

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable James R. Barber, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JAMES GIBSON,

APPELLANT

APPELLATE CASE NO. 2017-000610

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED FEBRUARY 23, 2017	1
VOIR DIRE	4
JURY SELECTION	14
OPENING STATEMENT BY MR. MORROW	23
OPENING STATEMENT BY MR. FALK	26
TESTIMONY	
DR. MARIE GEHLE	
Direct Examination by Mr. Morrow	29
Voir Dire Examination by Mr. Falk	32
Direct Examination by Mr. Morrow (Continued)	34
Cross Examination by Mr. Falk	69
Redirect Examination by Mr. Morrow	80
OBJECTION	83
TESTIMONY	
DR. MARIE GEHLE	
Proffer (In Camera)	84
COURT'S RULING	85
TESTIMONY	
DR. MARIE GEHLE	
Redirect Examination by Mr. Morrow (Continued)	86
MOTION FOR A DIRECTED VERDICT	89
COURT'S RULING	90
TESTIMONY	
CHARLOTTE TAYLOR	
Voir Dire Examination by Mr. Falk	93
Voir Dire Examination by Mr. Morrow	97

COURT'S RULING	98
TESTIMONY	
CHARLOTTE TAYLOR	
Proffer Examination by Mr. Falk.....	99
Direct Examination by Mr. Falk	112
Cross Examination by Mr. Morrow	131
JAMES GIBSON	
Direct Examination by Mr. Falk	133
Cross Examination by Mr. Morrow	153
DR. MARIE GEHLE	
Reply Direct Examination by Mr. Morrow.....	157
CLOSING ARGUMENT BY MR. MORROW	161
CLOSING ARGUMENT BY MR. FALK	168
CHARGE ON THE LAW	175
VERDICT	191
ORDER OF COMMITMENT	195
CERTIFICATE OF COUNSEL	196

1 INDEX:

2	Voir dire	4
3	Jury Selection	14
4	Jury sworn	16
5	Opening statement Court	16
6	Opening Plaintiff	23
7	Opening Defendant	26
8	Plaintiff Rests	88
9	Motion for directed verdict.....	89
10	Defense Rests	156
11	Plaintiff close	161
12	Defendant close	168
13	Court's charge	175
14	Verdict	191

15

16 WITNESS/DESCRIPTION PAGE NO.

17	Dr. Marie Gehle direct.....	29
18	Voir Dire by Mr. Faulk	32
19	Dr. Marie Gehle cross.....	69
20	Dr. Marie Gehle redirect.....	80
21	Proffered testimony of Dr. Marie Gehle	84
22	Dr. Marie Gehle recross.....	87
23	Voir Dire examination of Charlotte Taylor ...	93
24	Voir Dire examination of Charlotte Taylor ...	97

25

State v Gibson

2/23/17

3

1	Charlotte Taylor	Proffer.....	98
2	Charlotte Taylor	direct.....	112
3	Charlotte Taylor	cross.....	131
4	James Gibson	direct.....	133
5	James Gibson	cross.....	153
6	Dr. Marie Gehle	reply direct.....	157

7

8 EXHIBITS:

9	Plaintiff's Exhibit No. 1	47
10	Plaintiff's Exhibit No. 2	49
11	Plaintiff's Exhibit No. 3	51
12	Court's Exhibit No. 1	106
13	Court's Exhibit No. 2	190
14		
15	Certificate of Court Reporter.....	194

16

17

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(Jury panel in at 9:30 a.m.)

THE COURT: This is where I ask everybody a bunch of questions. Again, another case -- the state alleges that Mr. Gibson was a sexual violent predator. And as a result the jury should determine that he is and that he should be confined in a secure facility for treatment. Of course, Mr. Gibson denies that and as a result we're here to let you hear the evidence in the case and ultimately determine the facts, apply the law, and render a verdict.

Now, I asked a number of questions the other day and we're going to have to ask many of them again. Now, the folks that had some issues that prevented them from, in some instances that allowed them to be excused, they're not here today on this case because the questions are the same questions that we asked the other day. And all of y'all indicated that you would have been in a position to serve in the other case, so I assume your answers are similar. But we're going to ask the questions and see what happens.

First, I want to introduce you to Mr. Gibson. Mr. Gibson, if you'd stand and let the jury see.

MR. GIBSON: (Stands)

THE COURT: This is Mr. James Gibson, ladies and gentlemen. I would inquire at this time is there any member of this jury panel or any member of the jury panel whose immediate family who is related by blood or connected by

State v Gibson

2/23/17

5

1 marriage or either or now in the past has had a close
2 personal relationship with Mr. Gibson or is now or in the
3 past has had a business or a employment relationship with
4 Mr. Gibson. If so, please stand.

5 (No one stands)

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

7 MR. GIBSON: (Seated)

8 THE COURT: Ladies and gentlemen as is the case
9 and situation in most cases when people come into court,
10 they are represented by attorneys. And then that is, in
11 fact, the situation here today. The State of South Carolina
12 is represented by the Attorney General's Office. And Mr.
13 Christopher A. Morrow, who is standing here, is a member of
14 the South Carolina Bar and employed by the Attorney
15 General's office is the Assistant Attorney General who is
16 hear handling this case. And I would inquire at this time
17 is there any member of this jury panel here, a member of the
18 jury panel who is related by blood or connected by marriage
19 or either now or in the past has had a close personal
20 relationship with Mr. Morrow or either now or in the past
21 has had an employment or a business relationship with Mr.
22 Morrow or with the Attorney General's office. If so, please
23 stand.

24 (No one stands)

25 THE COURT: Ladies and gentlemen, representing Mr.

1 Gibson is Mr. James Faulk. And Mr. Faulk is with the Faulk
2 Law Firm and I think their offices are in Charleston but he
3 practices throughout the State of South Carolina. He's a
4 member of the South Carolina Bar as well. And I would
5 inquire at this time, is there any member of this jury panel
6 or any member of the jury panel's immediate family who is
7 related by blood or either now or in the past has had a
8 close personal relationship with Mr. Faulk or either now or
9 in the past has had an employment or a business relationship
10 with him or his office or been represented by Mr. Faulk. If
11 so, please stand? All right. Thank you, sir.

12 (No one stands)

13 THE COURT: Now, ladies and gentlemen is there any
14 member of this jury panel know anything about the sexual
15 offense or offenses, which Mr. Gibson was convicted of? If
16 so, please stand?

17 (No one stands)

18 THE COURT: Does the fact that Mr. Gibson has been
19 convicted of a sexual offense and has completed his criminal
20 sentence related to the conviction in any way prevent you
21 from being able to be a fair and impartial juror? If so,
22 please stand?

23 (No one stands)

24 THE COURT: Is there any member of this jury panel
25 or any member of the jury panel's immediate family who have

State v Gibson

2/23/17

7

1 been a victim of a sexual assault? If so, please stand?

2 (No one stands)

3 THE COURT: Is there any member of this jury panel
4 or any member of the jury panel's immediate family been
5 charged with or convicted of a sexual offense? If so,
6 please stand?

7 (No one stands)

8 THE COURT: Is there any member of this jury panel
9 had any training or experience in the fields of psychiatry,
10 psychology or the law? If so, please stand?

11 (No one stands)

12 THE COURT: This is -- apparently Anna Good is not
13 the right name in this case?

14 MR. MORROW: Again, that's a typo, Your Honor.

15 THE COURT: Mr. Faulk?

16 MR. FAULK: I believe that's correct, Your Honor.

17 THE COURT: Ladies and gentlemen, some potential
18 witnesses who may testify in this trial are Dr. Marie Gehle.
19 And is Dr. Gehle here?

20 THE WITNESS: (Dr. Gehle stands)

21 THE COURT: This is Dr. Gehle right here. And
22 Charlotte Taylor, Dr. Charlotte Taylor, is she here?

23 THE WITNESS: (Dr. Taylor stands)

24 THE COURT: This is Dr. Taylor standing back
25 there. And I would inquire at this time is there any member

1 of this jury panel or any member of the jury panel's
2 immediate family who is related by blood or connected by
3 marriage or either now or in the past has had a close
4 personal relationship with either of these ladies? Or
5 either now or in the past has had an employment or a
6 business relationship or been seen by either of these
7 ladies. If so, please stand?

8 (No one stands)

9 THE COURT: Is there any member of this jury panel
10 been involved in a prison ministry, a prison outreach
11 program or any other program involving contact with
12 incarcerated persons. If so, please stand?

13 (No one stands)

14 THE COURT: Is there any member of this jury panel
15 or a member of the jury panel's immediate family ever been
16 subject to a civil commitment proceedings or been
17 voluntarily or involuntarily civilly committed. If so,
18 please stand.

19 (No one stands)

20 THE COURT: Any member of this jury panel who has
21 any reason to believe that they may not be fair and
22 impartial in this case if you are seated as a juror? If so,
23 please stand?

24 (No one stands)

25 THE COURT: Any member of this jury panel or any

State v Gibson

2/23/17

9

1 member of the jury panel's immediate family who has been the
2 victim of a violent crime?

3 (No one stands)

4 THE COURT: Is there any member of this jury panel
5 believe it is impossible to rehabilitate persons that were
6 convicted of committing sexual crimes against children? If
7 so, please stand?

8 (No one stands)

9 THE COURT: Does any member of this jury panel
10 believe that people who are -- suffer from pedophilia can
11 ever be cured -- oh, I guess cannot be cured would be --

12 (No one stands)

13 THE COURT: Does any member of this jury panel
14 believe that sentences defendants receive for sexual crimes
15 against children are too lenient? If so, please stand?

16 (No one stands)

17 THE COURT: Any member of this jury panel ever
18 work for or in any way been connected with a social services
19 agency, a Guardian ad litem program, a foster care program,
20 or any other entity that investigates or counsels victims of
21 rape or sexual assault. If so, please stand?

22 JUROR NO. 127: (Stands)

23 THE COURT: Yes, ma'am. Your name?

24 JUROR NO. 127: Deborah McDonald Jamison.

25 THE COURT: All right. And you work for who?

1 JUROR NO. 127: Crisis -- I work for CASA.

2 THE COURT: All right. And the fact that you're
3 employed with an agency that does counseling, would that
4 prevent you from listening to the evidence in this case and
5 based upon such evidence render a fair and impartial
6 verdict?

7 JUROR NO. 127: No.

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

9 Yes, ma'am. Your name.

10 JUROR NO. 21: Audrey Brown.

11 THE COURT: All right. Ms. Brown.

12 JUROR NO. 21: Department of Social Services.

13 THE COURT: All right. The fact that you're
14 employed with DSS, would that prevent you from listening to
15 the evidence in this case and based upon such evidence
16 render a fair and impartial verdict?

17 JUROR NO. 21: No, it would not.

18 THE COURT: Thank you, ma'am.

19 Is there any member of this jury panel or any member of
20 the jury panel's immediate family associated with any
21 victims' advocacy group such as Darkness to Light? If so,
22 please stand?

23 Yes, ma'am. Your name again?

24 JUROR NO. 127: Deborah McDonald Jamison.

25 THE COURT: And you're associated with?

State v Gibson

2/23/17

11

1 JUROR NO. 127: With CASA.

2 THE COURT: All right. The fact that you have
3 that relationship, would that prevent you from listening to
4 the evidence in this case and based upon such evidence
5 rendering a fair and impartial verdict?

6 JUROR NO. 127: No.

7 THE COURT: Thank you, ma'am.

8 Is there any member of this jury -- does any member of
9 this jury panel personally know or had recent communication
10 with a member of the First Circuit Solicitor's Office? If
11 so, please stand?

12 (No one stands)

13 THE COURT: Any member of this jury panel
14 personally know or had any recent communications with a
15 member of the South Carolina Attorney General's Office? If
16 so, please stand?

17 (No one stands)

18 THE COURT: Any member of this jury panel have any
19 bias or prejudice in connection with this case or any of the
20 individuals involved in this case? If so, please stand?

21 (No one stands)

22 THE COURT: Any member of this jury panel or any
23 member of the jury panel's immediate family ever been
24 charged, accused or convicted of criminal sexual conduct?
25 If so, please stand?

1 (No one stands)

2 THE COURT: Any member of this jury panel or any
3 member of the jury panel's immediate family been the victim
4 of a criminal sexual conduct or sexual abuse, whether
5 reported or unreported?

6 (No one stands)

7 THE COURT: Has any member of this jury panel have
8 any strong beliefs about sexual abuse of any kind that would
9 affect your being fair and impartial in consideration of the
10 evidence in this trial?

11 (No one stands)

12 THE COURT: Ladies and gentlemen, at the end of
13 this case, I'm going to charge you as to the law in this
14 case. It is your obligation to accept the law as I give it
15 to you and apply it to the facts that you determine them to
16 be. Is there any member of this jury panel who believes you
17 will not be able to comply with my instructions and apply
18 the law, as I give it to you, to the facts that you
19 determine? If you cannot comply with my instructions,
20 please stand at this time?

21 (No one stands)

22 THE COURT: Any member of this jury panel know of
23 any bias or prejudice either for or against the State or Mr.
24 Gibson that you may have? If so, please stand?

25 (No one stands)

State v Gibson

2/23/17

13

1 THE COURT: Any member of this jury panel believe
2 that you cannot be fair and impartial to both the State and
3 the Respondent? If you believe you cannot, please stand?

4 (No one stands)

5 THE COURT: All right. Any further inquiry from
6 the State?

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

8 THE COURT: Anything from the Respondent?

9 MR. FAULK: No, Your Honor.

10 THE COURT: All right. Madam Clerk, if we could.

11 THE CLERK: All right. It'll take me just a few
12 minutes.

13 THE COURT: All right.

14 (Court at ease)

15 THE COURT: Madam Clerk, we need the one
16 alternate.

17 THE CLERK: One alternate.

18 THE COURT: Yes.

19 (Court at ease)

20 (Off the record bench conference with counsel and the
21 Court.)

22 THE COURT: Y'all ready?

23 MR. MORROW: Yes.

24 MR. FAULK: Yes.

25 THE COURT: All right. Ma'am Clerk, if you would.

1 THE CLERK: All right. Plaintiff?

2 MR. MORROW: Plaintiff strikes juror 16.

3 COURT REPORTER: I'm sorry. The number?

4 THE COURT: I'm sorry, which one?

5 MR. MORROW: 16.

6 COURT REPORTER: Thank you.

7 MR. FAULK: What are the alternates?

8 THE CLERK: 21 through 23.

9 MR. FAULK: We strike juror no. 10.

10 THE CLERK: Plaintiff?

11 MR. MORROW: Juror 7.

12 MR. FAULK: Juror 19.

13 MR. MORROW: Juror 9.

14 MR. FAULK: Juror 14.

15 MR. MORROW: Juror 4.

16 MR. FAULK: Juror 8.

17 THE COURT: All right. Each of you get one strike
18 in 21, 22 or 23, for the alternate.

19 MR. MORROW: Juror 22.

20 MR. FAULK: Juror 21.

21 THE CLERK: All right. When I call your name,
22 please come forward and have a seat in the jury box. Bring
23 your personal belongings with you.

24 THE COURT: Madam Clerk, hold on one second. Let
25 me just make sure the State had 16, 7, 9 and 14 and

State v Gibson

2/23/17

15

1 alternate 22?

2 MR. MORROW: The State had 16, 7, 9, and 4.

3 THE COURT: All right. I'm sorry.

4 MR. MORROW: And then alternate 22.

5 THE COURT: And the Respondent had 10, 19, 14, and
6 8 and alternate 21; is that correct?

7 MR. FAULK: Yes.

8 THE COURT: All right. I'm sorry Madam Clerk.

9 THE CLERK: That's all right, Judge.

10 Juror No. 100, Ald Q Johnson;

11 Juror No. 155, Carolyn Robinson;

12 Juror No. 75, Cynthia Green;

13 Juror No. 76, Joseph Griffin;

14 Juror No. 30, William Clark;

15 Juror No. 12, Freddy Bishop;

16 Juror No. 80, Robert Halback;

17 Juror No. 164, William Simmons;

18 Juror No. 77, Michael Gross;

19 Juror No. 117, Timothy Lee;

20 Juror No. 8, Barbara Beach;

21 Juror No. 128, Latecia Middleton; and,

22 The alternate is Juror No. 44, Marva Davis.

23 THE COURT: All right. Ladies and gentlemen of
24 the jury panel that did not get selected, I thank you very
25 much for making yourselves available today. I've got some

1 good news for you. We're going to be able to turn you loose
2 for the rest of the week. If you need an excuse for work,
3 if you go downstairs to the clerk's office, they will make
4 that available. Again, you will be getting a small check
5 from the county as a token of their appreciation in the not
6 too distant future. But we can't operate without you and we
7 certainly appreciate you being here. So y'all are free to
8 leave at this time. Have a nice weekend and goodbye.

9 (Remaining jury panel out at 12:19
10 p.m.)

11 THE COURT: Lieutenant, when those people come in
12 just put them in the back of the courtroom. And if any of
13 them -- I don't know if anybody has shown up late since we
14 started?

15 COURT SECURITY: Not yet, sir.

16 THE COURT: All right. Madam Clerk, can you swear
17 the jury?

18 (WHEREUPON, the Jury was duly
19 sworn)

20 THE COURT: Thank you ladies and gentlemen. Good
21 morning to you. And, again, I want to thank you as well for
22 making yourself available here this morning. This is a --
23 as I told you this is a case that the State is alleging that
24 Mr. Gibson is a sexual violent predator under the statutes
25 of the State of South Carolina. And as such that he needs

State v Gibson

2/23/17

17

1 to be confined in a facility, secure facility so that he can
2 receive certain treatment in the future. Mr. Gibson, as I
3 told you earlier denies this and we are now going to let you
4 listen to the evidence in the case. I'm going to apply the
5 law and you will ultimately have to make a decision based on
6 the evidence and the law as to whether or not Mr. Gibson is,
7 in fact, a sexual violent predator under our laws. This is
8 a very important case to both the State and to the
9 Respondent, Mr. Gibson. And we want to do everything we can
10 to see to it that he gets a fair and impartial trial. One
11 of the ways that I'm going to ask you to help do that is
12 that you not discuss this case with each other or with
13 anyone else at any time until you have been given
14 instructions that you can begin deliberations in the case.
15 That means whenever we break and you go back into the jury
16 room for a little rest and some refreshments, don't discuss
17 the case with each other at all when you're back there. If
18 we break and go to lunch or by chance this case goes into
19 tomorrow and you leave the courthouse, you run into friends
20 or family or acquaintances, do not discuss the case with
21 anybody that you come in contact with. I ask you to do this
22 for several reasons. One, you need to give both the State
23 and the Respondent an opportunity to offer whatever they
24 wish to offer in this case in terms of the evidence make
25 whatever arguments that they wish to make before you begin

1 to formulate any opinions about the case. If you go back
2 and start talking about it before everybody has completed
3 what they wish to offer, then you may begin to formulate
4 some opinion about the case. And that wouldn't be fair to
5 either side if they haven't been able to give a full
6 presentation. If you go to lunch and run into a friend or
7 you go home at night and see somebody that you know and tell
8 them you're on jury duty, talk about the case, I can promise
9 you, even though they've not heard the first word of
10 evidence, they're going to have an opinion and they're going
11 to express that to you and it may influence you in some way.
12 So I'm going to ask you not to do that. At the end of your
13 jury service, you can talk to anybody you want to about any
14 of your service and tell them anything you want to tell them
15 about the case. But until then, please let's not discuss
16 the case at all.

17 I'm also going to ask that you not do any private
18 investigating in the case. And, again, by that I mean don't
19 get on Google and try and check anything out and see what
20 you can find out on the computer or anything like that.
21 Again, you are to decide the case based on the evidence
22 that's presented in front of you here in this courtroom and
23 that alone and we're going to ask that you do so.

24 Now, as I told you the State is seeking to have the
25 Respondent determined to be a sexually violent predator.

State v Gibson

2/23/17

19

1 This is a civil case but it's a little bit different than
2 the normal civil case in that the burden of proof on the
3 State is to prove its claim beyond a reasonable doubt, which
4 is generally the burden of proof that's required in a
5 criminal case. Generally, in a civil case, the burden of
6 proof is by the preponderance of the evidence. So there's a
7 higher burden on the State of South Carolina, but they
8 welcome that burden and they will attempt to meet that
9 burden. But the way this case is going to unfold, in case
10 you've not served on a jury before or it's been some time is
11 that the first thing that's going to happen, the lawyers are
12 going to have an opportunity to speak with you. This is
13 called an opening statement. And this is a chance for them
14 to introduce themselves and to tell you a little bit about
15 the case so you have some understanding of what the claims
16 are in the case by both the State and Mr. Gibson. After
17 both sides have made their opening statements -- and, of
18 course, the State will go first. The State goes first
19 throughout the course of the trial because the burden of
20 proof falls on the State. After both sides have made their
21 opening statement, then the State will begin the
22 presentation of its evidence. And I would assume most of
23 its evidence would come in by way of testimony from
24 witnesses. We can have several types of witnesses in this
25 case. We could have a fact witness, somebody that has seen

1 something, heard something, smelled something, tasted
2 something, they know something from one of their senses and
3 they will tell you what that factual information is. We
4 could also have, what we call, an expert witness. And an
5 expert witness has special knowledge, experience, training,
6 skill in some area and can offer opinions, which can assist
7 you in understanding any matters that may be in controversy.
8 So, as I said, most of the evidence, I would assume, will
9 come in by way of testimony from witnesses, but we could
10 have other types of evidence. We could have some exhibits
11 of some sort, that type of evidence is introduced. It's
12 given an exhibit number. And that type of evidence will go
13 with you to the jury room when you begin your deliberations.
14 Testimony goes with you in your memory. So it's essential
15 that you pay close attention to what's being said here
16 today.

17 If you can't hear somebody, don't understand somebody,
18 let me know in some way and we'll make sure that that
19 witness or lawyer or whoever it is speaks up or speaks more
20 clearly so that you will understand what's going on.

21 A third type of evidence that could come in is what we
22 call a stipulation. And that's where the parties stipulate
23 or agree as to some fact or some matter. If there's a
24 stipulation, the lawyers will tell me and I will tell you
25 and you are to accept that as though it has been proven here

State v Gibson

2/23/17

21

1 in the courtroom.

2 Now, after the State has put up whatever evidence the
3 State wishes to offer, Mr. Gibson is given an opportunity to
4 offer any evidence that Mr. Gibson wishes to offer. And I
5 would assume his evidence would be of a similar nature to
6 the State's in that most of it would be testimony. But Mr.
7 Gibson has no burden in this case and so he doesn't
8 necessarily have to offer any evidence in the case.

9 After both sides have presented whatever evidence they
10 wish to offer, then the lawyers are given another chance to
11 talk to you. That's called a closing argument. A closing
12 argument is different from an opening statement in that the
13 closing argument is a chance for them to review with you the
14 evidence that they think came in, to discuss with you issues
15 that they hope you will discuss when you go back into the
16 jury room, for them to emphasize what they think is
17 important that would be considered by you in your
18 deliberations. It's a chance for the lawyers to attempt to
19 convince or persuade you as to why you should ultimately
20 return a verdict for their respective client.

21 When both sides have concluded their closing arguments,
22 then ladies and gentlemen, I will you charge you or instruct
23 you as to the law. You will then retire to the jury room
24 and begin your deliberations. I think, as I've told you on
25 several occasions this week, you are the judges of the facts.

1 in this case. You are the sole judges of the facts. Nobody
2 else will participate in that process but you. My
3 responsibility is different in that I have two areas of
4 primary responsibility. One, I'm sort of the referee in
5 this matter. In the trial of a case we have rules that we
6 try cases by and it's my responsibility to see that those
7 rules are followed. My other responsibility is, as I've
8 told you, to instruct you or charge you as to the law so you
9 can apply the law to the facts.

10 Now, ladies and gentlemen, we have good lawyers in this
11 case. They're experienced. They've tried a number of
12 cases. I want you to pay close attention to what they tell
13 you during the course of the trial. But understand what
14 they say is not evidence. They are attorneys for their
15 respective clients. They represent their clients. It's
16 their responsibility to put forth in front of you what they
17 think is necessary for their case. They're advocates. Pay
18 close attention, but what they tell you is not evidence and
19 should not be considered by you as evidence.

20 Ladies and gentlemen, I don't know how long this
21 trial's going to last. I'm going to do my best to see if we
22 can finish it today, but we're not going to do anything to
23 cut off either the State or the Respondent in putting forth
24 what they wish to offer. But we're going to move as quickly
25 and as smoothly as we can and we'll see what happens. So

State v Gibson

2/23/17

23

1 with that said, I'll call on Mr. Morrow.

2 Are you ready to proceed.

3 MR. MORROW: Yes, Your Honor.

4 THE COURT: All right. If you would, please, sir.

5 PLAINTIFF OPENING STATEMENT

6 BY MR. MORROW:

7 Good morning, ladies and gentlemen. My name is
8 Christopher Andrew Morrow and I work for the South Carolina
9 Attorney General's Office. Now, from time to time you may
10 hear someone else in the courtroom refer to me as Cam. Cam
11 is my initials. It is my nickname. That's what I go by, so
12 that's why you might hear people call me that.

13 Like I said, I work for the South Carolina Attorney
14 General's Office. And you may be wondering why someone from
15 Columbia is down here trying this case and why not somebody
16 more local. Well, the simple answer to that question is
17 when this South Carolina Sexually Violent Predator Act was
18 passed by the State Legislature, they assigned all of the
19 cases to be handled by the South Carolina Attorney General's
20 Office. That's why I'm here.

21 Now, this case today has been brought by the State
22 under the Sexually Violent Predator Act. And we are here
23 because the State is seeking the civil commitment of James
24 Gibson as a sexually violent predator. You might be asking
25 yourself, what is a sexually violent predator. About

1 sixteen years ago, the South Carolina General Assembly
2 passed the Sexually Violent Predator Act with two thoughts
3 in mind. First, that there are certain individuals in our
4 State that suffer from mental abnormalities or personality
5 disorders that make them likely to commit acts of sexual
6 violence. And second that these individuals need treatment
7 in a secure setting to the protect the public during the
8 treatment process.

9 The State contends that James Gibson is one of those
10 individuals the General Assembly had in mind when they
11 passed the sexually violent predator act. To prove that
12 James Gibson is a sexually violent predator, the State must
13 prove to you two elements. First, that he has been
14 convicted of at least one sexually violent offense. James
15 Gibson has been convicted of a sexually violent offense. I
16 don't think the other side is going to contest that. You'll
17 hear about his offending history and what happened to his
18 victims. Second, the State must prove to you that James
19 Gibson suffers from a mental abnormality or personality
20 disorder that makes him likely to commit future acts of
21 sexual violence if not confined for long-term controlled
22 care and treatment. And to that point, the State is
23 providing to you with the expert, Dr. Marie Gehle, chief
24 psychologist with the Department of Mental Health. And
25 she's going to tell you that she diagnosed Mr. Gibson with

State v Gibson

2/23/17

25

1 pedophilia disorder and exhibitionist disorder. You'll hear
2 testimony from which you can decide whether James Gibson
3 lacks control over that mental abnormality and whether those
4 disorders make him likely to commit acts of a future sexual
5 violence. You'll also hear the methodology that Dr. Gehle
6 used in conducting her evaluation when reviewing multiple
7 files, conducting an actuarial of James Gibson's risk and
8 interviewing James Gibson.

