard any evidence, please do so. You may only
5 consider the competent evidence before you, and you are to
6 disregard any evidence that was stricken from the record,
7 if there was any.

8 You are able -- you are also to consider only the
9 testimony which has been presented from the witness stand,
10 together with any exhibits admitted into the record of this
11 case, in determining what verdict to render. I have the
12 additional duty to charge you on the applicable law of this
13 case, and in that regard I am the sole judge of the law. I
14 told you this yesterday. It is your duty to accept and
15 apply the law as I state it, even if you think the law
16 should be different; or even if you think I charge you the
17 law in error. Under the law you are obligated to abandon
18 any of those thoughts and apply the law just as I charge
19 it.

20 You are the sole, exclusive judge of the facts in this
21 case. I told you that yesterday. You are not to infer
22 from any opinion that I may have, and I cannot articulate
23 to you, or even formulate, or express to you any opinion on
24 the facts. That is your job. The law does not, as I said,
25 permit me to have an opinion, and therefore if anything I

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1 have said or done, or anything that I now say or do is
2 thought by you to be an opinion of mine on the facts in
3 this case, you would be mistaken; because I do not have
4 any. That is solely your job, and I cannot invade your
5 province.

6 It is solely your duty to determine the effect, value,
7 weight -- and weight of the evidence presented during the
8 course of the trial. Arguments of counsel, which you just
9 heard, are a beneficial part of every trial. The
10 statements made by the attorneys during those opening
11 statement and closing arguments are not evidence.

12 You must base your verdict not on the -- you must base
13 your verdict on the evidence as you remember it.

14 Therefore, if there's any conflict between your
15 recollection of the evidence and anything that counsel may
16 have said about the evidence, you rely on your
17 understanding of what was presented as evidence in this
18 case.

19 As I have already stated to you, in this case the
20 burden is on the State to prove Mr. Stewart falls within
21 the sexually violent statute beyond a reasonable doubt. If
22 the State fails to meet this burden, you must find him --
23 find that he is not a sexually violent predator. Our laws
24 have defined -- our courts have defined a reasonable doubt
25 as the kind of doubt that would cause a reasonable person

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1 to hesitate to act. There are very few things that we can
2 know in our world with absolute certainty, and absolute
3 certainty is not required in a case such as this. If,
4 based on your consideration of the evidence, you are firmly
5 convinced that Mr. Stewart falls within the sexually
6 violent predator statute definition, then you would return
7 a verdict for the State.

8 If, on the other hand, you think there's a real
9 possibility that he is not -- does not fall within the
10 definition of a sexually violent predator, as defined by
11 our law, you must give him the benefit of that doubt and
12 return a verdict for the respondent.

13 Reasonable doubt may arise from the evidence that is
14 in the case, or from the lack of evidence in the case. It
15 is up to you to determine whether or not a reasonable doubt
16 exists in this case.

17 There are two types of evidence which are presented
18 during a trial: Direct and circumstantial evidence.
19 Direct evidence is the testimony of a person who claims to
20 have actual knowledge of a fact, such as an eyewitness.
21 Direct evidence is evidence which immediately establishes
22 the facts sought to be proven.

23 Circumstantial evidence is proof of a chain of facts
24 and circumstances which indicate the existence of a fact.
25 Circumstantial evidence is evidence which immediately

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1 establishes collateral facts from which the main fact may
2 be inferred. Circumstantial evidence is based on
3 inference, and not on personal knowledge or personal
4 observation. Circumstantial evidence is proof that does
5 not actually establish the fact in question, but that
6 asserts or describes something else from which you may
7 either reasonably infer the believability of the fact; or
8 at least reasonably infer an increase in the possibility of
9 the fact.

10 For Circumstantial evidence to be sufficient to
11 warrant finding of fact under the -- under or by
12 circumstantial evidence, the circumstances must lead to
13 that fact with reasonable certainty. The facts and
14 circumstances should be considered in the light of ordinary
15 experience and common sense. The existence of a fact
16 cannot be based on speculation, surmise, or conjecture.

17 Our law makes absolutely no distinction between the
18 weight or the value to be given to either direct or
19 circumstantial evidence, nor is a greater degree of
20 certainty required of circumstantial evidence than of
21 direct evidence.

