

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

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SC Court of Appeals

IN THE MATTER OF THE CARE AND
TREATMENT OF CRAIG ALLEN CARROLL,

APPELLANT

APPELLATE CASE NO 2017-000972

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY) CASE NO. 2015-CP-08-02677

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4 IN THE MATTER OF THE)
5 CARE AND TREATMENT OF)
6 CRAIG ALLEN CARROLL,) Transcript of Record
7 Respondent,)
8)
9)
10) Date: April 10, 2017
11) April 12, 2017
12)
13)

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B E F O R E:

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The Honorable Kristi Harrington

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1 (The following proceedings were held
2 April 10, 2017, Berkeley County Common Pleas Court,
3 in re: The matter of the care and treatment of
4 Craig Allen Carroll, at 11:01 a.m.)

5 (STATE EXH. 1, Sentencing Sheet, for
6 identification.)

7 THE COURT: Ladies and gentlemen, you
8 are now all qualified to serve as jurors, and so
9 I'm going to select the jury for my first case.
10 This is the State of South Carolina, County of
11 Berkeley, Court of Common Pleas of the Ninth
12 Judicial Circuit, 2015-CP-08-2277, In the matter of
13 the care and treatment of Craig Allen Carroll.

14 This is a brief statement of the facts.
15 The respondent, Craig Allen Carroll, has previously
16 been convicted of a certain crime and has served a
17 sentence for this conviction. The State, through
18 Mr. Bogle, has brought this case under the Sexually
19 Violent Predator Act to seek the civil commitment
20 of Craig Allen Carroll for long-term control, care,
21 and treatment in a secure facility. This is not a
22 criminal proceeding seeking incarceration. This is
23 a proceeding seeking civil commitment in a secure
24 facility.

25 Is there any member of the jury panel

1 who knows anything about this case other than what
2 I have just read to you? If so, please stand.

3 Thank you, there are none.

4 Ladies and gentlemen, I will give you
5 an opportunity to come forward at the end of my
6 questions concerning this particular case like we
7 did at the end of the qualifications questions.

8 Mr. Falk, I'm going to allow you the
9 opportunity to stand and introduce yourself and
10 your client.

11 MR. FALK: Good morning; my name is
12 James Falk. I have a law firm in Charleston, and
13 this is my client Craig Allen Carroll.

14 THE COURT: Ladies and gentlemen, is
15 there any member of the jury panel related by
16 blood, marriage, close personal friend, ever have
17 any business, personal, or professional dealings,
18 or know Mr. Craig Allen Carroll in any way? If so
19 please stand.

20 Thank you, there are none.

21 Is there any member of the jury panel
22 related by blood, marriage, close personal friend,
23 ever have any business, personal, or professional
24 dealings, or know Mr. Falk in any way? If so,
25 please stand.

1 Thank you, there are none.

2 Mr. Bogle, if you would please stand
3 and introduce yourself, tell us a little bit about
4 your office.

5 MR. BOGLE: Thank you. My name is Jim
6 Bogle. I work for the attorney general's office in
7 Columbia. Our job is to handle cases under this
8 law that you will hear about this week.

9 THE COURT: Thank you.

10 Is there any member of the jury panel
11 related by blood, marriage, close personal friend,
12 ever have any business, personal, or professional
13 dealings, or know Mr. Bogle in any way? If so,
14 please stand.

15 Thank you, there are none.

16 Is there any member of the jury panel
17 ever been employed by, or a member of your
18 immediate family ever been employed by the state
19 attorney general's office in any capacity? If so,
20 please stand.

21 Thank you, there are none.

22 I'm now going to call a list of
23 potential witnesses who may be called to testify in
24 this case. If you are related by blood, marriage,
25 close personal friend, know these individuals in

1 any way, please stand as I call their name.

2 Dr. Marie Gehle with the South Carolina
3 Department of Mental Health, Kiersten Wilde, Nicole
4 McConnell, Lisa O'Connell. Any member of the jury
5 panel know these individuals in any capacity? If
6 so, please stand.

7 Thank you, there are none.

8 Mr. Falk, any additional witnesses?

9 MR. FALK: No, Your Honor.

10 THE COURT: Any member of the jury
11 panel ever been employed by, or have any business,
12 professional dealings with the South Carolina
13 Department of Mental Health in any capacity? If
14 so, please stand.

15 Thank you. There -- yes. Your juror
16 number and name, sir?

17 PROSPECTIVE JUROR: 173.

18 THE COURT: 173.

19 PROSPECTIVE JUROR: My name is Ronald
20 Warren.

21 THE COURT: Yes.

22 PROSPECTIVE JUROR: My soon to be
23 ex-wife was in the Behavioral Health Center, South
24 Carolina. She was committed for --

25 THE COURT: She was a patient with

1 Behavioral --

2 PROSPECTIVE JUROR: She was
3 involuntarily committed.

4 THE COURT: Is there anything about
5 what you shared with us that would affect your
6 ability to be fair and impartial in this case?

7 PROSPECTIVE JUROR: I have a pretty low
8 opinion of the South Carolina Mental Health.

9 THE COURT: And so my question is,
10 will you be able to listen to the facts from the
11 witness stand, apply the law as I give it to you,
12 and render a verdict based solely upon those
13 things? I need a yes or no. There is no wrong or
14 right answer.

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

17 THE COURT: All right. I will protect
18 you from the trial of this case. Please do not
19 answer any further questions, but I need you to
20 stay with us. You will receive further
21 instructions regarding the rest of the week.

22 Is there anyone else?

23 Thank you, there are none.

24 Is there any member of the jury panel
25 that knows or has had recent communication with

1 anyone in the Ninth Circuit Solicitor's Office? So
2 that's a prosecuting agency in Berkeley and
3 Charleston County. If so, please stand.

4 Your name and juror number?

5 PROSPECTIVE JUROR: 191, Frances
6 Nelson. I don't know if this counts, but I work
7 for Berkeley County Records Management so I deal
8 with the Solicitor's office a lot.

9 THE COURT: Okay. Anything about that
10 employment that would affect your ability to be
11 fair and impartial in this case?

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

14 THE COURT: Okay. And your juror
15 number?

16 PROSPECTIVE JUROR: Is 191.

17 THE COURT: Okay. Is there anybody
18 else?

19 Thank you, there are none.

20 Is there any member of the jury panel
21 that knows anything about the crimes for which
22 Mr. Carroll was sentenced? If so, please stand.

23 Thank you, there are none.

24 Is there any member of the jury panel
25 that has any specialized training or experience, or

1 you have ever worked in the field of psychiatry,
2 psychology, or the law? If, so please stand.

3 Thank you, there are none.

4 Any member of the jury panel ever
5 worked for, or has in any way been connected with
6 any social services agency, guardian ad litem
7 program, a foster care program, or any other entity
8 that investigates or counsels victims of rape or
9 sexual assault? If so, please stand.

10 Yes, your juror number and name?

11 PROSPECTIVE JUROR: Twanda Bradley,
12 juror number 12.

13 THE COURT: Okay. Tell me why you
14 stood up.

15 PROSPECTIVE JUROR: Because I used to
16 work at Dee Norton Lowcountry Children's Center.

17 THE COURT: And what did you do there?

18 PROSPECTIVE JUROR: I was a child
19 advocate.

20 THE COURT: And will you be able to
21 listen to the facts from the witness stand, apply
22 the law as I give it to you, and render a verdict
23 based on those things?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Do you know any of the

1 individuals, either from the witness list, or the
2 respondent, or either attorney?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Tell me your juror number.

5 PROSPECTIVE JUROR: 12.

6 THE COURT: And how long has it been
7 since you worked at Dee Norton?

8 PROSPECTIVE JUROR: Eleven years.

9 THE COURT: Okay. Thank you.

10 Is there anyone else?

11 Thank you. There are none.

12 Is there any member of the jury panel,
13 or your spouse, or very close friend works for any
14 law enforcement agency, either city, county, state,
15 or federal? If so, please stand. You or your
16 spouse or close friend work for any law enforcement
17 agency.

18 Yes, ma'am; your juror number and name.

19 PROSPECTIVE JUROR: 153, Nancy Sparks.

20 And I don't know if this counts, but my husband is
21 a voluntary constable.

22 THE COURT: Here in Berkeley or
23 somewhere else?

24 PROSPECTIVE JUROR: Berkeley and
25 Charleston.

1 THE COURT: Is there anything about his
2 occupation that would affect your ability to be
3 fair and impartial in this case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: And your juror number?

6 PROSPECTIVE JUROR: 153.

7 THE COURT: Thank you.

8 Yes ma'am.

9 PROSPECTIVE JUROR: Juror number 11.

10 My niece works for Berkeley County Sheriff's
11 Department. Her name is Sergeant Annie Jackson.

12 THE COURT: Do you know anything about
13 this case, other than what I have just read to you?

14 PROSPECTIVE JUROR: No.

15 THE COURT: When is the last time that
16 you have seen Sergeant Jackson?

17 PROSPECTIVE JUROR: About two weeks.

18 THE COURT: Is there anything about her
19 employment and you being related to her that would
20 affect your ability to be fair and impartial in
21 this case?

22 PROSPECTIVE JUROR: No, ma'am.

23 THE COURT: And your juror number?

24 PROSPECTIVE JUROR: 11.

25 THE COURT: Yes, ma'am.

1 PROSPECTIVE JUROR: Juror 102. My
2 husband has two cousins that work for Charleston
3 County Sheriff's Department.

4 THE COURT: And the same question;
5 anything about that that would affect your ability
6 to be fair and impartial in this case?

7 PROSPECTIVE JUROR: No.

8 THE COURT: And your juror number?

9 PROSPECTIVE JUROR: 102.

10 THE COURT: Yes, ma'am.

11 PROSPECTIVE JUROR: Juror number 115.
12 My father is retired from the North Charleston
13 Police Department.

14 THE COURT: Okay. And how long has he
15 been retired?

16 PROSPECTIVE JUROR: I mean,
17 technically, he retired in 2008, but he went back
18 until 2014.

19 THE COURT: Anything about that that
20 would affect your ability to be fair and impartial
21 in this case?

22 PROSPECTIVE JUROR: No.

23 THE COURT: And your juror number?

24 PROSPECTIVE JUROR: 115.

25 THE COURT: Thank you.

1 PROSPECTIVE JUROR: 175. My
2 sister-in-law works for the sheriff's office.

3 THE COURT: And do you know anything
4 about this case, other than what I have just read
5 to you?

6 PROSPECTIVE JUROR: No, ma'am.

7 THE COURT: Thank you. And your juror
8 number?

9 PROSPECTIVE JUROR: 175.

10 THE COURT: Thank you.

11 Anyone else?

12 Thank you, there are none.

13 Any member of the jury panel, or your
14 spouse, or a very close friend work as an emergency
15 technician, volunteer fire person, or any
16 occupation that can be described as a first
17 responder, or you have been involved in a prison
18 ministry, prison outreach program, or any other
19 program involving contact with incarcerated
20 programs, or you, or a family member, your spouse
21 are associated with any crime prevention group,
22 victim's rights group, or criminal, or law
23 enforcement organizations such as a neighborhood
24 watch group, Citizens Against Violent Crime, People
25 Against Rape, Rape Crisis Hotline, Darkness to

1 Light or any group of that nature? If so, please
2 stand.

3 Yes; your juror number and name?

4 THE COURT: 69 Kim grant. I'm an
5 emergency responder at Capstone right now.

6 THE COURT: What was the last thing
7 you said?

8 PROSPECTIVE JUROR: At Capstone. And
9 I'm going to Trident Tech now part-time for an EMT.

10 THE COURT: Anything about what you
11 shared with us that would affect your ability to be
12 fair and impartial in this case?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Thank you.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: Frances Nelson,
17 191. I minister at Hill-Finklea every Tuesday
18 night. Well, mostly every Tuesday night.