9 Now, Dr. Gehle will tell you that he suffers from
10 pedophilic disorder and that's a relevant abnormality under
11 the Sexually Violent Predator Act. And that she believes
12 that he is likely to reoffend based on her evaluation.
13 You'll also hear from witnesses that the Defense may
14 provide.

15 So the question that will be presented to you is after
16 comparing the witnesses in this trial and assessing their
17 credibility and thoroughness and the extent of their
18 evaluation and knowledge, whether James Gibson suffers from
19 a mental abnormality or personality disorder, which makes
20 him likely to reoffend sexually if he's not committed to a
21 secured facility for care, control and treatment. In other
22 words, is James Gibson safe to be out in the community on
23 his own and not commit another act of sexual violence ever
24 again?

25 Now, the burden of proof in this case is on the State.

1 And the State welcomes that burden. The Judge will instruct
2 you that this is a civil case, as he has already, and not a
3 criminal case. But the Sexually Violent Predator Act --
4 under the Sexually Violent Predator Act the State must prove
5 its case beyond a reasonable doubt. Keep in mind that's not
6 beyond all doubt or any doubt or any conceivable doubt.
7 It's beyond a reasonable doubt. Later the Judge will tell
8 you that truth beyond a reasonable doubt is truth that
9 leaves you firmly convinced.

10 Now, these cases by their very nature are going to --
11 tend to contain disturbing facts. This case is certainly no
12 different in that regard. And I ask you to do one thing. I
13 ask you to listen to the evidence. And as you listen to the
14 evidence in this case, the verdict you should render will
15 become clear, that James Gibson is a sexually violent
16 predator and should be committed to the sexually violent
17 predator treatment unit so that he can receive the treatment
18 that he needs and to protect the public during the treatment
19 process. Thank you.

20 THE COURT: Mr. Faulk.

21 MR. FAULK: May it please the Court?

22 THE COURT: Yes, sir.

23 DEFENSE OPENING STATEMENT

24 BY MR. FAULK:

25 Ladies and gentlemen, I've got a good friend of mine a

State v Gibson

2/23/17

27

1 few years older than me when we were going down to Santee.
2 He told me a story one day that I found very moving. He
3 said thirty years ago he woke up one morning at 4:00 in the
4 morning and he was inside the bucket and he didn't know what
5 happened that night because he was drinking the night
6 before. And I always think that's a good example because
7 he's now been thirty years sober and he has also -- he has a
8 big heart and he's one of the people that helps a lot of
9 other people fight sobriety. But I call that to your
10 attention to remind you that people can change. Stuff can
11 happen in peoples' lives and people can change who they
12 were. Sometimes it takes a wake-up call for people to get,
13 to realize that they were going down the wrong path. My
14 friend got that wake-up call when he woke up in a bucket not
15 knowing how he got there, knowing that it could have been
16 serious consequences for him. And honestly, some people
17 need more than one wake-up call. But the State's just going
18 to want you to focus on stuff that happened almost a quarter
19 of a century ago. I'm going to ask you to consider who Mr.
20 Gibson is today.

21 You're going to have an opportunity to hear from Mr.
22 Gibson and he's going to tell you about all of his personal
23 growth and the stuff that he has changed about his life, and
24 some of the insights he's gotten about his life over the
25 past twenty-two years while he's been at the Department of

1 Corrections.

2 This is going to be a relatively short trial. But I
3 don't want you to confuse that without appreciating the
4 serious consequences that your decision is going to have
5 today. Your decision today is going to make the difference
6 -- or tomorrow. It is going to be a short trial and your
7 decision is going to make a difference about whether or not
8 after serving a twenty-two year prison sentence he's going
9 to have to go away for an indeterminate period of time in
10 order to get additional treatment or whether or not after
11 twenty-two years he's going to be able to be let free. And
12 you're going to have an opportunity to consider some of this
13 stuff, personal growth and classes and training and
14 treatment that he has already received over these past
15 twenty-two years and you're going to decide whether or not
16 you're comfortable that that's enough, that he's not a
17 different person. But honestly, you're going to have an
18 opportunity to hear him talk. And I don't think -- I think
19 you'll have the opportunity, once you hear how sincere he is
20 about some of the changes he's made in his life, some of the
21 personal growth that he has gone through, you'll be
22 convinced that he's not the same person he was a quarter of
23 a century ago. And that it is okay for him to be let go.
24 He's served a very long prison sentence and its time for him
25 to go home. Thank you.

State v Gibson. Marie Gehle - Direct 2/23/17 29

1 THE COURT: All right. Are you ready to call your
2 first witness?

3 MR. MORROW: Yes, Your Honor.

4 The State would call Dr. Marie Gehle to the stand.

5 (WHEREUPON, Marie Gehle was sworn
6 to tell the truth.)

7 DR. MARIE GEHLE - DIRECT EXAMINATION

8 BY MR. MORROW:

9 Q Good morning, Dr. Gehle?

10 A Good morning.

11 Q Would you please state your full name and spell your
12 last name for the record?

13 A It's Marie Gehle, G-E-H-L-E.

14 Q Dr. Gehle --

15 A Excuse me. I'm sorry.

16 Q That's all right, Dr. Gehle. What is your occupation?

17 A I'm a clinical psychologist.

18 Q Okay. And how long have you worked in that capacity?

19 A Well, I was licensed in 2010.

20 Q Okay. And what advanced degrees do you possess?

21 A I have a bachelor's degree in psychology, a master's
22 degree in clinical psychology and a doctorate in clinical
23 psychology.

24 Q And Dr. Gehle, what is psychology?

25 A It's the study of human behavior and the mind.

1 Q And is there such a thing as forensic psychology?

2 A Yes.

3 Q And what is that?

4 A That's taking the science of psychology and applying it
5 to questions of the law. Forensic psychologist do things
6 like determine if somebody is competent to stand trial or
7 whether they might be not guilty by reason of insanity or
8 whether they might meet criteria as a sexually violent
9 predator. We give opinions to the court so that juries and
10 judges can make decisions about those issues.

11 Q And Dr. Gehle, have you had any additional specialized
12 training or experience within the field of forensic
13 psychology beyond your doctorate degree?

14 A I did a post-doctoral fellowship in forensic psychology
15 at East Central Regional Hospital in Augusta, Georgia.

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

18 A I'm a member of the American Psychology and Law
19 Society; a member of the Augusta Area Psychological
20 Association; and a member of the Sex Offender Civil
21 Commitment Program Network.

22 Q Dr. Gehle, does your work allow you to conduct forensic
23 evaluations of individuals?

24 A Yes.

25 Q And do you have experience working directly with sex

State v Gibson Marie Gehle - Direct

2/23/17

31

1 offenders?

2 A Yes.

3 Q How much experienced do you have working directly with
4 sex offenders?

5 A Well, I began working with sex offenders when I
6 graduated from college with my bachelor's degree in 2000. I
7 was a case manager at a community mental health center and
8 worked with sex offenders who were undergoing treatment.
9 And then I worked with sex offenders throughout the rest of
10 my career on and off. I've been working at the Department
11 of Mental Health in the sexually violent predator program
12 since 2009.

13 Q Dr. Gehle, approximately how many sex offenders have
14 you evaluated?

15 A I've evaluated approximately, maybe about two hundred
16 and twenty-five to two hundred and fifty.

17 Q And what types of evaluations have you conducted in
18 relation to sex offenders?

19 A I have done -- all my experience with sex offenders
20 evaluations have been under the Sexually Violent Predator
21 Act. So I've done evaluations to determine if people should
22 be committed as sexually violent predators. And then I've
23 also done evaluations of the people who have been committed
24 to see if they continue to need to be committed to the
25 sexually violent predator program. So those are the two

1 types.

2 Q Dr. Gehle, have you ever testified for the respondent
3 in sexually violent predator cases?

4 A Yes.

5 Q And have you ever recommended that a respondent in a
6 SVP case did not meet criteria for commitment?

7 A Yes, many times.

8 Q Do you know about what percentage of the time you
9 recommend that respondents do not meet commitment?

10 A I believe it's about a third of the cases, maybe thirty
11 to forty percent; I believe, that they do meet the criteria.
12 So sixty to seventy percent of the time I say that they do
13 not meet criteria.

14 Q And Dr. Gehle, have you ever been previously recognized
15 as an expert and testified as an expert in the field of
16 forensic psychology?

17 A Yes.

18 Q How many times?

19 A Around seventy-five to a hundred times.

20 MR. MORROW: Your Honor, at this time the State
21 would move that Dr. Gehle be recognized as an expert in the
22 field of forensic psychology.

23 THE COURT: Any Voir Dire?

24 VOIR DIRECT EXAMINATION OF DR. GEHLE

25 BY MR. FAULK:

1 Q Are you board certified in forensic psychiatry?

2 A Well, I'm a psychologist, so I'm not --

3 Q I'm sorry. Excuse me. Forensic psychology?

4 A No, I'm not.

5 Q And you said that you are the chief psychologist? Is
6 there more than one chief psychologist at the Department of
7 Mental Health?

8 A Well, I don't think I said what my title was. But my
9 title is chief psychologist and there are multiple. It's a
10 state title.

11 MR. FAULK: We'll accept her as an expert.

12 THE COURT: All right. Ladies and gentlemen, as I
13 told you, we might have, what we call, an expert witness in
14 this case. And under our rules if scientific, technical or
15 other specialized knowledge will assist you, the trier of
16 the facts, in understanding any of the evidence or in
17 determining any fact that may be in issue, a witness may be
18 qualified as an expert by virtue of his or her knowledge,
19 skill, experience, training or education. And as such, may
20 offer opinions in his or her areas of expertise. I find Dr.
21 Gehle to be qualified as an expert in the field of forensic
22 psychology. And as such, she may offer opinions in this
23 field. I tell you that her testimony should be given such
24 weight and credibility as you deem appropriate, as you will
25 with any and all witnesses who testify in this trial.

1 DR. MARIE GEHLE - CONTINUED DIRECT EXAMINATION

2 BY MR. MORROW:

3 Q Dr. Gehle, I just wanted to clear up one point. Are
4 you licensed in the State of South Carolina to practice
5 psychology?

6 A Yes.

7 Q Okay. Thank you. Dr. Gehle, how did you become
8 involved in this case?

9 A I was court ordered to do an evaluation to determine if
10 Mr. Gibson meets criteria under the sexually violent
11 predator act.

12 Q And were you paid to conduct your evaluation in this
13 case?

14 A I'm paid a salary by the Department of Mental Health,
15 so I was but not directly for this case. I get paid a
16 salary to do these cases, whichever cases I'm appointed to
17 do.

18 Q Now, Dr. Gehle, do you get paid any differently if you
19 recommend commitment or if you don't recommend commitment?

20 A No.

21 Q Bonuses, anything like that?

22 A No.

23 Q Okay. What type of evaluation did you perform in this
24 case?

25 A What I call a pre-commitment evaluation.

State v Gibson Marie Gehle - Direct

2/23/17

35

1 Q And when you were ordered to do this evaluation, what
2 did the Court ask you to do?

3 A Well, they asked me to evaluate Mr. Gibson to see if he
4 has a mental abnormality or personality disorder that makes
5 him likely to engage in acts of sexual violence if not
6 confined for long term control, care, and treatment. They
7 ask me to submit that opinion to the Attorney General's
8 office and then it would be submitted to the Court and to
9 his attorney.

10 Q And could you describe the method by which you conduct
11 pre-commitment evaluations for SVP cases?

12 A Yes. The first thing I do is I get the order and the
13 information. I get a packet of information from the
14 Attorney General's office. That includes the petition that
15 they filed in Court in this case. That contains a number of
16 documents related to Mr. Gibson's legal history, any
17 evaluations that have been done, any investigations, any
18 charges, warrants, indictments, any sentences that he's
19 received from the courts. I also get another packet of
20 information that comes from the multi-disciplinary team,
21 which is the first group of people that look at people in
22 the course of these proceedings. And that includes things
23 like the department of corrections records and then many of
24 the records that are in the multi- -- or in the civil
25 commitment petition. I look through those records and see

1 if there are anything missing. If I know that there are
2 other charges that I don't have the documents for and I
3 request those and I read through all of that, and then I sit
4 down and do an interview with the person, Mr. Gibson in this
5 case. And then I take all that information and I write a
6 report. And I submit that to the attorney general's office
7 for the law.

8 Q And Dr. Gehle, again, as part of your evaluation, did
9 you meet with and interview Mr. Gibson?

10 A Yes.

11 Q And how long did you interview Mr. Gibson for?

12 A I interviewed him and had him take a psychologist test,
13 which he took on his own. And he was at our office for
14 about six hours and fifteen minutes.

15 Q And Dr. Gehle, is James Gibson in the courtroom today?

16 A Yes.

17 Q Can you point him out to the jury?

18 A He's sitting at the table next to his attorney.

19 Q Okay.

20 MR. MORROW: Your Honor, may the record reflect
21 the witness identified James Gibson?

22 THE COURT: It does.

23 BY MR. MORROW:

24 Q Dr. Gehle, did you explain the purpose of the
25 evaluation to Mr. Gibson?

State v Gibson Marie Gehle - Direct 2/23/17 37

1 A Yes.

2 Q And did he consent to the evaluation?

3 A Yes. When I do these evaluations, I give a long
4 explanation about exactly what we're going to do. What the
5 purpose of the evaluation is. What I'm looking for in terms
6 of criteria. What kind of questions I'm going to ask. I
7 give a long explanation and I also explain sort of how the
8 law works so that people will understand what might happen
9 next. And when I did that with him, he consented to
10 participate in the interview.

11 Q Dr. Gehle, in addition to meeting and interviewing with
12 Mr. Gibson, what information did you receive to aid you in
13 conducting your evaluation?

14 A Well, like I said I received the petition, which
15 included quite a few documents, things that the multi-
16 disciplinary team looked at, records from the department of
17 corrections, his national criminal history report, sentence
18 sheets, indictments, warrants, investigation records. And
19 there was also a few letters that were included in the
20 record. I also looked at the Orangeburg County Public Index
21 records for Mr. Gibson to clarify a few things. And that
22 was the bulk of the information.

23 Q And how did you obtain that information?

24 A Well, I obtained it when I was ordered to do this
25 evaluation and then there was a number of documents that

1 were missing from the record, so I requested those and I
2 obtained them, I believe, through your office or through
3 primary sources.

4 Q And Dr. Gehle, is that type of information that you
5 just listed for the jury, is that the type of information
6 that's typically and reasonably relied upon by other experts
7 in your field?

8 A Yes.

9 Q And did you consider relying on that information that
10 you listed for the jury a moment ago, and upon your
11 interview with Mr. Gibson, in rendering your opinion in this
12 matter?

13 A Yes.

14 Q Dr. Gehle, based on -- can you explain to the jury how
15 an individual's past sexual offenses relate to his future
16 sexual offense behavior?

17 A Well, it's important to look at somebody's past sexual
18 offense behavior because that -- I'm looking for patterns of
19 behavior so that I can estimate what somebody's likely to do
20 in the future. Sexual arousal patterns tend to remain
21 stable over time, so that's why they're very important in
22 this context.

23 Q And Dr. Gehle, based on your interview with Mr. Gibson
24 and in your review of his file, could you tell if he'd ever
25 been convicted of any sexual offenses?

State v Gibson Marie Gehle - Direct

2/23/17

39

1 A Yes.

2 Q And, in fact, you found that he'd been convicted of
3 nine sexual offenses; correct?

4 A That's correct.

5 Q Okay. The first one of those would be lewd and
6 lascivious behavior in Kansas; is that correct? From 1984?

7 A Yes.

8 Q Four counts of that?

9 A That's correct.

10 Q Okay. The second would be taking indecent liberties
11 with a child in 1998 -- or in 1988 in Carteret County, North
12 Carolina?

13 A That's correct.

14 Q The third one would be -- the I guess, sixth offense,
15 would be criminal sexual conduct with a minor in the second
16 degree in Orangeburg County in South Carolina in 1995?

17 A That's correct.

18 Q The seventh offense would be criminal sexual conduct
19 with a minor in the first degree in Orangeburg County in
20 South Carolina in 1995?

21 A That's correct.

22 Q You also found that he'd been convicted of two counts
23 of lewd act on a minor in Orangeburg County in South
24 Carolina in 1995?

25 A That's correct.

1 Q And Dr. Gehle, why is it important for you to review
2 and consider this type of information when rendering your
3 opinion?

4 A Well, it's important for me to look at, like, the
5 circumstances of the offense. What was the gender of the
6 victim? What was the age of the victim? What circumstances
7 were involved in the offense? How did the offense come to
8 happen? Was it very forceful; were certain activities
9 noted? Because it's important when I'm looking for a
10 diagnosis, to see if there is a diagnosis and to score a
11 risk assessment.

12 Q Dr. Gehle, could you give a brief overview of the time
13 line of Mr. Gibson's offense?

14 A Yes. Well, first off, he told me that he was charged
15 with a sex offense in 1982 in Kansas, that he had exposed
16 his genitals to a group of -- some kids that were walking
17 down the streets. It was a group of three or four kids and
18 he felt that they were around ten years old. I'm not sure
19 if he was convicted of that offense. It wasn't noted in the
20 normal records that I receive. I did find that he was
21 convicted of four counts of lewd and lascivious behavior for
22 exposing his penis to several different people. One was to
23 a male on September 8th, 1983; one was to another male on
24 September 9th, 1983; to a female on December 19th, 1983;
25 and, to another male on December 29th, 1983. That all

State v Gibson Marie Gehle - Direct 2/23/17 41

1 happened in Kansas. He was convicted of those offenses and
2 it was unclear what sentence he received, but it was noted
3 that he was convicted and that he was, at least, required to
4 pay court costs. It appears that he was probably put on
5 probation and not incarcerated. In 1998, he pled guilty to
6 taking indecent liberties with a child in North Carolina and
7 he pled guilty and was sentenced to eight years of
8 incarceration.

9 Q I'm sorry. You said 1998?

10 A I'm sorry. 1988. Did I -- I'm sorry. So 1988 in
11 North Carolina. He was then charged with several offenses
12 around the same time in 1995 in South Carolina and he was
13 convicted of those at one time. And he was ordered to serve
14 a total of forty years of incarceration for those offenses.

15 Q Dr. Gehle, I'm going to show you some documents. Could
16 you take a moment to see if you recognize those documents
17 and if you've seen them before?

18 A Yes, I've seen these. I've seen copies of these
19 documents.

20 Q And did you review those documents as part of your
21 evaluation?

22 A Yes.

23 Q And are they the type of documents that are commonly
24 reasonably relied upon by experts in your field?

25 A Yes, they are.

1 Q And is it necessary to review the details of the
2 underlying facts to that offense?

3 A Yes, it is.

4 Q And why is it necessary?

5 A Again, it's because I need to know the details
6 regarding the victim, when the offense occurred, how it
7 occurred. I need to know this information in order to
8 consider mental disorders and his risk to reoffend. And I
9 also want to know that information so I can ask him about it
10 in an interview.

11 Q And Dr. Gehle, what are those documents that I just
12 handed you?

13 A So you handed me a warrant for four counts of, I
14 believe, Let me see what exactly they call it here. It's
15 four counts of exposing his genitals to four different
16 victims between September 8th of 1983 and December 29th of
17 1983 in Riley, Kansas. It is an agreement to pay fines,
18 costs, and restitution in relation to those charges. There
19 is an order of probation and parole in relation to those
20 charges. There is a letter from the North Carolina
21 Department of Corrections dated November 21st, 1985 to
22 diagnostic and classification services section to a judge in
23 Beaufort, North Carolina. And there are two others like
24 that.

25 Q And Dr. Gehle, could you describe the facts and

State v Gibson Marie Gehle - Direct 2/23/17 43

1 circumstances regarding Mr. Gibson's 1984 lewd and
2 lascivious behavior conviction from Kansas?

3 A Okay. So he was convicted of exposing his penis to a
4 male on September 8th, 1983. That was the first count. The
5 second count was on September 9th, 1983. He was convicted
6 of exposing his penis to another male. Count three was
7 exposing his penis to a female on December 19th, 1983. And
8 count four was exposing his penis to a male on December
9 29th, 1983.

10 Q Dr. Gehle, was Mr. Gibson put on probation and parole
11 for that offense?

12 A Yes, that's my understanding.

13 Q And was part of the condition of that probation that he
14 receive treatment at Topeka State Hospital in Topeka,
15 Kansas?

16 A Well, I don't know the nature of -- yeah, I'm sorry.
17 It does say psychiatric treatment. He was ordered to admit
18 himself to Topeka State Hospital in Topeka, Kansas. And it
19 says that he is to present there for psychiatric treatment
20 and he's ordered to comply with treatment until discharge by
21 the hospital and to follow all aftercare recommendations.

22 Q And Dr. Gehle, when was he released for that offense,
23 released on probation for that offense?

24 A It says as a condition of parole, the defendant is
25 ordered to admit himself to the hospital on Monday, March

1 5th, 1984. And I don't have -- I don't believe that I found
2 out when he was released from the hospital.

3 Q Dr. Gehle, I'm also going to show you some more
4 documents. I want you to take a moment to see if your
5 recognize those documents?

6 A Yes, I've seen copies of these documents.

7 Q And did you review those documents as part of your
8 evaluation?

9 A Yes.

10 Q And are they the type of documents that are commonly
11 and reasonably relied upon by experts in your field?

12 A Yes.

13 Q And, again, why is it necessary to review the details
14 and underlying facts of the offense?

15 A Well, it's important that I know the details regarding
16 the victim's gender, age, the circumstances under which the
17 offense occurred. When the offense occurred. I need to
18 know that in order to consider mental disorders and his risk
19 to reoffend, and so that I can also ask him about it in the
20 interview possibly.

21 Q And what are those documents that you're looking at?

22 A So one is a warrant for arrest from North Carolina.
23 It's to do with the 1988 offense. There's an indictment for
24 the 1988 offense from North Carolina. There's an order of
25 judgment and commitment for that offense, taking indecent

State v Gibson Marie Gehle - Direct 2/23/17 45

1 liberties with a child. There's a document entitled felony
2 judgment, findings of factors and aggravation and mitigation
3 of punishment related to that 1988 offense. There is a
4 document entitled interviews. And then there is a
5 handwritten letter that is not very legible.

6 Q And Dr. Gehle, again, you used those documents as part
7 of the basis to your evaluation?

8 A Yes, some of them.

9 Q And, again, Dr. Gehle, could you describe the facts and
10 circumstances regarding Mr. Gibson's 1988 convictions for
11 indecent liberties with a child from Carteret County, North
12 Carolina?

13 A Okay. So this was an offense involving a male under
14 the age of thirteen. I'm not sure exactly what his is, but
15 I know that he was under the age of thirteen. And it
16 happened in North Carolina. And Mr. Gibson told law
17 enforcement that he had been living with the victim and his
18 family and that he fondled the victim, six encounters in a
19 period of five days, and that -- I believe that he fondled
20 him and there was oral sex.

21 Q And what sentence did Mr. Gibson receive following his
22 conviction for indecent liberties with a child?

23 A He pled guilty to a charge and was sentenced to eight
24 years of incarceration.

25 Q Dr. Gehle, I'm going to show you what's been pre-marked

1 for identification purposes only as State's Exhibit 1.

2 Would you take a moment to review these documents, see if
3 you recognize them?

4 A Yes, I've seen copies of this.

5 Q What are those documents?

6 A So the first page is an indictment for criminal sexual
7 conduct with a minor in the first degree, an offense that
8 occurred in Orangeburg County between November 1st, 1994 and
9 December 30th, 1994, involving a victim whose initials are
10 DBW. And the act involved fellatio, which is oral sex.

11 Q And have you seen those documents --

12 A Sorry. I'm not done.

13 Q I'm sorry?

14 A That's the indictment. There is a case history for
15 that -- for a warrant associated with that indictment, gives
16 the sentence. And there is a sentence sheet for criminal
17 sexual conduct with a minor in the second degree related to
18 that indictment.

19 Q And Dr. Gehle, did you review those documents as part
20 of your evaluation?

21 A Yes.

22 Q Are they the type of documents commonly and reasonably
23 relied upon by other experts in your field?

24 A Yes.

25 Q Is there anything on that document to indicate it's

State v Gibson Marie Gehle - Direct 2/23/17 47

1 authenticity?

2 A They are marked as true copies by the Clerk of Court in
3 Orangeburg County.

4 MR. MORROW: Your Honor, at this time the State
5 would admit Plaintiff's Exhibit 1 into evidence.

6 MR. FAULK: If I could see it, please? (Reviews
7 Plaintiff's Exhibit No. 1) without objection.

8 THE COURT: So admitted.

9 (Plaintiff's Exhibit No. 1,
10 Indictment, DBW, was marked and entered.)

11 BY MR. MORROW:

12 Q Could you describe the facts and circumstances
13 regarding Mr. Gibson's 1995 conviction for criminal sexual
14 conduct with a minor in the second degree in Orangeburg
15 County, South Carolina?

16 A Well, the victim, DBW, was an eleven-year-old male and
17 Mr. Gibson was convicted of performing oral sex on that
18 victim.

19 Q And what sentence did Mr. Gibson receive following his
20 conviction for criminal sexual conduct with a minor in the
21 second degree?

22 A He was sentenced to twenty years of incarceration.

23 Q Dr. Gehle, I want to show you what's been pre-marked
24 for identification purposes only as Plaintiff's Exhibit 2.
25 Could you take a moment to take a look at these documents

1 and see if you recognize these documents?

2 A Yes, I've looked at copies of these.

3 Q Dr. Gehle, what are those documents that you just
4 looked at?

5 A It's an indictment for criminal sexual conduct with a
6 minor in the first degree for an offense that occurred in
7 Orangeburg County between November 1st, 1994 and December
8 30th, 1994 and involved fellatio with a minor child whose
9 initials are Child . It is a sentence sheet for criminal
10 sexual conduct with a minor in the first degree related to
11 that indictment. It is a General Sessions case history for
12 that incident. There is also an indictment for lewd act
13 upon a child for an offense that occurred in Orangeburg
14 County between November 1st, 1994 and December 30th, 1994
15 and involved that victim, Child . And it involved fondling the
16 victims genital area and exposing the penis to the victim.
17 There's a sentence sheet for that offense. And there's also
18 a General Sessions case history related to that offense.

19 Q And are those the type of documents that are typically
20 and reasonably relied upon by other experts in your field?

21 A Yes.

22 Q And is there anything on those documents that indicate
23 their authenticity?

24 A Yes. They're all marked as true copies by the Clerk of
25 Court in Orangeburg County.

State v Gibson Marie Gehle - Direct

2/23/17

49

1 MR. MORROW: At this time, Your Honor, the State
2 would move that Plaintiff's Exhibit 2 be entered into
3 evidence.

4 MR. FAULK: Without objection.

5 THE COURT: So admitted.

6 (Plaintiff's Exhibit No. 2,
7 indictment, Child , was marked and entered.)

8 Q And Dr. Gehle, could you describe the facts and
9 circumstances regarding that 1995 criminal sexual conduct
10 with a minor in the first degree offense and the lewd act
11 upon a child offense in Orangeburg County?