22 In determining what the facts of this case are, you
23 must judge the credibility, that is the believability of
24 the witnesses who have testified. You alone are -- as the
25 trial jury in this case, you must decide the effect, force

CHARGE TO THE JURY:

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1 -- and force of the testimony. In making this decision,
2 there are things that you may take into consideration.
3 Take into consideration the things that I've already
4 discussed. Take into consideration in determining
5 believability and credibility of those things that you find
6 are in individuals in your day-to-day life indicative of
7 truthfulness.

8 You can look at the demeanor of the witness. That is
9 the way a witness acts on the stand. Are they hesitant,
10 straightforward in responding to the questions. You can
11 look at consistencies or inconsistencies within the
12 testimony of a witness. What was the ability of the
13 witness to know about the facts? That is, what opportunity
14 did the witness have to actually know those things to which
15 the witness testified. You may look at any bias or
16 prejudice, whether a witness would wish to help or hurt one
17 side or the other.

18 You can look and determine, as I said a minute ago,
19 whether the testimony is reasonable under -- in light of
20 your own experiences and common sense. You may consider
21 whether the testimony of one witness was corroborated or
22 made stronger by other testimony and evidence; or, if it
23 was made weaker; or, impeached by some other testimony and
24 evidence.

25 I have told you that you have the right to believe

CHARGE TO THE JURY:

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1 part or all or none of a witness's testimony. You can
2 believe one witness as opposed to several; several
3 witnesses as opposed to one; and you may reject any, part,
4 or all of a witness's testimony. You do not determine the
5 facts merely by counting the number of witnesses presented
6 by each side. The fact that testimony is not controverted
7 does not mean you must accept it as true and undisputed.
8 You still must gauge the credibility of the witness to
9 determine the believability of the facts offered through
10 the testimony by the witnesses.

11 In exercising your mental processes and in attempting
12 to decide the facts, the law simply requires that you
13 exercise good judgment, common sense, your sense of logic
14 and reason, and your experiences in life. Apply these
15 attributes to the evidence, apply the law, and you will be
16 able to return a verdict.

17 During the course of this trial, I told you we would
18 have an expert witness that testified, and we did. Our
19 rule of evidence usually does not allow an individual to
20 testify and give an opinion. As I told you earlier,
21 generally witnesses are restricted to testifying to
22 something they've seen, or heard, or smelled, or felt, or
23 touched. However, where an individual has certain training
24 and experience, knowledge in a certain area, that person
25 may be qualified as an expert, and take facts and from

CHARGE TO THE JURY:

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1 those facts render an opinion.

2 I have qualified Ms. Gehle, or Doctor Gehle, as an
3 expert in this case, but it's up to you to determine
4 whether or not you believe she possessed the qualifications
5 to render the opinion she rendered; and you can look at the
6 reason she gave for reaching the opinion she reached.
7 Testimony of experts is allowed into evidence to assist
8 you. It is not binding on you. You look at an expert
9 witness through the same lens as you look at the other
10 witnesses in this case, and you may accept or reject, in
11 whole or in part, the testimony of an expert.

12 Now, as to the charge, this is a statutory offense.
13 It's not really an offense, I used the wrong term. This is
14 a statutory proceeding. Our legislature has determined
15 that individuals who meet certain criteria are qualified
16 for a jury if it's so determined, based on the facts and
17 the law, to designate that person as a sexually violent
18 predator.

19 The elements as to this offense -- and again, I use
20 the word offense, but I -- it's not an offense; I
21 apologize. The elements that the State must prove beyond a
22 reasonable doubt in order for you to find that Mr. Stewart
23 falls into the category of a sexually violent offender is,
24 one, that the respondent has been convicted of a sexually
25 violent offense. I charge you that criminal sexual conduct

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1 in the third degree and criminal sexual conduct with a
2 minor in the second degree are sexually violent offenses.

3 I charge you that the respondent's -- that the State
4 must prove beyond a reasonable doubt, as I said, first,
5 that he has been convicted of a sexually violent offense,
6 and second, that he suffers from a mental abnormality or
7 personality disorder that makes him likely to engage in
8 acts of sexual violence if not confined in a secure
9 facility for long-term control, care, and treatment.