19 THE COURT: Say that again.

20 PROSPECTIVE JUROR: I minister to the
21 women at Hill-Finklea on Tuesday nights.

22 THE COURT: Okay. Is there anything
23 about that that would affect your ability to be
24 fair and impartial in this case?

25 PROSPECTIVE JUROR: No.

1 THE COURT: When is the last time that
2 you were there?

3 PROSPECTIVE JUROR: Because I'm in
4 school, it's been three weeks now. I have class on
5 Tuesday for seven weeks.

6 THE COURT: Do you know any of the
7 names or anything about this case, other than what
8 I have just read to you?

9 PROSPECTIVE JUROR: No.

10 THE COURT: And tell me your juror
11 number.

12 PROSPECTIVE JUROR: 191.

13 THE COURT: Yes, sir.

14 PROSPECTIVE JUROR: Juror number 58,
15 Spencer Fey. I currently work as a paramedic
16 firefighter with the City of Goose Creek and, also,
17 just left Berkeley County EMS two months ago.

18 THE COURT: Anything about that
19 occupation that would affect your ability to be
20 fair and impartial in this case?

21 PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: And your juror number?

23 PROSPECTIVE JUROR: 58.

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR: Juror number 131,

1 Charles Pendergast. I used to be a firefighter EMS
2 with Hanahan, and my wife and I used to teach Bible
3 study at McDougal.

4 THE COURT: Anything about what you
5 shared with me that would affect your ability to be
6 fair and impartial in this case?

7 PROSPECTIVE JUROR: No, Your Honor.

8 THE COURT: And your juror number?

9 PROSPECTIVE JUROR: 131.

10 THE COURT: Thank you. Anyone else?

11 Thank you, there are none.

12 Any member of the jury panel been the
13 subject of, or had a close friend or family member
14 that was the subject of a mental inquest warrant or
15 other civil commitment for mental health reasons?
16 If so, please stand.

17 Thank you, there are none.

18 Is there any member of the jury panel
19 who is related by blood or marriage to another
20 member of the jury panel? If so, please stand.

21 Wife, sister is on the jury panel this
22 week.

23 Yes, ma'am.

24 PROSPECTIVE JUROR: My niece, Tawanda
25 Bradley.

1 THE COURT: And your juror number?

2 PROSPECTIVE JUROR: 11.

3 THE COURT: And your juror number, Ms.
4 Bradley?

5 PROSPECTIVE JUROR: 12.

6 THE COURT: Is there anything about
7 your niece being on the jury panel that would
8 affect your ability to be fair and impartial in
9 this case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: And if you both were
12 selected, would that be an issue? Would you be
13 able to listen to the facts from the witness stand,
14 apply the law as I give it, and render a verdict
15 based upon those things?

16 PROSPECTIVE JUROR: No.

17 THE COURT: And your juror number.

18 PROSPECTIVE JUROR: 11.

19 THE COURT: Same question to you, is
20 there anything about your aunt being on the jury
21 panel that would affect your ability to be fair and
22 impartial in this case?

23 THE WITNESS: No.

24 THE COURT: Would you be able to listen
25 to the facts from the witness stand, apply the law

1 as I give it to you, and render a verdict based
2 only upon those things?

3 PROSPECTIVE JUROR: Yes, ma'am.

4 THE COURT: Okay. Thank you, juror no.
5 12.

6 Is there anyone else?

7 Thank you, there are none.

8 That's the first time that I have ever
9 asked that question, but I actually had a husband
10 and wife serve. They got selected in the same week
11 so we know that it happens.

12 Ladies and gentlemen, I am now going to
13 ask a series of questions that I have determined
14 that you need to come forward and speak with me in
15 private. Please listen very carefully.

16 Is there any member of the jury panel
17 related to or have a close friend who accused
18 Mr. Craig Carroll of committing a sexual offense
19 against them? If that applies to you, I need you
20 to come forward at the appropriate time.

21 Would the fact that Mr. Carroll has
22 been convicted of sexual offenses and completed his
23 criminal sentence related to the conviction prevent
24 you from being a fair and impartial juror in this
25 case? If that applies to you, I need you to come

1 forward at the appropriate time.

2 Is there any member of the jury panel,
3 or any of your close personal friends or relatives
4 ever been the victim of a sexual assault? If so, I
5 need you to come forward at the appropriate time.

6 Is there any member of the jury panel,
7 or a close family member, ever been the victim of a
8 violent crime, domestic violence, sexual assault by
9 a spouse, partner or social acquaintance, or been
10 the victim of a date rape? If that applies to you,
11 I need you to come forward at the appropriate time.

12 Is there any member of the jury panel,
13 or a close personal friend or relative, ever been
14 charged with or convicted of a sexual offense? If
15 so, please come forward at the appropriate time.

16 Is there any member of the jury panel,
17 or a member of your immediate family, or a close
18 personal friend ever been the subject of a civil
19 commitment proceeding or been voluntarily or
20 involuntarily committed?

21 Ladies and gentlemen, if those
22 questions apply to you, or you need to see me about
23 any of the previous questions, or if for whatever
24 reason you feel that you would be unable to listen
25 to the facts from the witness stand, apply the law

1 as I give it to you, and render a verdict based
2 only upon those things free from any outside
3 personal, religious, moral beliefs, for whatever
4 reason you feel that this case -- that you cannot
5 be that fair and impartial juror that both the
6 petitioner and the respondent deserves, please come
7 forward and the bailiff will assist you.

8 THE BAILIFF: Juror 25.

9 PROSPECTIVE JUROR: I want to let you
10 know, I was molested when I was five, but I think I
11 can serve.

12 THE COURT: Okay. Was that here in
13 Berkeley County?

14 PROSPECTIVE JUROR: Charleston.

15 THE COURT: Was the individual
16 prosecuted?

17 PROSPECTIVE JUROR: He was sent to some
18 place to get well.

19 THE COURT: Okay. And so you have
20 heard the facts, and this is not a criminal --

21 PROSPECTIVE JUROR: Right.

22 THE COURT: -- case, this is a civil
23 commitment. Will you be able to listen to the
24 facts --

25

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: -- from the witness stand,
3 apply the law, and render a verdict based upon
4 those things?

5 PROSPECTIVE JUROR: Yes, ma'am.

6 THE COURT: Okay. 25 will remain.

7 THE BAILIFF: 117.

8 PROSPECTIVE JUROR: I had a
9 five-year-old granddaughter molested by her father,
10 and my mother-in-law was molested by a babysitter.

11 THE COURT: Were charges brought?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: And convicted?

14 PROSPECTIVE JUROR: Yes, ma'am.

15 THE COURT: And where was that?

16 PROSPECTIVE JUROR: In Fort Stewart,
17 Georgia, the Army base.

18 THE COURT: Is there anything about
19 what you've shared with me that would affect your
20 ability to be fair and impartial in this case?

21 PROSPECTIVE JUROR: It hits pretty
22 close to home, ma'am.

23 THE COURT: Okay. And some jurors are
24 better suited to serve in other cases. I have
25 plenty of work to do. Will you be able to listen

1 to the facts, apply the law as I give it to you,
2 and render a verdict based upon those things?

3 PROSPECTIVE JUROR: Not in this case.

4 THE COURT: I'll excuse from this case
5 only. Don't answer anymore questions about this
6 case, but I need you to stay with me.

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: 117 is excused from the
9 trial of this case.

10 THE BAILIFF: 51.

11 PROSPECTIVE JUROR: Hi.

12 THE COURT: Good morning.

13 PROSPECTIVE JUROR: My oldest son was
14 sexually assaulted by my brother's friend when I
15 was away in the Navy.

16 THE COURT: And was that here in
17 Berkeley County?

18 PROSPECTIVE JUROR: No. No.

19 THE COURT: Were charges brought?

20 PROSPECTIVE JUROR: No.

21 THE COURT: And is there anything about
22 what you have shared with us that will affect your
23 ability to be fair and impartial?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Juror 51 is excused from

1 the trial of this case.

2 Please stay with us and don't answer
3 any other questions. I will give you instructions
4 regarding the remainder of your week.

5 THE BAILIFF: 127.

6 PROSPECTIVE JUROR: Hi. I was molested
7 by my uncle at age six and I was raped by a former
8 boss at Senior Tequila in 2009.

9 THE COURT: Were charges brought in
10 that latter case?

11 PROSPECTIVE JUROR: No, because the
12 rape -- I can't go to court, it was too traumatic.

13 THE COURT: You know the basis of this
14 is not a criminal prosecution. This is a civil
15 commitment. Is there anything about what you've
16 shared with us that would affect your ability to be
17 fair and impartial in this case?

18 PROSPECTIVE JUROR: I don't know,
19 because I don't know what happened.

20 THE COURT: Okay. Juror 127 is excused
21 from the trial of this case.

22 I need you to stay with us and I'll
23 give you further instructions. Don't answer any
24 further questions in this matter. Thank you.

25 THE BAILIFF: Juror 6.

1 THE COURT: Good morning.

2 PROSPECTIVE JUROR: My sister was raped
3 by my grandfather, and I don't think -- I don't
4 think it's a good idea that I would be on the jury.

5 THE COURT: Okay. I'm going to excuse
6 you from the trial of this case. I need you to
7 stay with us so I can give you further instructions
8 regarding your service for the week.

9 PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: Juror 6 is excused from the
11 trial of this case.

12 THE BAILIFF: 129.

13 PROSPECTIVE JUROR: How are you? So I
14 had a brother -- I had a brother that was murdered
15 about 23 years ago, and then my sister was molested
16 as a child.

17 THE COURT: All right. Were charges
18 brought?

19 PROSPECTIVE JUROR: No.

20 THE COURT: So you've shared a couple
21 of things. Anything about what you've shared that
22 would affect your ability to be fair and impartial?

23 PROSPECTIVE JUROR: Not the murder, but
24 the molestation.

25 THE COURT: I will excuse you from the

1 trial of this case.

2 PROSPECTIVE JUROR: Okay.

3 THE COURT: I need you to stay with us,
4 but don't answer anymore questions about this case.
5 I will give you further instructions regarding your
6 service this week.

7 THE BAILIFF: Juror 9.

8 THE COURT: Good morning.

9 PROSPECTIVE JUROR: My father was -- my
10 father was in prison for a lewd act.

11 THE COURT: Okay. Did that occur here
12 in Berkeley County or somewhere else?

13 PROSPECTIVE JUROR: Charleston -- I
14 mean, Dorchester County.

15 THE COURT: Okay. And how long ago was
16 that.

17 PROSPECTIVE JUROR: He's been out now
18 since -- 2007 is whenever he got out and he served
19 six years.

20 THE COURT: Anything about what you've
21 shared with us that would affect your ability to be
22 fair and impartial in this case?

23 PROSPECTIVE JUROR: No.

24 THE COURT: All right. Juror 9 will
25 remain. Thank you.

1 (Bench conference)

2 THE COURT: Mr. Bogle, any further
3 questions?

4 MR. BOGLE: No.

5 THE COURT: Mr. Falk? Just place them
6 on the record.

7 MR. FALK: Your Honor, I needed to know
8 if you would ask about Katie O'Connell? That was
9 one of the names --

10 THE COURT: I asked about two
11 O'Connells.

12 MR. FALK: But there are three.

13 THE COURT: There's only two on my
14 list, and I asked -- I'll ask again --

15 MR. FALK: It was on my voir dire list.

16 THE COURT: What's her name?

17 MR. FALK: Katie O'Connell.

18 (Open court)

19 THE COURT: Is there any member of the
20 jury panel related by blood, marriage, close
21 personal friend, ever have any business, personal,
22 or professional dealings with Katie O'Connell? If
23 so, please stand.