12 A Well, Mr. Gibson exposed his genitals to the victim who
13 was a ten-year-old male and he also fondled the victim's
14 genitals and he performed oral sex on the victim. And,
15 again, the victim was ten.

16 Q And Dr. Gehle, what sentence did Mr. Gibson receive
17 following his conviction of criminal sexual conduct with a
18 minor in the first degree?

19 A He was sentenced to thirty years of incarceration for
20 the criminal sexual conduct with a minor on the first degree
21 charge.

22 Q And how about lewd act upon the child?

23 A He was sentenced to ten years of incarceration for that
24 offense.

25 Q Dr. Gehle, I'm going to show you again another document

State v Gibson Marie Gehle - Direct 2/23/17 50

1 that's been pre-marked for identification purposes only as
2 State's Exhibit 3. I would like for you to take a moment to
3 look at that document and see if you recognize it?

4 A Yes, I've looked at copies of these documents.

5 Q And what are those documents?

6 A It is an indictment for lewd act upon a child for an
7 offense that occurred in Orangeburg County between November
8 1st, 1994 and December 30th, 1994. That involved a victim,
9 DMC. And it involved Mr. Gibson fondling the genital area
10 of the victim and exposing his penis to the victim. It's a
11 sentence sheet for lewd act upon a child and it is a General
12 Sessions case history record for that offense.

13 Q And are those documents of the type that are typically
14 and reasonably relied upon by other experts in your field?

15 A Yes.

16 Q And is there anything on those documents to indicate
17 their authenticity?

18 A Yes. They're marked as true copies by the Clerk of
19 Court in Orangeburg County.

20 MR. MORROW: Your Honor, at this time the State
21 would move to admit Plaintiff's Exhibit 3 into evidence.

22 A Oops, I'm sorry. It looks like I -- like some pages
23 came off. So I might -- I don't know if I talked about
24 those.

25 MR. FAULK: No objection.

1 THE COURT: So admitted.

2 (Plaintiff's Exhibit No. 3,
3 indictment, DMC, was marked and entered.)

4 BY MR. MORROW:

5 Q And Dr. Gehle, could you describe the facts and
6 circumstances underlying Mr. Gibson's conviction for lewd
7 act upon a child from Orangeburg County, South Carolina?

8 A That involved a victim who was thirteen years old. And
9 it involved Mr. Gibson fondling the boy's penis and exposing
10 his penis to that victim.

11 Q And what sentence did Mr. Gibson receive following his
12 conviction for lewd act upon a child?

13 A He was sentenced to ten years of incarceration.

14 Q Thank you, Dr. Gehle. Is it important to look at
15 arrests of sexual offenses where an individual was not
16 convicted?

17 A Yes. I like to look at all those things.

18 Q And why is it necessary to look at that?

19 A Well, it's necessary because, again, I want to look at
20 the underlying facts of the case to see if they're
21 consistent with other charges. I also want to be able to
22 put that into the time line to see if the person was
23 arrested because that would take them out of the community
24 potentially. I want to be able to ask them about it. And
25 it's necessary for considering any risk assessment, to score

1 a risk assessment.

2 Q Is that something done by other experts in your field?

3 A Yes.

4 Q Did you rely on such information as part of the basis
5 of your expert opinion?

6 A Yes.

7 Q In reviewing the legal documents in this case, did you
8 see whether Mr. Gibson was investigated for other sexual
9 offenses?

10 A Well, he was charged with two other offenses in
11 relation to the charges that I just spoke about that
12 occurred in 1994. And that was a lewd act upon a child and
13 criminal sexual conduct in the first degree. Those charges
14 were dismissed.

15 Q And why is it necessary to review the details and
16 underlying facts of those charged but ultimately dismissed
17 offenses?

18 A Well, it's important to look at them in terms of the
19 risk assessment because it's a fact that he was charged with
20 them. I don't look at them in terms of the diagnosis
21 because I don't take those as facts. They have been proven
22 by the court. But I do ask about them in the evaluation.

23 Q And Dr. Gehle, would you please describe the details of
24 the charges that were dismissed?

25 A I don't have those facts right in front of me but they

State v Gibson Marie Gehle - Direct 2/23/17 53

1 were similar -- I think they involved the same victims.

2 Q And those were dismissed as part of the plea deal;
3 correct?

4 A That's correct.

5 Q Okay. And Dr. Gehle, is it necessary to look at
6 disciplinary infractions at the South Carolina Department of
7 Corrections that an individual has --

8 MR. FAULK: Objection, Your Honor. Relevance.

9 THE COURT: All right. We're going to take a
10 break right now and I'm going to discuss this.

11 Ladies and gentlemen, I'm going to let you step back to
12 the jury room. And we'll take about a fifteen minute break.
13 Do not discuss the case at all while you're back there.

14 (Jury out at 10:56 a.m.)

15 THE COURT: What kind of disciplinary action is
16 it?

17 MR. MORROW: He has a sexual misconduct
18 disciplinary infraction from 2010 in addition to several
19 other disciplinary infractions.

20 THE COURT: Of what?

21 MR. MORROW: Refusing to -- failing to obey
22 orders; out of place; possession of contraband; and, abuse
23 of privileges.

24 MR. FAULK: Your Honor, I have a particular
25 problem with the sexual misconduct because I believe that it

1 only states what actually happened in there. But I have a
2 greater concern about whether or not the possession of a
3 weapon; being out of place; possession of contraband; abuse
4 of privilege or anything has any real probative value here
5 that would outweigh the prejudicial value.

6 THE COURT: Not having any, you think probably is
7 probative --

8 MR. FAULK: Every case is different, the facts are
9 different and it's clear that I did make a point of that
10 yesterday. But my point here today is that in a prison
11 environment, I'm not sure if a person on the jury knows how
12 easy it is to pick up an offense for being out of place.
13 And I think that would tend to skew --

14 THE COURT: Well, clearly, I think the sexual
15 violation is applicable in this instance.

16 What else have you got?

17 MR. MORROW: There was a failing to obey orders,
18 an out of place, possession of contraband and an abuse of
19 privileges.

20 THE COURT: What is the possession of contraband?

21 MR. MORROW: Dr. Gehle, can you --

22 THE WITNESS: I'll have to look.

23 THE COURT: How old are these?

24 MR. MORROW: The possession of contraband is a
25 2007; abuse of privileges is 2006; failing to obey orders is

State v Gibson Marie Gehle - Direct 2/23/17 55

1 2013 and 1995; and, the sexual misconduct is 2010; out of
2 place is 2007.

3 MR. FAULK: Your Honor, it's my understanding that
4 the contraband in this case might be cleaning supplies that
5 he wasn't allowed to have. I think that sort of shows --
6 they're going to think contraband is a gun, a weapon or
7 something like that.

8 THE COURT: I mean, if you know what it is or do
9 you have it?

10 THE WITNESS: I think I just found it.

11 THE COURT: Okay.

12 THE WITNESS: Do you want me to tell you?

13 THE COURT: Sure.

14 THE WITNESS: Possession of two Cosmo
15 antimicrobial hand/body shampoo and shaving cream bottles,
16 which was filled with bio-clean chemicals. And the other
17 was filled with floor stripper belonging to medical. The
18 items were confiscated. That's it.

19 THE COURT: All right.

20 MR. MORROW: Your Honor, we can restrict it to the
21 sexual misconduct.

22 THE COURT: All right.

23 MR. FAULK: Thank you.

24 THE COURT: All right. We'll take a little bit of
25 a break.

1 MR. FAULK: Thank you.

2 THE COURT: Doctor, you can step down but don't
3 discuss your testimony during the break.

4 THE WITNESS: Thank you.

5 (Court in recess for short break)

6 (Court in session after short
7 break)

8 THE COURT: Tell me your name?

9 JUROR NO. 54: Sarah Elmore.

10 THE COURT: Ms. Elmore, I've been told by the
11 clerks office you said you called on Tuesday and didn't call
12 on Wednesday and so you didn't know to be there.

13 JUROR NO. 54: Yes.

14 THE COURT: Well, I specifically told the jury
15 when they left on Tuesday afternoon to call back the next
16 night, not that night. So --

17 JUROR NO. 54: I apologize, but I did, I got it
18 mixed up but I did call Tuesday night but I didn't call last
19 night. And I apologize.

20 THE COURT: Well, last night was when you were
21 supposed to call. But anyway, so what you're going to do,
22 you're going to sit here with me until this trial's over.

23 JUROR NO. 54: That's fine.

24 THE COURT: And your other friends that didn't
25 come, and there's a number of them, they may have a lot more

State v Gibson Marie Gehle - Direct 2/23/17 57

1 dire consequences than you do, so. But you sit there. As
2 long as this jury's in here, you're going to be here.

3 JUROR NO. 54: Okay.

4 THE COURT: When they go to lunch you can go to
5 lunch. When they come back, you need to be back.

6 JUROR NO. 54: All right.

7 THE COURT: Thank you, ma'am.

8 JUROR NO. 54: Okay.

9 (Court at ease)

10 THE COURT: All right. Let's bring the jury in.

11 THE BAILIFF: Yes, Your Honor.

12 (Jury in at 11:23 a.m.)

13 THE COURT: Now, let me get everybody -- when you
14 come in, everybody move down as far as you can because if
15 you don't, somebody might trip over somebody. I've had
16 jurors get hurt in the jury box before and then we've got
17 workers' comp claim problems.

18 All right. Mr. Attorney General, if you would proceed.

19 MR. MORROW: Yes, Your Honor.

20 DR. MARIE GEHLE - CONTINUED DIRECT EXAMINATION

21 BY MR. MORROW:

22 Q Now, Dr. Gehle, we were discussing, is it necessary to
23 look at the disciplinary infractions that an individual has
24 while he's in prison?

25 A Yes.

1 Q And why is it necessary to look at that?

2 A Well, I want to see what kind of behavior they had in
3 an environment where they're closely monitored. And to, in
4 particular, see if they had any sexual misconduct
5 infractions.

6 Q Is that something done by typically and reasonably
7 relied upon by other experts in your field?

8 A Yes.

9 Q And did you rely on such information as part of the
10 basis of your expert opinion?

11 A Yes.

12 Q So, Dr. Gehle, when you reviewed Mr. Gibson's
13 disciplinary infractions at the department of corrections,
14 did you find any instances of sexual misconduct?

15 A Yes.

16 Q And what did you find?

17 A Well, I found that in 2010 an inmate accused Mr. Gibson
18 and a third inmate of grabbing him and raping him. Mr.
19 Gibson, when he was asked about this offense, he said that
20 he had consensual sex with that person. And so he was
21 initially charged with sexual assault and he was found
22 guilty of sexual misconduct.

23 Q And Dr. Gehle, why is that relevant to your evaluation?

24 A Well, it's relevant in particular when looking at the
25 risk assessment. It helps me figure out how many prior sex

State v Gibson Marie Gehle - Direct

2/23/17

59

1 offenses he's had or charges and convictions.

2 Q And were these disciplinary infractions part of the
3 basis of your expert opinion?

4 A Yes.

5 Q Is it also necessary to look at sex offender treatment
6 that that individual has while he's in prison?

7 A Yes.

8 Q And why is it necessary to do that?

9 A Well, it's important to see whether he participated in
10 treatment, whether it was offered to him and whether he took
11 them up on that. There's -- risk to reoffend sexually is
12 increased if people start treatment and then fail to finish
13 it. So I wanted to see if he participated and finished
14 treatment.

15 Q And is it something -- is that something that's looked
16 at and relied upon by other experts in your field?

17 A Yes.

18 Q Did you rely on that information as part of the basis
19 of your expert opinion?

20 A Yes.

21 Q And what, if any, reference did you find regarding Mr.
22 Gibson's sex offender treatment while at the South Carolina
23 Department of Corrections?

24 A Well, I found that he was enrolled in sex offender
25 treatment in 1995 and that he refused contact and

State v Gibson Marie Gehle - Direct 2/23/17 60

1 terminated. And that he did successfully complete a course
2 of sex offender treatment between October 15th, 2013 and
3 April 29th, 2014 in the department of corrections.

4 Q And is it important to administer any psychological
5 testing when conducting these evaluations?

6 A It can be.

7 Q And what, if any, psychological testing did you
8 conduct?

9 A Well, I gave Mr. Gibson the Minnesota Multi-phasic
10 Personality Inventory. It's a true or false questionnaire.
11 It has about -- over five hundred questions. And it helps
12 assess a wide range of clinical conditions and attitudes and
13 problems and things like that. And I gave that to Mr.
14 Gibson. I also scored an actuarial risk assessment.

15 Q Okay. And what is the -- I'm going to call it the
16 MMPI-2.

17 A Yes, that's the abbreviation.

18 Q Okay. What is the MMPI-2?

19 A It's a self-report psychological instrument to assess
20 whether somebody's being honest with the questions, honest
21 in the answering, whether they're defensive, not defensive.
22 And it assesses a wide range of clinical conditions.

23 Q And what did Mr. Gibson's scores on the MMPI-2
24 indicate?

25 A Well, his scores were consistent with antisocial

State v Gibson Marie Gehle - Direct 2/23/17 61

1 attitudes and behaviors, in particular.

2 Q And why is that important considering your -- well,
3 when you're considering your diagnosis and your evaluation
4 overall in this case?

5 A Because one thing that I need to look for is whether
6 somebody has antisocial attitudes and behaviors because
7 that's a very broad category of risk factors that are
8 associated with increased likelihood that somebody will
9 commit another sex offense.

10 Q And Dr. Gehle, based on your examination of Mr. Gibson,
11 you reviewed his file and you reviewed his records and all
12 the other facts, which we've been discussing so far today,
13 were you able to diagnose Mr. Gibson with a relevant mental
14 abnormality?

15 A Yes.

16 Q And what was that mental abnormality?

17 A I diagnosed him with pedophilic disorder, non-exclusive
18 type, sexually attracted to males.

19 Q And what is pedophilic disorder?

20 A Well, pedophilic disorder is a specific type of a
21 paraphilic disorder. And a paraphilic disorder is a
22 recurrent intense sexually arousing fantasies, sexual urges
23 or behaviors that involve a set of behaviors, a specific
24 class of victims or non-human objects that occur over a
25 period of at least six months. So pedophilic disorder is

1 when somebody is sexually attracted to prepubescent
2 children. So a child who has not had any level of sexual
3 development; no public hair and no breast development. We
4 tend to think that those kids are thirteen and under. So
5 under age thirteen we think of them as being prepubescent.
6 They haven't hit puberty yet. So in this case pedophilic
7 disorder is recurrent, intense sexually arousing fantasies,
8 sexual urges or behaviors involving sexual arousal to
9 prepubescent children that occur over a period of at least
10 six months.

11 Q And how does Mr. Gibson meet the criteria for
12 pedophilic disorder?

13 A Well, he has -- first off, he told me that he was
14 sexually aroused to male children in the past, so that was
15 an important thing. He also has been convicted of -- well,
16 he told me that he had exposed his genitals to a group of
17 kids that were around age ten in 1982. He said -- or I know
18 that he was also convicted of exposing his genitals. I
19 don't know the ages of those victims, so I'm not sure if
20 that meets the criteria for pedophilia.. But in 1988 he was
21 convicted of sexual offenses against a prepubescent child, a
22 male. And in that case he told investigators that he had a
23 problem with this type of behavior, with this type of
24 arousal. And that he was sick and that he needed help. He
25 made similar statements when he was arrested in 1994 and

State v Gibson Marie Gehle - Direct

2/23/17

63

1 those also involved children, thirteen or under, or at least
2 two of them were prepubescent. So I'm looking for the age
3 of victims. I have several victims who are under the age of
4 thirteen; they're male. And he's told me that he's aroused
5 to male children and I have a number of offenses in which he
6 was convicted of that very type thing.

7 Q And what does Mr. Gibson's diagnosis of pedophilic
8 disorder mean?

9 A It means that he is sexually aroused by prepubescent
10 male children. He reports that his arousal is not exclusive
11 to children but that he's also sexually aroused by adults
12 who would be post-pubescent. And he reported that he's
13 engaged in sexual activities with adults. That's why it's
14 considered non-exclusive. It's not exclusive to children.
15 He has arousal to adults and children. And that he's
16 sexually attracted to males. That's what he reported and
17 that is consistent with his victim type.

18 Q Dr. Gehle, did you also diagnose Mr. Gibson with
19 exhibitionistic disorder?

20 A Yes. So exhibitionistic disorder is also a paraphilic
21 disorder and that is sexual arousal to exposing your
22 genitals to somebody who's not expecting or not consenting
23 to that behavior. And I found that he engaged in that
24 behavior over a period that was six months.

25 Q And again, how does Mr. Gibson meet the criteria for

1 exhibitionistic disorder?

2 A Yeah, that's a tongue-twister.

3 Q Yeah?

4 A So he told me that he exposed his genitals in 1982 to a
5 group of children who were under age ten. And then I also
6 know that he was convicted of at least -- or convicted of
7 four offenses for exposing his genitals to non-consenting
8 people between September and the end of December in 1983.

9 So I'm looking to see if there is a six-month pattern to
10 this behavior. And based on his self-report that he was
11 convicted in 1982 or that he did this in 1982. I'm sorry.
12 He wasn't convicted. And that I know that he did it towards
13 the end of 1983, that constitutes a six-month pattern in
14 this type of behavior.

15 Q And is having multiple paraphilic disorders diagnosis,
16 is that a risk factor that psychologists, such as yourself,
17 look at when --

18 A Yes, it is.

19 Q And when you do these evaluations, how do you measure a
20 person's risk to reoffend?

21 A Well, one of the most important things I do is I score
22 an actuarial risk assessment called a Static 99R. That's a
23 widely used risk assessment tool to estimate what somebody's
24 likelihood is to commit another sexual offense. And then I
25 also look at a number of factors that we call dynamic risk

State v Gibson Marie Gehle - Direct 2/23/17 65

1 factors to see if he has any of those in his history.

2 Q Dr. Gehle, you said that you use the Static-99R and
3 that that's an actuarial measure. Well, what exactly is an
4 actuarial measure?

5 A An actuarial measure is -- so this particular one is a
6 ten-item test and the scores range from negative three to
7 twelve. And I add up the factors and come to a score. And
8 then that places his risk in a category. So it would be in
9 the well above average risk category. I can also look at
10 that score and apply it to an actuarial table and it gives
11 me a percentage of people with that same score, how many of
12 those people with that score re-offended within a certain
13 period of time. So I know that with the score of six, which
14 is what Mr. Gibson got on this test, if you have a score of
15 six, twenty-point five percent of people with a score of six
16 reoffend within five years. So it's similar to insurance
17 tables or things like that. If you want to give life
18 insurance, they're going to look at a number of factors to
19 sort of estimate how long you're going to live, you know,
20 what kind of lifestyle you lead and see how likely you are
21 to essentially die and they have to pay out life insurance
22 without you paying much into the system. So that's where
23 that term actuarial comes from. It comes from insurance and
24 it's one of the tests that we use in these cases.

25 Q And Dr. Gehle you said that Mr. Gibson's score was a

1 six on the Static 99R?

2 A That's correct.

3 Q And what did that indicate about his risk to reoffend?

4 A Well, that's in the well above average risk category.

5 I know that people with a score of six, twenty point five
6 percent of them reoffend within five years. And I also look
7 at like how does that categorize him compared to other sex
8 offenders? And when I look at just the average sex
9 offender, the average sex offender will get a score of two
10 on this test. And so his estimated recidivism risk is three
11 point seven seven times higher than the average sex
12 offender. So he's much higher. His risk is estimated to be
13 much higher than the average sex offender.

14 Q You also mentioned some dynamic risk factors. What are
15 dynamic risk factors?

16 A Dynamic risk factors are things that can be changed
17 through treatment or addressed in other means. And they are
18 factors that have been shown to be related to sexual
19 reoffending in the literature.

20 Q And does Mr. Gibson have any dynamic risk factors for
21 reoffense?

22 A Yes.

23 Q What are they?

24 A He has a history of sexual preoccupation so being
25 preoccupied with sex. He told me that he was sexually

State v Gibson Marie Gehle - Direct 2/23/17 67

1 preoccupied around the time that he was committing the
2 sexual offenses. Given his multiple sex offenses involving
3 children, he has a sexual preference for prepubescent or
4 pubescent children, which is a risk factor. He reported
5 some instability in his employment and things like that. So
6 he has a history of lifestyle impulsiveness, which is a risk
7 factor. And then he also meets criteria for multiple
8 paraphilics, for pedophilic disorder and for exhibitionistic
9 disorder.

10 Q To be clear Dr. Gehle, is it your expert opinion Mr.
11 Gibson suffers from a mental abnormality?

12 A Yes.

13 Q And you have two mental abnormalities here of
14 pedophilic disorder and exhibitionistic disorder?

15 A That's correct.

16 Q And Dr. Gehle, do you have an opinion as to whether Mr.
17 Gibson's pedophilic disorder and exhibitionistic disorder
18 causes him serious difficulty in controlling his behavior?

19 A Yes.

20 Q And do you have an opinion, Dr. Gehle, whether Mr.
21 Gibson is likely to commit future acts of sexual violence?

22 A Yes. My opinion is that he is.

23 Q And Dr. Gehle, do you have an opinion as to whether Mr.
24 Gibson's pedophilic disorder and exhibitionistic disorder
25 makes him likely to engage in acts of sexual violence if not

1 confined to a secure facility for long-term control, care
2 and treatment?

3 A Yes. I'm most concerned about the pedophilic disorder
4 because that's associated with acting out with prepubescent
5 children and those are -- those are sexually violent
6 offenses typically. Putting your hands on a child will
7 result in a variety of crimes that are often considered
8 sexually violent under the SVP Act. The exhibitionistic
9 disorder would predispose him to commit acts of sexual
10 offenses that could be charged in this state, but they might
11 not be considered to be sexually violent offense. Indecent
12 exposure is not typically considered to be a sexually
13 violent offense. So while that might predispose him to
14 commit sex offenses, it's not sexually violent. So I'm most
15 concerned again about the pedophilic disorder.

16 Q And Dr. Gehle, did you reach an ultimate conclusion
17 about whether Mr. Gibson meets the criteria to be found as a
18 sexually violent predator?

19 A Yes.

20 Q And does he meet that criteria?

21 A It's my opinion that he does meet that criteria.

22 Q And are all of these opinions and all of your testimony
23 today based on a reasonable degree of psychological
24 certainty?

25 A Yes.

State v Gibson Marie Gehle - Cross 2/23/17 69

1 Q Thank you. Please answer any questions that the court
2 or Mr. Faulk may have for you.

3 DR. MARIE GEHLE - CROSS-EXAMINATION

4 BY MR. FAULK:

5 Q Hello, Dr. Gehle?

6 A Hello.

7 Q Are you aware of what constitutes sexual misconduct
8 with somebody who is in the department of corrections? I
9 mean, what types of conduct would be included in that?

10 A It could be a variety of behaviors.

11 Q Even if two men were having consensual sex in the
12 department of corrections, isn't that sexual misconduct?

13 A Yeah, it could be.

14 Q Okay. So we really don't know about that sexual
15 offense in 2010 while he was at the department of
16 corrections, what was really at stake there; right?

17 A Well, I know that he was accused of a sexual assault
18 and then they reduced that and found him guilty of sexual
19 misconduct.

20 Q Because a sexual assault is a serious crime; is it not?

21 A I would assume it is, yes.

22 Q I mean, next to murder it's probably the most serious
23 crime against another person that you could commit, would it
24 not be? I mean, because the allegation was one of
25 penetrative conduct; is that correct?

1 A Yes.

2 Q And the department of corrections did not file criminal
3 charges against him?

4 A That's correct.

5 Q And what kind of consequence did he have as a result of
6 the sexual misconduct?

7 A He had a variety of consequences. I believe that he
8 lost good time, so he lost days that were, I guess,
9 subtracted from his ultimate sentence. And he lost canteen
10 and telephone privileges. And I believe that he was in some
11 administrative detention.

12 Q So he got about sixty days of administrative detention?

13 A It says ninety days and then he got twenty-nine days of
14 credit, so it was sixty-one days total.

15 Q Okay. So he was in lockup -- it would appear, based on
16 the records that you have there, that he was in lockup for
17 sixty days?

18 A That's my understanding.

19 Q And have you had an opportunity to look at other
20 consequences people get for committing offenses while
21 they're at SCDC?

22 A Yes.

23 Q I mean, a hundred and eighty day loss of canteen
24 privileges, it's not that rare of a disciplinary action; is
25 it?

1 A No.

2 Q And it's not -- and you can have a relatively
3 insignificant offense and get a hundred and eighty days of
4 canteen privileges suspended?

5 A Probably. I'm not really sure. I can't remember off
6 the top of my head what typical punishment goes with what
7 offense. But it wouldn't surprise me.

8 Q Okay. So if, for example, in this case if the alleged
9 victim in the case recanted his statement and it did turn
10 out to be a consensual contact between the two individuals,
11 that would be consistent with the finding that it's sexual
12 misconduct, would it not?

13 A I believe so.

14 Q Okay. But not necessarily a violent sexual assault?

15 A Correct.

16 Q Okay. Now, you said that he had treatment, had SOT.
17 He had sex offender treatment; is that not correct?

18 A Yes. That's what I found in the records.

19 Q And did you --

20 MR. FAULK: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. FAULK:

23 Q Did you review the MDT (sp) package and the petition
24 and all the documents that the State filed?

25 A Yes.

1 Q And did you find that document in there?

2 A I'm not sure.

3 Q Would it be typical -- could you just generally
4 describe what that document is about without saying what it
5 says?

6 A So this is a SCDC health services system, a SOAP note.

7 Q SOAP is sex offender -- what's a SOAP note?

8 A No. A SOAP is a type of progress note that's typically
9 used in mental health and I can't tell you exactly what that
10 acronym means, but it doesn't have anything to do with sex
11 offenders.

12 Q Okay.

13 A It has like what are the symptoms, things like that.

14 Q Did you recall seeing that? I'm sorry. I can't
15 remember if you said you recall seeing that note?

16 A I'm not sure if I've seen this.

17 Q What was your understanding of his progress that he
18 made while he was in the sex offender treatment?

19 A The records that I reviewed said that he completed with
20 average participation.

21 Q Do your records indicate whether or not that he got a
22 seal? That he got a certificate?

23 A I don't know what they get. I know that it said that
24 he completed that.

25 Q Okay. What does that program involve? Are you

1 familiar with that program?

2 A Not very familiar, no.

3 Q Okay. Let me ask you this. One of the findings from
4 your report when you're discussing his sexual exhibitionism,
5 is the fact that he indicated on six different occasions, he
6 and his -- I'm not sure if it was wife or his girlfriend
7 were having sex on the beach; is that correct?

8 A Yeah. I believe that he said something of that nature.

9 Q Okay. And so clearly he has an interest in sexual
10 partners who are age appropriate female?

11 A Yes, that's what he reported.

12 Q And is that not at some extent inconsistent with the
13 diagnosis of pedophilia?

14 A Having an interest in adults as well?

15 Q Yes. Age appropriate adults.

16 A Well, the diagnosis of pedophilic disorder has a
17 specifier, non-exclusive or exclusive type, because it's
18 fairly common that people have arousal to both. So that
19 would be non-exclusive. I mean, it's common enough that
20 there has been a specifier added to that diagnosis in the
21 diagnostic and statistical manual.