10 Inherent in these two elements is that the State must
11 prove the requirement that the respondent's mental
12 abnormality or personality disorder caused -- causes him
13 serious difficulty in controlling his behavior. In other
14 words, the State must prove beyond a reasonable doubt that
15 the individual it seeks to commit suffers from a mental
16 illness which he cannot sufficiently control without the
17 structure and care provided by a mental health facility,
18 rendering him otherwise likely to commit a dangerous act.

19 In order for you to better understand the elements of
20 the State's cause of action, I'm going to define for you
21 some of the terms that I have used. The term, quote,
22 mental abnormality, end quote, means a mental condition
23 affecting a person's emotional or volitional capacity that
24 predisposes that person to commit sexually violent
25 offenses. This mental abnormality or personality disorder

CHARGE TO THE JURY:

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1 must cause the respondent, Mr. Stewart, serious difficulty
2 in controlling his behavior. The element quote likely to
3 engage in acts of sexual violence, end quote, means the
4 person's propensity to commit acts of sexual violence is of
5 such a degree as to pose a menace to the health and safety
6 of others, so that he is dangerous to others.

7 I remind you that the burden is on the State to prove
8 to your satisfaction those elements beyond a reasonable
9 doubt. The State must prove that, again, that he, Mr.
10 Stewart, has been convicted of a sexually violent offense
11 as I instructed you, and, also suffers from a mental
12 abnormality or personality disorder that makes him likely
13 to engage in acts of sexual violence if not confined in a
14 secure facility for long-term control, care, and treatment.

15 If the State carries its burden of proof and convinces
16 you beyond a reasonable doubt as to those two elements, it
17 is entitled to a finding that Mr. Stewart is a sexually
18 violent predator. If the State does not meet that burden
19 of proof as to one or both of those elements, the
20 respondent is entitled to a finding that he is not a
21 sexually violent predator.

22 Please keep in mind as you deliberate the importance
23 of your responsibility under your oath. You're not called
24 upon to serve very often as jurors, and the proper
25 performance of your duty requires each of you to reach the

CHARGE TO THE JURY:

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1 height of freeing your mind of all improper inferences and
2 influences.

3 Your verdict must be unanimous. All twelve jurors
4 must agree. Your verdict cannot be based on passion,
5 prejudice, sympathy, public opinion, or matters outside the
6 record. When you have reached a verdict, knock on the door
7 Mr. Bailiff; and you will deliberate -- you will preside
8 over deliberation and be the liaison and I'll tell you more
9 about that in a moment, between the jury and the Court
10 while you deliberate and ultimately sign on behalf of the
11 jury the unanimous verdict.

12 Again, the verdict must be unanimous. While you are
13 deliberating, if you have any questions, Mr. Foreman,
14 please write them on a piece of paper that will be
15 provided, knock on the door, give it to the bailiff. I
16 will -- the bailiff will bring them to me, bring the note
17 to me. I will review it, go over it with the attorneys,
18 and decide how to respond. It may be that I can write an
19 answer on the note.

20 We can have testimony replayed, and if you need to
21 have me re-charge any, part, or all of the law, I can bring
22 you back and here in open court, re-charge you any of the
23 law.

24 Now, when you reach a verdict, knock on the door and
25 tell the bailiff you have reached your verdict. We're not

CHARGE TO THE JURY:

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1 starting another trial, so I should be able to send for you
2 promptly when you've reached a verdict.

3 When you go into the jury room, do not start yet your
4 deliberations. I have to go over my charge with the
5 attorneys. If I have made an error in my charge, since you
6 have to follow it to the letter, it is important that I
7 make sure it's proper and correct in entirety. If I have
8 made an error, I will bring you back in and correct
9 anything that I need to correct, if that is the case. If I
10 do not need to make any corrections, we will send in the
11 verdict form and the exhibits, and the bailiff will tell
12 you to start deliberating. But do not start deliberating
13 until you hear the bailiff say those words.