24 Thank you. There are none.

25 (Bench conference)

1 THE COURT: Okay. Any additional
2 questions?

3 MR. FALK: Yeah. Let me -- these are
4 the ones that you didn't ask, if I could just make
5 a record here.

6 THE COURT: Is there something that I
7 missed, so I can ask it while we're here?

8 MR. FALK: Does anyone believe if
9 someone suffers from pedophilia they will never be
10 cured?

11 THE COURT: Okay.

12 MR. FALK: Does any member of the jury
13 panel --

14 THE COURT: Hold on one second.

15 MR. BOGLE: The mental abnormality --
16 basically, Dr. Gehle looked at pedophilia. It
17 wasn't enough. She diagnosed another mental
18 abnormality.

19 THE COURT: Do you want me to ask that
20 question?

21 MR. BOGLE: No, but, I mean, there were
22 young victims but she didn't diagnose that type of
23 abnormality. I don't like the question, but --

24 THE COURT: That's why I didn't ask it.

25 MR. FALK: Okay. Does any member of

1 the jury panel believe it is impossible to be
2 rehabilitated if a person's ever been convicted of
3 committing sexual crimes against children?

4 MR. BOGLE: We don't like that one.

5 THE COURT: I think that's an
6 inappropriate comment on the facts.

7 MR. FALK: Does any member of the panel
8 believe that those convicted of sex crimes receive
9 sentences that are too lenient?

10 MR. BOGLE: We don't like that one
11 either.

12 THE COURT: Same.

13 MR. FALK: That's all.

14 THE COURT: All right. Thank you.

15 MR. BOGLE: Thank you, Your Honor.

16 (Open court)

17 THE COURT: Ladies and gentlemen, this
18 is my final -- your final chance to come forward if
19 there's any reason that you feel you cannot be a
20 fair and impartial juror to serve on this case.
21 And, again, this is a short week, so please come
22 forward if there is some reason you need to speak
23 with me.

24 Remember, your service is for the week.
25 Friday is a holiday. Any reason why you think that

1 you could not serve this week, please come forward
2 at this time.

3 Thank you. There are none.

4 (Bench conference.

5 MR. FALK: Juror number 156 said he
6 thought he knew him and you told him that was not
7 the time and he didn't come back up.

8 THE COURT: I've asked it five
9 different times.

10 (Open court.

11 THE COURT: 156, juror 156, please come
12 forward.

13 (Prospective juror complies)

14 THE COURT: You had indicated that you
15 thought you knew the defendant --

16 PROSPECTIVE JUROR: And I don't.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: He just looked
19 really familiar to me.

20 THE COURT: Thank you. That's what I
21 anticipated. Thank you.

22 MR. BOGLE: What number was he?

23 THE COURT: 156.

24 THE BAILIFF: Juror 170.

25 PROSPECTIVE JUROR: Hi. Ma'am, this is

1 the first time I come to the court with something
2 my -- this thing. I hear not well, but I don't
3 want to waste your time...

4 THE COURT: Have you understood all of
5 my questions?

6 PROSPECTIVE JUROR: Yes, a little bit.

7 THE COURT: And tell me what you do
8 during the day that keeps you busy.

9 PROSPECTIVE JUROR: I work on my job.

10 THE COURT: What do you do?

11 PROSPECTIVE JUROR: Nail technician.

12 THE COURT: Where is that?

13 PROSPECTIVE JUROR: In shopping center,
14 Northwoods Mall.

15 THE COURT: Okay. Mr. Vo, you've
16 understood my questions so I will have you stay
17 with us.

18 PROSPECTIVE JUROR: But --

19 THE COURT: 170 will remain.
20 Anything else?

21 PROSPECTIVE JUROR: Thank you.

22 THE COURT: Thank you.

23 MR. BOGLE: I know he satisfied your
24 questions, but I don't believe he understands.

25 THE COURT: He didn't strike him, he

1 met the qualifications.

2 We're going to pick two alternates.

3 (Open court)

4 THE COURT: Mr. Bogle, are you ready?

5 MR. BOGLE: Yes, Your Honor.

6 THE COURT: And, Mr. Falk, are you
7 ready?

8 MR. FALK: If I can have a moment, Your
9 Honor.

10 THE COURT: They're going to prepare
11 the strike sheet.

12 Ladies and gentlemen, the attorneys
13 involved in this case have been taking notes about
14 your responses. As I've indicated several times,
15 many of you are much better suited to serve as
16 jurors in a particular type of case. The law
17 allows for each side to have what is called
18 peremptory strikes, and so that is what they are
19 doing now. They're compiling their lists and they
20 will be striking. After that, you will receive
21 your instructions for the remainder of the week.

22 Ladies and gentlemen, if you need to
23 take a comfort break, now is the appropriate time
24 to do so, but I ask that you come back and remain
25 quietly seated.

1 Mr. Falk, let me know when you're
2 ready.

3 MR. FALK: Yes, Your Honor.

4 (A recess transpired.)

5 THE COURT: Madame Clerk.

6 THE CLERK: Gentlemen, let us begin our
7 strikes. Beginning with the Plaintiff. The
8 Plaintiff strikes.

9 MR. BOGLE: Number 1.

10 THE CLERK: Plaintiff strikes number 1.
11 Defendant strikes?

12 MR. FALK: Number 5.

13 THE CLERK: Defendant strikes number 5.
14 Plaintiff strikes?

15 MR. BOGLE: Number 16.

16 THE CLERK: Plaintiff strikes number
17 16.

18 Defendant strikes?

19 MR. FALK: Number 6.

20 THE CLERK: Defendant strikes number 6.
21 Plaintiff strikes?

22 MR. BOGLE: Number 17.

23 THE CLERK: Plaintiff strikes number
24 17.

25 Defendant strikes?

1 MR. FALK: Number 11.
2 THE CLERK: Defendant strikes number
3 11.
4 Plaintiff strikes?
5 MR. BOGLE: Number 10.
6 THE CLERK: Plaintiff strikes ten.
7 Defendant strikes?
8 MR. FALK: Number 13.
9 THE CLERK: Defendant strikes 13.
10 For our first alternate, use the
11 numbers 21 through 23.
12 Plaintiff strikes?
13 MR. BOGLE: Number 21.
14 THE CLERK: Plaintiff strikes 21.
15 Defendant strikes?
16 MR. FALK: Number 23.
17 THE CLERK: Defendant strikes 23.
18 And for the second alternate, use 24
19 through 26.
20 Plaintiff strikes?
21 MR. BOGLE: 24.
22 THE CLERK: Plaintiff strikes 24.
23 Defendant strikes?
24 MR. FALK: Number 25.
25 THE CLERK: Defendant strikes number

1 25.

2 Gentlemen, let's check our strikes
3 please.

4 Plaintiff strikes number 1, number 10,
5 number 16, number 17, alternate number 21 and our
6 second alternate number 24; is that correct.

7 MR. BOGLE: That's correct, ma'am.

8 THE CLERK: Thank you.

9 The defendant strikes number 5, number
10 6, number 11, number 13, and our first alternate
11 number 23, and our second alternate number 25.

12 Is that correct?

13 MR. FALK: That's correct.

14 THE CLERK: Thank you. Ladies and
15 gentlemen of the jury, when I call your name,
16 please come forward with your belongings to serve
17 on the jury. Juror 191, Frances Nelson; juror
18 number 66, Sandra Gaspers; juror number 82, Robert
19 Hooge; juror number 192, Louis Salem; juror number
20 153, Nancy Sparks; juror number 115, Katelyn
21 Michael; juror number 22, Michael Carter; juror
22 number 3, Teresa Alford; juror number 150, Ryan
23 Smith; juror number one, Gerald Addison; juror
24 number eight, Paul Blackwell; juror number 19, John
25 Caison.

1 Our first alternate, juror number 74,
2 Jennifer Frodge; and our second alternate, juror
3 number 76, Tyrone Haynes.

4 THE COURT: Any motions or matter
5 pertaining to the jury as selected?

6 MR. BOGLE: There are none.

7 THE COURT: Mr. Falk.

8 MR. FALK: There are none.

9 THE COURT: Okay. Ladies and
10 gentlemen, you have been selected as the jury to
11 try this case. Mr. Addison, you have taken the
12 position of jury foreman by taking a seat in that
13 chair.

14 Ladies and gentlemen, please be
15 escorted to your jury room. We're going to get
16 your phone numbers and take care of that and we'll
17 see you back in just a few moments.

18 (Jury panel out, 11:44 a.m.)

19 THE COURT: Outside of the presence of
20 the jury, any motions or matters pertaining to the
21 selection of the jury? Mr. Bogle?

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

23 THE COURT: Mr. Falk.

24 MR. FALK: There are none.

25 THE COURT: All right. To my members

1 of the jury who were not selected as the jury to
2 try this case, and so this was a really good week
3 for you to serve.

4 What do I mean by that, Mr. Spivey?

5 PROSPECTIVE JUROR: That there's four
6 more days.

7 PROSPECTIVE JUROR: It's a short week.

8 THE COURT: How short do you think it
9 is?

10 So you have completed your service for
11 the week. So, ladies and gentlemen, when a judge
12 tells you this is a good week to serve, that's a
13 hint that you need to stay. All right. You all
14 can spend time with your aunt, right?

15 Ladies and gentlemen, it is a pleasure.
16 We have been working very hard just because -- we
17 have one case to try and we have been working very
18 hard. It is because you showed up that we're able
19 to do what we do. Had you not shown up today, this
20 case would not have been tried. The cases that
21 have resolved before this case would not have
22 resolved without you.

23 So, ladies and gentlemen, thank you for
24 your service to Berkeley County, thank you for your
25 contribution to our justice system. You have

1 earned your exemption for the next three years, so
2 I will see you back in three years.

3 Have a wonderful, wonderful holiday and
4 spring break. You are free to go.

5 (Jury panel out.)

6 THE COURT: Mr. Bogle, there's no case
7 law on him being in custody or in shackles in front
8 of the jury at this stage --

9 MR. BOGLE: We leave it up to the local
10 courthouse and judge. Whatever policy you-all
11 have --

12 THE COURT: So the jury's seen him in
13 custody.

14 MR. BOGLE: Not that I'm aware of.

15 THE COURT: Clearly, there is -- the
16 criminal cases would be --

17 MR. FALK: It's my opinion we are not
18 hiding the fact that he served.

19 THE COURT: Right. I mean, that's what
20 brings him in front of the court today. So we will
21 try to keep it to a minimum not to make it so
22 flagrant. Do you have clothes for him?

23 MR. FALK: I do have it organized for
24 Wednesday.

25 THE COURT: Do we have pretrial

1 motions?

2 MR. BOGLE: We do.

3 THE COURT: Do you want to do those and
4 then we'll break until Wednesday?

5 MR. BOGLE: Do you want to get them
6 back in and tell them to come back Wednesday?

7 THE COURT: I will. I will; I can't do
8 that without Mr. Carroll.

9 (Off-the-record conference.)

10 MR. BOGLE: Are we making the
11 Questionnaire a court exhibit?

12 THE COURT: We can. We can if he wants
13 to, I have no objection.

14 All right. Do you have an extra copy?

15 MR. FALK: Yes.

16 THE COURT: Ms. Denise will mark that
17 as Court's 1.

18 (COURT EXH. 1 in evidence.)