22 Q Was there a difference in risk if somebody who is
23 exclusively having pedophilic interest versus somebody who
24 has interest in both as far as a risk to reoffend against
25 another child?

1 A I am not sure of specific research to address that
2 issue, but I believe that somebody who has exclusive sexual
3 arousal with children would be at more risk?

4 Q Right. Well, so there's some kind of evidence here
5 that he has a sexual interest in age appropriate adults; is
6 that correct? That's what we just said?

7 A That's what he reported.

8 Q Okay. And he reported that he had romantic
9 relationships for a period of time with other females?

10 A Yes. And sexual relationships with males.

11 Q But he reported age appropriate relationships with
12 females, three or four of them; is that correct?

13 A Yes.

14 Q Okay. Now, are you familiar with a test that's called
15 a PPG test?

16 A Yes.

17 Q And what is your understanding of what a PPG test would
18 do?

19 A A PPG test is a penile plethysmography. It is
20 measuring arousal towards stimulus in a lab environment.

21 Q So if he were to have been given a PPG test in the past
22 eighteen months, would that not provide some indication of
23 his current sexual interests?

24 A It may. There's a lot of problems with the PPG.

25 Q But what evidence is there over the last twenty-two

State v Gibson Marie Gehle - Cross 2/23/17

75

1 years, based on his conduct of the last twenty-two years,
2 which would show an interest in children today?

3 A Well, his interest in children today, I mean, it's
4 assumed that it still exist based on his prior behavior
5 because he's been incarcerated and there aren't children
6 there. He's not had access to his preferred victim type and
7 we know that pedophilic disorder is a chronic disorder that
8 remains over time.

9 Q You had some concerns about his chronic instability in
10 employment. Can you explain? You had referred to that as
11 one of the dynamic risk factors?

12 A Yes. He told me that he had held a job for five or six
13 months at the most and that he would often just quit jobs.
14 He had been fired a few times for not coming to work. He
15 would not go to work if he was too tired or if he didn't get
16 day off that he requested. And quit jobs without giving
17 much notice.

18 Q What was his -- did he tell you what his occupation
19 was?

20 A He worked in construction.

21 Q Have you had an opportunity to review or look at the
22 histories of people who've been in construction for a period
23 of time?

24 A I mean, I've evaluated people who worked in
25 construction.

1 Q And it's not uncommon for people to work on one job and
2 then go to another job; is that not correct? If you have a
3 trade and you get hired as a mason and you work on a house
4 and --

5 A It can work like that or some people work for a company
6 and work, you know, extended period of times.

7 Q You've also indicated -- when you're talking about his
8 dynamic risk factors, you'd indicated a history of serious
9 sexual preoccupation, around the time he would sexually
10 offending?

11 A Yes.

12 Q Okay. What evidence is there of a current
13 preoccupation, of serious sexual preoccupation?

14 A That is a history of that because he reported that that
15 was the case back then.

16 Q Okay. But as far as the last twenty-two years, was
17 there any indication of sexual preoccupation?

18 A No. He didn't report any.

19 Q And in your discovery you didn't find any?

20 A No. I mean just the sexual misconduct in prison but
21 that doesn't necessarily indicate preoccupation.

22 Q So is it fair to say that your opinion that he
23 currently poses a risk to reoffend is based on your
24 assumptions about his diagnosis or your professional opinion
25 about his diagnosis? You said pedophilia and it's chronic;

1 is that correct?

2 A That's correct.

3 Q Because there has not been really any evidence of any
4 activities on his behalf for the last twenty-two years,
5 which would show an interest in what you say is sexual
6 preoccupation?

7 A Correct.

8 Q And certainly, there's been no conduct with juveniles?

9 A No. I have no documentation that he has been accused
10 of any sexual offenses while he's been incarcerated, sexual
11 offenses that would involve children while he's been
12 incarcerated.

13 Q Now, you said that he has some antisocial attitudes and
14 behaviors and that was based on the MMPI; is that correct?

15 A Yes. And then some attitudes in the evaluation.

16 Q Okay. But he does certainly not have antisocial
17 personality disorder; is that right?

18 A I did not diagnose him with any antisocial personal
19 disorder; that's correct.

20 Q No psychopathic disorders of any kind?

21 A I did not diagnose him with that, no.

22 Q Okay. And those antisocial attitudes come from
23 answering a five hundred question true false test; is that
24 correct?

25 A Yes. And some of his behaviors in the interview.

1 Q Now, did you grade that test or did you have somebody
2 else grade it?

3 A I graded it.

4 Q You graded the MM -- because it's possible to have
5 other -- you can send those back to MMPI to get graded; is
6 that correct?

7 A I believe you can but that's not how I do it.

8 Q Okay. Let me just come back around. So the testing
9 instruments that you used was the MMPI and the Static 99; is
10 that correct?

11 A That's correct.

12 Q And you reviewed what you thought were some of his
13 dynamic risk factors to interpret with the Static 99; is
14 that correct?

15 A Well, I look at those and they're not necessarily
16 interpreted with the Static but they are part of the risk
17 assessment.

18 Q But there are other tests that would be available to
19 know what somebody's current sexual interest, would there
20 not?

21 A (Witness pauses)

22 Q For example, there is an ABLE test, the visual reaction
23 time test; is that correct?

24 A Yes.

25 Q And under that test is it not true that a person would

1 be subjected to images, different categories of potential
2 sexual parts or victims and it was a way of subject -- it
3 was a way -- in using that test you could tell whether or
4 not somebody had an interest based on how long they looked
5 at the image; is that correct?

6 A Well, that's what the theory is, but the research
7 behind that test is not very good and it's been shown to be
8 very unreliable.

9 Q And would there not be some way to actually just give a
10 polygraph test and ask him some questions? And your
11 questions could have been posed to see if he has a current
12 preoccupation with having sex with children?

13 A I guess it's possible. It's not something that I have
14 access to do. I mean, I don't do polygraphs and I don't
15 have -- I wouldn't even know how to order a polygraph test.

16 Q Well, then I'm coming back to the PPG test. The
17 department of mental health, do they have a facility where
18 they can do PPG testing?

19 A We have the testing equipment; yes.

20 Q And, again, had you hooked him up to that test, would
21 that not have given you more insight as to whether or not he
22 has a current preoccupation?

23 A I don't believe so. I don't use that test in my
24 evaluations. It's controversial to use in these types of
25 evaluations. It's more appropriate to be used in treatment

1 if it's going to be used at all. But there are a lot of
2 problems with that test in particular, with the reliability,
3 the standardization or lack of standardization, so that's
4 not a test that I use in these evaluations.

5 Q But you're aware of other people who have -- practicing
6 in the state, who perform initial -- well the commitment
7 evaluations that would use these tests; is that not correct?

8 A Yes. There are some people who do use that test.

9 MR. FAULK: One moment, Your Honor. I have no
10 further questions.

11 THE COURT: Anything?

12 MR. MORROW: Briefly, Your Honor.

13 MARIE GEHLE - REDIRECT EXAMINATION

14 BY MR. MORROW:

15 Q Dr. Gehle, when you reviewed the record, you found that
16 Mr. Gibson had been convicted of nine sexual offenses
17 between 1984 and 1995?

18 A That's correct.

19 Q Okay. And in addition to that while he's been
20 incarcerated, he's had a 2002 [sic] disciplinary infraction
21 for sexual misconduct?

22 A 2010.

23 Q Yes. So he's been sanctioned ten total times for
24 sexual misconduct?

25 A Yes.

State v Gibson Marie Gehle - Redirect 2/23/17

81

1 Q Okay. And four of those -- four of those were in 1995
2 and those involved three minor children under the age of
3 thirteen?

4 A That's correct.

5 Q Okay. And one of those was in 1998 and involved a
6 minor child under the age of thirteen.

7 A In --

8 Q 1988 in North Carolina?

9 A Yes. Yes. 1988, yes.

10 Q And also from his own admission in exposing -- he
11 admits exposing his penis to ten-year old males in Kansas?

12 A Yes, a group of them.

13 Q And the only times he hasn't -- well, let me say -- in
14 the last twenty years he hasn't offended against children,
15 where's he been for the last twenty years?

16 A He's been incarcerated.

17 Q Okay. Now are there any children in the South Carolina
18 Department of Corrections under the age of thirteen?

19 A No.

20 Q So the only reason he hasn't offended in the last
21 twenty years is because he hasn't had access to children?

22 A He hasn't had access that's correct.

23 Q You also mentioned problems with the penile
24 plethysmography test. Let's talk about those. What are
25 some of the problems with the penile plethysmography?

1 A Well, the first problem is that a lot of the research
2 comes out of Canada. In Canada, they're allowed to show
3 people who are hooked up to this test -- well, let me back
4 up a little bit. Basically, what you do is you sit in a
5 room and they put a gauge around your penis and they want to
6 see if you, while you're looking at certain images or
7 hearing certain stories and things like that, whether you
8 get sexually aroused. And so they want to measure the level
9 of arousal that you show; so whether your penis gets erect.
10 Much of the research comes out of Canada. And in Canada,
11 they're allowed to show sex offenders nude pictures of young
12 children. Whereas, if they did that in this country, it
13 would be showing child pornography and that's against the
14 law. So they don't do that in this country. But a lot of
15 the research comes out of Canada and shows that this test,
16 you know, can be effective. But when they give the test
17 here, they don't use the same images. And so it's not -- we
18 don't know how effective it is in measuring whether
19 somebody's a pedophile or what their sexual interests are.
20 There's a lot of false positives. Many people can put other
21 things on their minds and they can actually be sexually
22 aroused but they can pretend not to be aroused or they won't
23 show arousal on that test. So people can fake it. Those
24 are a lot of the problems with the test. It's also -- for
25 me it's, in part, a moral issue cause you're really trying

State v Gibson Marie Gehle - Proffer 2/23/17

83

1 to get into somebody's head. And it's one of the most
2 invasive test that you can use in psychology or in
3 psychiatry or even in the medical field. Because you're a
4 gauge on somebody's penis and then you're forcing them to
5 look at images or hear stories about things that might be
6 unpleasant. And you're trying to get in their head and see
7 how aroused they are. So in some places it's been found
8 inadmissible and I find that very problematic. Also, a lot
9 of people might not consent to this test or they feel like
10 they would be forced to take the test. And I don't want to
11 force anybody to take that test. Those are some of the
12 reasons that I don't use that test in these cases.

13 Q Dr. Gehle, what happened when you asked Mr. Gibson
14 about his current sexual interest?

15 A When I asked him about his current sexual interest?

16 Q Yes?

17 MR. FAULK: Objection, Your Honor. May we
18 approach.

19 THE COURT: You may.

20 (Off the record bench conference with counsel and the
21 Court.)

22 THE COURT: Ladies and gentlemen, I need to take
23 up a matter with these attorneys. I'm going to let y'all
24 step back to the jury room for -- it won't be more than just
25 a minute or two. So please don't discuss the case while

1 you're in there.

2 (Jury out at 12:05 p.m.)

3 THE COURT: All right. As your question again,
4 Mr. Morrow?

5 PROFFERED TESTIMONY OF DR. MARIE GEHLE

6 MR. MORROW: Yeah, Dr. Gehle, during your
7 interview or your evaluation of Mr. Gibson, what happened
8 when you were asking about his current sexual interest?

9 THE WITNESS: Well, I mean, that's a broad
10 question. I asked him in a variety of context about his
11 sexual interests. He told me that he was bisexual. That he
12 figured that out after the fact, is what he said. He told
13 me that he'd been sexually aroused by prepubescent males.
14 He told me that he had exposed his genitals to people. He
15 told me that -- he told me that if a straight male ever had
16 sex with another man, that that man was not heterosexual,
17 that that man would be bisexual. And when I was asking him
18 about the offenses pertaining to children -- because he, at
19 times, denied that he was aroused by children. It was
20 inconsistent through the evaluation. But when I questioned
21 him I used that definition. He was saying that if somebody
22 was -- a straight man ever had sex with another man, that
23 that person was not straight. And so I used those words
24 against him when questioning about children to highlight,
25 you know, if somebody had sex with children, that would mean

State v Gibson Marie Gehle - Redirect 2/23/17

85

1 that they're sexually attracted to children and that they're
2 not, you know, I guess just attracted to males or just --
3 sorry -- just attracted to adults. And he got upset at that
4 point in the interview and didn't want to answer any more
5 questions.

6 MR. FAULK: Your Honor, I'd have no objection if
7 that was what the testimony was. It just -- in her report,
8 it went a little further than that, and that's where my
9 objection would have been.

10 THE COURT: All right. You understand that,
11 Doctor?

12 THE WITNESS: Yes. I think.

13 MR. FAULK: Can I express my --

14 THE COURT: I think they're concerned that there
15 might -- you reference in your report that his attorney told
16 him not to answer a question. We don't want to invade the
17 attorney/client providence. So don't mention anything about
18 an attorney.

19 MR. FAULK: Thank you.

20 THE COURT: Okay?

21 THE WITNESS: Okay.

22 THE COURT: Is that sufficient for your purposes,
23 Mr. Morrow?

24 MR. MORROW: That's sufficient, Your Honor.

25 THE COURT: All right. Let's bring the jury in

1 here.

2 THE BAILIFF: Yes, Your Honor.

3 (Jury in at 12:09 p.m.)

4 THE COURT: All right. Mr. Morrow.

5 DR. MARIE GEHLE - CONTINUED REDIRECT EXAMINATION

6 BY MR. MORROW:

7 Q Dr. Gehle, what happened when you asked Mr. Gibson
8 about his current sexual interests?

9 A Well, he told me that he was bisexual. And I asked
10 him, you know -- his currently interests I asked him in a
11 variety of manners, a variety of different contexts in the
12 evaluation. We talked about it when we were talking about
13 the incident where he exposed his genitals to the group of
14 kids. And he told me that he wasn't necessarily aroused by
15 those children, that that wasn't what he found arousing.
16 And that he indicated that those victims were just
17 convenient. He said something in nature to he could not
18 have sex with women in pornography that he watched, so he
19 exposed himself to children, primarily male children. He
20 indicated in the interview that he held a belief that if a
21 straight man had ever had sex or engaged in sexual contact
22 with another man, that that man was not heterosexual, that
23 they were not straight. And so I used that reasoning with
24 him when talking about whether he was sexually attracted to
25 children. Because he has engaged in sexual acts with

1 children, I wanted to know if he had the same beliefs in
2 that regard, that somebody that was sexually attracted or
3 somebody who engaged in acts with children couldn't just be
4 sexually attracted to adults, that they were also sexually
5 attracted to children and consistent with pedophilia. When
6 I asked him about those things, he became upset with me and
7 he refused to talk anymore and so we stopped the interview
8 at that point.

9 Q Thank you.

10 MR. MORROW: No further questions, Your Honor.

11 MR. FAULK: Brief recross, Your Honor.

12 DR. MARIE GEHLE - RECROSS EXAMINATION

13 BY MR. FAULK:

14 Q You never asked him are you currently sexually
15 attracted to children; is that correct?

16 A Excuse me?

17 Q The verb tense is what I'm having a concern with.
18 Every time you paraphrase his response, it was always
19 talking about in the past tense. You asked was he attracted
20 to. Now, did you ever ask him is he currently attracted to?

21 A Yes.

22 Q Was that his response?

23 A Was what his response?

24 Q What was his response?

25 A What was his response? I would have to pull out my

1 notes here and see what his specific response was. Give me
2 a moment.

3 Q And was he talking about how he was feeling back in
4 1999, '95 or whatever, prior to his incarceration?

5 A Okay. Now, I'm lost. I'm not sure what question you
6 want me to answer --

7 Q Did you ever ask him is he currently attracted to
8 children?

9 A Yes.

10 Q What was his answer?

11 A I need to look that up.

12 Q Okay. Thank you.

13 A And you want me to do that; correct?

14 Q Yes?

15 A Okay. He said that he was attracted to males in the
16 past.

17 Q Okay.

18 A I did ask him -- I'm sorry -- what gender of children
19 he preferred sexually and he did respond males.

20 MR. FAULK: No further questions.

21 THE COURT: All right. Thank you, ma'am. You may
22 step down.

23 All right. Anything further from the State?

24 MR. MORROW: No, Your Honor. At this time the
25 State would rest its case.

State v. Gibson

2/23/17

89

1 THE COURT: All right. Anything from the
2 Defendant?

3 MR. FAULK: We want to make our motion.

4 THE COURT: All right. Ladies and gentlemen,
5 again, I've got to take up a matter of law. The State has
6 rested, which means it's presented its evidence in its case
7 in chief. And I need to take up a matter of law with the
8 attorneys. If you'll step back to the jury room again we'll
9 bring you back in just a few minutes. Thank you.

10 (Jury out at 12:37 p.m.)

11 THE COURT: All right. Mr. Faulk --

12 MR. FAULK: Your Honor --

13 THE COURT: No. Hold on. Hold on. All right.
14 Go ahead.

15 MR. FAULK: Your Honor, there's two points in a
16 motion for a directed verdict at this time. The first being
17 is that the State has really offered no evidence of a
18 current interest in pedophilic targets, current interest in
19 children. The State has only offered evidence as to conduct
20 that occurred twenty-two, twenty-five years ago. I believe
21 the question before the Court, before this jury is whether
22 he currently is a risk to be a sexual offender. And the
23 other point that we would raise is that Dr. Gehle testified
24 that it was a twenty-point five percent likelihood that he
25 would reoffend based on her evaluation of the Static-99.

1 And we would ask the Court to consider whether under the
2 definition of the Sexually Violent Predator, which is found
3 at 44-48-30, section (1), section (b) supp. And it defines
4 a sexually violent predator as -- in addition to somebody
5 who has been convicted of a sexually violent offense
6 suffered from a mental abnormality or personality disorder
7 that makes the person likely to engage in acts of sexual
8 violence if not confined. I'm not sure if twenty percent or
9 twenty point five percent is even close to being a
10 likelihood or that the person is likely to reoffend.

11 THE COURT: All right. Anything Mr. Morrow?

12 MR. MORROW: Your Honor, really, on a motion for
13 directed verdict the trial court is concerned with the
14 existence of evidence, not its weight. Considering in the
15 light most favorable to the State, the State has provided
16 the Court with the testimony of Dr. Gehle, who has testified
17 that he does suffer from a mental abnormality, in fact, two
18 mental abnormalities, a pedophilic disorder and
19 exhibitionist disorder. She's testified that that makes it
20 -- that he is -- based on her evaluation, he is likely to
21 reoffend sexually if not confined for treatment. And the
22 State has provided such evidence. Mr. Faulk's arguments go
23 to weight of that evidence and not its existence.

24 THE COURT: All right. I'm going to deny the
25 motion. She did testify that it violated the -- he's been

State v Gibson

2/23/17

91

1 convicted and in her opinion he is likely to reoffend in the
2 future.

3 All right. Are you ready to call your witness?

4 MR. FAULK: Yes, we are, Your Honor.

5 THE COURT: All right. Let's bring the jury in.

6 Again, before we get into it, this is the same
7 parameters as is yesterday; is that correct? This woman is
8 not testifying as an expert, is that --

9 MR. FAULK: Dr. Taylor is going to testify as an
10 expert.

11 THE COURT: All right. Hold on. Keep the jury.

12 And what is her area of expertise?

13 MR. FAULK: Psychology and counseling. She taught
14 -- she was on the faculty for eight and a half years at
15 Clemson University in the field of psychology and
16 counseling. She taught -- she the classes in psychotherapy,
17 psycho diagnostics and psychopharmacology. We would offer
18 her possibly as an opinion as to whether or not he -- that
19 he suffers from pedophilia..

20 MR. MORROW: Your Honor, we have been provided no
21 report from this expert, no information about -- that this
22 expert was going to be testifying as an expert. The State -
23 - she has not conducted an evaluation pursuant to the
24 Sexually Violent Predator Act. The State would find -- and
25 the State also sees that she's a licensed professional

State v Gibson Charlotte Taylor - Voir Dire 2/23/17 92

1 counselor and has a license in that... But is not licensed in
2 the field of psychology -- doesn't believe it's appropriate
3 for her to testify as an expert in the field of psychology.
4 She can certainly testify, if she's allowed to testify as an
5 expert, in the field of professional counseling or licensed
6 professional counseling or professional counseling
7 supervisor. But I feel taking it to the field of psychology
8 is not appropriate based on her licensure.

9 MR. FAULK: I don't think licensing is a
10 requirement for being able to testify as an expert in the
11 State of South Carolina. It's just whether or not she has
12 experience --

13 THE COURT: She's testifying -- I mean, this is a
14 field of science; isn't it?

15 MR. FAULK: Yes.

16 THE COURT: All right. Field of science, you
17 generally have to be licensed to -- if you're going to
18 testify as a professional engineer, a medical doctor, a
19 nurse, they're licensed. How is it that -- so Joe Q Smith
20 who may have been in a medical hospital -- I mean, a
21 psychiatric hospital for twenty years as a patient might be
22 able to testify as a expert?

23 MR. FAULK: I don't think that's a fair
24 comparison.

25 THE COURT: Because they have the experience of

State v Gibson Charlotte Taylor - Voir Dire 2/23/17 93

1 having been exposed to all of this for twenty years?

2 MR. FAULK: She has --

3 THE COURT: She's not a psychologist is she?

4 MR. FAULK: She was part of the faculty at Clemson
5 in the Department of Psychology and counseling. I don't
6 know what would make somebody a -- I mean, she doesn't have
7 a private practice in psychology but whether or not -- she
8 taught the classes.

9 THE COURT: Can she practice psychology in South
10 Carolina.

11 MR. FAULK: From her answer she seems to say yes.

12 THE COURT: All right. We'll let's put her on the
13 stand and we'll do a little voir diring on this witness now.

14 MR. FAULK: Thank you.

15 THE COURT: Ma'am, Come up here.

16 (WHEREUPON, Charlotte Taylor, was
17 sworn to tell the truth.)

18 CHARLOTTE TAYLOR - VOIR DIRE EXAMINATION

19 BY MR. FAULK:

20 Q Dr. Taylor, what faculty positions have you held?

21 A I'm sorry. I can't hear you.

22 Q What faculty positions have you held?

23 A If you'll give me one minute, please? I have retired
24 after eight and a half years at Clemson University teaching
25 graduate school students of counseling and psychology. As a

State v Gibson Charlotte Taylor - Voir Dire 2/23/17 94

1 professor emeritus, I have taught for thirteen years at the
2 Citadel. And also taught as an adjunct for South Carolina
3 State University and the University of South Carolina.

4 Q What courses did you teach at Clemson University?

5 A Numerous. In terms of this particular trial, psycho
6 diagnostics.

7 Q What is psycho diagnostics?

8 A That is teaching counselors and psychologists and
9 others how to use the diagnostic statistical manual. We're
10 on the Fifth version now.

11 Q What are some other courses that you have taught?

12 A Psycho pharmatrophics.

13 Q What is that?

14 A That is use of any pharmatrophic medication, that would
15 be medication for any mental illness, for any personality
16 disorder, anything covered in the DSM-V.

17 Q Do you have any other courses related to this topic?

18 A I highlighted yours. I didn't highlight mine. Oh, I
19 have it right here. Psychopathology.

20 Q What is that?

21 A That is the psychology of pathological disease and
22 illness, mental disorders.

23 Q What educational background did you have that allowed
24 you to teach those classes?

25 A I have an undergraduate degree in counseling with a

State v Gibson Charlotte Taylor - Voir Dire 2/23/17 95

1 major in psychology and minor in education from Jacksonville
2 University in Florida. I have a masters degree from the
3 Citadel --

4 THE COURT: All right. You have a psychology
5 degree with a major -- I mean, a counseling degree with a
6 major in psychology?

7 THE WITNESS: Yes, sir.

8 THE COURT: So --

9 THE WITNESS: No, sir. I'm sorry, sir. My
10 bachelor's degree is a major in psychology with a minor in
11 education. My master's degree is a major in counseling.
12 And my graduate degree is a major in counseling with a minor
13 in psychology.

14 BY MR. FAULK:

15 Q And where were those degrees earned?

16 A My master's degree was earned at the Citadel in
17 Charleston, South Carolina. My doctorate was earned at the
18 University of Memphis in Memphis, Tennessee. I'm also a
19 nationally certified counselor.

20 Q And you taught a course in psycho pharmacology?

21 A I have taught it a number of times.

22 Q And psycho diagnostics?

23 A Number of times.

24 Q What is a number of times? You were on the faculty for

25 --

1 A At least ten.

2 Q Okay. Ten for each class?

3 A At least.

4 Q Have you ever been qualified as an expert to testify in
5 the State of South Carolina?

6 A Many times.

7 Q In what fields were you qualified as an expert?

8 A As an expert witness for the victims.

9 Q And what was your field of expertise that you were
10 testifying as?

11 A I was the counselor and the psychologist for the
12 victims. I did the assessments including the MMPI, which is
13 part of the class of psycho diagnostics that requires
14 assessment.

15 Q Assessment of whether or not they were, in fact,
16 victimized. Is that the --

17 A That's part of it. Yes, sir.

18 Q What other fields have you been qualified as an expert
19 to testify?

20 A I've been qualified to testify as an expert in cases of
21 domestic violence.

22 Q And what was your field of expertise?

23 A The same areas I just mentioned.

24 MR. FAULK: Your Honor, I think under the statute

25 --

State v Gibson Charlotte Taylor - Voir Dire 2/23/17

97

1 THE COURT: Do you have any voir dire?

2 MR. MORROW: Yes, Your Honor.

3 CHARLOTTE TAYLOR - VOIR DIRECT EXAMINATION

4 BY MR. MORROW:

5 Q Dr. Taylor, you have an EdD degree; correct? That's
6 where you're at?

7 A That's correct?

8 Q And it was a major in counseling; correct?

9 A Yes.

10 Q With a minor in psychology?

11 A Correct.

12 Q You are a licensed professional counselor; correct?

13 For the State South Carolina?

14 A Correct.

15 Q And the license number for that is Number 499?

16 A Correct.

17 Q And you are a licensed professional counselor
18 supervisor; correct?

19 A Correct.

20 Q And that license number 1523?

21 A Correct.

22 Q And when I look both of those up on the LLR, licensing
23 and regulation board in South Carolina, I can pull you up
24 and see if you're licensed; correct?

25 A Uh-huh. (Affirmative response.)

State v Gibson Charlotte Taylor - Voir Dire 2/23/17 98

1 Q Okay. You are not licensed in the State of South
2 Carolina in the field of psychology?

3 A I'm licensed in psychology as a school psychologist.

4 Q But not as a psychologist?

5 A Not a clinical psychologist.

6 Q Thank you.

7 MR. MORROW: That's all I have, Your Honor.

8 THE COURT: All right. She's not going to testify
9 as a psychologist in this case. She's not licensed as a
10 psychologist. She's not trained as a psychologist. She's
11 not a practicing psychologist. She is a counselor in
12 education, which she has taken some psychology courses and
13 maybe has taught some courses that are psychology related.
14 But she is not a professional psychologist. She's not a
15 licensed psychologist and she won't be qualified as a
16 witness as a psychologist.