14 Now the verdict form, again the verdict must be
15 unanimous. There's a place, Mr. Foreman, for you to sign,
16 a place for the date. Today's the 31st of May. And there
17 are two options. The State is -- the verdict form states
18 this question. First line: Has the petitioner, the State
19 of South Carolina, proved beyond a reasonable doubt Justin
20 L. Stewart is a sexually violent predator under the South
21 Carolina Sexually Violent Predator Act. Then, there's a
22 next paragraph, so to speak, and it says we comma, the jury
23 comma, unanimously answer the question as follows. And
24 there are two choices: Yes, Justin L. Stewart is a
25 sexually violent predator, or no, Justin L. Stewart is not

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1 a sexually violent predator. You would put an X or check,
2 Mr. Foreman, before -- on the little line before those --
3 whichever of those two options the jury unanimously
4 chooses.

5 The fact that one is first and the other is second is
6 of no importance. We have to put them in some order, and
7 this is the way I always put them. So the fact that one
8 precedes the other, that is, one of the options precedes
9 the other, is of no importance at all. So I'm going to let
10 you go to the jury room, but do not start deliberating yet.
11 And Mr. Konez?

12 MR. KONEZ: Yes, sir.

13 THE COURT: I'm probably mispronouncing that. Konez?

14 MR. KONEZ: Konez.

15 THE COURT: Mr. Konez, if you'll stay in when the jury
16 goes out this time.

17 MR. KONEZ: Yes.

18 THE COURT: Yes, stay in.

19 (JURY EXITS COURTROOM AT 10:44 AM.)

20 THE COURT: I'll be with you in just a minute.

21 Anything from the State?

22 MR. BOGLE: No, your Honor.

23 THE COURT: Anything from the Defense?

24 MS. BROWDER: No, sir.

25 THE COURT: All right. Check the verdict form and

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1 exhibits, and we'll have the bailiff take them back, and
2 start deliberating.

3 Mr. Konez, you're free to go, and you can stay if you
4 wish to see what the verdict will be but you don't have to
5 stay, you can leave. You don't have to call back, but
6 you're through for the week. I've got other stuff to do
7 without a jury but we're through using the jury for the
8 week. So, you'll be mailed a check. We appreciate your
9 help. Thank you. All right. We'll be at ease pending
10 hearing from the jury.

11 (ALTERNATE JUROR DISMISSED AT 10:45 AM.)

12 (COURT AT EASE AT 10:45 AM.)

13 (COURT BACK IN SESSION AT 11:19 AM.)

14 THE COURT: We've received -- I'm sorry.

15 (DEFENDANT JUSTIN STEWART REENTERS COURTROOM.)

16 THE COURT: We've received a note from the jury with
17 two questions. Well, a question and a request. The
18 question is, how long will the, quote, long-term treatment,
19 end quote, period be? And I cannot answer that, because I
20 don't know. Then, their asking if they can get a re-read
21 the statute, which I will re-read what I charged involving
22 the elements of the *Sexually Violent Predator Act*.

23 Any comments?

24 MR. BOGLE: That sounds -- that sounds like the only
25 way to handle it, Judge. Yes, sir.

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1 MS. BROWDER: I agree, your Honor.

2 THE COURT: All right. Bring in the jury.

3 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED AND
4 MARKED, RECEIVED INTO THE RECORD.)

5 (JURY RE-ENTERS COURTROOM AT 11:21 AM.)

6 THE COURT: Members of the jury panel, I've received
7 your note, and as to the question, how long will the,
8 quote, long-term treatment, end quote, period be? I do not
9 know. I cannot answer that.

10 As to re-charge on the statute, I will charge you the
11 elements that the State must prove beyond a reasonable
12 doubt, keeping in mind that this is the statute that was
13 enacted by our legislature.

14 The elements which the State must prove beyond a
15 reasonable doubt are one, -- and when I use the word
16 respondent I'm talking about Mr. Stewart -- that the
17 respondent has been convicted of a sexually violent
18 offense. I charge you that criminal sexual conduct in the
19 third degree and criminal sexual conduct with a minor in
20 the second degree are sexually violent offenses.

21 The second element that the State must prove beyond a
22 reasonable doubt is that the respondent suffers from a
23 mental abnormality or personality disorder that makes him
24 likely to engage in acts of sexual violence, if not
25 confined in a secure facility for long-term control, care,

RECHARGE TO THE JURY:

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1 and treatment. Inherent in these two elements is that the
2 State must prove the requirement that the respondent's
3 mental abnormality or personality disorder causes him,
4 quote, serious difficulty in controlling his behavior, end
5 quote.