19 THE COURT: And if you want to go ahead
20 and make Court's 2 a complete set of your proposed
21 Voir Dire, I'm happy to do that as well.

22 (COURT EXH. 2 in evidence.)

23 MR. BOGLE: This is the State's Exhibit
24 1. It's a certified copy of the Sentencing Sheet.
25 We can go ahead and mark that as Plaintiff's

1 Exhibit 1.

2 THE COURT: Plaintiff's Exhibit 1 into
3 evidence without objection; is that correct, Mr.
4 Bogle?

5 MR. BOGLE: Yes, Your Honor.

6 THE COURT: Mr. Falk, any objection?

7 MR. FALK: No, Your Honor.

8 (STATE EXH. 1 in evidence.)

9 MR. FALK: I know we made my voir dire
10 and the questionnaire exhibits, but I think I need
11 to preserve my objections to you not using them.
12 If that's going to be -- I think I have to object
13 to not asking the questions that I asked.

14 THE COURT: I don't know that you do,
15 but you did at the time that I didn't ask it. So,
16 I mean, you can keep renewing it.

17 MR. FALK: I'm always concerned about
18 the issue of preservation.

19 THE COURT: Remember, this is a CP
20 docket.

21 (Jury in, 11:59 a.m.)

22 THE COURT: Thank you. Please be
23 seated.

24 Ladies and gentlemen, you have been
25 selected as the jury to try this case. I,

1 typically, break for lunch about 12:00, so it's an
2 appropriate time for us to break.

3 Ladies and gentlemen, I wanted to give
4 you some admonitions so you will understand what is
5 happening. I'll give you further instructions on
6 the law and as we proceed throughout the progress
7 of this case.

8 I will give you notepads when we return
9 on Wednesday morning to begin the trial of this
10 case, but I knew that we were going to go ahead and
11 break for the day so there was no need to give you
12 the notepads.

13 Mr. Addison has been selected as the
14 foreperson in this case. What that simply means,
15 he's the jury spokesperson. So that is your
16 assigned seat, Mr. Addison. If at any time you
17 have any questions or concerns, please let your
18 foreperson know -- there will always be a bailiff
19 seated to your left -- and we will take care of the
20 matter as soon as we can.

21 To my two alternates, those are your
22 assigned seats. You may alternate with each other,
23 but the two of you must remain at the end. The
24 rest of you need to come in, you may sit wherever,
25 with the exception of those three seats. You may

1 have noticed when you came in, the attorneys and
2 parties involved in this case were standing. This
3 is out of respect for your new position as judges
4 of the facts. So please come in and take a seat
5 because everyone will remain standing until all of
6 you have been seated.

7 Ladies and gentlemen, please do not
8 discuss this case until I tell you otherwise. As I
9 indicated to you, we are going to take our lunch
10 break and then there are some matters unrelated to
11 this case that I have to handle tomorrow, so we
12 will not have court tomorrow.

13 We will begin promptly on Wednesday at
14 9:00 p.m. You may not discuss this case with
15 anyone, that does include your fellow jurors, your
16 family, your friends, or anyone else. That
17 includes face-to-face discussions, but it also
18 includes any texting, communicating via Facebook or
19 any other social Internet media sites, anything of
20 that nature.

21 You may not do any independent
22 investigation regarding this case. That means you
23 may not look up anything about either the attorneys
24 or the individuals involved, the judge, the
25 witnesses, any of the terms that you may have

1 heard. Simply put, everything that you know about
2 this case must come from what you learn in this
3 courtroom.

4 I will tell you when you may begin to
5 discuss this case, but you may only discuss the
6 case when all 12 of you are in the room and only
7 after you have been submitted to the jury room.

8 Ladies and gentlemen, I will give you
9 an overview of the case, as well as the procedure,
10 but those are my rules, those are my admonitions.
11 Simply put, you may not talk about the case.
12 You're going to go home and somebody is going to
13 ask you what you did today. And you will have to
14 say, the judge told me I can't talk about this case
15 until after it's over.

16 Ladies and gentlemen, I anticipate that
17 we will be done Thursday afternoon at the very
18 latest. So I'm going to ask just to make sure, is
19 there anyone that knows they have a conflict on
20 Wednesday and Thursday at this time?

21 THE COURT: Yes, ma'am.

22 PROSPECTIVE JUROR: Will it be over
23 before, like, 5:00?

24 THE COURT: Do you have a conflict --

25 PROSPECTIVE JUROR: Well, I have class

1 Thursday night, so...

2 THE COURT: Thursday night only?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: All right. And so --

5 PROSPECTIVE JUROR: Tuesdays and
6 Thursdays.

7 THE COURT: And so you are going to
8 hear me say this to witnesses as well. My court
9 reporter, as wonderful as she is, she can't take
10 down two people talking so that's why I was
11 allowing you to talk, so we didn't talk over each
12 other.

13 If you have any other conflicts -- as I
14 indicated, we should be done Thursday afternoon at
15 the latest. We will make every accommodation for
16 you for class. Please remind me Thursday though.

17 PROSPECTIVE JUROR: All right.

18 THE COURT: Is there anyone else?

19 Thank you. And, again, if you have any
20 questions or concerns, direct those to the
21 foreperson. Please be back -- the bailiffs will
22 tell you how to report so we may begin at 9:00 a.m.
23 on Wednesday.

24 I will ask that you call Tuesday
25 evening after 6:00 p.m. just to verify the start

1 time is still 9:00 a.m.

2 We have their cell phone numbers,
3 correct?

4 THE BAILIFF: Yes.

5 THE COURT: That is a way for you to
6 just verify that you will still be reporting at
7 9:00 a.m. on Wednesday.

8 Any questions or concerns?

9 Mr. Foreman, would you just check and make sure
10 that the panel has no questions or concerns.

11 THE FOREPERSON: None.

12 THE COURT: All right. Please remember
13 all of my admonitions. Thank you. Have a
14 wonderful afternoon.

15 Please rise for the jury.

16 (Jury out, 12:00 p.m.)

17 THE COURT: Thank you. Please be
18 seated.

19 Mr. Bogle, you've filed several
20 pretrial motions; is that correct?

21 MR. BOGLE: That's correct, Your Honor.
22 If I could go to the third one first, the third
23 motion in limine, which was e-mailed out Friday and
24 mailed in. We are withdrawing that one.

25 THE COURT: Okay. As I understand, Dr.

1 Mulbry is not testifying; is that correct?

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

3 THE COURT: So the third motion in
4 limine is withdrawn. Any objection, Mr. Falk?

5 MR. FALK: No, Your Honor.

6 THE COURT: Mr. Bogle.

7 MR. BOGLE: Thank you, Your Honor.

8 The Petitioner's first motion in limine
9 has to do with location. I don't know if Your
10 Honor knows, but if these guys are committed, they
11 go to one of two places. One is an unused wing
12 behind the Broad River Corrections Institution.
13 There's two unused wings where he's at right now.
14 Another is Crash Farrow, which is also near the
15 Department of Corrections, a mental health property
16 out on Farrow Road.

17 We would object to any reference during
18 opening, closing argument, testimony as them going
19 to a prison, going to a life sentence, going to a
20 former death row, which one of the wings at Broad
21 River is.

22 THE COURT: Is there any reason,
23 Mr. Falk, that you would need to use any of that
24 language?

25 MR. FALK: Not that specific language,

1 no.

2 THE COURT: That motion is granted.

3 MR. BOGLE: Thank you.

4 THE COURT: Next one.

5 MR. BOGLE: The next motion has to do
6 with treatment. As Your Honor knows, what we have
7 to prove is the existence of a sexually violent
8 crime, a conviction, and whether or not the
9 respondent has a mental abnormality or a
10 personality disorder that makes him likely to
11 commit these offenses again, and then he cannot
12 control that such that he needs to be confined in a
13 secure facility for long-term control, care, and
14 treatment. That's the only thing we have to prove.

15 Any question of the State's witness
16 about treatment, type of treatment, how long
17 treatment lasts, what the treatment is would be not
18 part of the elements we have to prove. It could
19 confuse and mislead the jury. It would also be
20 something that would be speculative at best.

21 Dr. Gehle, the State's expert, she is
22 not involved in treatment. She does the pre
23 commitment issue and no one knows what type of
24 treatment he might need until he gets there.

25 THE COURT: Mr. Falk, were you planning

1 on using any testimony concerning the type of
2 treatment?

3 MR. FALK: Yes, Your Honor.

4 THE COURT: And how is that relevant?

5 MR. FALK: Your Honor, I think the
6 issue is whether or not he has to receive treatment
7 in a secure facility for long-term care and
8 commitment.

9 THE COURT: So whether or not -- tell
10 me how the type of treatment is relevant.

11 MR. FALK: Well, I think I should be
12 able to explore whether or not there would be
13 outpatient treatment that would be just as
14 effective, as far as from a treatment point of
15 view, as the treatment would be that he would
16 receive in custody.

17 THE COURT: Mr. Bogle, I think that's a
18 different --

19 MR. BOGLE: It is.

20 THE COURT: -- determination.

21 MR. BOGLE: I don't have any problem
22 with us quarrelling about whether or not he's got
23 to be confined for treatment versus outpatient
24 treatment, but the type of treatment they give at
25 the facility I think is off limits. It's

1 speculative and not relevant and it would confuse
2 the jury.

3 THE COURT: Do you understand the
4 difference? I tend to agree with Mr. Bogle's
5 position.

6 MR. FALK: As long as I could explore
7 whether or not the type of treatment you could get
8 on an outpatient basis would be of the same type,
9 if she knows. She is opining that he needs to go
10 in for treatment, so she has to have some general
11 understanding of what type of treatment that he
12 would get.

13 I mean, my theory is that the treatment
14 you would get at outpatient is essentially the same
15 treatment you would get as inpatient.

16 THE COURT: So the State's motion in
17 limine to exclude reference to any and all future
18 treatment is granted.

19 Do you have any other motions,
20 Mr. Bogle?

21 MR. BOGLE: No, Your Honor. And just
22 for the Court's information, this finally -- this
23 has been pending for several years and finally got
24 adopted this year. The Department of Mental Health
25 put out for contract the actual treatment. Now DMH

1 doctors still do the annual review evaluations, the
2 pre commitment evaluations and all that, and the
3 release evaluations, but the actual treatment is
4 now being run by a private contractor out of
5 Florida called Correct Care. They handle the
6 Florida SVP program and now they're doing the
7 inhouse treatment here. I don't know if you knew
8 that, but just --

9 THE COURT: I did not.

10 MR. BOGLE: -- FYI, that is what is
11 happening.

12 THE COURT: Okay.

13 MR. BOGLE: There are no other pretrial
14 motions.

15 THE COURT: And so I have some pretrial
16 motions in limine from you Mr. Falk; is that
17 correct?

18 MR. FALK: Your Honor, could I just
19 make sure I understand what type of latitude I'm
20 going to have as far as --

21 THE COURT: So you may inquire as to
22 the difference between outpatient and inpatient
23 treatment, would it be the same, but you cannot
24 inquire as to the type of treatment.

25 MR. FALK: Okay. Thank you.

1 THE COURT: I have a motion in limine
2 to exclude testimony; is that correct? Legislative
3 history.

4 MR. FALK: I think that the terms,
5 mentally abnormal and extremely dangerous group of
6 sexually violent predators, I think is somewhat
7 language -- my client certainly has not been
8 determined to be a sexually violent predator, nor
9 mentally abnormal at this point. I just think that
10 we can go through that discussion without using
11 that terminology because I think it's a little
12 inflammatory.