17 MR. FAULK: I would like the opportunity to
18 proffer what her testimony would be. If we could do that
19 now?

20 THE COURT: How long is it going to take?

21 MR. FAULK: Fifteen minutes.

22 THE COURT: All right.

23 THE WITNESS: May I speak?

24 MR. FAULK: No. Let me ask you questions.

25 CHARLOTTE TAYLOR - PROFFER DIRECT EXAMINATION

State v Gibson Charlotte Taylor - Voir Dire 2/23/17

99

1 BY MR. FAULK:

2 Q You have taught classes in psycho diagnostics; is that
3 correct?

4 A That's correct.

5 Q And that would include helping teach people how to make
6 diagnosis that's under the DSM-V; is that correct?

7 A That's correct.

8 Q DSM-V has a category called pedophilia; is that
9 correct?

10 A That's correct.

11 Q Now, how much time have you spent with Mr. Gibson? How
12 many hours would you guesstimate you have spent with Mr.
13 Gibson in counseling and therapy?

14 A Probably a couple thousand.

15 Q And during that time did you look at his offense
16 history?

17 A Yes, I did.

18 Q And during that time did you look at his sexual
19 history?

20 A Yes, I did.

21 Q And his family history?

22 A Yes, I did.

23 Q And so a part of the thousand hours or how ever many
24 hours was spent looking at his -- how he got here today; is
25 that correct?

State v Gibson Charlotte Taylor - Voir Dire 2/23/17 100

1 A Correct.

2 Q And you know that he'd been accused and pled guilty to
3 crimes of sexual violence against children; is that correct?

4 A That's correct.

5 Q And so you know that in the past that he has had
6 victims who have been children; is that correct?

7 A Would you repeat that, please?

8 Q You know in the past that some of his victims have been
9 children; is that correct?

10 A That's correct.

11 Q Now, do you have an opinion about whether or not he is
12 a pedophile --

13 A Yes, I do.

14 Q -- or that he suffers from pedophilia?

15 A Yes, I do.

16 Q And what is that opinion?

17 A Based on my own assessments of Mr. Gibson and because
18 the State did not do a forensic report on the MMPI --

19 Q I just want to know what you know, not --

20 A I'm sorry.

21 Q -- without saying anything --

22 A I'm sorry.

23 Q What do you know specifically and why do you say --

24 A James Gibson is not a pedophile.

25 Q And what is the basis for that opinion?

State v Gibson Charlotte Taylor - Voir Dire 2/23/17 101

1 A The basis of that opinion is not only research but my
2 experiences with him, both in instruction and in therapy.

3 Q Okay. And can you give us some specifics?

4 A It is true that Mr. Gibson is bisexual.

5 Q Oka.

6 A It is also true that Mr. Gibson endured from birth a
7 horrendous childhood. He was passed from group to group.
8 He developed a reactive attachment disorder.

9 Q What does that mean?

10 A That means it was difficult for him to feel close to
11 people, to gain any form of trust. Eventually, within the
12 framework of the prison system, he was introduced to people
13 such as myself who voluntarily came in.

14 Q But let me just go back. He had victims who were
15 children. Why do you say he's not a pedophile?

16 A I say he's not a pedophile because his initial offenses
17 were exploratory.

18 Q What does that mean?

19 A That means that he was development delayed at the age
20 of eighteen when he committed those offenses. You could
21 liken that to seven and eight year olds who explore each
22 other.

23 Q And so he had crimes against children up until 1999?

24 A No. I believe the next set of offenses occurred when
25 Mr. Gibson was attempting to determine whether he was

1 homosexual, heterosexual or bisexual.

2 Q What was the age of his last offenses?

3 A Thirty.

4 Q And those were offenses against children?

5 A Some of them.

6 Q And what is your basis for saying that they do not
7 constitute him being a pedophile?

8 A At that point in time, he had been receiving support
9 from numerous areas within the prison system, which provide
10 education. He began to know himself. While he was not
11 provided until a few years ago mental health treatment, he
12 was provided a great deal of educational information, which
13 included SOAP?

14 Q And what is SOAP?

15 A SOAP is the program that South Carolina uses. His
16 scores are exemplary, the Sexual Offender Awareness Program.

17 Q So is it your testimony that he is no longer a
18 pedophile or never was a pedophile?

19 A Never was a pedophile. He was a molester.

20 Q And in your opinion what is the difference between the
21 two?

22 A The difference is that, and I have plenty of research
23 to back it up if anyone's interested. But the difference is
24 that there are various reasons for molestation. Not all of
25 them are pedophilia?

State v Gibson Charlotte Taylor - Voir Dire 2/23/17 103

1 Q What are the other reasons?

2 A Excuse me. I'm going to have to look, even though it's
3 my own research. The Massachusetts Treatment Center would
4 denote Mr. Gibson as a regressed molestor who has normal
5 sexual interests. And I would point out that the DSM-V does
6 not consider bisexuality abnormal. They may turn to sexual
7 contact, as he did, at the age of approximately thirty with
8 children as a means of coping to identify who they are and
9 what their sexual identity is. Additionally, rather than
10 antisocial attitudes and behaviors, the initial behaviors on
11 Mr. Gibson's part could be attributed to -- and this is a
12 study out of the University Arizona -- an older child's
13 curiosity, a sexually older child's curiosity. And rather
14 than pedophilia or paraphilia, in human growth and
15 development, identity versus role confusion, I believe that
16 Mr. Gibson never formed a role that he felt comfortable was
17 him until approximately ten years ago.

18 Q So it's your opinion that the -- in your opinion and
19 expert medical certainty, psychological certainty, that he
20 is not a pedophile?

21 A He is not a pedophile.

22 Q And that his assaults against child victims was not
23 motivated by a desire for pedophilia; is that a way to say
24 it?

25 A He's not interested in children. And many children do

1 enter Allendale Correctional Institute.

2 Q What do you mean by that?

3 A There are tours; there are visitations. Mr. Gibson
4 was, in fact, in the character dorm --

5 Q Well, talk about that testimony.

6 THE COURT: Let me tell you something. Let's
7 stick to what we have here.

8 MR. FAULK: Yes, sir.

9 THE COURT: This lady, and in my opinion, you to
10 some extent, may have some problems if you're promoting this
11 lady as a psychologist who can testify at a trial as an
12 expert, when she's not licensed. Is not a psychologist at
13 all. I'm letting you proffer this but we're going to stick
14 to the area that you're trying to get her to testify to.

15 MR. FAULK: Thank you, Your Honor. I have no
16 further questions.

17 THE COURT: Have you got anything Mr. Morrow?

18 MR. MORROW: Nothing for this witness, Your Honor.

19 THE COURT: All right. Again, my ruling is she
20 cannot testify as a psychologist and offer any opinion as a
21 psychologist because she's not licensed as a psychologist.
22 She is not a practicing psychologist. She's not a
23 psychologist. She's taken some courses in psychology and
24 may have taught some courses that are psychology related.

25 MR. FAULK: Thank you.

State v Gibson

2/23/17

105

1 THE COURT: All right. Let's bring the jury in.

2 THE BAILIFF: Your Honor, before they come, may I
3 approach?

4 THE COURT: Sure.

5 THE BAILIFF: (Approaches the bench)

6 THE WITNESS: Should I step down?

7 THE COURT: Yes, ma'am. You can have a seat.

8 You can have a seat so we can call you back.

9 You can qualify her as an expert as an educational
10 consultant --

11 THE WITNESS: I'm an educational psychologist.

12 THE COURT: Ma'am.

13 THE WITNESS: I'm licensed as --

14 THE COURT: Do you want to argue with me.

15 THE WITNESS: No, sir.

16 THE COURT: Because you're going to end up losing
17 if you do.

18 THE WITNESS: No, sir.

19 THE COURT: All right. Have a seat.

20 THE WITNESS: I'm simply saying --

21 THE COURT: You do not talk to me unless I say
22 something -- you answer his questions. His questions.

23 That's all you do.

24 All right. Bring the jury in. Mr. Bishop has been
25 elected as the foreperson of this jury.

1 (Court's Exhibit No. 1, jury
2 foreperson, was marked.)

3 THE BAILIFF: I beg the Court's indulgence, Your
4 Honor. (Approaches the bench)

5 (Jury in at 12:40 p.m.)

6 THE COURT: All right. Let me get the lawyers to
7 step up here just a minute, if you would.

8 (Off the record bench conference with counsel and the
9 Court.)

10 THE COURT: Ladies and gentlemen, the State's
11 rested, which means, as I told you they presented their
12 evidence in their case in chief and the Respondent has the
13 opportunity to offer his evidence. And they're prepared to
14 go forward. But what we're going to do is break for lunch
15 and come back in because their testimony would take longer.
16 We would break no later than 1:00 normally. So we'll break
17 for lunch and come back in. I'm going to ask y'all to be
18 back here at quarter 'till 2:00 and we'll let them put up
19 their case and we'll go forward at that time. Please do not
20 discuss the case with anyone while you're gone, including
21 each other while you're gone. Y'all have a nice lunch and
22 we'll see you back here in an hour and two or three minutes
23 one of the two. Thank y'all.

24 (Jury out 12:41 p.m.)

25 THE COURT: All right. Y'all can go to lunch.

State v Gibson

2/23/17

107

1 I need to deal with these folks that decided they
2 didn't want to come to jury duty today.

3 All right. Those folks that are here that were jurors
4 that didn't show up this morning; y'all come up here,
5 please.

6 Ma'am, I've already talked to you. You can go to
7 lunch. You need to be back here at quarter till 2:00.

8 The rest of y'all come up here, please?

9 Ma'am, tell me your name. Stay right there? Right
10 there.

11 JUROR NO. 174: I'm Cheryl Still.

12 THE COURT: All right. Ms. Still, why weren't you
13 here this morning at 9:15?

14 JUROR NO. 174: When I called on Tuesday night --
15 or I was here Tuesday. And when I called Tuesday night, the
16 --

17 THE COURT: You weren't supposed to call Tuesday
18 night. You were supposed to call Wednesday night. When you
19 were excused on Tuesday, we picked a jury that morning and I
20 told you that y'all this case would -- y'all didn't need to
21 call until Wednesday night not Tuesday night.

22 JUROR NO. 174: Yes, sir. And I misunderstood and
23 I called Tuesday night and they said that wouldn't need us
24 for the rest of the week. So I didn't call --

25 THE COURT: I doubt they told you they wouldn't

State v Gibson

2/23/17

108

1 need you for the rest of the week because we knew all along
2 we were going to need another jury for the rest --

3 Did y'all put on --

4 THE CLERK: I did not put a message on until 5:00
5 yesterday afternoon, Judge. There may have been an old
6 message on there.

7 JUROR NO. 174: That must have been because when I
8 called --

9 THE CLERK: But it would have said the term of
10 court that they were supposed to appear form.

11 JUROR NO. 174: So, yes, sir.

12 THE COURT: Ma'am, we can't operate the court
13 system if people don't come. You've got a responsibility to
14 do it and do it right, so here's what the deal is --

15 JUROR NO. 174: Yes, sir. I understand.

16 THE COURT: -- what you're going to do is sit here
17 the rest of the day while this trial is going on. You'll be
18 here as long as we have a jury in this courtroom this week,
19 okay?

20 JUROR NO. 174: Okay.

21 THE COURT: You're free to leave. Be back here at
22 quarter till 1:00.

23 JUROR NO. 174: Quarter till 1:00?

24 THE COURT: I mean 2:00. I'm sorry.

25 JUROR NO. 174: Yes, sir. Quarter till 2:00.

State v Gibson

2/23/17

109

1 THE COURT: Yes, ma'am. If you don't come --

2 JUROR NO. 174: Okay. Quarter to 2:00 and be
3 here.

4 THE COURT: Wait in this courtroom. Right back
5 there where you were sitting or wherever you want to sit. I
6 don't care where you sit.

7 JUROR NO. 174: Okay.

8 THE COURT: But you've got one hour to eat lunch.

9 JUROR NO. 174: Okay.

10 THE COURT: Thank you, ma'am.

11 JUROR NO. 174: All right. Thank you.

12 THE COURT: Yes, sir. Tell me your name?

13 JUROR NO. 25: Dennis Casey.

14 THE COURT: Why weren't you here?

15 JUROR NO. 25: When I called last night the line
16 was busy. And I called a couple of times and the line was
17 busy and I didn't think about it to call back earlier this
18 morning. And that's my excuse for being not here. And I've
19 -- I apologize. I know that you're prompt and I apologize.

20 THE COURT: Sir?

21 JUROR NO. 25: I apologize for not being here
22 today. You made it clear, be here.

23 THE COURT: All right. Well, you be back here at
24 quarter 'till 2:00. You're going to sit here the rest of
25 the afternoon too or as long as we've got a jury in this

State v Gibson

2/23/17

110

1 courtroom?

2 JUROR NO. 25: Thank you, sir.

3 THE COURT: Thank you.

4 Tell me your name, ma'am?

5 JUROR NO. 43: Joyce Davis.

6 THE COURT: Davis?

7 JUROR NO. 43: Uh -- I don't know yet. I got to go
8 back tomorrow.

9 THE COURT: All right. Ms. Davis, why weren't you
10 here?

11 JUROR NO. 43: I was calling and it was busy and I
12 went on a job interview this morning. I'm sorry.

13 THE COURT: Did you get the job?

14 JUROR NO. 25: No, I don't know yet. I've got to
15 go back tomorrow.

16 THE COURT: Well, you hope you do. You're going
17 to be here as long as this jury's here too.

18 JUROR NO. 25: Okay.

19 THE COURT: Be back here at quarter 'till 2:00.

20 JUROR NO. 25: All right. Thank you.

21 THE COURT: Yes, sir. Tell me your name?

22 JUROR NO. 20: Teddy Britt.

23 THE COURT: I'm sorry?

24 JUROR NO. 20: Teddy Britt.

25 THE COURT: And Mr. Britt, why didn't you come?

State v Gibson

2/23/17

111

1 JUROR NO. 20: The same reason as the other
2 gentleman. When I called the line was busy. I called a
3 couple of times and never got an answer so I showed up for
4 work this morning instead.

5 THE COURT: That ain't good enough. You knew you
6 had jury duty this week; didn't you?

7 JUROR NO. 20: Yes, sir. And like I said I called
8 yesterday afternoon.

9 THE COURT: You just keep calling until you get
10 them if 11:00 at night. If people don't show we can't
11 operate it.

12 JUROR NO. 20: Yes, sir.

13 THE COURT: There's a number of people that we
14 haven't been able to find. But when they come, they're
15 probably going to spend a little bit of time at the same
16 place some of these folks are.

17 JUROR NO. 20: Yes, sir.

18 THE COURT: You be back here at quarter till 2:00,
19 if you would.

20 JUROR NO. 20: Definitely.

21 THE COURT: Madam Clerk, mark on this paper -- do
22 you have the people that showed up?

23 THE CLERK: Yes, sir.

24 THE COURT: Mark that we spoken to them in here..

25 (Court in recess for lunch)

State v Gibson Charlotte Taylor - Direct 2/23/17 112

1 (Court in session after lunch
2 break.)

3 THE COURT: All right. Let's bring the jury in.
4 We ready to go?

5 THE BAILIFF: Yes, Your Honor.

6 THE COURT: You ready to go, Mr. Faulk?

7 MR. FAULK: We are, Your Honor.

8 (Jury in at 1:56 p.m.)

9 THE COURT: All right. Ladies and gentlemen, as
10 you recall when we finished the State had put up their case
11 and are you ready to call your first witness there, Mr.
12 Faulk?

13 MR. FAULK: We are, Your Honor.

14 THE COURT: All right. If you would, please, sir.

15 MR. FAULK: We call Dr. Taylor to the stand.

16 (WHEREUPON, Charlotte Taylor was
17 sworn to tell the truth.)

18 CHARLOTTE TAYLOR - DIRECT EXAMINATION

19 BY MR. FAULK:

20 Q Would you please state your name for the record?

21 A Dr. Charlotte Murrow Taylor.

22 Q And what type of -- do you hold any professional
23 licenses?

24 A Yes.

25 Q And what fields are those in?

State v Gibson Charlotte Taylor - Direct 2/23/17 113

1 A My licenses are in the field of counseling, national
2 and state, educational --

3 Q Educational counseling?

4 A Educational certification in psychology.

5 Q What type of academic background do you have?

6 A I have a bachelor degree from Jacksonville University
7 in Florida, with a major in psychology and a minor in
8 education. I have a master's degree from the Citadel with a
9 major in counseling. And I have a doctorate from the
10 University of Memphis in Memphis Tennessee with a major in
11 counseling and a minor in psychology.

12 Q So what does -- so you have a PhD. in counseling?

13 A No, I have an EdD.

14 Q All right. So what does counseling mean in that
15 context? What would a counselor do?

16 A A counselor provides therapeutic diagnostics and
17 techniques -- diagnostics and techniques to help people who
18 are either referred or perceive the need to change thought
19 processes, inappropriate feelings and/or behaviors.

20 Q Do you practice as a counselor in the State of South
21 Carolina?

22 A Yes, I do.

23 Q And who are your customers or clients in your practice?

24 A I do individual therapy, marriage and family therapy.
25 I do -- one third of my practice is assessment, referrals by

State v Gibson Charlotte Taylor - Direct 2/23/17 114

1 doctors. I do group therapy. And as a volunteer, I do
2 disaster response for the American Red Cross. And I do
3 therapy as well as instruction and counseling in the prison
4 system.

5 Q How long have you been a licensed counselor in the
6 State of South Carolina?

7 A Since probably the early '80s.

8 Q Okay. And you've been practicing as a counselor?

9 A The entire time.

10 Q Okay.

11 MR. FAULK: At this time, we would ask to have her
12 qualified as an expert in counseling?

13 THE COURT: Any Voir Dire?

14 MR. MORROW: No, Your Honor. No objection.

15 THE COURT: All right. Ladies and gentlemen,
16 again, as I told you earlier scientific, technical or other
17 specialized knowledge will assist you, the trier of the
18 facts, in understanding any evidence or determining any fact
19 that may be in issue. The witness may be qualified as an
20 expert in his or her area of expertise by virtue of his or
21 her knowledge, experience, skill training or education and
22 may testify thereto and offer opinions in his or her areas
23 of expertise. I caution you again that you are to give this
24 witness's testimony such weight and credibility as you deem
25 appropriate, as you will with any and all witnesses who

State v Gibson Charlotte Taylor - Direct 2/23/17 115

1 testify in this case.

2 BY MR. FAULK:

3 Q Have you ever had an opportunity to meet with Mr.
4 Gibson?

5 A Many times.

6 Q And what context was that?

7 A As a volunteer at Allendale Correctional Institute. I
8 wear several hats. One of them is to teach certain classes,
9 life skills, advanced life skills and psychology. One of
10 them is to do counseling groups; and one of them is to do
11 individual counseling and therapy.

12 Q And wearing all those hats, which ones did you have
13 with Mr. Gibson?

14 A All three.

15 Q So he was in your life skills class?

16 A Yes, he was.

17 Q And then what's the second one is a group counseling?

18 A Yes.

19 Q And individual counseling?

20 A Yes. And he has also participated in individual
21 counseling the entire time he has been at the Orangeburg
22 County Detention Center.

23 Q Okay. While he's been there, and who's provided him
24 the individual counseling; is that you?

25 A Yes.

State v Gibson Charlotte Taylor - Direct 2/23/17 116

1 Q Okay. So what period of time did you -- when did you
2 first start meeting with him in Allendale?

3 A When he first arrived in Allendale, I think the middle
4 of 2015.

5 Q Okay. And so since the middle of 2015 until now, how
6 much time have you spent with him?

7 A Probably as many as two thousand hours.

8 Q Okay. Are there specific types of counseling?

9 A Yes.

10 Q Do you -- what are some examples of types of
11 counseling?

12 A Adlerian counseling looks at the --

13 Q Which one do you focus on?

14 A I use a number with the prison system inmates.
15 Particular sex offenders, I tend to use cognitive behavioral
16 therapy because it is recommended by the latest research and
17 experts.

18 Q Okay. And there are two things there. One you said
19 with sex offenders. So what was your -- was it a sex
20 offender group that you were working in Allendale?

21 A My first group was a sex offender group; yes.

22 Q Okay. And then you were teaching life skills to the
23 sex offenders?

24 A Yes.

25 Q And how often would you all meet?

State v Gibson Charlotte Taylor - Direct 2/23/17 117

1 A Once a week.

2 Q And for what period of time?

3 A For two and a half hours.

4 Q And what was then the duration of that, how many weeks?

5 A I'm sorry.

6 Q So it's once a week for two and a half hours for how
7 many weeks?

8 A That particular class goes for an entire year, except
9 holidays.

10 Q Okay. And what was Mr. Gibson's participation in that
11 class?

12 A He was highly motivated. He had already participated
13 in a program that lead him to believe that the more he
14 learned about himself and others, the better chance he could
15 be a productive citizen. In the getting to know you
16 meetings that we first held, that was one of his responses
17 about what he hoped to get out of the class, to know himself
18 better and to learn to trust more.

19 Q And you've had some private counseling sessions with
20 him?

21 A Yes.

22 Q When did they start?

23 A Probably October 2015.

24 Q Are there any specific issues that you all addressed in
25 Mr. Gibson's counseling?

State v Gibson Charlotte Taylor - Direct 2/23/17 118

1 THE WITNESS: Do I have your permission to speak
2 freely?

3 THE COURT: Uh-huh. (Affirmative response.)

4 A Yes.

5 BY MR. FAULK:

6 Q And what were those issues?

7 A Mr. Gibson is an abandoned child. He has an attachment
8 disorder. There was no bonding with his birth parents.

9 Q And that was based on -- how did you come to that?
10 What is that based on?

11 A He did his life story. I also spoke to a member of his
12 family.

13 Q Okay. So he had attachment issues and what else?

14 A Mr. Gibson was abused in a variety of ways when he was
15 young, soon after birth. Children who have disabilities are
16 often more abused than children who do not. Mr. Gibson was
17 born both blind and somewhat deaf. His birth mother took
18 him to his grandmother and left him. Both his grandparents
19 were alcoholics.

20 Q And this is based on his report; is that right?

21 A And his Aunt Suzanne's report.

22 Q Okay.

23 A With whom I have been in constant contact.

24 Q And so how often would you speak with her?

25 A At least once a month.

State v Gibson Charlotte Taylor - Direct 2/23/17 119

1 Q So why is important to address these types of issues?
2 Why was he in counseling for these types of issues?

3 A Because unlike most of us he never learned how to have
4 any type of healthy relationship or who he was as a human
5 being.

6 Q And so how would you counseling effect that? How would
7 your counseling treat that?

8 A In cognitive behavioral therapy, you have to add a
9 component of emotionality because the feelings are so deeply
10 embedded that you cannot help someone change their thinking
11 so that they can change their behavior until you allow them
12 to express their feelings. So the first thing that we do in
13 a class are different activities, a collage, for example,
14 that I interpret for them, based on the emotionality they
15 express. Then we look at the thought pattern and decide
16 whether that emotion is real or based on someone else's
17 behavior toward me or toward Mr. Gibson.

18 Q The emotion is real to?

19 A The emotion of, for example, being abandoned.
20 Physically, Mr. Gibson was not abandoned. Emotionally, he
21 was abandoned by both his birth father and mother and
22 developed feelings of shame and guilt because of that. He
23 acted out on those feelings of shame and guilt in grossly
24 inappropriate ways. He was also physically abused,
25 molested. He was given alcohol at a very early age, I

State v Gibson Charlotte Taylor - Direct 2/23/17 120

1 believe five. Five is what I'm thinking. And he was never
2 modeled how to be an appropriate masculine human being.

3 Q What kind of progress has he made in his counseling, in
4 your counseling with him?

5 A I would say fantastic.

6 Q And how would you measure his progress?

7 A I would measure it two ways. First by his grades in
8 the state-sponsored program, which he participated in before
9 he came in there. They're very high. Secondly, in his
10 motivation. He never missed a class. He changed cognitive
11 distortions, which are thoughts that are irrational; I'm
12 worthless. We're all worthy. We all do things wrong, I
13 expect. When I met Mr. Gibson, he had come a long way but
14 he still had feelings of worthlessness.

15 Q Well, how does somebody change their cognitive
16 distortions?

17 A I teach by having them, in that particular instance,
18 look at accomplishments. One of his accomplishments is that
19 he worked with the disabled in Allendale. One of his
20 accomplishments is that he was a part of the animal advocate
21 program in Allendale where rescued dogs and cats are trained
22 by the inmates in Bamberg Dorm and then adopted. It's a no-
23 kill program. In addition to that, members in the group,
24 during weeks that we we're working on cognitive distortions,
25 write down what good things they're seeing, if it's that

State v Gibson Charlotte Taylor - Direct 2/23/17 121

1 distortion, the other inmates do it. And then we validate
2 in the meeting. Is that something you did? That's a worthy
3 thing. I have to add here that there's a spiritual basis
4 for that because Mr. Gibson had parents who threw him away,
5 part of the work in group and individual -- they're not in
6 class -- had to be they had an appropriate parent in the
7 form of God, and he has accepted that.

8 Q So there's a faith-based component to your counseling?

9 A Yes.

10 Q Does it only work if you're --

11 A No.

12 Q My question was does cognitive behavioral development
13 only work if you have faith?

14 A It works much more readily and it is instilled within
15 human being brilliantly if faith is a component.

16 Q Through this counseling, has he had an opportunity to
17 change some of his cognitive distortions?

18 A Many.

19 Q And you said worthlessness. What are some of those
20 other cognitive distortions?

21 A That he couldn't communicate with other people so he
22 didn't. So they thought he was either mean or an isolate.

23 Q What was the basis for that?

24 A He'd never been taught to communicate. He couldn't
25 hear, so when he tried to speak he spoke very loudly as a

State v Gibson Charlotte Taylor - Direct 2/23/17 122

1 young person, age birth to twenty-five. I don't know. And
2 so it was very off-putting. He gave an example of his
3 grandmother being told not to bring him back to church
4 because he was too loud. People with hearing deficits are
5 often very loud. We had to look at that as a physical
6 disability he had no control over.

7 Q Okay. So are there other cognitive distortions that
8 you all addressed during the therapy?

9 A Yes. Drinking's okay. Despite the fact that his
10 parents were both horrible alcoholics, James developed
11 alcohol as a coping mechanism as many people do. If I just
12 pass out, I won't -- you know, this will go away. I am a
13 doctoral addictions counselor, licensed. And one of the
14 lessons has to be that that behavior causes yet another
15 problem in life. And so we dealt with that as well. That
16 is a common factor with inmates.

17 Q What was the distortion that he could drink or he
18 should not drink?

19 A The distortion was that it was okay for him to drink.
20 He realizes he can't touch alcohol.

21 Q Okay. Any other distortions that you want to address?

22 A It's okay to hit people. James was beaten severely
23 when he was a young person and he developed the concept that
24 the big person gets to hit the little person, would hurt the
25 little person. He had already done a lot of work on this,

State v Gibson Charlotte Taylor - Direct 2/23/17 123

1 though we did do a lot more work on this because that is in
2 times of frustration a very easy coping mechanism to fall
3 back on. And so he learned the triggers so that he could do
4 thought stopping. Imagine a stop sign and just back away.
5 Learn appropriate communication to say let's agree to
6 disagree. It's like a tapestry tied together. Bathing.
7 James was not allowed to bathe but a couple of times a week
8 when he was child and he was only allowed to wash his hair
9 once. When I met James, that was still a little bit of a
10 problem. And he has completely eliminated that. His
11 hygiene is impeccable.