6 In other words, the State must prove beyond a
7 reasonable doubt that the respondent, who is -- commitment
8 is sought, suffers from a mental illness which he cannot
9 sufficiently control without the structure and care
10 provided by a mental health facility, rendering him
11 otherwise likely to commit a dangerous act.

12 In order for you to better understand these elements,
13 I'm going to define for you some of the terms that I have
14 just used. First, quote, mental abnormality, end quote,
15 means a mental condition affecting a person's emotional or
16 volitional capacity that predisposes the person to commit
17 sexually violent offenses. This mental abnormality or
18 personality disorder must cause Mr. Stewart serious
19 difficulty in controlling his behavior.

20 The second phrase I'm going to define for you is,
21 quote, likely to engage in acts of sexual violence. This
22 means that the person, here again that's Mr. Stewart's,
23 propensity to commit acts of sexual violence is of such a
24 degree as to pose a menace to the health and safety of
25 others, so that he is dangerous to others.

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1 I remind you that the burden of proof is on the State
2 to prove to your satisfaction beyond a reasonable doubt
3 that Mr. Stewart has been convicted of a sexually violent
4 offense, as I instructed you, and also suffers from a
5 mental abnormality or personality disorder that makes him
6 likely to engage in acts of sexual violence if not confined
7 in a secure facility for long-term control, care, and
8 treatment.

9 If the State carries this burden of proof and
10 convinces you beyond a reasonable doubt as to each of these
11 two elements, it is entitled to a finding that Mr. Stewart
12 is a sexually violent predator. If the State does not meet
13 that burden of proof as to one or both of these elements,
14 the respondent, Mr. Stewart, is entitled to a finding that
15 he is not a sexually violent predator.

16 Now that's the re-charge on what the statute says, and
17 I'll let you go and return to your deliberations..

18 (JURY EXITS COURTROOM AT 11:24 AM.)

19 THE COURT: Anything from the State on the re-charge?

20 MR. BOGLE: No, your Honor. Thank you.

21 THE COURT: Defense?

22 MS. BROWDER: No, sir.

23 THE COURT: All right. We'll be at ease.

24 (COURT IN RECESS AT 11:25 AM.)

25 (COURT BACK IN SESSION AT 12:19 PM.)

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1 THE COURT: Thank you. You may take your seats. I'm
2 informed by the bailiff that we have a verdict. We'll send
3 for the jury in just a moment. If any of you who are here
4 feel like you'll be emotional when the verdict is returned,
5 depending on what it is, I suggest you leave the courtroom.
6 That is, the Court will not tolerate any outbursts by
7 anyone. And if anyone cannot control themselves and makes
8 any outbursts, I'll have to hold you in contempt of court
9 and incarcerate 'em for awhile. So, I suggest you not do
10 that. Not suggesting that anybody would, but just in case.

11 Bring in the jury.

12 (JURY RE-ENTERS COURTROOM AT 12:20 AM.)

13 THE COURT: Mr. Foreman, I understand the jury has
14 reached a verdict.

15 THE FOREPERSON: We have, your Honor.

16 THE COURT: If you'll hand it to the bailiff, the
17 bailiff will hand it up to me.

18 (VERDICT RECEIVED UP BY THE COURT.)

19 THE COURT: The Clerk will publish.

20 MADAM CLERK: The State of South Carolina, County of
21 York, in the Matter of Care and Treatment of Justin L.
22 Stewart, Case Number 2015-CP-46-3790, we, the jury,
23 unanimously answer the question as follows: Has the
24 petitioner, the State of South Carolina, proved beyond a
25 reasonable doubt Justin L. Stewart is a sexually violent

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1 predator under the South Carolina Sexually Violent Predator
2 Act, yes, Justin L. Stewart is a sexually violent predator.
3 Signed this date by Kenneth G. Claiborne, May 31st, 2017.

4 Ladies and gentlemen of the jury, please affirm that
5 this is your verdict by raising your right hand. Thank
6 you. Let the record show all hands are raised.

7 (ALL JURORS AFFIRMED THE VERDICT BY RAISING OF HANDS.)