13 THE COURT: Well, we're here under the
14 Sexually Violent Predator Act, so how are we going
15 to get around that language?

16 MR. FALK: All I was driving at is, the
17 bold faced -- I just didn't like mentally abnormal
18 and extremely dangerous group of sexually violent
19 --

20 MR. BOGLE: I think where this comes
21 from, in my opening argument, what I usually do is
22 read the very first section of the act where the
23 act -- where the legislature talks about its
24 intention. It says, a group of sexually violent
25 predators who require involuntary civil commitment.

1 The probate process is not working -- I haven't got
2 the Statute in front of me, but the very first
3 section of the act, I just read it to them word for
4 word.

5 THE COURT: The general assembly finds
6 that a mentally abnormal and extremely dangerous
7 group of sexually violent predators exist who
8 require involuntary civil commitment in a secure
9 facility for long-term care, control, and
10 treatment.

11 MR. BOGLE: And I think I stop there,
12 or I might go to the next sentence.

13 THE COURT: The general assembly
14 further finds that the likelihood these sexually
15 violent predators will engage in repeated acts of
16 sexual violence if not treated for their mental
17 conditions is significant.

18 MR. BOGLE: And that's pretty much
19 where I stop, and then I do my regular opening
20 argument. Our position is, it's in the statute and
21 it is what it is. We think -- we think it's -- I'm
22 not -- because the general assembly wrote it and
23 it's part of the law, I think it's appropriate to
24 mention in the opening argument.

25 THE COURT: Mr. Falk, it is the law, it

1 is in the statute.

2 MR. FALK: I still don't think it's
3 necessary, but it's your decision.

4 THE COURT: I'm denying that motion in
5 limine. And then any reference, they have the
6 right to petition annually?

7 MR. BOGLE: We're not going to go
8 there, Judge. I used to, but I don't go there
9 anymore about the annual review, the right to
10 petition each year.

11 THE COURT: That is granted.

12 Prior arrests that were nolle prossed.

13 MR. FALK: Yes, Your Honor. I can
14 appreciate that testimony -- I mean, that any
15 evidence that the expert uses can be the basis of
16 her opinion and that can be explored with the jury;
17 however, I do think that the Court still has the
18 obligation under 403 to make a determination of
19 what testimony is more prejudicial than probative.

20 So if she's going to -- I would expect
21 Dr. Gehle to testify that she looks at everything,
22 that she looks at all interfaces with law
23 enforcement; however, it's my opinion that charges
24 for which they were nolle prossed, especially, if
25 we don't have the full factual basis on why the

1 charges were nolle prossed, that information would
2 tend to be more prejudicial to my client than
3 probative of her opinion.

4 She can still testify to her opinion,
5 she can say she reviewed his records without going
6 into specific details as to the nature of the
7 offense, the age of the victim, et cetera, all that
8 kind of stuff. I think those details are
9 unnecessary and not sufficiently probative.

10 MR. BOGLE: Your Honor, my responses
11 would apply to both items 3, 4, and 5, of this
12 motion. The memo of law that I submitted to the
13 court would be my return to that.

14 Basically, there is two diagnoses that
15 Dr. Gehle will testify about. The first is going
16 to be a mental abnormality. It's called other
17 specified paraphilic disorder biastophilia, dealing
18 with sex with nonconsenting people. The
19 abnormality of the sexual attraction to rape.

20 Now, the other thing she has -- she's
21 also diagnosed him with antisocial personality
22 disorder. And she would testify, and we can do
23 that outside of the jury if you want to, in order
24 to diagnose antisocial, you have to go through the
25 guy's entire criminal history to show a pattern of

1 disregard for rules, regulations, improper behavior
2 going back prior to age 15.

3 So she has to go through everything
4 that he's done and explain that to the jury to get
5 to that diagnosis. So that would be a valid basis
6 for that diagnosis.

7 Now, as far as the nolle prossed
8 charges, disposition unknown, incidents where the
9 arrest warrants are might not be available --
10 again, the Ettel case decided in 2008 -- the Court
11 held that prior sexual offenses, even not resulting
12 in convictions, were appropriate as well as prior
13 nonsexual convictions. Some of the prior sexual
14 convictions had not resulted in conviction.

15 The Ettel case did the 403 comparison
16 evaluation and found that this was proper in order
17 for the State to establish whether or not the
18 person met the definition of a sexually violent
19 predator. And one of the things they were looking
20 for is whether or not he again needs to be confined
21 for treatment, as opposed to not, and his ability
22 to control his behavior in the future.

23 Also, the Corley case decided in --

24 THE COURT: Did the Ettel Court -- do I
25 still need to go through the 403 balancing, even

1 though she is relying on -- if she relied upon
2 these for finding?

3 MR. BOGLE: The Ettel court did that,
4 made that analysis and decided that the criminal
5 history was directly relevant in proving whether or
6 not the guy was a sexually violent predator. And
7 that included the underlying details of crimes,
8 including crimes that were nolle prossed or
9 dismissed and that is -- also, came out in the
10 Corley case from 2003. The probative value of the
11 details outweigh the danger of undue prejudice for
12 purposes of this act; I'm referring to pages 2 and
13 3 of the State's Memo of Law.

14 THE COURT: Mr. Falk.

15 MR. FALK: Your Honor, I think whether
16 a particular court did a balancing analysis of
17 their facts in that case does not necessarily mean
18 that that's the same -- the outcome of that
19 balancing analysis would not apply to this case. I
20 think the Court is still obligated under 403 to
21 determine what evidence is more prejudicial and
22 probative.

23 I don't know that all the details of
24 the facts that were used in Ettel and Corley. They
25 may or may not be identical to this; they may be

1 different. I think this court still has that
2 obligation.

3 THE COURT: Mr. Bogle, is it your
4 position that the -- what would be contained, in
5 essence, in 3, 4 and 5 of Mr. Falk's motion come in
6 without any review by the Court? She would just be
7 -- Dr. Gehle would just be allowed to testify to
8 anything that she found?

9 MR. BOGLE: Yes.

10 THE COURT: And, Mr. Falk, would have
11 the appropriate latitude for cross-examination?

12 MR. BOGLE: And -- yes, Your Honor.
13 And there would certainly be cases where perhaps
14 arrest warrants couldn't be found, and Dr. Gehle
15 will disclose that, and she gives the appropriate
16 weight to prior bad acts the respondent has done
17 where the information might be lacking.

18 What she's looking at is his criminal
19 history trying to show a pattern of behavior,
20 because as was said in the Ettel case, future
21 behavior can be best predicated on past behavior.
22 And she's looking for a pattern.

23 THE COURT: So consideration of a
24 person's past criminal history is directly relevant
25 to establishing, first of all, whether a person has

1 been convicted of a sexually violent offence under
2 this section, which then would also bear directly
3 on whether he suffers from a mental abnormality.

4 Your motion under your 3, 4 and 5 is
5 denied.

6 And, again, Mr. Falk, I think that is a
7 most appropriate contemporaneous objection as well,
8 and if it becomes to where we need to take it,
9 while we have the witness there, outside of the
10 presence of the jury, I'm happy to do that as well.

11 MR. FALK: There's another element of
12 this, and since we're on the subject, there will be
13 times where Dr. Gehle may be called upon -- she may
14 give hearsay testimony as to what somebody said.
15 And so, again, that would -- I would object there
16 to hearsay in addition to --

17 THE COURT: I think it all depends
18 on -- again, it's going to be more fact specific.
19 There may be an exception --

20 MR. FALK: Yes, Your Honor.

21 THE COURT: -- and how she phrases it,
22 it may be appropriate. And then after, Mr. Bogle
23 will clarify with Dr. Gehle as to what she means by
24 that.

25 MR. BOGLE: What she does is she goes

1 through police reports, victim statements -- it's
2 like you have three stages; what the victims told
3 the police when the crime first started, and then
4 what the defendant told the police when he was
5 arrested, and then what the defendant tells her
6 during the interview. There's three types of
7 conversations she's trying to analyze and look for
8 consistencies or inconsistencies.

9 Since it's the basis of an expert
10 opinion, under Rule 702, we would submit that -- as
11 long as it's the basis of her expert opinion, that
12 it need not be admissible in and of itself into
13 evidence under the traditional expert witness rule.

14 MR. FALK: There is one item that is
15 not on the list that I can raise a contemporaneous
16 objection or discuss it now, and that would be his
17 DJJ records. Now, again, I'm not going to hide
18 from the fact that he's been in DJJ, but, again,
19 some of the details of those records are sealed for
20 a reason.

21 And, also, I would argue that certainly
22 in a criminal case, but there is an understanding
23 that people's -- young men's minds are not fully
24 developed when they're juveniles under the Miller
25 v. Alabama, Aiken v. Byers, and the jury being able

1 to give too much weight to possibly criminal
2 conduct that occurred with somebody at that age and
3 using that to extrapolate what his conduct would be
4 as he becomes an adult I think would become
5 prejudicial, and there should be some limitation on
6 the use of the DJJ records.

7 THE COURT: Mr. Bogle.

8 MR. BOGLE: These are records she
9 looked at in the course of the investigation, and
10 she's looking -- for the antisocial diagnosis,
11 she's looking for conduct prior to age 15. And for
12 the criminal conduct what she's basically finding,
13 if I had to use a theme for the case is, the guy
14 can't stop.

15 There's offenses when he was a juvenile
16 that started young, offenses continued. Some of
17 these he's adjudicated guilty for in the family
18 court and then later we have the general sessions
19 offenses. It's a pattern that she's looking at.

20 THE COURT: And so you don't anticipate
21 that she's going to highlight one offense more than
22 the other, or highlight the fact that he was a
23 juvenile when -- other than the fact that that is
24 when it chronologically started?

25 MR. BOGLE: She's just going to

1 chronologically go through it. That's right,
2 Judge.

3 THE COURT: And so now we're all aware
4 and we'll be paying attention.

5 MR. FALK: Thank you.

6 THE COURT: But, again, the motion in
7 limine I have ruled, but a motion in limine based
8 upon -- can change, my ruling can change as the
9 facts and circumstances unfold.

10 MR. FALK: Thank you.

11 MR. BOGLE: Thank you.

12 THE COURT: Anything further?

13 MR. BOGLE: Nothing that we have.

14 MR. FALK: No, Your Honor.

15 THE COURT: So if you'll just check in
16 -- about what time is your thing over tomorrow?

17 MR. FALK: I'm sure it's 5:00, but I
18 will check.

19 THE COURT: If you will just check in
20 about 4:00 tomorrow just to make sure that
21 everything is on track, and if we need to have the
22 jury come in later, let me know.

23 Please be here at 8:45 on Wednesday.

24 Thank you. We're at ease.

25 (These proceedings were recessed at

1 12:22 p.m., to be continued 4/12/2017 at 9:00 a.m.)
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1 (The following proceedings were had
2 April 12, 2017, In the Matter of the Care and
3 Treatment of Craig Allen Carroll, Berkeley County
4 Common Pleas, 9:25 a.m.)

5 THE COURT: Anything before we bring
6 in the jury? Mr. Bogle?

7 MR. BOGLE: Nothing from the State,
8 Your Honor.

9 THE COURT: Mr. Falk?

10 MR. FALK: Nothing, Your Honor.

11 THE COURT: Okay.

12 (Jury in, 9:22 a.m.)