12 Q Are you concerned that he's going to relapse into some
13 of these -- I'm sorry. Was it deficits in cognitive
14 development?

15 A No.

16 Q And why is that?

17 A Well, there are several reasons. First, James has a
18 relapse prevention plan in place and he has been working on
19 it for two and a half years.

20 Q Without going into the specifics of the relapse, but
21 what types of areas does the relapse prevention plan cover.
22 I don't want you to read the exact plan?

23 A It covers joining sex abuse anonymous where he was
24 molested significantly when he was a very small child and as
25 a prepubescent child himself. Having a mentor, possibly

State v Gibson Charlotte Taylor - Direct 2/23/17 124

1 living in a residential facility where groups are provided
2 for him.

3 Q So having a mentor, living in a -- when you say
4 residential facility, you're talking about like Jump Start
5 or --

6 A Shield.

7 Q -- Shield?

8 A Yes.

9 Q And what is the benefit to having a mentor or being
10 around other people who would be in Shield?

11 A It is a --

12 Q Is it accountability?

13 A Yes. Total accountability. But it's also transition.
14 This man's been locked up for twenty-three years. I've
15 worked with gentlemen who don't know how to use a phone,
16 that don't have the basic things that we take for granted.
17 They have no conscious understanding how to work that. He
18 has many skills and he has had significant job experience.
19 So they will hook him up with Voc. Rehab. He has already
20 committed to working with a therapist. They will work him
21 with mental health. There will be a lot of opportunities.
22 The gentleman who runs Shield, for example, David Truluck,
23 does a fantastic job of monitoring and getting people ready
24 to go home.

25 Q So Shield, I know what Shield is. There's one in

State v Gibson Charlotte Taylor - Direct 2/23/17 125

1 Charleston. So that's like a half-way house; is that
2 correct?

3 A Yes.

4 Q Okay. And what type of financial does it provide?

5 A Each member provides their own support and James does
6 have access to provide for his support. He also has the
7 ability to work.

8 Q And doesn't Truluck have some businesses? Don't they
9 work in the businesses?

10 A Yes. But they don't have to work in the businesses. I
11 mean, there are a lot of opportunities available.

12 Q And Shield provides housing?

13 A Yes. And every day someone comes in with either a
14 spiritual based meeting, substance based meeting, sexually
15 behavior based meeting. At this point, I must disclose that
16 as Dr. Gehle indicated, James clearly is a bisexual.

17 Q Let me just back off that for a second?

18 A Okay.

19 Q Would he benefit from -- you said that you were an
20 addiction counselor?

21 A Yes.

22 Q And so would he benefit from going to AA meetings?

23 A I think that they bring -- if we're talking most of
24 these residential centers, Shield included, they bring them
25 in. And, yes, they're required to go.

State v Gibson Charlotte Taylor - Direct 2/23/17 126

1 Q So in your course of providing counseling to Mr. Gibson
2 or other people, are there people who come who -- one of
3 their core issue is a sexual confusion?

4 A Yes.

5 Q In addition to Mr. Gibson how many other people like
6 that have you dealt with?

7 A Forty, fifty.

8 Q And I'm using sexual confusion. But gender identity or
9 --

10 A I'm on the gay-friendly therapists list in Charleston.

11 Q Okay. Was his sexual identity one of the issues that
12 you addressed in the counseling?

13 A Yes.

14 Q And what was your opinion and how did his sexual
15 identity or his self-perceived sexual identity, how did that
16 effect his behavior?

17 A In order to explain that, I must explain, you know -- I
18 can -- Okay.

19 Q Okay.

20 A When we diagnose sexual identity is no longer
21 considered a disorder. Sexual inappropriate behavior is.
22 Sexual identity is not. It is my professional opinion that
23 --

24 Q Let me just -- so you deal with people who have sexual
25 identity issues in your counseling?

State v Gibson Charlotte Taylor - Direct 2/23/17 127

1 A Yes.

2 Q And in order for them to benefit from your counseling,
3 how do you deal with the sexual identity issues?

4 A First, we have to determine what their sexual identity
5 actually is.

6 Q Is that part by self-report?

7 A Part of it's self-report, part of it's diagnostic,
8 forensic reports.

9 Q And what is the -- if somebody has sexual identity
10 issues, what is the purpose of the counseling? How would
11 the counseling help them?

12 A People with sexual identity issues have the same kind
13 of problems everybody else has. You know, everybody's got
14 some kind of issues. My work with people who have sexual
15 identity issues is to help them become comfortable in their
16 own skin, whether they be homosexual, heterosexual, or
17 bisexual.

18 Q Has it been your experience that people with sexual
19 identity issues have difficulties in their personal life?

20 A Yes.

21 Q And have those difficulties caused them to get into
22 trouble?

23 A Yes.

24 Q And is that why they've sought counseling?

25 A Yes.

State v Gibson Charlotte Taylor - Direct 2/23/17 128

1 Q So where, based on your counseling and the time spent
2 with him, what is your opinion of his sexual identity
3 issues?

4 A I believe that James Gibson has resolved his sexual
5 identity issues. I believe he will need additional therapy
6 in terms of any form of adult relationship, be it male or
7 female, because that has not been part of his existence.
8 But he knows that he is bisexual and he is comfortable in
9 his own skin about that.

10 Q And you think as your time spent with him, has that
11 helped him become comfortable? I mean, do you think that
12 that transformation was a result of the counseling? Did it
13 contribute to it?

14 A Definitely. It was very difficult for him to bring up
15 but he made a commitment, as do all my group members, that
16 we're not going to be honest, I'm not going to let them stay
17 in the group.

18 Q And so you talked about he was always at that class,
19 that met two and a half hours a week for a period of years.
20 And then the group, how often would the group meet?

21 A The group usually meets every other week.

22 Q Okay. For how long?

23 A That's an unlimited number. It depends on whether
24 we've covered the issues we need to cover in group. These
25 are closed groups. New people don't come in once we've

State v Gibson Charlotte Taylor - Direct 2/23/17 129

1 started. People have a certain set of issues they want to
2 deal with, let's say divorce, for example. It's a huge loss
3 for people. It's a huge loss for children. When we set up
4 that group it's very inappropriate to have someone pop in
5 six weeks after the group is started.

6 Q So there were many people in the group who also had
7 sexual identity issues?

8 A Several.

9 Q Would those be topics that you would talk about during
10 the group?

11 A Yes.

12 Q And, again, so you said the group could go for a
13 varying amount of time when it would meet. But how often
14 each week would it meet? Oh, you said every other week?

15 A Every other week.

16 Q And so for how many weeks would you run this group?

17 A The average group at Allendale would meet for sixteen
18 to twenty weeks.

19 Q Okay.

20 A The group is totally confidential with Warden Pates
21 insistence.

22 Q Okay. And was there homework in between?

23 A Yes.

24 Q What would be a typical homework assignment?

25 A A typical homework assignment for the group might be to

1 draw a picture of your family.

2 Q Okay. How would that be helpful?

3 A That would be helpful because the group members would
4 identify for each other what might be missing in the family.
5 That would also bring out grief issues because the person
6 might not be there who had died while they were
7 incarcerated.

8 Q So is there a part of counseling and part of your
9 training to interpret these drawings?

10 A Yes.

11 Q What other types of homework assignments would be
12 given?

13 A I would have them write a letter to the victims.

14 Q That wouldn't go to the victim though, would it?

15 A No.

16 Q And would those letters be read to the group?

17 A If they chose to. Otherwise, they would just be read
18 by me.

19 Q Why would you do that as part of the counseling?

20 A Because part of growth -- in order to be a fully
21 functioning human being is to have at least a group of
22 people with whom you can feel trust. Someone who's been
23 incarcerated seventeen, eighteen, twenty years doesn't trust
24 anyone. And they have no personal power. So my homework
25 assignments are designed to give them some personal power.

State v Gibson Charlotte Taylor - Cross 2/23/17 131

1 And then, as we process it, to help them begin to trust each
2 other.

3 Q So with all of your time spent with Mr. Gibson, has he
4 made improvements in his counseling?

5 A Significant.

6 Q I have no further questions. Please answer any
7 questions Mr. Morrow has.

8 CHARLOTTE TAYLOR - CROSS-EXAMINATION

9 BY MR. MORROW:

10 Q Dr. Taylor, you said you were brought to Allendale to
11 teach life skills classes; correct? Or that you taught two
12 voluntary life skills classes?

13 A I was actually invited by the warden.

14 Q Okay.. And Dr. Taylor, would you have reviewed Mr.
15 Gibson's criminal history with him as part of your
16 counseling?

17 A Yes.

18 Q So you would agree that he was convicted in Kansas in
19 1984 for lewd and lascivious behavior?

20 A Yes.

21 Q Okay. And you would further agree that he was ordered
22 to receive treatment at the Topeka State Hospital in Kansas
23 after that?

24 A Uh-huh. (Affirmative response.)

25 Q And you would also agree that he was convicted in

State v Gibson Charlotte Taylor - Cross 2/23/17 132

1 Carteret County, North Carolina for indecent liberties on a
2 child in 1988?

3 A I believe he had identity versus role confusion issues
4 at that time.

5 Q Okay. You would further agree that the victim in that
6 case was under the age of thirteen?

7 A I would.

8 Q Okay. You would agree that he was released from that
9 sentence and then he came to South Carolina; correct?

10 A (Nods head in the affirmative.)

11 Q And that he was convicted of criminal sexual conduct
12 with a minor in the second degree for an offense against
13 DBW, an eleven-year-old male?

14 A (Nods head in the affirmative.)

15 Q And you would agree that in 1995 he was also convicted
16 of sexual conduct in the second degree and lewd act on a
17 child for offenses againstChild , a ten-year-old male?

18 A At this time, his sexual identity was still unresolved.

19 Q But he was convicted of that charge; correct?

20 A I don't argue that.

21 Q Okay.

22 MR. MORROW: No further questions of this witness,
23 Your Honor.

24 MR. FAULK: No redirect.

25 THE COURT: Thank you, ma'am. You may step down.

State v Gibson James Gibson - Direct

2/23/17

133

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Call your next witness.

3 MR. FAULK: We'll call our next witness. We'll
4 call Mr. Gibson to the stand.

5 (WHEREUPON, James Gibson was sworn
6 to tell the truth.)

7 JAMES GIBSON - DIRECT EXAMINATION

8 BY MR. FAULK:

9 Q Mr. Gibson, you've heard some testimony about some
10 awful things that you've pled guilty to?

11 A Yes, sir.

12 Q And those were crimes that were -- in which children
13 were victims?

14 A Yes.

15 Q Do you feel that you're the same person that you were?

16 A Absolutely not.

17 Q So how long have you been in prison?

18 A I've been locked up now for twenty-two years and two
19 months.

20 Q Twenty-two years two months.

21 A Twenty-two years two months.

22 Q I guess you remember that. Does that also include the
23 time that you were at --

24 A That is from the day I was sentenced to now.

25 Q So you were sentenced on what day?

1 A April 24th, 1995.

2 Q Okay. And so until that day -- in fact, you were in
3 the Orangeburg County Detention Center last night; is that
4 correct?

5 A Actually, I should correct that and say from January 6,
6 when I was locked up, not when I was sentenced.

7 Q Okay. What types of classes did you take -- well, how
8 did you spend your time when you were -- let me back up one
9 more time. Where did you serve your twenty years?

10 A My first eleven and a half years was at Evans
11 Correctional Institution in Bennettsville, South Carolina.
12 I went from there to Lieber, outside of Charleston in
13 Ridgeville. I got my Level II there. And was sent back to
14 Evans Institutional for PI. I was the lead man over PI.

15 Q What does Level II mean?

16 A There's custody levels within SCDC, Level III being the
17 highest. Level II, being a minimum in. And then for minor
18 things, they have a minimum out, which is a Level I. That's
19 the people who get to go out and work, work release and
20 things like that.

21 Q So you were at Lieber and you got your Level II and
22 then they sent you to where?

23 A They sent me back to Evans. I went back to PI and I
24 stayed there for --

25 Q What does PI mean?

State v Gibson James Gibson - Direct

2/23/17

135

1 A Prison industries.

2 Q And so what is prison industries.

3 A It varies from one yard to another and not every yard
4 has it. At prison industries they do wire harness assembly.
5 They have contracts for automotive manufacturers --

6 Q Where does this work go?

7 A It's done on the prison yard. They have a building set
8 up for plant --

9 Q So it's like a factory on the prison yard?

10 A Right.

11 Q Can anybody participate in prison industries?

12 A It's open to anybody who can stay out of trouble and is
13 willing to get a GED if they don't already have one, and
14 who's willing to go through the necessary training to secure
15 the ability to do the job itself.

16 Q And so you were at prison industries while you were at
17 Evans?

18 A Right.

19 Q And then what happened after that? Where did you go?

20 A I went to Ridgeland, South Carolina, to Ridgeland
21 Correctional Institution. Back into the furniture factory
22 there. And I worked there until they closed that plant
23 down. I stayed at Ridgeland for about seven years. And
24 I've worked in medical there. I secured hazmat
25 certification because I was working in medical and I had to

1 often work with hazardous material from people that
2 Hepatitis C and, you know, different blood --

3 Q And these are jobs that you got while you were there?

4 A Right.

5 Q All right. Were they compensated?

6 A The prison industries was compensated. The other stuff
7 wasn't.

8 Q Are they considered a perk to go and get some of these
9 jobs?

10 A Some people would say so, yeah.

11 Q Did you get out of your cell?

12 A Yeah. I mean, we come out of our cells anyway, but a
13 lot of people they prefer to get out of the dorm and not be
14 locked up in the dorm all day.

15 Q So did you ever get to Allendale?

16 A I came to Allendale in 2015. I was actually in a
17 character program already at Kershaw and had put in for
18 Allendale because I didn't know I'd been accepted for the
19 one at Kershaw. So I was accepted for the one at Allendale
20 and they went ahead and transferred me to Allendale?

21 Q So what is a character dorm?

22 A A character dorm is a dorm where everybody has to have
23 really good behavior. There's no fighting. There's no, you
24 know, loud disturbances. There's no drinking, no drugs,
25 none of that. It's not like being in prison. It's almost

State v Gibson James Gibson - Direct 2/23/17 137

1 like being on the street.

2 Q Are you're saying that there's access to alcohol when
3 you're in prison?

4 A Oh, yeah. It's all over. I didn't stop drinking just
5 because I got locked up. I only stopped drinking thirteen
6 years ago.

7 Q Okay. But that's not allowed in the character dorm?

8 A No. Nothing like that is allowed in the character
9 dorm.

10 Q And so what would happen if you broke one of the rules?

11 A Well, you're going to get a disciplinary write-up. And
12 you're going to be kicked out of the program at least
13 temporarily, depending on the severity of the charge. And
14 how many times you've been charged. And if they feel like
15 you're a problem, going to be an on-going problem, then
16 they'll kick you out of the program and eventually off the
17 yard.

18 Q Did you participate in any classes while you were
19 Allendale?

20 A Everything I could find the time for.

21 Q Give me some examples of classes that you did?

22 A Well, let's see. I did Dr. Taylor's life skills class.
23 I took classes on pet -- animal training, and pet and animal
24 grooming, pet grooming. I took -- where I can get
25 certified. I took classes on different behavioral levels.

1 Being able to connect with other people and build a
2 relationship, communicate. And --

3 Q So there were other life skills classes beyond Dr.
4 Taylor's?

5 A There's life skills classes. There's technical school
6 classes, electrician, welding, carpentry. There's a lot of
7 stuff available.

8 Q How about faith-based classes?

9 A They have church of some sort or another at least once
10 a day. If there's not something going on in the dorm and
11 there's classes and church services in the chapel itself.

12 Q I'm familiar with Guardrails and Crossroads. Were you
13 in any types of programs like those?

14 A Right. I've got certificates over there from Rock of
15 Ages Ministries and various other ministries. School of
16 Christ International, which I graduated from.

17 Q So what did it take to graduate from School of Christ
18 International?

19 A The School of Christ International is a correspondence
20 graduate type course, almost like a Biblical high school
21 course. You take lessons about the Bible and about Christian
22 Morality, Christian Theology. And you have to do the
23 assignments and return the assignments to the school.
24 They're graded and sent back. And if you complete
25 successfully then, you know, you get a nice diploma.

1 Q So how long did it take you to do one of these
2 assignments?

3 A It depends. They vary. Some are relatively short and
4 others go somewhat longer. I've had some assignments from
5 different -- like of Rock of Ages that might take me three
6 or four days just to complete one assignment because there
7 are so many questions. And then others, you know, they
8 might only be twenty or thirty questions and I can complete
9 that in a hour or so and mail it back in.

10 Q What types of questions are they, just who did what in
11 the Bible? I mean, you know, like Bible history or --

12 A It teaches you who did what in the Bible, who is who.
13 But it teaches you the proper morality. Bible -- you've
14 often heard, I'm sure, basic instructions before leaving
15 earth. And that's what it boils down to is about teaching
16 people how to live, teaching people how to interact with
17 others, how to conduct our self in the right way, you know.
18 And these are all things that I missed out on growing up.

19 Q I've never heard that term used, basic instructions
20 before leaving earth?

21 A Yeah.

22 Q Is that from one of those -- is that from Crossroads or
23 one of those?

24 A That's just something that I -- I believe I heard that
25 in church one time when I was, I don't know, late teens

1 early twenties.

2 Q So what was your faith background when you were a
3 child?

4 A Really, I didn't have one. I was kicked out of church
5 basically when I was young, as Dr. Taylor mentioned earlier,
6 because when I was born, I was basically deaf. I mean, I
7 wasn't totally and completely deaf in the fact I couldn't
8 hear, but there's -- I needed tubes in my ears to make my
9 ears drain properly. And from the age of four to the age of
10 twelve, I had seven surgeries to get me these tubes so that
11 I would be able to hear. And as time progressed, my hearing
12 got better. And I still need a permanent set of tubes,
13 which I've never gotten but I've been fine --

14 Q Dr. Taylor discussed general issues. Can you address
15 that? Do you feel -- did you have some --

16 A Yeah. I did. I had a lot of issues. When I was
17 young, I went through a lot of physical and emotional,
18 mental and sexual abuse. And the majority of it was very
19 long-term. It left me confused about a whole lot of things,
20 life, in general. I mean, I was never prepared to go out in
21 a big world. And so when I did go out into the world, it
22 was a disaster waiting to happen. You know, I was just -- I
23 was never prepared for it. And I didn't understand myself.
24 I didn't understand the feelings that I was experiencing and
25 I didn't know what to do with them. I didn't have anybody

State v Gibson James Gibson - Direct 2/23/17 141

1 to talk to about it. I didn't know anybody that I could
2 trust. So --

3 Q Were you the victim of abuse when you were a child?

4 A From the time I was two and a half years old.

5 Q And who were your abusers?

6 A Well, at two and a half, I was given away by my parents
7 to my grandparents. My grandfather was an abusive
8 alcoholic, physically abusive. And he was my sexual abuser.
9 My grandmother was an alcoholic and she was addicted to pain
10 killers. When I would try to talk to her, I learned very
11 quickly if the news is on, if Jeopardy is on, if the Wheel
12 of Fortune is on, or if there's any soap opera on shut up.
13 You don't talk right now. And what that taught me was that
14 the television was more important than I was. And so I, I
15 internalized all of this. And I never had anybody that I
16 could go to and talk to. Outsiders from the family, my mom
17 would strenuously keep them at bay. She was very protective
18 of me where outsiders were concerned. My understanding of
19 it, now what I figured out, is because she didn't want
20 outsiders to know what was really going on in the house.

21 Q So when you say your mom, are you meaning your
22 grandmother?

23 A My grandmother.

24 Q Okay. Well, it doesn't sound like your grandparents
25 were the best role models. What were your parents like?

1 A I don't know. I left them at two and a half years old.
2 You know, they left me at two and a half years old.

3 Q What do you mean left?

4 A They called my -- my birth mother called my grandmother
5 and told her to come and get me she didn't want me. So that
6 was what happened.

7 Q What contact have you had with your birth mother since
8 --

9 A I've spoken to my birth mother three times in fifty-two
10 years. And we never seem to be able to connect. She's -- I
11 don't know, she just -- we can't connect. My birth father,
12 we have started building a relationship in the last year.
13 And he has assured me that had he known that I was going
14 through the abuse I was going through, he would have come
15 and gotten me to stop it. But I had no way of getting in
16 touch with him. So --

17 Q Is it accurate that you would identify as a bisexual?

18 A Yes. Absolutely.

19 Q What kind of relationships have you had with adult
20 females?

21 A I've been married twice.

22 Q All right. And tell me about that?

23 A My first wife, I dropped out of school and I signed up
24 for the Army because I was married. I needed to take care
25 of my wife. This was me trying to be responsible, trying to

State v Gibson James Gibson - Direct 2/23/17 143

1 do what I felt I was supposed to do as a man. And as it
2 turns out -- I was eighteen, she was seventeen, and neither
3 one of us was really prepared to go out into the world. So
4 it didn't work. It didn't work out. We were together --
5 we were married for a year and we were together probably
6 about one year and nine months.

7 Q Let me ask you this. Let me take you off the subject
8 there. Do you think that -- Dr. Taylor, I think, lead me to
9 believe that there possibly was a connection between your
10 gender identity issues and some of your illegal sexual
11 conduct.

12 A Yeah.

13 Q What do you think about that?

14 A I firmly believe that because really, I didn't
15 understand what had happened to me. I couldn't understand
16 the motivation. And I was trying to -- I was trying to
17 understand. I was trying to figure it out. That was a
18 driving, a driving force with me. I was trying to figure
19 out, you know, why did this happen? Why would somebody even
20 do this? And the only time I've ever offended I was
21 incredibly, incredibly drunk or high on drugs. I smoked
22 weed, did LSD. As a sober individual, I have never turned -
23 - because I would be thinking, you know, why did this
24 happen. Then I would drift off to that and I would end up
25 doing things that I really didn't need to be doing, that I

1 shouldn't have been doing. And it's ruined a lot of lives.
2 I understand that. It hurts me because the people that
3 mattered the most to me, the people that should have been
4 able to depend on me to protect them, that's the people I
5 failed. I couldn't protect them from what was destroying
6 me.

7 Q What people are you talking about?

8 A I'm talking about my victims.

9 Q Okay.

10 A I couldn't protect them from the poison that was in me,
11 from the rot that was destroying me. But I couldn't bring
12 myself to go to somebody and say look, this is what's
13 happening. I need help with this because the way the laws
14 are, if I was to go to even with doctor/patient
15 confidentiality, if I was to go to a doctor and explain,
16 okay, this is what's happening. I need help. I'm going to
17 prison. They're required by law to turn me in. So, you
18 know, there's no doctor --

19 Q That was your understanding?

20 A Right. That's my understanding. There's no
21 doctor/client confidentiality in that situation.

22 Q I just want to take you back. You did have offense
23 while you were in prison?

24 A Right.

25 Q Could you explain?

State v Gibson James Gibson - Direct 2/23/17 145

1 A While I was in prison I figured out that I was
2 bisexual. The person that claimed a sexual assault was a
3 former partner of mine. And at the time he was trying to
4 get moved over to another dorm. What I didn't know until
5 after the accusation came down was that that was the third
6 time he'd made such an accusation against somebody in SCDC.
7 And it always was a matter of him trying to get moved
8 somewhere else.

9 Q So you said he was a partner of yours?

10 A He was a partner of mine.

11 Q You mean a sexual partner?

12 A Yeah. He was my sex partner for a year.

13 Q Is that -- does the South Carolina Department of
14 Corrections condone that activity?

15 A No. That's why I got the charge. It was determined
16 that there was no sexual assault. And the only reason I'd
17 gotten the charge was because I admitted to the truth of the
18 fact that he and I had been involved in a sexual
19 relationship for a year. That's why I got the charge.

20 Q And you got disciplinary detention as a result of that?

21 A Right. And I spent two months in lockup and a few odd
22 days, six months canteen visitation, no telephone and that
23 was all they could do.

24 Q If you were let out today, do you still think you need
25 sex offender treatment or some type of treatment on those

1 lines?

2 A If I'm fortunate enough, blessed enough to be released
3 then I'm going to pursue individual counseling myself
4 because I want to do everything in my power to make sure
5 that when I am out there, I don't hurt nobody again. I
6 don't ever, ever want to be responsible for hurting anybody
7 in any way, most especially the way I have done in the past.
8 It's unacceptable and I understand that. At the time, I
9 wasn't really thinking it. I was focused on why did this
10 happen to me? And trying to understand why it happened to
11 me. I wasn't thinking about the harm I was causing to other
12 people. So --

13 Q Do you feel you are currently sexually attracted to
14 little boys?

15 A No. No. That's -- no, there's no sexual attraction to
16 little anybody. As Dr. Taylor said, I'm comfortable in my
17 skin as a bisexual man. I like women just fine, but over
18 the last twenty-two years I've learned that I can also be in
19 a sexual-type relationship with an adult male. So --

20 Q Dr. Gehle described pedophilia as a chronic condition.
21 Do you feel you have any pedophilic urges now?

22 A No. No, I don't.

23 Q Do you think you had them at one time?

24 A No. As, you know, there was a statement in Dr. Gehle's
25 report that I was aroused when I was doing this. I told her

State v Gibson James Gibson - Direct 2/23/17 147

1 no, I wasn't aroused. My understanding is that, you know,
2 if a man is sexually aroused, he's going to have an
3 erection. At no time did I ever have an erection when I was
4 committing my crimes. It wasn't about sex. It was about
5 trying to understand what had happened to me as a child.

6 Q But you don't dispute that you exposed yourself to --

7 A No. I did the things that I did. And I understand
8 that they were not right. They were terrible things. It
9 saddens me. It breaks my heart to know that I'm responsible
10 for causing this much pain, this much anguish to any living
11 thing. And if I could go back in time and undo it, I would
12 pay any price to be able to go back and undo all the harm
13 that I've done. I wouldn't even have to think about it --

14 Q Do you have a relapse prevention plan?

15 A Yes, I do.

16 Q What is that?

17 A A relapse prevention --

18 Q I know what it is. Specifically, what is your relapse
19 --

20 A My relapse prevention includes going to regular
21 counseling or therapy, getting involved in a church so that
22 I can maintain my Christian connections with people, so that
23 I can have Christian mentors, so that I can continue to
24 learn about Christian morality, about Christian life, about
25 the way that God intended for us to interact with each

State v Gibson James Gibson - Direct 2/23/17 148

1 other. Counseling. One of the main things that is really
2 important for a sex offender is to know what their triggers
3 are and to know how to stay away from their triggers, how to
4 avoid their triggers. I know that I cannot drink. That's
5 an automatic. There's no such thing as take a drink for me,
6 not even a sip. I don't even want it around me. I know I
7 need to stay away from any person, place or thing that can
8 possibly lead to me reoffending, anything that would
9 endanger myself or other people, anything that would lead to
10 falling back into drinking or drug use. It's really common
11 sense stuff. But, you know, there's a saying common sense
12 isn't all that common. And I firmly believe that because
13 for forty years of my life I've seemed to had a knack for
14 evading common sense, but --

15 Q Well, if you want to reconnect with a Christian church,
16 you're still going to church where there's little children
17 aren't there?