8 THE COURT: Anything from the State before the jury is
9 dismissed?

10 MR. BOGLE: No, your Honor. Thank you.

11 THE COURT: Defense?

12 MS. BROWDER: No, sir.

13 THE COURT: All right. Members of the jury panel,
14 thank you for your help. This concludes the work of the
15 jury for the week.. And so, you're free to leave, and
16 you'll be mailed a check. Thank you. Not much of one, but
17 it's a check.

18 (JURY EXITS COURTROOM AT 12:22 PM.)

19 THE COURT: The jury has been dismissed. Anything
20 from the State?

21 MR. BOGLE: No, your Honor.

22 THE COURT: Defense?

23 MS. BROWDER: Yes, sir. At this time, I would renew
24 all our prior objections, specifically as to the charge of
25 when he was nine years old and the one when he was a

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1 thirteen-year-old being admissible. In addition I would
2 move for a new trial at this time based on those, as well
3 as, based on the evidence presented the jury could not come
4 to the conclusion that is beyond a reasonable doubt,

5 THE COURT: All right. I deny the motion. I believe
6 that, as I said earlier, the evidence was sufficient to
7 support the verdict, and I believe that my earlier
8 evidentiary rulings were correct.

9 The State has an order prepared?

10 MR. BOGLE: We have. May I approach, your Honor?

11 THE COURT: Yes, sir. Ms. Browder, have you seen that
12 proposed order?

13 MR. BOGLE: What I'll do, Judge, is I'll deliver this
14 to the Detention Center with directions for who they have
15 to call for mental health to set up a time to bring him
16 down there.

17 MS. BROWDER: There's no objection to it, your Honor.

18 THE COURT: All right. The order's been signed,
19 without objection. Thank you. All right, that's it for
20 right now and I believe for the week. The next thing we
21 have is tomorrow with one.

22 MADAM CLERK: Yes, sir.

23 THE COURT: Thank you.

24 (COURT IN RECESS AT 12:30 PM.)

25 (END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 30th and 31st days of May, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: August 10 1 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 JUSTIN L. STEWART,)
 RESPONDENT.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-46-03790

ORDER OF COMMITMENT

FILED-RECEIVED
 2017 MAY 31 PM 12:28
 DAVID HAMILTON
 S.C. CC P & CS
 YORK COUNTY, Y.C.

The trial of this case was held in the York County Court of Common Pleas the week of May 30, 2017. A jury of citizens from York County heard this case pursuant to a request for a jury trial filed by the State. Senior Assistant Attorney General James G. Bogle, Jr. represented the State and Anna R. Browder, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:

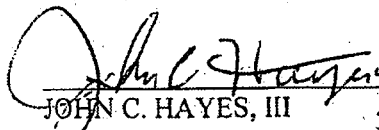
The State has proven beyond a reasonable doubt that Respondent, Justin L. Stewart, is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED THAT:

(a) Respondent Justin L. Stewart is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent Justin L. Stewart is to continue to be detained at the York County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health, at 4460 Broad River Road, Columbia, SC 29210. The Detention Center is to transport Respondent on such scheduled date as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.


 JOHN C. HAYES, III
 Sixteenth Judicial Circuit
 Court of Common Pleas

5/31/17

May - 31st, 2017
 York, South Carolina

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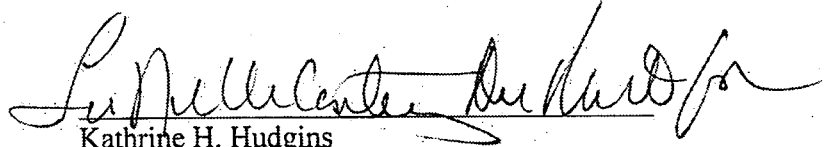
JUN 02 2017

SC Court of Appeals

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,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

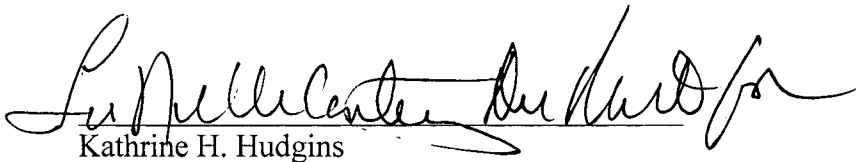
ATTORNEY FOR APPELLANT

This 15th day of February, 2018.

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,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 15th day of February, 2018.

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FEB 15 2018

SC Court of Appeals