13 THE COURT: Thank you. Please be
14 seated.

15 Morning, ladies and gentlemen. If you
16 would please stand, we must administer an oath to
17 you.

18 THE JURY,
19 being first duly sworn, testified as follows:

20 THE CLERK: Thank you. Please be
21 seated.

22 THE COURT: Was there any member of
23 the panel who could not take the oath? If so,
24 please stand.

25 Thank you. All 14 jurors have taken

1 the oath.

2 Mr. Caison, can you hear me okay right
3 there? Are you going to be using your equipment?

4 A JUROR: I can.

5 THE COURT: Okay. Let me know if we
6 need to move you further or closer.

7 Ladies and gentlemen of the jury, did
8 every member of the panel comply with my
9 instructions during your recess? If you did not
10 comply, please stand.

11 Thank you. All 14 jurors have
12 indicated they complied with the Court's
13 instructions.

14 Ladies and gentlemen, what I now say is
15 meant to serve as an introduction to the trial of
16 this case. Please remember, these remarks are not
17 a charge on the law. I will instruct you on the
18 law applicable to this case throughout the trial
19 and at the end of the trial before you retire to
20 decide the case.

21 Before the trial begins, I take this
22 opportunity to explain to you what will be
23 happening so that you would be better able to
24 follow and understand what is happening.

25 You have been selected as fair and

1 impartial jurors. Your purpose is to find and
2 determine the facts. You are the sole judges of
3 the facts in this case. If at any time I make any
4 comment regarding the facts, you must disregard
5 that comment. You are to determine the facts from
6 the testimony you hear and any other evidence that
7 is presented. You should not be influenced by any
8 opinions or statements you may have heard outside
9 of this courtroom.

10 It is important that you perform your
11 duty of determining the facts diligently and
12 conscientiously because, ordinarily, there is no
13 way to correct an erroneous determination of the
14 facts by a jury.

15 When you comply with the oath that you
16 just took to impartially determine the facts of
17 this case, you will have fulfilled your duty and no
18 one can criticize your verdict. On the other hand,
19 and with equal emphasis, the same law that makes
20 you the judges of the facts makes me the judge of
21 the law.

22 The law as given by this Court is the
23 only law that you may consider. You must accept it
24 and follow it even though you may disagree with it.
25 I cannot tell you what I think -- what I think the

1 facts are and you cannot disagree with me about
2 what the law is or what the law should be. Your
3 job is to take the facts as you find it, apply the
4 law as I give it to you, and render a verdict based
5 upon those things.

6 Again, until I advise you to begin your
7 deliberations, you must not discuss the case with
8 anyone. That does include your fellow jurors, your
9 friends, your family members or anyone else.
10 Please remember this includes face-to-face
11 discussions, but also any postings, blogging,
12 texting, anything of that nature. You may not do
13 any independent investigation regarding this matter
14 or any research regarding this case.

15 Ladies and gentlemen, you may during
16 breaks or -- if we recess over the lunch hour or
17 evening hour, you may see some of the parties
18 involved in this case or attorneys. Please do not
19 think they're being rude to you; I have instructed
20 them they are not to talk to you at all. Please
21 understand they are merely following the court's
22 instructions.

23 After this case is submitted to you,
24 you must discuss it only in the jury room with your
25 fellow jurors. It is important that you keep an

1 open mind in this case and not decide any issue in
2 this case until all of the evidence has been
3 presented, the parties have made their closing
4 arguments, and I have instructed you on the law
5 applicable to this case.

6 In just a moment the attorney for the
7 Plaintiff will make what is called an opening
8 statement. The attorney will explain to you what
9 the issues are in this case, or at least what he
10 believes the issue to be. The attorney for the
11 defendant will also make an opening statement.
12 Please remember what the attorneys tell you in
13 their opening statement is not evidence in this
14 case. It is only their contention as to what the
15 evidence will show you.

16 The evidence in this case is presented
17 to you by the testimony of sworn witnesses from the
18 witness stand, as well as any exhibits that may be
19 introduced in this case.

20 Ladies and gentlemen, the evidence, the
21 exhibits that are introduced into evidence in this
22 case will go back with you in your jury room. So
23 please do not think that if you don't have enough
24 time you won't see those again; they will go back
25 with you and be in the room when you retire to

1 consider your verdict.

2 From time to time, you may hear one of
3 the attorneys state an objection or ask to approach
4 the bench, or I might find it necessary to excuse
5 you for a short while from the courtroom. If I do
6 have the attorneys approach the bench, please do
7 not try to read our lips or overhear us.

8 If I excuse you, please don't think I'm
9 trying to hide anything from you. The reason we do
10 this is because sometimes it is necessary for me to
11 make a comment on the facts in order to issue a
12 ruling on the law. So I may excuse you for a short
13 while so that in no way anything that I say or do
14 throughout the progress of this trial influences
15 you as to the findings of the facts.

16 In determining what the facts are in
17 this case, you must decide whether or not the
18 testimony of the witness is believable. It is my
19 responsibility to rule as a matter of law as to
20 whether certain testimony is admissible at all. So
21 once the testimony is admitted, whether or not you
22 believe it is for you to determine.

23 In deciding whether to believe the
24 witness you have the right to consider whether the
25 witness has an interest in the result of the trial,

1 whether the witness is prejudiced towards either
2 the plaintiff or the defendant, or the opportunity
3 for the witness to have seen the matters and things
4 about which the witness may testify, as well as the
5 way the witness acted on the witness stand.

6 You have a right to consider anything
7 in the record that will help you evaluate the
8 testimony of the witnesses. It is your duty to pay
9 close attention. Please do not let your thoughts
10 wander so at the end of the case, after you have
11 heard all of the witnesses, and the attorneys have
12 given their closing arguments, and I have
13 instructed you on the law applicable in this case,
14 you will be able to determine what those fact are,
15 apply the law to those facts and render a just
16 verdict.

17 Mr. Foreman, it is your responsibility
18 to write the verdict in this case, but I will give
19 you further instructions when I instruct you on the
20 law at the close of the case.

21 Ladies and gentlemen, the State has
22 brought this case under the sexually violent
23 predator law of the State of South Carolina. The
24 State seeks civil commitment of Craig Allen
25 Carroll, the respondent, and you may hear

1 respondent and defendant used interchangeably, for
2 long-term care, control, and treatment in a secure
3 facility.

4 This is not a criminal proceeding
5 seeking incarceration, but rather a proceeding
6 seeking civil commitment. The State alleges or
7 claims that the respondent is a sexually violent
8 predator under the law. Respondent denies that he
9 is a sexually violent predator.

10 The State has the burden of proof in
11 this case and must prove its case beyond a
12 reasonable doubt. If you find that the State has
13 not met this burden, respondent will be released.
14 If you find that the State has met its burden of
15 proof and find that the respondent is a sexually
16 violent predator, he will not be released but will
17 be committed to a secure treatment facility
18 operated by the South Carolina Department of Mental
19 Health.

20 It is my responsibility to preside over
21 this trial, and I have a duty to rule upon the
22 admissibility of the evidence offered during the
23 process of this trial. Again, I remind you, you
24 are the sole and exclusive judges of the facts. I
25 am the judge of the law.

1 Do not infer from anything that I say
2 during the comments and giving these instructions
3 or throughout the progress of this trial that I
4 have any opinion about the facts in this case. The
5 law does not allow me to have an opinion about the
6 facts in this case.

7 It is your duty as jurors to determine
8 the effect, value, and weight of the evidence
9 during -- presented during the course of the trial.
10 The elements which the State must prove beyond a
11 reasonable doubt are that the respondent has been
12 convicted of a sexually violent offense, and that
13 the respondent suffers from a mental abnormality or
14 personality disorder that makes him likely to engage
15 in acts of sexual violence if not confined in a
16 secure facility for long-term control and
17 treatment.

18 I will define those terms to you in
19 more detail when I instruct you on the law at the
20 end of the case.

21 Ladies and gentlemen, give your
22 attention to Mr. Bogle.

23 MR. BOGLE: Thank you, Your Honor. May
24 it please the Court?

25 THE COURT: Yes, sir.

1 MR. BOGLE: Mr. Falk.

2 We met Monday; my name is Ken Bogle.

3 I'm with the attorney general's office. In these
4 types of cases, people sometimes wonder why the
5 Solicitor or the county attorney is not presenting
6 it. What happened was, when the legislator passed
7 this law back in 1998, they gave the job to the
8 attorney general's office to present these cases
9 around the State. /

10 There is two of us, Christopher Marrow
11 and I, that do the state, and one of the circuits I
12 have is the Ninth Circuit which puts me down here.

13 First off, I would like to thank you
14 for your service on behalf of the State and
15 certainly on behalf of Mr. Carroll. It is an
16 important job for both your county, the State, and
17 for Mr. Carroll, and I appreciate your duty in
18 doing your job today and however long this thing
19 lasts. It may last until tomorrow; I'm not sure.

20 Let me give you an idea of what we're
21 here about. When you told your friends you were
22 selected for jury duty and you came down here on
23 Monday, you might have been thinking I was going to
24 hear a wreck case, a medical malpractice case,
25 something like that. Well, that's not it.

1 What happened was, the general assembly
2 passed the law back in 1998, the judge called it --
3 and she's right, it's called the sexually violent
4 predator law and here's what they wrote.

5 The general assembly finds that a
6 mentally abnormal and extremely dangerous group of
7 sexually violent predators exist who require
8 involuntary civil commitment in a secure facility
9 for long-term control, care, and treatment.

10 The general assembly further finds that
11 the likelihood these sexually violent predators
12 will engage in repeated acts of sexual violence if
13 not treated for their mental conditions is
14 significant.

15 That's what they wrote back in 1998,
16 and here's what we have. In this particular case,
17 Mr. Carroll had been convicted of a sexually
18 violent crime as defined under the law. He served
19 his time. That's done. He's now sitting in the
20 county jail awaiting this trial that we're going to
21 have today. The purpose of this trial, what the
22 State is going to prove to you beyond a reasonable
23 doubt, is whether or not he's a sexually violent
24 predator as defined in the law.

25 Now, what does that mean? First off,

1 he has to be convicted of at least one sexually
2 violent crime, and we have that and you'll be
3 getting that later on during the trial; but the
4 next thing is, does he have a mental abnormality or
5 a personality disorder that makes him likely to
6 commit these types of crimes in the future unless
7 he is confined in a secure facility for control,
8 care, and treatment? That's what it boils down to.

9 And also the question is, can he
10 control himself? If he cannot, that's a problem.
11 He might commit these crimes in the future. So at
12 a prior hearing, the Court appointed -- we had a
13 hearing where the Court appointed Dr. Marie Gehle.
14 She is sitting on the second row, she is a
15 psychologist with the Department of Mental Health.

16 Her job was to evaluate Mr. Carroll.
17 She studied all of the records we have on him,
18 looked at his prison record, his conviction record,
19 everything she could find and then talked to the
20 guy and run whatever tests she likes to run on the
21 guy as part of her job, and render an opinion on
22 whether or not he fits the definition of a sexually
23 violent predator.

24 Now, normally, in court cases witnesses
25 can't testify about opinions. All they can do is

1 testify about facts. For example, a witness might
2 testify about, I saw the gun go off. I saw the
3 traffic light turn red. I heard the sounds of
4 gunfire, something like that. Something they
5 sense, something they see, something they touch.

6 Now, if a witness has a particular type
7 of training in a particular field, like psychology,
8 they can be qualified by the court as an expert
9 witness and be allowed to give you an opinion, and
10 that's what Dr. Gehle is doing. Dr. Gehle's job is
11 doing pre-commitment, the pre-trial like this one,
12 type of evaluations for the Department of Mental
13 Health, and she's been doing it for several years.
14 Her job is to evaluate the guy and see whether or
15 not he fits the criteria and then tell you exactly
16 why.