18 A Every church has children and you can always -- there
19 are home-based churches. There are Christian's -- men's
20 meetings where they go to restaurants and meet or they'll
21 have a little meeting in a motel lobby -- not a lobby but a
22 meeting room. There's always a way. Just being able to
23 call a Christian and say look, I need to talk. I've got
24 something that's bothering me and I need to talk to
25 somebody. There's a lot of ways that you can connect with a

State v Gibson James Gibson - Direct 2/23/17 149

1 Christian mentor. By disclosing my past ahead of time so
2 that they understand what my issues are, then it's going to
3 be somebody that I can trust because, you know, obviously
4 I'm not just going to run around and blab to the world, this
5 is my past, you know. It's easy enough for everybody to
6 find out as it is, but I don't want to run around with a
7 sign on my back that says this is what I've done, you know.

8 Q You would register as a sex offender?

9 A Yeah. I'll have to. Yeah. That's an automatic.
10 That's why I say it's easy enough to find out. There's a
11 government website in every state that lists every sex
12 offender in the state. So it's not hard to find out.

13 Q You participated in sex offender treatment at SCDC;
14 right?

15 A Yeah.

16 Q That was the SCDC sponsored program; right?

17 A Right.

18 Q What did you learn in that program?

19 A That's where I learned such things as thought stopping
20 and how to identify with my victims, which was -- that was
21 an extension of my victim's impact class where I initially
22 learned to identify with my victims. In this class they
23 teach you how to recognize your triggers. How to recognize
24 when you're getting into a danger zone. How to cope with
25 it. You know, how to steer yourself away from. If you need

State v Gibson James Gibson - Direct

2/23/17

150

1 to, you contact somebody and you get them to come and help
2 you get away from it. It teaches you a lot of different
3 ways to avoid making the same mistakes again.

4 Q And did you complete that class?

5 A Yes, I did. I got a gold-stamped SCDC embossed South
6 Carolina State embossed seal on it.

7 Q What's your understanding of the significance of
8 getting the gold seal?

9 A The gold seal is, as it was explained to us in the
10 class when we first started, if you did not complete the
11 class to the satisfaction of the instructors, then you would
12 not receive the gold seal, because the gold seal represents
13 that you have made significant progress in recovery.

14 Q How often did that class meet?

15 A Every day, Monday through Friday and occasionally on
16 Saturdays.

17 Q And for how long a time would each meeting be?

18 A Up to four hours at a time.

19 Q And was there homework in between?

20 A Every day.

21 Q And what was the class like? Were you sitting behind a
22 black board? Was it --

23 A No. It was like a group therapy type of class. The
24 counselor would lead the class and we would have discussions
25 about how things should be done. About, you know, we would

State v Gibson James Gibson - Direct 2/23/17 151

1 discuss in some little detail what we had done. But we
2 would discuss in great detail how we could have avoided the
3 situation, how we can identify ways to avoid the situations,
4 really, just not putting ourself in a situation or a place
5 where we can possibly do something or lead to a point where
6 somebody might think we've done something.

7 Q So you took the sex offender treatment and then you
8 took classes with -- you took the life skills --

9 A Life skills class.

10 Q And did you also participate in group classes --

11 A Yeah.

12 Q And you also had counseling?

13 A I've had counseling. I've had counseling going on now
14 for twenty-two years.

15 Q In your words, how have you benefitted through
16 counseling?

17 A Well, in my words, I've benefitted from the counseling
18 because now I'm comfortable with who I am. I have accepted
19 that I have done some really, really bad things that should
20 never happen. I've learned to forgive my abusers and I've
21 learned to forgive myself. I've learned to identify with
22 other people, I've learned to communicate with other people.
23 I'm much more open about who I am and what I've done, than
24 what I used to be. I don't have the anger issues, the
25 bitterness and resentment anymore. I used to really have

1 serious issues with inadequate -- feelings of inadequacy and
2 insecurity. And all of that has slowly but surely melted
3 away.

4 Q And you attribute these changes in you to?

5 A To all of the counseling, the classes, you know. I
6 gave my life to God and was baptized August 10th, 2011. So,
7 I mean, there's been significant change in my life.

8 Q What would you do for employment if you were out
9 tomorrow?

10 A I was generally working construction when I was out
11 before. And I worked specifically as an electrician. I'm
12 qualified as a journeyman already.

13 Q Journeyman electrician?

14 A Journeyman electrician. If I can go back out to the
15 street, I'd, you know, try to get back into a technical
16 college and get my certification as an electrician because
17 that would open more job opportunities for me, other than
18 just construction. Construction can be somewhat unstable in
19 various communities. I also want to get my OSHA
20 Certification, safety because that will increase my pay
21 scale. So I have quite a few opportunities. As it stands
22 right now, I have a half a dozen different jobs that I can
23 go to and put in my application. And upon a successful
24 interview, I've got a job waiting for me. I have a place to
25 stay. I have financial assistance, pretty much everything I

State v Gibson James Gibson - Cross 2/23/17 153

1 need. All I've got to do is be blessed enough to go out
2 there and start a new life. Honestly, for the first time in
3 my life I have an opportunity to really go out and have a
4 life. My entire life, up until thirteen years ago, was
5 governed by alcohol and drugs. I had very few sober moments
6 from the time I was five years old until thirteen years ago.

7 Q I have no further questions. Please answer any
8 questions Mr. Morrow has.

9 JAMES GIBSON - CROSS-EXAMINATION

10 BY MR. MORROW:

11 Q Mr. Gibson, you would agree you were admitted for
12 counseling for lewd and lascivious behavior in Kansas in
13 1984?

14 A It was 1983. It wasn't 1984.

15 Q And you would agree that the victims in that case were
16 around ten years old?

17 A (Nods in the affirmative.)

18 Q Okay. And you received a probationary sentence for
19 that offense?

20 A Correct.

21 Q And you were ordered to go get psychiatric treatment at
22 that time?

23 A And I did go to the hospital. They kept me there for
24 thirty days and released me.

25 Q Okay. And so then after that you went back to North

State v Gibson James Gibson - Cross 2/23/17 154

1 Carolina and you molested a thirteen-year-old boy there and
2 you went to prison for that; correct?

3 A Correct.

4 Q And you --

5 A Two years and nine months at a minimum custody
6 facility.

7 Q But you were originally sentenced to eight years, you
8 served four?

9 A Right. No.. I served two years and nine months.

10 Q Two years and nine months?

11 A Correct.

12 Q Okay. And yet after having been sent to prison in
13 1988, after you -- let's see. You got probation 1984, you
14 got psychiatric treatment. Then you went in 1988, you
15 served two years and nine months. Yet in 1995 you were
16 convicted of criminal sexual conduct with a minor in the
17 second degree?

18 A Correct.

19 Q And the victim in that case was an eleven-year-old boy?

20 A Correct.

21 Q All right. And then you were also convicted of
22 criminal sexual conduct with a minor in the first degree?

23 A Correct.

24 Q And lewd act. And that was a ten-year-old boy?

25 A And I'm not proud of any of that.

State v Gibson James Gibson - Cross 2/23/17 155

1 Q All right. And you were sentenced to thirty years on
2 that. And then also in 1995 you were convicted of lewd act
3 on a child under fifteen?

4 A Correct.

5 Q Okay. So, again, in '84 you got convicted and you
6 faced consequences. You were ordered to get treatment and
7 you got it. And you got out. In '88 you did it again. And
8 you served two years in prison and you got out. And in '95
9 you did it again?

10 A As for the treatment I got, I was there in the hospital
11 for thirty days. I talked to a doctor one time who asked me
12 why I was there. And I never saw his face again for the
13 thirty days I was there before they discharged me. And that
14 was the treatment I got.

15 Q All right. Well, even after the '88 offense -- all
16 right -- you got two years in prison, two years, nine
17 months?

18 A Yeah.

19 Q Okay. A reasonable person would have sought treatment
20 after that?

21 A You're right.

22 Q But you didn't?

23 A You're right. You're absolutely right. I should have,
24 but there was a whole lot of shame issues and I really
25 didn't know where to turn.

State v Gibson James Gibson - Cross 2/23/17 156

1 Q You didn't know where to turn so you turned to ten-
2 year-old boys?

3 A No, I turned to a liquor bottle.

4 Q No, sir, you offended against ten-year-old boys?

5 A Yes, I did, under the influence of alcohol.

6 Q Yeah. Okay. Thank you. Mr. Gibson, last time you had
7 free access to children without anyone else around was in
8 1995; is that correct?

9 A No, there are children in and out of SCDC all the time.

10 Q But there are guards and cameras and other things --

11 A Yeah. They bring them through the -- they have one or
12 two guards with them and they bring twenty or thirty kids
13 through the living areas and the work areas and the dining
14 areas and the recreational areas. They take a full tour of
15 the institution. And you'll never convince me that one or
16 two people can keep an eye on twenty or thirty people. So,
17 you know, I've had access. I haven't had any desires. I
18 have had access.

19 Q Thank you.

20 MR. MORROW: I have no further questions.

21 MR. FAULK: No redirect.

22 THE COURT: All right. You may step down. Thank
23 you.

24 MR. FAULK: We would rest.

25 THE COURT: All right. Any reply?

State v Gibson Marie Gehle - Reply Direct 2/23/17 157

1 MR. MORROW: Your Honor, at this time the State
2 would call Dr. Gehle.

3 THE COURT: All right. I remind you Doctor,
4 you're under oath from previously this morning.

5 THE WITNESS: Yes, sir.

6 MARIE GEHLE - REPLY DIRECT EXAMINATION

7 BY MR. MORROW:

8 Q Dr. Gehle, you were in the courtroom for all of Dr.
9 Taylor's testimony as well as Mr. Gibson's testimony;
10 correct?

11 A Yes.

12 Q And have you heard anything or any information today
13 that would cause you to change your opinion in this case?

14 A No.

15 Q Okay. And it's still your opinion that he is a -- he
16 suffers from pedophilic disorder?

17 A That's correct.

18 Q And why has nothing changed your opinion?

19 A Well, because pedophilic disorder includes sexual
20 arousal, urges or behaviors. And he's engaged in behaviors
21 against prepubescent children, so he meets criteria. It
22 doesn't matter necessarily what his motivation was, whether
23 he was trying to work out sexual abuse themes or whether he
24 was having sexual identity issues. The fact is that he
25 engaged in the behaviors. So he meets criteria.

State v Gibson

2/23/17

158

1 Q And Dr. Gehle, based on the actuarial assessment you
2 did of his risks, you found that he was three times more
3 likely as an average sex offender to commit another sex
4 offense?

5 A Yes.

6 Q Thank you.

7 MR. MORROW: No further questions, Your Honor.

8 THE COURT: Anything?

9 MR. FAULK: No, Your Honor.

10 THE COURT: All right. Thank you, Doctor. You
11 may step down.

12 All right. Anything further in reply?

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

14 THE COURT: All right. Ladies and gentlemen, the
15 parties have now completed the presentation of all their
16 evidence in the case and we are at the phase where we're
17 going to do oral arguments. I'm going to give these lawyers
18 a few minutes to collect their thoughts and get ready for
19 their closing arguments. And so I'm going to let you step
20 back to the jury room for about ten minutes, relax for a few
21 minutes. Come back and then we will move to bring this case
22 to a conclusion. Y'all don't discuss the case when you're
23 back in the jury room, please?

24 (Jury out at 3:00 p.m.)

25 THE COURT: All right. Folks, that'll give y'all

State v Gibson

2/23/17

159

1 a few minutes to relax and think about what you want to say
2 and we'll come back.

3 (Court in recess for a short break
4 at 3:00 p.m.)

5 (Court in session after short break
6 at 3:20 p.m.)

7 THE COURT: Tell me your name, please?

8 JUROR NO. 133: Kadeem Nelson.

9 THE COURT: Miller?

10 JUROR NO. 133: Nelson?

11 THE COURT: Nelson?

12 JUROR NO. 133: Yes, sir.

13 THE COURT: Mr. Nelson, you were supposed to be
14 here at 9:15 this morning. Why weren't you here? Pull your
15 pants up?

16 JUROR NO. 133: Because I had a call and the --
17 said -- told me that they were cancelled for this week.

18 THE COURT: Told you what?

19 JUROR NO. 133: They was cancelled for the rest of
20 this week.

21 THE COURT: So you called Tuesday instead of
22 Wednesday?

23 JUROR NO. 133: I had called -- I think yesterday.
24 Yesterday after 6:00.

25 THE COURT: That was on Tuesday that you called.

State v Gibson

2/23/17 160

1 Yesterday after 6:00 they said be here at 9:15 this morning.
2 Tuesday they left up the message from the previous week.
3 And several people have had that. All right. Well, you
4 need to stay here through the rest of this trial.

5 JUROR NO. 133: Yes, sir.

6 THE COURT: All right. Tell me your name, please,
7 sir?

8 JUROR NO. 156: Stanley Robinson.

9 THE COURT: Robinson? Now why weren't you here,
10 Mr. Robinson?

11 JUROR NO. 156: I work at night and I went to work
12 at 3:30 and I didn't have access to a phone around 6:00 when
13 you said call. And I got off work this morning. I said I'm
14 going to get up early enough to call. And I went to sleep
15 and didn't wake up until the sheriff wake me up this
16 afternoon about 1:00.

17 THE COURT: You know, it's that kind of stuff that
18 might put you in jail for a while and you won't be working
19 at all.

20 JUROR NO. 156: I want to apologize. I'm very
21 sorry about that.

22 THE COURT: This is an important job. You know,
23 you're making the few people that do show up, they're having
24 to do all the work.

25 JUROR NO. 156: Yes, I'm really sorry about that.

State v Gibson

2/23/17

161

1 THE COURT: All right. Have a seat out there.
2 You're going to sit here for the rest of the day too.

3 You're going to sit here, both of you will be here as
4 long as we've got a jury out. We're up to eight out of
5 thirteen.

6 (Court at ease)

7 THE COURT: All right. Let's bring the jury in.

8 THE BAILIFF: Yes, Your Honor.

9 (Jury in at 3:20 p.m.)

10 THE COURT: All right. Ladies and gentlemen, as I
11 told you, we're now going to hear from the lawyers on their
12 closing statements and then we'll go into the charge and put
13 y'all to work. So if you would, please, Mr. Morrow.

14 MR. MORROW: Thank you, Your Honor. May it please
15 the Court.

16 PLAINTIFF CLOSING

17 BY MR. MORROW:

18 James Gibson is a sexually violent predator. The
19 Defense in this case wants you to believe that James Gibson
20 who made a mistake and he paid for that mistake and the
21 State's unfairly putting him through this trial. Well,
22 let's think about a mistake for a moment. A mistake could
23 happen to anyone. You could, for example, forget a really
24 important appointment or you might share something that a
25 friend told you in confidence. Or you might forget to pay a

1 bill when it's due. Those are all mistakes and they all
2 have consequences. However, there's a difference between
3 making the one mistake and repeating a mistake over and over
4 again. Repetition in the mistake shows a pattern of
5 behavior. If you forget an important appointment once,
6 that's a mistake. If you repeat the mistake multiple times
7 over a prolonged period of time, then you're unreliable. If
8 you accidentally share something a friend told you in
9 confidence once, that's a mistake. If you routinely share
10 things that people tell you in confidence, then you're a
11 gossip. If you forget to pay a bill once it's due once,
12 then that's a mistake. If you repeatedly forget to pay your
13 bills, you're going to get your electricity turned off or
14 your stuff repossessed. Repetition is evidence of a pattern
15 of behavior, especially when repetition happens after having
16 already suffered the consequences for that mistake. This
17 case is an example of repetition but it's also an example of
18 escalation. James Hunt [sic] exposed his penis to four
19 children -- I mean, James Gibson, excuse me, exposed his
20 penis to four children who were around ten years old in
21 1984. He was convicted of four counts of lewd and
22 lascivious behavior. He was ordered to be placed on
23 probation and to receive psychiatric treatment. He even
24 told you that he received that treatment. Yet, in 1988,
25 four years later, he was in Carteret, North Carolina and

State v Gibson

2/23/17

163

1 there he was convicted of taking indecent liberties with a
2 child. No longer content to expose himself to children, he
3 decided to take it a step further. He was sentenced to
4 eight years on that offense and he served about two years
5 and nine months. In 1995, he was convicted of four sexually
6 violent convictions. Criminal sexual conduct with a minor
7 in the second degree, for an offense against an eleven-year-
8 old male. He's no longer content with just touching at this
9 point. This time Mr. Gibson forced oral sex on an eleven-
10 year-old male. Also in '95, Mr. Gibson was convicted of
11 criminal sexual conduct with a minor in the first degree and
12 lewd act on a child for crimes against, Child a ten-year-old
13 male. Again, he forced oral sex on a ten-year-old boy.
14 Also in '95, he's convicted of lewd act on a child for
15 offenses against a thirteen-year-old boy. Mr. Gibson did
16 not stop when he was ordered to be on probation in 1984. He
17 did not stop once he received treatment in 1984. He did not
18 stop after he got convicted in North Carolina in 1988. In
19 fact, he escalated. He continued -- he had more victims.
20 And Mr. Gibson also said another thing: He said he didn't
21 receive the treatment because he thought they would have to
22 report him. That doesn't say that he's concerned about what
23 he's doing to people. That says he's concerned about
24 getting caught. The only thing that stopped Mr. Gibson from
25 offending are the periods of time that he was in prison.

State v Gibson

2/23/17

164

1 Mr. Gibson simply can't stop. He couldn't stop in '84; he
2 couldn't stop in '88; he couldn't stop in '95. And he's
3 consistently demonstrate a pattern of behavior, and that
4 pattern of behavior is that he is sexually attracted to
5 children under the age of thirteen. He cannot stop and he
6 is a sexually violent predator. And we're here today
7 because we are seeking the civil commitment of Mr. Gibson to
8 a secure facility for treatment. This isn't about
9 punishment. It's about treatment. And what does the State
10 have to prove to you? The State has to prove to you that
11 he's been convicted of a sexually violent offense and that
12 he suffers from a mental abnormality or a personality
13 disorder that makes him likely to commit a crime of sexual
14 violence if not committed for long-term control, care and
15 treatment.

16 Now, the burden of the proof in this case is beyond a
17 reasonable doubt. And keep in mind that it's not beyond all
18 doubt. It's not beyond any doubt. It's not beyond any
19 conceivable doubt. Proof beyond a reasonable doubt is proof
20 that leaves you firmly convinced. Let's talk about the
21 evidence the State has provided. The State has provided
22 evidence -- Mr. Hunt [sic] was convicted of sexually violent
23 offenses under the statute here in South Carolina. You
24 going to have these to look at in the jury room. They've
25 been marked as evidence. You're going to be able to

State v Gibson

2/23/17

165

1 physically touch these and look at them. The State has
2 proven that allegation. We also provided you evidence that
3 he suffered from a mental abnormality or personality
4 disorder.

5 You heard from the testimony of Dr. Gehle, who is a
6 chief psychologist at the Department of Mental Health, is a
7 court-appointed evaluator in this case, is licensed to
8 practice psychology in the State of South Carolina and has
9 performed two hundred and twenty to two hundred and fifty
10 evaluations on sex offenders. And she only recommends
11 commitment thirty to forty percent of the time. She talked
12 about the methodology of her evaluation, how she reviewed
13 records, how she interviewed Mr. Gibson, how she had him
14 perform the psychological testing called the MMPI-2, how she
15 conducted a risk assessment using the Static 99R. And what
16 she found using the Static 99R is he is three times as
17 likely as a typical sex offender to reoffend. She also
18 discussed with you various dynamic risk factors. She
19 diagnosed him with pedophilic disorder. In order to make
20 that diagnosis she told you that there were several
21 criteria. First, that he had sexual interest in
22 prepubescent children. Well, she talked about how he met
23 that criteria. He has these nine offenses against children
24 under the age of thirteen. He also has to commit a crime --
25 or he has to suffer from this for a period greater than six

State v Gibson

2/23/17

166

1 months. From 1983 through 1995 is a period greater than six
2 months. So he meets the criteria that way as well. It has
3 to manifest itself in fantasies, urges and behaviors. Well,
4 his behavior speaks for itself. He exposed himself in 1984.
5 In 1988, he took it a step further. He had touching. In
6 1995, he performs oral sex on children. Each time he's
7 escalated and he's manifested those behaviors and those
8 attraction to children. The likelihood to reoffend
9 sexually. The State has proven that point as well.

10 Dr. Gehle talked about his likelihood to reoffend and
11 she talked about the Static 99R score. The score of six
12 places him in the high risk category, moderate to high-risk
13 category. And she also said it makes him three times as
14 likely as a typical sex offender to reoffend. That's
15 compared to sex offenders, not just the general population.
16 She also talked about his dynamic risk factors. And she
17 talked about the fact that while he was in prison, in a
18 facility where he's monitored twenty-fours a day, seven days
19 a week, he had a disciplinary infraction for sexual
20 misconduct. If he couldn't control himself while he was
21 being monitored twenty-four hours a day, seven days a week,
22 why are we supposed to believe he can control himself in the
23 community?

24 Let's talk about the Defense's cases. Dr. Taylor
25 testified that she provided life skills classes for Mr.

State v Gibson

2/23/17

167

1 Gibson and that he did well in those classes. Dr. Gehle was
2 in the courtroom for all of that, did not change her
3 opinion. And, in addition to that, her classes happened
4 before Dr. Gehle's initial evaluation in this case. All of
5 that information is considered from Dr. Gehle's point, but
6 she did not find it relevant. In fact, Mr. Gibson doesn't
7 have any -- we haven't discussed any history but he doesn't
8 have any history of any kind of other offenses, other than
9 sexual offenses. It makes sense that he would do what he
10 was supposed to do while in prison, other than the sexual
11 offenses. He has a mental abnormality or personality
12 disorder that makes him likely to offend sexually. Also
13 James Gibson took the stand. And, again, he said he didn't
14 seek help because he thought he would be reported. That
15 doesn't show that a man is concerned about his problem and
16 wants to get help for it and is concerned about the children
17 that he is hurting. It shows that he doesn't want to get
18 caught, that he doesn't want to go to prison again. He
19 didn't care about what happens to those children. He cares
20 about what consequences happen to him. Mr. Gibson can't
21 stop. The State isn't seeking to punish him for one
22 mistake. The State is seeking to civilly commit James
23 Gibson because through his actions he has demonstrated a
24 sexual attraction for children. He has demonstrated that he
25 cannot control that attraction to children. He was

State v Gibson

2/23/17 168

1 convicted in '84, received treatment, failed to stop.
2 Convicted in '88, failed to stop after that. Failed to get
3 treatment on his own after that. In fact, he went -- in
4 1995 was convicted of four sexually violent offenses in the
5 State of South Carolina. He escalated those offenses each
6 time he was caught. He will reoffend again and the State
7 has proved that he is a sexually violent predator.

8 The State ask that you find that James Gibson is a
9 sexually violent predator. And we ask that you commit him
10 to the South Carolina Sexually Violent Predator Treatment
11 Unit so that he can get the help that he so desperately
12 needs and to protect the children of the State of South
13 Carolina from him. Thank you.

14 THE COURT: Mr. Faulk.

15 MR. FAULK: May it please the Court?

16 THE COURT: Yes, sir.

17 DEFENSE CLOSING

18 BY MR. FAULK:

19 Ladies and gentlemen of the jury, I think in my opening
20 statement this morning I told you I thought the State was
21 gong to focus on who Mr. Gibson was a quarter of a century
22 ago, and I think that's pretty much what you've heard, a lot
23 from the State about who Mr. Gibson was a quarter of a
24 century ago. In fact, when Mr. Morrow was just giving his
25 closing argument, he talked about a statement and he

State v Gibson

2/23/17

169

1 repeated it two or three times. A statement that Mr. Gibson
2 made about what he was thinking twenty-five years ago.
3 Yeah, at the time he said what he was thinking, I didn't
4 want to get caught. He said he thought he would get caught.
5 It had to be reported. That's still talking a person
6 twenty-five years ago, twenty-two years ago.

7 Let's talk today, right now, this afternoon, about who
8 Mr. Gibson is today. The State -- Mr. Gibson is not the
9 same person that he was twenty-five years ago. First of
10 all, he's completed sex offender treatment program that's
11 offered by the South Carolina Department of Corrections.
12 Second of all, he's gone through some extensive counseling.
13 Dr. Taylor was here. She testified and she's a licensed
14 counselor. She holds an advanced degree in counseling. And
15 she talked to you about some of the work that they had done
16 together over the -- whether it one thousand hours, two
17 thousand hours, but it was a long period of time that she
18 spent with Mr. Gibson, where they were trying to sort of
19 ferret out what were some of those motivations that he had,
20 some of those cognitive distortions he had about himself.
21 And she talked about how he -- how that she practiced
22 cognitive behavioral therapy, which was a way to think about
23 some of the motivations that you have and how you can change
24 your behavior going forward.

25 Mr. Gibson had a horrendous childhood. It's almost

State v Gibson

2/23/17

170

1 unbelievable to think about the fact that he was given to
2 grandparents and the grandparents were abusive alcoholics,
3 inattentive, and that was the better choice from the
4 parents. I mean, I don't know how bad the parents could
5 have been that they would have thought that he would be
6 better off raised by his grandparents. It did not sound
7 like they provided him anything that he needed while he was
8 a child. But he worked through those issues and it's hard
9 to work through those issues. That's what he did with Dr.
10 Taylor. That's the therapy that he went through with Dr.
11 Taylor, identifying some of those things because those are
12 hard things to deal with. And it's going to cause
13 confusion. Those are hard issues for him to deal with but
14 he has spent months, hours, however you want to say it. He
15 is not the same person he was twenty-five years ago. Let's
16 stay focused on the Static 99. And the Static 99 all talked
17 about what he was twenty-five years ago. And the State's
18 actually -- Dr. Gehle said well in addition to the Static
19 99, I looked at dynamic risk factors. And so she said it's
20 a combination of looking at the Static 99, which is basic --
21 I mean, his Static 99 is not going to change. It talks
22 about what his offenses were in the past, you know, whether
23 he was related to the people. How many -- that's all stuff
24 he can't change that. That's the past. That's twenty-two
25 years ago.

State v Gibson

2/23/17

171

1 And then she also talked about well, there were some
2 dynamic risk factors they were going to look at. And when
3 you look at the Static 99 and the dynamic risk factors --
4 but if you paid attention to what she said is the dynamic
5 risk factors, she still focused on who he was. He had a
6 preoccupation with sex back twenty-two years ago when he was
7 in this pattern of offense conduct. It's not -- there is no
8 indication of preoccupation with sex now. And what we're
9 worried about is who he's going to be today. Who he is
10 today, who he's going to be tomorrow. That's a dynamic risk
11 factor that would apply to the old person, the person who
12 was uncomfortable in his skin. And the other dynamic risk
13 factor she talked about was multiple offenders. Well, he
14 can't do anything about the fact that there were multiple
15 offenders. That's never going to change. He had multiple
16 offenders. I don't know why that's not just considered part
17 of the Static 99. That's all talking about his past. And
18 he had chronic job instability. Okay. He's a man working
19 in construction, probably at the time had an alcohol
20 problem. I'm sure we all probably know some guys who you've
21 tried to hire to do some work on your house, and maybe they
22 weren't the most reliable people at the time. And, you
23 know, maybe they've worked just long enough to get enough to
24 drink, you know. But I don't think that's who he is now. I
25 think if you had an opportunity -- you had the opportunity

1 to hear his testimony.