17 Now, for her to do that today, she will
18 have to explain to you what her diagnosis is. In
19 other words, what is the mental abnormality that
20 this guy has? And, also, she found a personality
21 disorder, and she will explain what that is. The
22 point is, in order to do that she may have to talk
23 about the underlying details of the crimes to
24 explain how she reached that diagnosis. So I kind
25 of apologize to you in advance because you may be

1 hearing some things that you didn't expect to hear
2 during jury duty. That's the kind of case it is.

3 Now, the burden of proof, like the
4 judge said, is beyond a reasonable doubt, and she
5 will explain to you exactly what that means at the
6 end of the trial once all of the evidence is in.
7 The big thing for you is to keep an open mind,
8 listen to all of the testimony, look at the
9 exhibits that are coming into evidence and consider
10 all of the evidence in making a decision. I think
11 that once the case is over you will find that the
12 State has indeed met its burden.

13 Your Honor.

14 THE COURT: Thank you.

15 You may proceed.

16 MR. FALK: May it please the Court?

17 THE COURT: Mr. Falk.

18 MR. FALK: Ladies and gentlemen, my
19 name is James Falk; I represent Mr. Carroll. One
20 thing I want you to keep in mind while this case is
21 going on is that we've talked about civil cases,
22 car wreck cases, and this is sort of a hybrid.
23 It's sort of a cross between a criminal case and a
24 civil case for one important reason, your decision
25 today has to be beyond a reasonable doubt. That's

1 the same type of certainty that you must have when
2 you render your verdict that you would have in any
3 case that's a criminal case.

4 Even though we're in civil court and
5 we're playing by the civil court rules, that rule
6 applies here. The reason why it applies is because
7 your decision is going to determine whether or not
8 my client is going to go to a secure facility,
9 meaning whether he's going to go to someplace that
10 he will be restricted to leave, not able to leave.

11 Your decision today is going to have a
12 complete 100 percent impact on whether or not my
13 client is going to go free today or whether or not
14 he's going to serve some term of civil confinement.

15 The State -- and the other thing that
16 you need -- one of the things, in order to be fair
17 here, is that you are going to have to -- I mean, I
18 will tell you right now that my client committed
19 crimes. We're not running away from that. My
20 client committed crimes. He has paid the price of
21 those crimes, he's gone to prison.

22 What you need to do though is --
23 although some of the details might be relevant for
24 Dr. Gehle's opinion, you cannot let those details
25 influence your decision in this case right here. I

1 mean, you're going to hear stuff and it's going to
2 be upsetting, and it's going to be very easy to be
3 so upset with some of these details that you hear
4 that you're going to want to punish my client for
5 those acts, but the State of South Carolina has
6 already punished my client for those acts.

7 The issue here today is whether or not
8 my client has a past criminal record or whether or
9 not he has a mental disability. You're going to be
10 asked to decide today whether or not he's bad --
11 and I will admit that he has a criminal record, he
12 has a felony record -- or whether he's mad, whether
13 or not he has a mental disease.

14 And that's the issue for you to focus
15 on today. Not to focus on whether or not you're
16 upset or mad or you don't want to forgive him for
17 the stuff that he's done in the past. That's not
18 your job today. Your job today is to determine
19 whether or not you think he has a mental disease
20 and that mental disease is somehow influencing his
21 future conduct.

22 It's going to be very important for you
23 to give full attention, and also remember that Dr.
24 Gehle is providing an opinion today, but you are
25 still the determiners of the facts in this case.

1 You-all can evaluate Dr. Gehle's opinion. If it
2 rings true to you, you're going to go down one
3 path. If you have some issues, if you have some
4 problems, if you think maybe there's something that
5 you don't abide by in that opinion, you're free to
6 reach your own decision because you-all are the
7 juges of the facts here.

8 This is not a case where Dr. Gehle
9 comes in and decides whether or not my client is
10 going to go to a secure facility. It's your
11 decision today. You need to listen to Dr. Gehle's
12 opinion and you also need to listen to my client
13 and any other witnesses that we put up. I hope
14 that you give full and serious attention to the
15 case and I trust that you will reach the right
16 verdict. Thank you.

17 THE COURT: Mr. Bogle, call your first
18 witness.

19 MR. BOGLE: Thank you, Your Honor. May
20 it please the Court.

21 The State would call Dr. Marie E.
22 Gehle.

23 MARIE ELIZABETH GEHLE,
24 being first duly sworn, testified as follows:

25 THE CLERK: Please be seated. State

MARIE GEHLE - DIRECT EXAM BY MR. BOGLE

1 your full name for the record and spell your last
2 name.

3 THE WITNESS: My name is Marie
4 Elizabeth Gehle. It's spelled G-E-H-L-E.

5 DIRECT EXAMINATION

6 BY MR. BOGLE:

7 Q. Dr. Gehle, good morning.

8 A. Good morning.

9 Q. Would you please tell the jury what
10 your occupation is?

11 A. Yes. I'm a clinical psychologist. I
12 specialize in sexually violent predator
13 evaluations. I'm also an associate professor at
14 the University of South Carolina Medical School in
15 the psychiatry department and at the Medical
16 College of Georgia in Augusta in the psychiatry
17 department.

18 Q. And how long have you worked in that
19 capacity as a psychologist?

20 A. I was licensed in 2010, and I began
21 working at the Department of Mental Health in 2009.

22 Q. What advanced degrees do you have?

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

MARIE GEHLE - DIRECT EXAM BY MR. BOGLE

1 Q. Just basically what is psychology?
2 What is the meaning of psychology that we have to
3 look for?

4 A. Psychology is the study of human
5 behavior and the mind.

6 Q. Okay. Now, if I use the word,
7 forensic, along with psychology in talking about
8 these cases, what does that mean?

9 A. Forensic psychology is when you apply
10 the principles of psychology, the study of human
11 behavior and the mind, and the study of mental
12 illnesses and the diagnosis and treatment of mental
13 illnesses, and you apply those principles to
14 questions that the law might have, so questions
15 that the Court might have.

16 We do things like competency to stand
17 trial evaluations, make sure that somebody is doing
18 okay and understands what's going on in court when
19 facing a criminal charge. We do things like
20 determine whether somebody is not guilty by reason
21 of insanity at the time they committed a crime. We
22 do risk assessments for the Court. We give
23 opinions about whether somebody suffered a
24 psychological injury due to some event. We do all
25 kinds of things for the Court and answer questions

MARIE GEHLE - DIRECT EXAM BY MR. BOGLE

1 that they may have.

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

5 A. Well, I did a predoctoral internship
6 that was largely focused in forensic psychology,
7 that was a year-long training out in Tacoma,
8 Washington; and then I did a postdoctoral
9 fellowship in forensic psychology at East Central
10 Regional Hospital, which is a state psychiatric
11 hospital in Augusta, Georgia.

12 Q. Do you have memberships in professional
13 organizations relevant to your field?

14 A. Yes. I'm a member of the American
15 Psychological Association Division 41, which is the
16 American -- I have to remember the -- Psychology
17 and Law Society, we call it APLS. I'm a member of
18 the sex offender civil commitment program network
19 which is a group of people who deal with sexually
20 violent predator laws. And then I'm a member of a
21 local psychology organization in Georgia.

22 Q. Can you describe your background and
23 your job history regarding the South Carolina
24 Sexually Violent Predator Act and the people
25 identified under that law?

MARIE GEHLE - DIRECT EXAM BY MR. BOGLE

1 A. Yes. In 2009, I started working at the
2 South Carolina Department of Mental Health in the
3 sexually violent predator program. When I first
4 started I was involved in the treatment team, so I
5 supervised therapists who were doing treatment with
6 people that were committed as sexually violent
7 predators. I also sat on the management team for
8 the sexually violent predator program and I did
9 annual review evaluations, so evaluations of people
10 who were committed to the sexually violent predator
11 program.

12 I believe it was in 2011, I changed
13 jobs and started doing solely pre commitment
14 evaluations to determine whether somebody meets the
15 criteria of a sexually violent predator, and I've
16 been doing those evaluations ever since.

17 Q. Have you previously been recognized and
18 testified as an expert witness in the circuit
19 courts of South Carolina regarding sexually violent
20 predator cases?

21 A. Yes.

22 Q. About how many times?

23 A. I believe this is my 97th time.

24 Q. Okay. In what states are you licensed
25 to practice psychology? You mentioned a connection

MARIE GEHLE - VOIR DIRE EXAM BY MR. FALK

1 to Georgia a few minutes ago.

2 A. I'm licensed to practice in Georgia and
3 South Carolina.

4 MR. BOGLE: At this time we would like
5 to move to request that Dr. Gehle be identified and
6 recognized by the Court as an expert witness in the
7 field of forensic psychology.

8 THE COURT: Any objection or additional
9 voir dire?

10 MR. FALK: May I ask a few questions?

11 THE COURT: You may.

12 VOIR DIRE EXAMINATION

13 BY MR. FALK:

14 Q. Do you have a PhD in psychology?

15 A. I have a doctorate in psychology, a
16 PsyD.

17 Q. What is the difference in a PsyD and
18 PhD?

19 A. Well, that's a good question. A PhD is
20 more research focused and a PsyD is more focused on
21 clinical work, although we end up -- in my program,
22 the one that I completed at Xavier University, I
23 still had to do a full research project and do a
24 dissertation.

25 Q. So what is clinical work, is that more

MARIE GEHLE - VOIR DIRE EXAM BY MR. FALK

1 on treatment?

2 A. Clinical work just means interfacing
3 with people. Psychology is a very broad field so
4 there are people who might work solely in business
5 advising them on, you know, how to market, how to
6 train their employees. There are psychologists who
7 do nothing but research, and there are
8 psychologists who do all kinds of different things.

9 So clinical psychology is focused on
10 the evaluation and treatment of human beings.

11 Q. And that's different than forensic
12 psychology?

13 A. Well, forensic psychology is a subset
14 of clinical psychology.

15 Q. Do you have an advanced degree in
16 forensic psychology?

17 A. No. They do not offer advanced degrees
18 in forensic psychology.

19 Q. Are you board certified in forensic
20 psychology?

21 A. No.

22 MR. FALK: We will accept Dr. Gehle as
23 an expert.

24 THE COURT: All right. Thank you.

25 Ladies and gentlemen, normally a person

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 cannot give opinion testimony. Typically, when a
2 person testifies, they must testify to what they
3 heard, saw, or sensed by smell or something of that
4 nature. There is an exception when someone is
5 qualified because of their education and
6 experience. They are permitted to give their
7 opinion in certain areas if the Court qualifies
8 them in that way.

9 Dr. Gehle will be qualified in the area
10 of forensic psychology to give opinion testimony in
11 that area. That does not mean that you must accept
12 her opinion. It is simply evidence for you to use
13 in any way that you see fit and give it the weight
14 and credibility that you deem appropriate.

15 Mr. Bogle.

16 MR. BOGLE: Thank you, Your Honor.

17 CONTINUING DIRECT EXAMINATION

18 BY MR. BOGLE:

19 Q. Dr. Gehle, how did you become involved
20 in this case involving Mr. Carroll?

21 A. Well, I was appointed by the Court to
22 be the evaluator and to give an opinion as to
23 whether Mr. Carroll meets the criteria of a
24 sexually violent predator.

25 Q. So what is your protocol in doing this

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 type of evaluation? What is the step-by-steps that
2 you follow in doing this type of evaluation to see
3 if a guy meets those criterion?