2 You heard what he's been through. He was very candid
3 with his admission to you. He said -- he acknowledges the
4 fact that he's a bisexual, acknowledges the fact that he had
5 homosexual or relationships with other men once he got to
6 prison. He understands. He's now comfortable in his skin.
7 He can't do anything about that. And now he understands
8 some of his motivations. Dr. Gehle said it doesn't matter
9 what his motivations were. He fits the criteria. That's a
10 very cold approach. It's not who that man was up on the
11 stand. It's just he fits the criteria. Let's check the
12 boxes. Let's give him this diagnosis. And then when she
13 was talking about risk factors she said well, just like
14 you're doing insurance. You know, it's actuarially based.
15 But I contend the issue today is not what a man who had Mr.
16 Gibson's criminal offense history would do tomorrow, the
17 issue for this jury this afternoon is what Mr. Gibson is
18 going to do tomorrow. Not somebody who fits with a bunch of
19 other people, some statistical group. You need to look at
20 that man when he had a chance, that he sort of bore his sole
21 to you. You had a chance to hear who he was. You have to
22 decide whether that an, not somebody who fits under the bell
23 curve with him, but whether that man poses a risk.

24 This is a significant decision. As I said this is a
25 very important case. It's, you know, gone by quickly.

State v Gibson

2/23/17

173

1 We're getting it all done today. But you have to decide by
2 -- you have to be convinced beyond a reasonable doubt that
3 he is a sexually violent predator. And that means that
4 whether or not he's going to have a likelihood to reoffend.
5 There's things with statistics and I'm sure y'all have all
6 heard the joke that eighty percent of the statistics are
7 made up half the time. And, you know, I don't really know
8 how to interpret all the statistics, but there's one that I
9 heard that I'm having a hard time of reconciling. She said
10 the likelihood that he would reoffend is twenty percent.
11 Now, considering a very important decision that you might
12 have. Let's say that you have all -- one of you have
13 decided or, you know, decided to plan the family reunion and
14 have your entire family get together. And, you know, you
15 all have rented out some park. There's no structure there.
16 You just rented out a park. Y'all are going to have a big
17 barbeque, a big family reunion. But you wake up that
18 morning and you find out that there's a twenty percent
19 chance of rain. Are you going to base that decision and a
20 court decision on a twenty percent chance. Are you going to
21 make a significant decision about your life on the twenty
22 percent? That's almost like on roll out of the dice. But I
23 don't even think you have to focus on the statistics because
24 I don't think the statistics apply to him. Because I think
25 you saw a man who has gone through a transformation. He

1 spent twenty-two years in -- that's almost a quarter of a
2 century. And it's been a period of self-discovery for him.
3 He's a different man.

4 Now, you all are sitting here today, this afternoon
5 because you answered the question -- I asked the Judge to
6 ask you a question whether or not you believe that somebody
7 who suffered from pedophilia could ever be rehabilitated.
8 You all, all acknowledged that you thought that it was
9 possible for somebody to be rehabilitated who suffered from
10 pedophilia, because had you not answered that, you would
11 have been excused from the jury. I know that y'all were
12 here on Tuesday when two of the jurors were excused for
13 answering that question. That they didn't believe
14 pedophiles could ever be rehabilitated. But all of you
15 promised and took an oath and all y'all must believe that it
16 is possible. I think it is possible. And I think it's
17 certainly it's in the case with Mr. Gibson, is a man who
18 committed some acts of pedophilia. He may have had
19 pedophilic motivations, but he is not that same person
20 today.

21 I am confident that if you really think about the
22 testimony, and you compare kind of the approach with who he
23 was twenty-five years ago and how he fits statistically
24 under the bell curve, and the testimony you heard from that
25 man on the stand about two hours ago, or an hour and a half

State v Gibson

2/23/17

175

1 ago, you'll be convinced that he does not pose a risk to
2 reoffend. He does not meet the definition of a sexually
3 violent predator. Thank you.

4 THE COURT: Anything in reply?

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

6 COURT'S CHARGE

7 THE COURT: All right. Mr. Foreman, ladies and
8 gentlemen of the jury, it is now my duty under the
9 Constitution of this State to charge and instruct you as to
10 the law that is applicable to this case. It is your duty to
11 accept and apply the law as I state it to you. The State of
12 South Carolina has brought this case under the Sexually
13 Violent Predator law. The State seeks the simple commitment
14 of James Gibson for the long-term control, care and
15 treatment in a secure facility. This is not a criminal
16 proceeding seeking incarceration, but is rather a proceeding
17 seeking civil commitment. The State alleges or claims that
18 Mr. Gibson is a sexually violent predator under the law.
19 The Respondent denies that he is a sexually violent predator
20 and the burden of proof is, therefore, on the State to prove
21 by evidence sufficient to satisfy each of you beyond a
22 reasonable doubt that Mr. Gibson is a sexually violent
23 predator. If the State is unable to meet the burden proof
24 as to one or more of the elements of this claim, the
25 Respondent is entitled to a finding that he is not a

1 sexually violent predator.

2 Ladies and gentlemen, I want to make sure that you
3 understand that Mr. Gibson is not accused of committing a
4 crime in these proceedings. As you heard from the
5 testimony, he did have previous charges for which he was
6 sentenced by the Court. Mr. Gibson has now completed his
7 sentence for these charges and the State is now alleging
8 that Mr. Gibson is a sexually violent predator. The State
9 has the burden of proving this case and must prove its case
10 beyond a reasonable doubt. If you find the State met the
11 burden of proof, then the Respondent will not be released.
12 If you find the State has not met its burden of proof and
13 find the Respondent is not a sexually violent predator, he
14 will be released. If he is not released, he will then be
15 committed to a secure treatment facility operated here in
16 South Carolina.

17 Now, during this trial you and I have had separate
18 duties to perform. As the trial Judge, it is my
19 responsibility to preside over the trial and I also have the
20 duty to rule upon the admissibility of evidence offered in
21 this case. In that regard, you are to consider only the
22 competent evidence before you and you are to disregard from
23 your mind any testimony which may have been ordered from the
24 record or which may not have been admitted in the process of
25 the trial. If there was any, you are to consider only the

State v Gibson

2/23/17

177

1 testimony which has been presented from the witness stand,
2 together with any other evidence admitted into the record of
3 this case, and any stipulations of counsel which may have
4 also been made into the record, if there were any.

5 Furthermore, I have the additional duty to charge you
6 on the applicable law of the case. And in this regard, I am
7 the sole judge of the law and it's your duty to accept and
8 apply the law as I state it to you. If you have any
9 preconceived ideas as to what the law is or what the law
10 ought to be and it does not agree with what I tell you the
11 law is, you are obligated under your oath to abandon your
12 preconceptions because you are sworn to accept the law
13 precisely as I state it to you.

14 In this trial you are the sole and exclusive judge of
15 the facts and I am the judge of the law. Do not infer that
16 I have any opinion about the facts in this case from
17 anything that I have said during the course of the trial in
18 ruling upon the admissibility of evidence or otherwise or
19 from anything that I am now saying in the course of this
20 charge. In this regard, the law simply does not permit me
21 to have an opinion about the facts. As jurors, it is your
22 duty alone to determine the effect, the value and the weight
23 of the evidence presented during the course of the trial.
24 While arguments of counsel is a beneficial part of every
25 trial, you should remember that the statements made by the

1 attorneys are not evidence. In presenting arguments counsel
2 often refer to the evidence. However, you should base your
3 verdict on the burden of the evidence as you remember it.
4 And if there are any conflicts between the recollection of
5 counsel about the evidence and your own recollection, you
6 should rely on your understanding of the evidence.

7 Now, in most civil cases tried in the Court of Common
8 Pleas, which is what we're in today, the burden of proving a
9 claim is by the preponderance or the greater weight of the
10 evidence. However, in this type of case under this
11 particular statute, the State's burden is greater than that.
12 Here it is beyond a reasonable doubt. As I've already
13 stated to you, the State has the burden of proof. It is the
14 law of this State according to the Sexually Violent Predator
15 Statute, the State must prove its case to the standard of
16 proof beyond a reasonable doubt. Again, if the State fails
17 to meet this high burden, then you must find Mr. Gibson not
18 a sexually violent predator.

19 Now, what is a reasonable doubt. Proof beyond a
20 reasonable doubt is proof that leaves you firmly convinced
21 that Respondent is a Sexually Violent Predator. Members of
22 the jury, there are very few things in the world that we
23 know with absolute certainty. And in this type of case, the
24 law does not require proof that overcomes every possible
25 doubt. If based on your consideration of the evidence you

State v Gibson

2/23/17

179

1 are firmly convinced that Mr. Gibson is a sexually violent
2 predator, then you must return a verdict for the State. If,
3 on the other hand you think there is a real possibility he
4 is not a sexually violent predator, you must give him the
5 benefit of the doubt and return a verdict for Mr. Gibson.

6 Reasonable doubt may arise from the evidence that is in
7 the case or from the lack of evidence in the case. It is up
8 to you to determine whether or not a reasonable doubt exists
9 in this case. Now, there are two types of evidence in every
10 case which is presented during a trial, direct evidence and
11 circumstantial evidence. Direct evidence is the testimony
12 of a person who claims to have actual knowledge of a fact,
13 such as an eyewitness. It is evidence which immediately
14 establishes the main fact to be proved. Circumstantial
15 evidence is proof of a chain of facts and circumstances
16 indicating the existence of a fact. It is evidence which
17 immediately establishes collateral facts from which the main
18 fact may be inferred. Circumstantial evidence is based on
19 inference and not on personal knowledge or observation. It
20 is proof that does not establish the fact in question but
21 that asserts or describes something else from which you may
22 either reasonably infer the truth of the fact or at least
23 reasonably infer an increase in the probability that the
24 fact is true. For circumstantial evidence to be sufficient
25 to warrant the finding of the fact, the circumstances must

1 lead to that fact with reasonable certainty. The facts and
2 circumstances should be considered in light of ordinary
3 experience and commonsense. The existence of a fact cannot
4 be based on speculation, surmise or conjecture. Now, the
5 law makes absolutely no distinction between the weight or
6 value to be given to either direct or circumstantial
7 evidence nor is a greater degree of certainty required of
8 circumstantial evidence than of direct evidence.

9 Now, in determining what the facts in this case are,
10 you must judge the credibility, which simply means the
11 believability of the witnesses and the value, the weight to
12 be given to their testimony. You alone must decide the
13 force, effect and truth of the testimony. In making this
14 decision there are many things that you may and should take
15 into consideration. You should consider the appearance and
16 the manner of the witness on the stand, a character often
17 referred to as the demeanor of the witness. You should
18 consider was the witness forthright or was the witness
19 hesitant? Was the witnesses testimony consistent or did it
20 contain discrepancies? What was the ability of the witness
21 to know the facts about which he or she testified? You
22 should consider was there some reason a witness would want
23 to give testimony which would help or hurt one side or the
24 other. In other witness, was the witness prejudiced or
25 biased. You should consider was the testimony of the

State v Gibson

2/23/17

181

1 witness reasonable when considered in light of all the
2 evidence in the case and in light of your own experience and
3 your own common sense. And was the testimony of the witness
4 corroborated or made stronger by other testimony or other
5 evidence or was it made weaker or impeached by such other
6 testimony and evidence? As jurors, please understand that
7 you have the right to believe a small portion of a witness's
8 testimony and disregard a larger portion or vice versa. You
9 may believe all the witness's testimony or none of the
10 witness's testimony. You may believe the testimony of a
11 single witness against that of many witnesses or the other
12 way around. Of course, you do not determine the truth
13 merely by counting the number of witnesses who may have
14 testified for one side or the other. The fact that the
15 testimony is not controverted does not mean you must accept
16 it as true and undisputed. You still must gauge the
17 testimony of a witness to determine the believability or
18 truth of the facts offered throughout the testimony.

19 In exercising your mental processes in attempting to
20 decide how to reach a verdict, the law simply requires that
21 you exercise your own good judgment, your common sense, your
22 sense of logic and reason and your experiences in life and
23 then apply these attributes to the evidence and apply the
24 law as I am now giving to you and thus arrive at a verdict.
25 Now, during the course of the trial, you also hear the

1 testimony of expert witnesses. The rules of evidence
2 ordinarily do not permit witnesses to testify as to opinions
3 or conclusions. Instead, they can testify as to facts
4 they've perceived such as what they saw, smelled, heard or
5 touched. However, an exception to this rule exists for a
6 witness which we call an expert witness. A witness who has
7 special knowledge, skill, experience, training or education
8 in a particular field may state an opinion as to relevant
9 and material matters in which the witness claims to be an
10 expert. In determining the weight to be given such an
11 opinion you should likewise consider the qualifications and
12 credibility of the expert and the reasons given for the
13 opinion. You are not bound by such an opinion; rather you
14 should give it the weight, if any, to which you think it
15 deserved. The value and effect of expert testimony is a
16 matter to be solely estimated by you the jury. No opinion
17 of a expert can be accepted in and of itself as truthful or
18 reliable but must be weighed by you and convince your
19 judgment beyond a reasonable doubt with the same force and
20 effect as any other fact in this case. You must consider
21 expert testimony in the same manner as you do other
22 testimony and give it the weight which you believe it to be
23 entitled when considered with all the other evidence in this
24 case. Such testimony is given for the purpose of helping you
25 and not for the purpose of controlling your judgment.

State v Gibson

2/23/17

183

1 Now, ladies and gentlemen, the elements which the State
2 must prove beyond a reasonable doubt are: One, that the
3 Respondent has been convicted of a criminally -- a sexually
4 violent offense. I charge and instruct you that criminal
5 sexual conduct in the first degree and lewd act on a child
6 are both sexually violent offenses; and second, the State
7 must prove beyond a reasonable doubt that the Respondent
8 suffers from a mental abnormality or personality disorder
9 that makes him likely to engage in acts of sexual violence
10 if not confined in a secure facility for long-term control,
11 care and treatment. Inherent in these two elements is the
12 State must prove the requirement that the Respondents mental
13 abnormality or personal order causes him serious difficulty
14 in controlling his behavior. In other words, the State must
15 prove beyond a reasonable doubt that Mr. Gibson suffers from
16 a mental illness, which he cannot sufficiently control
17 without the structure and care provided by a secure
18 facility, rendering him otherwise likely to commit a
19 dangerous reoffense.

20 Now, in order for you to better understand the elements
21 of the State's cause of action, I am going to define for you
22 some of the terms that I have just used. Mental
23 abnormality: It means a mental condition effecting a
24 person's emotional or volitional capacity that predisposes
25 the person to commit sexually violent offenses. This mental

1 abnormality or personality disorder must cause Mr. Gibson
2 serious difficulty in controlling his behavior. Likely to
3 engage in acts of sexual violence: That means that 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 a dangerous person. Again, I remind
7 you that the burden of proof is on the State to prove to
8 your satisfaction beyond a reasonable doubt that Mr. Gibson
9 has been convicted of a sexually violent offense, as I
10 instructed you. And that Mr. Gibson suffers from a mental
11 abnormality or personality disorder that makes him likely to
12 engage in acts of sexual violence if not confined in a
13 secure facility for his long-term control, care and
14 treatment. If the State carries its burden of proof and
15 convinces you beyond a reasonable doubt as to each of the
16 two elements of its cause of action, it is entitled to a
17 finding that Mr. Gibson is a sexually violent predator. If
18 the State does not meet that burden of proof as to one or
19 both of the elements, the Respondent is entitled to a
20 finding that he is not a sexually violent predator.

21 Mr. Foreman, and ladies and gentlemen of the jury, as
22 you retire to begin your deliberations, I wish to express
23 the hope that each of you will be mindful of the importance
24 of your responsibility. You are not called upon to serve as
25 jurors very often and the proper performance of the duty

State v Gibson

2/23/17

185

1 requires each of you to reach the height of freeing your
2 mind of all improper influences. As the Judge in this Court
3 I am vitally concerned that whatever verdict you find will
4 be the result of your going into the jury room and confining
5 your consideration to the evidence and the law that you have
6 heard in this courtroom, weighing it fairly and impartially
7 as I have ever confidence that you will do. Your verdict in
8 this case cannot be based on sympathy, on passion,
9 prejudice, or emotion or some other consideration not found
10 in the evidence. Remember, your verdict must be unanimous.
11 I will now explain to you the verdict form and the possible
12 verdict.

13 Mr. Foreman, I have prepared a verdict form and this
14 verdict form has two possible verdicts that this jury can
15 reach. As I've told you, the verdict must be the unanimous
16 verdict of all twelve jurors. It cannot be eleven one or
17 nine three or ten two. It has to be a twelve to zero
18 verdict of all twelve jurors. The two possible verdict
19 forms are yes, James Gibson is a sexually violent predator
20 or no, James Gibson is not a sexually violent predator.

21 Ladies and gentlemen, you are not to infer anything by what
22 goes first and what goes second on this verdict form because
23 something has to go first and something has to go second.
24 But those are your two potential verdicts in this case.

25 Mr. Foreman, what I'm going to ask you to do when the

State v Gibson

2/23/17

186

1 jury has reached its verdict, there are two blanks right by
2 each one of the verdict forms. You would check the verdict
3 and initial the verdict right by the check. And then if you
4 will sign the verdict form at the bottom where it says
5 foreperson and date the verdict. Once you have done that,
6 if you will advise the bailiff seated outside your room that
7 you all have reached a verdict, then we will bring you back
8 so that your verdict can be published.

9 Now, in just a minute I'm going to ask all of you but
10 Madam Alternate if you'll remain with us. All of you to
11 step back to the jury room, but do not begin any discussions
12 of this case. I must review with the attorneys the
13 instructions that I just gave you to determine whether they
14 believe I either failed to instruct you in some way or I
15 incorrectly instructed you. If I believe additional
16 instructions are necessary, I will immediately bring you
17 back and give you those additional instructions. If not, I
18 will have this verdict form, along with all exhibits that
19 have been introduced into this case, brought to you in the
20 jury room. And Mr. Foreman, you can begin your
21 deliberations at that time.

22 So if y'all will step back to the jury room, we'll be
23 with you momentarily.

24 (Jury out at 4:00 p.m.)

25 THE COURT: All right. Madam alternate,

State v Gibson

2/23/17 187

1 apparently they survived the process and they're in a
2 position to go forward with the deliberations. We started a
3 trial on Tuesday and we immediately lost one of the jurors,
4 but fortunately we had an alternate. One of the jurors had
5 a death in the family and wasn't able to proceed. So it's
6 just a precaution. I appreciate your willingness to be here
7 in this morning and to serve all day. I don't know how you
8 feel about -- a lot of jurors are upset they have to listen
9 and they don't get participate in the decision and a lot of
10 them are glad they don't have to, but we do appreciate your
11 willingness to do so.

12 Now, if you need an excuse for work if you will go down
13 to the clerk of court's office they will give you an excuse.
14 As I tell all the jurors, you'll get a small token of a
15 appreciation from the County of Orangeburg in the not too
16 distance future. Don't plan on padding your bank account
17 too much but, again, thank you very much and you're free to
18 leave. Jury duty is finished so you have a nice rest of the
19 week.

20 JUROR NO. 23: Thank you.

21 THE COURT: Thank you, ma'am.

22 (Alternate juror excused at 4:01
23 p.m.)

24 THE COURT: All right. Anything from the State
25 with respect to the --

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

2 MR. FAULK: There is one thing before the jury
3 instructions go back, I think when I closed I said I wanted
4 to renew my motion, but I don't know if you ever ruled on
5 it.

6 THE COURT: Well, I don't remember saying that but
7 that's okay. We'll --

8 MR. FAULK: I just want to fix the record.

9 THE COURT: I skipped directly to them on reply.
10 And, you know, your motions for your directed verdict --

11 MR. FAULK: I just want to preserve it.

12 THE COURT: -- are denied for reasons previously
13 stated.

14 MR. FAULK: Thank you, Judge.

15 THE COURT: That there is some evidence and it's a
16 matter of weight and everything.

17 All right. Anything further on the charge?

18 MR. FAULK: No, Your Honor.

19 THE COURT: All right. If y'all will get with our
20 present court reporter and make sure we have all the
21 exhibits. Here is the verdict form.

22 (Evidence to jury at 4:03 p.m.)

23 (Jury deliberating at 4:03 p.m.)

24 THE COURT: Ladies and gentlemen of the jury that
25 were late, if y'all will remain with us, we'll see what

State v Gibson

2/23/17

189

1 happens.

2 (Court in recess awaiting verdict
3 of the jury at 4:03 p.m.)

4 (Court in session for jury question
5 at 4:40 p.m.)

6 THE COURT: All right. You let's bring them in.

7 THE BAILIFF: Yes, Your Honor.

8 THE COURT: Ladies and gentlemen, I got your note,
9 Mr. Foreman, and of course, I can't answer your question.
10 Mr. Gibson -- if the State should prevail in this matter Mr.
11 Gibson would be committed for an indeterminate amount of
12 time in a long-term facility for treatment. So I can't
13 answer the question. You should not be concerned about the
14 amount of time it takes for the treatment. I can't tell you
15 anything more than what that is. So I'm going to let y'all
16 step back to the jury room. Please resume your
17 deliberations if you would.

18 (Jury out at 4:41 p.m.)

19 THE COURT: All right. Anything in response to
20 the question?

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

22 MR. FAULK: Nothing from the Respondent.

23 THE COURT: All right. I'm going to have this
24 marked as Court Exhibit No. 1.

25 COURT REPORTER: Court No. 2, Judge.

State v Gibson

2/23/17

190

1 THE COURT: What's No. 1

2 COURT REPORTER: The jury foreperson name.

3 THE COURT: Huh?

4 COURT REPORTER: The jury foreperson's name. We
5 always mark those a Court's Exhibit.

6 THE COURT: I didn't know that.

7 COURT REPORTER: This one is 2.

8 (Court's Exhibit No. 2, Note from
9 jury, is marked.)

10 (Court in recess awaiting verdict
11 of jury at 4:43 p.m.)

12 (Court in session for verdict at
13 5:26 p.m.)

14 THE COURT: All right. We're ready now? All
15 right. Let's bring the jury in.

16 THE BAILIFF: Yes, Your Honor.

17 (Jury in at 5:26 p.m.)

18 THE COURT: All right. Mr. Foreman, it's been
19 reported the jury's reached a verdict; is that correct?

20 THE FOREMAN: Yes, Your Honor.

21 THE COURT: Is this the unanimous verdict of all
22 twelve jurors?

23 THE FOREMAN: Yes, Your Honor.

24 THE COURT: All right. If you would, hand the
25 verdict form to the bailiff.

State v Gibson

2/23/17 191

1 THE BAILIFF: Your Honor, may I approach?

2 THE COURT: Yes, ma'am.

3 THE CLERK: In the matter of the care and
4 treatment of James Gibson, case number 2015-CP-38-01273, we,
5 the jury, unanimously answer the question as follows: Yes,
6 James Gibson is a sexually violent predator.

7 THE COURT: All right. Anything from the State
8 with respect to the verdict form?

9 MR. MORROW: Nothing from the State, Your Honor?

10 THE COURT: Anything from the Respondent?

11 MR. FAULK: No, Your Honor.

12 THE COURT: All right. Ladies and gentlemen of
13 the jury, thank you very much for your service. The good
14 thing is we're going to turn you loose for the rest of the
15 week and that will conclude your jury service this week. I
16 hope you realize how important you are to the process and we
17 can't do it without you. If you need something for work,
18 Madam Clerk, what do they do? The clerk's office is closed;
19 isn't it?

20 THE CLERK: If they'll wait on me, I'll get them
21 an excuse.

22 THE COURT: All right. Well, we'll let y'all go.
23 Thank you very much. All right. Y'all have a nice weekend
24 and thank you again for your service.

25 (Jury out at 5:28 p.m.)

1 THE COURT: Anything from the State?

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

3 THE COURT: Anything from the Defense -- I mean,
4 Respondent?

5 MR. FAULK: Nothing, Your Honor.

6 THE COURT: All right. Do you have an order?

7 MR. MORROW: Yes, Your Honor.

8 THE COURT: All right. Ladies and gentlemen of
9 the jury that were late, I'm going to turn you loose. Your
10 folks that didn't come in today and sit, however long y'all
11 sit is being ordered to come back and sit another week. So
12 you got a half day or two-thirds of a day as opposed to a
13 full week. But y'all have got to take this jury service
14 seriously because it just is critical and we got down to --
15 we conceivably could have not had enough jurors for this
16 trial and -- how many did have? Fourteen people did not
17 come back that were supposed to come back. And fortunately,
18 we got eight of you back today. So I do appreciate your
19 willingness to come in on Tuesday and come in this afternoon
20 but if you get the opportunity to serve again, it is so
21 important to the whole process so please just be a little
22 more careful with your service. Any of y'all need an excuse
23 for work?

24 JURORS: (Affirmative response)

25 THE COURT: All right. If you'll stick around

State v Gibson

2/23/17

193

1 we'll get you one and I'm going to go ahead and pay you for
2 your service today so you'll get a check for twelve dollars
3 for that, so -- but y'all are free to leave that can leave
4 and the clerk will -- I guess you're going to take them down
5 to the clerk's office?

6 THE CLERK: Yes, sir.

7 THE COURT: All right. Thank y'all. Good luck to
8 you, Mr. Gibson.

9 (Court in recess February 23, 2016
10 at 5:35 p.m.)
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State v Gibson

2/23/17

194

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 23 DAY OF FEBRUARY, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

May 21, 2017

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE MATTER OF THE CARE AND
TREATMENT OF

JAMES GIBSON,
Respondent

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
) CASE NO. 2015-CP-38-1273

) ORDER OF COMMITMENT

RECEIVED

MAR 10 2017

SC Court of Appeals

The trial of this case was held in the County of Orangeburg in the Court of Common Pleas the week of February 21, 2017. A jury of citizens from Orangeburg County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Christopher A. Morrow represented the State and James K. Falk, 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 James Gibson is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

- (a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent is to continue to be detained at the Orangeburg 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.



James R. Barber, III
First Judicial Circuit
Court of Common Pleas

February 23, 2017
Orangeburg, South Carolina

FILED FOR RECORD
WINNIE B. CLARK
2017 FEB 23 P 1:42
CLERK OF COURT
ORANGEBURG, SC

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

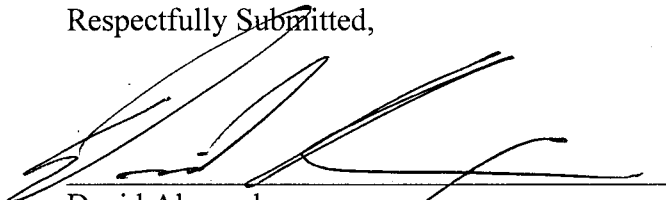
ATTORNEY FOR APPELLANT

This 9th day of May, 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,

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of May, 2018.

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