4 A. When I get an order to do an
5 evaluation, it is often accompanied by a packet of
6 information, so things like legal records, things
7 like Department of Criminal Justice records,
8 Department of Juvenile Justice records, corrections
9 records, evaluations done previously, police
10 reports, indictments, warrants, sentencing sheets,
11 a national criminal history. Things like that will
12 be included in the record.

13 I review all that stuff that I get and
14 then I schedule an interview and I sit down with
15 the person and I interview them. As we go through
16 the interview, I ask them questions about where
17 they were born and raised, what their childhood was
18 like, what kind of problems they got into as a
19 child.

20 I ask questions about their medical
21 history, their mental health history, substance
22 abuse history, about whether -- what they're into
23 sexually. I ask them all kinds of questions about
24 their sexual history. I get an account of their
25 legal history from them to get their side of the

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 story.

2 I ask them about what their plans are
3 for the future if they're not committed as a
4 sexually violent predator. And I ask them to talk
5 about whether they think they have a problem with
6 their behavior, whether they think they need
7 treatment, whether they think they're at risk to do
8 this again to get their side of things.

9 I will request additional records -- as
10 they're going through, they'll tell me where they
11 go to school and stuff like that; I'll request
12 those records. If I discover things that I believe
13 to exist that didn't come in that packet of
14 information, I will request all of those records
15 that I can get my hands on, and then I will sit
16 down and write a report.

17 This one was a 25-page report, this was
18 a pretty long report, and I submit that to the
19 court and that's the end of my involvement, unless
20 I get a Subpoena to come to court and testify.

21 Q. Dr. Gehle, as part of this, you
22 mentioned a minute ago you would have interviewed
23 Mr. Carroll. So did you interview Mr. Carroll?

24 A. Yes.

25 Q. Can you tell the jury about how long

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 the interview took place?

2 A. I interviewed him for
3 four-and-a-half-hours.

4 Q. Is the -- just for the record, is the
5 guy you interviewed in the courtroom today?

6 A. Yes.

7 Q. Would you identify him?

8 A. Sitting there in the white shirt.

9 MR. BOGLE: Let the record reflect
10 she's identified the respondent.

11 THE COURT: It will.

12 BY MR. BOGLE:

13 Q. All right. Now, did you explain the
14 purpose of this evaluation to Mr. Carroll when you
15 talked to him?

16 A. Yes. When I sit down with somebody I
17 explain to them, you know, exactly why I'm going to
18 be talking to them today. And I explain sort of
19 what the next steps are depending on what my
20 opinion is, you know, what can happen next, just so
21 that they have an understanding of what's going on,
22 why they're talking to me, whether they want to
23 talk to me, and so that I can sort of allay their
24 nerves, because it's a nerve-racking process as to
25 what might happen next.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 Q. Did he understand and consent to this
2 evaluation as far as you could tell?

3 A. Yes.

4 Q. Now, Dr. Gehle you described a minute
5 ago the type of written documentation that you get
6 to look at in preparation for this type of
7 evaluation. Is this the type of information that
8 is typically and reasonably relied upon by other
9 experts in your field?

10 A. Yes.

11 Q. And did you rely on this information,
12 along with the testing of Mr. Carroll that you did,
13 and the interview with him in forming an opinion in
14 this case?

15 A. Yes.

16 Q. Can you explain to the jury how a
17 person's past sexual offense behavior affects their
18 future sexual offense behavior?

19 A. Well, past behavior is one of the best
20 predictors of future behavior. People tend to
21 remain fairly consistent in their behavior over
22 time, especially in regards to their sexual
23 behavior. So if you look at what somebody's past
24 is, you have a general idea of what they're capable
25 of in the future.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 Q. Now, I noticed -- is it normal in these
2 types of evaluations for you to also look at any
3 prior evaluations, either psychiatric or
4 psychosexual, or whatever that had been done by
5 prior people looking at the same guy?

6 A. Yes.

7 Q. In this case you did look at some,
8 right? They were done by the Department of
9 Juvenile Justice?

10 A. Yes.

11 Q. What is the significance of looking at
12 these prior evaluations?

13 A. Well, they were very helpful because
14 they spoke of -- they often interview him, they
15 interviewed family members. They had information
16 about his criminal history and information about
17 his sexual behavior that maybe was -- that he was
18 not charged with formally.

19 So, for instance, there was some sexual
20 behavior problems that he had as a child and those
21 were detailed in his report.

22 Q. And that's relevant to your overall
23 evaluation?

24 A. Yes.

25 Q. Okay. Now, Dr. Gehle, jumping ahead

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 for a second, as part of this evaluation did you
2 diagnose Mr. Carroll with a personality disorder?

3 A. Yes.

4 Q. What's the name of the personality
5 disorder that you found that he had?

6 A. Antisocial personality disorder.

7 Q. What are the criteria to be diagnosed
8 with that?

9 A. Just a second here.

10 Q. The book that you're referring to, what
11 is that book called?

12 A. It's called the Diagnostic and
13 Statistical Manual for Mental Disorders. This is
14 the book that mental health providers use to
15 determine whether somebody has a mental disorder.
16 So this book has all the mental disorders that we
17 recognize and it has -- or for the most part
18 anyway, and then it has criteria as to when
19 somebody needs that and also gives them information
20 about research related to that disorder.

21 Q. So, in this case, you said a minute ago
22 you diagnosed him with a personality disorder
23 called antisocial. What are the criteria to
24 diagnose that?

25 A. So the diagnostic criteria are a

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 pervasive pattern, and disregard for, and violation
2 of the rights of others occurring since age
3 15 years as indicated by three or more of the
4 following. And so the next seven are criteria
5 under that.

6 So it's failure to conform to social
7 norms with respect to lawful behaviors as indicated
8 by repeatedly performing acts that are grounds for
9 arrest. Number two is deceitfulness as indicated
10 by repeated lying, use of aliases, or conning
11 others for personal profit or pleasure. Number
12 three is impulsivity or failure to plan ahead.
13 Number four is irritability and aggressiveness as
14 indicated by repeated physical fights or assaults.
15 Number five is reckless disregard for safety of
16 self or others. Number six is consistent
17 irresponsibility as indicated by repeated failure
18 to sustain consistent work behavior or honor
19 financial obligations. Number seven is lack of
20 remorse as indicated by being indifferent to or
21 rationalizing having hurt, mistreated, or stolen
22 from another. So those are the seven criteria
23 there.

24 And then it goes on to have a couple of
25 other things: B, the individual is at least 18

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 years old. You can't diagnose this if somebody is
2 not 18. C, there's evidence of conduct disorder
3 with an onset before age 15 years. So conduct
4 disorder is problems with behavior and conduct, the
5 way they treat people. That has to be present at
6 least to some degree prior to age 15. And then, D,
7 the occurrence of antisocial behavior is not
8 exclusively during the course of schizophrenia or
9 bipolar disorder.

10 Q. Okay. So to summarize, is what you're
11 looking here -- are you looking at the guy's entire
12 history as far as criminal activity, things he did
13 that he didn't get arrested for and so forth?

14 A. Yes; and his attitude towards things
15 and behavior in general, whether it's criminal or
16 not.

17 Q. So is it necessary to make this
18 diagnosis to look at the guy's -- or Mr. Carroll's
19 entire criminal history?

20 A. Yes, and his entire history, period.

21 Q. Does that include things where he might
22 have been investigated for a crime, but never
23 actually charged?

24 A. Yes.

25 Q. Does it include charges that were

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 brought, but later got dismissed or nolle prossed
2 or not prosecuted by the Solicitor's office?

3 A. Yes.

4 Q. And it also includes things he was
5 convicted of?

6 A. Yes.

7 Q. Why is it necessary to look at those
8 different categories, including categories where
9 they might have withdrawn the charges or dropped
10 them, or the charges never resulted in an arrest?
11 Why is it necessary to look at all of that?

12 A. Well, the first criteria here is
13 failure to conform to social norms with respect to
14 lawful behaviors as indicated by repeatedly
15 performing acts that are grounds for arrest; so
16 grounds for arrest. This is really -- you know,
17 your behavior doesn't comply with what we consider
18 to be socially acceptable normal lawful behavior.
19 So that encompasses all of those areas that you
20 mentioned.

21 It's also important to look at details
22 to see if it fits into the other criteria.

23 Q. Okay. Now, does Mr. Carroll have a
24 juvenile history, meaning Department of Juvenile
25 Justice, family court type history, prior to

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 offending as an adult?

2 A. Yes.

3 Q. Okay. So going back to his legal
4 history you had to look at, starting say in 2001,
5 what legal history, as far as conduct that he was
6 doing that violated the law, did you find
7 significant?

8 A. Well, had a long history of behavioral
9 problems and that included sexual behavior problems
10 going back to childhood, possibly back to age
11 five years old, sexual behavior problems and
12 behavior problems. In 2001, he was charged with
13 malicious injury to a tree house, tree or a house,
14 and trespassing. He and another friend did over
15 \$10,000 worth of damage to a construction site.

16 Q. Now, in 2001 -- this guy was born in
17 1990, right?

18 A. That's correct. So he was around
19 11 years old.

20 Q. Okay. What else did you find?

21 A. It was reported that he -- that he and
22 some friends stole cell phones out of cars that
23 they were breaking and entering, stole a loaded gun
24 out of a car, things of that nature. And that
25 started when he was around 11.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 Q. Okay. We have a 2004 charge involving
2 an animal. What was that charge?

3 A. That charge was for ill treatment of
4 animals in general and, comma, torture. He was
5 apparently playing street hockey with a turtle.

6 Q. What about in 2006, criminal sexual
7 conduct charge? In 2006 -- I'm looking at page 12
8 of your report.

9 A. Yes. In 2006, he was charged with
10 several offenses, they all seemed to come at once,
11 but some of them occurred -- one of them occurred
12 in 2002, that was a criminal sexual conduct with a
13 minor under 11 in the first degree. That offense
14 occurred in 2002, when he would have been about
15 12 years old.

16 He was also charged with assault with
17 intent to commit criminal sexual conduct in the
18 first degree for an offense that happened in
19 January of 2004. He was charged with public
20 disorderly conduct for an offense that happened on
21 March 24, 2004; he was charged with assault and
22 battery of a high aggravated nature for an incident
23 that occurred April 5, 2004; he was charged with
24 incest for an offense that occurred on May 17,
25 2006; and then he was charged with criminal sexual

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 conduct in the third degree for an offense that
2 occurred on May 17, 2006, and that was in addition
3 to that incest.

4 Q. What underlying details about the
5 charges did you find significant in making a
6 diagnosis?

7 A. Well, the sexual offenses are what I
8 look at most importantly. And the details of that
9 included several instances of sexually offending
10 young girls who were related to him by blood or
11 marriage and some who were not related to him and
12 even one stranger.

13 So in 2003, he touched his two-year-old
14 stepsister; in 2003, he was accused of masturbating
15 over the bed of his sister and her friend while
16 they slept. Also, in 2003, he was accused of
17 molesting his step-niece who was ten years old by
18 penetrating her vagina with his penis. I believe
19 that was how it was. He was accused of offending
20 his three-year-old stepsister, five-year-old
21 stepsister, and eight-year-old neighbor. That was
22 the stranger. He said he was upset with the girl's
23 mother so he digitally penetrated her with his
24 finger.

25 Then in 2006, along with all of the

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 charges that I mentioned, he was accused of raping
2 his 21-year-old half sister. He would have been
3 about 16 years old at the time, and he was accused
4 of raping her while she slept.

5 Q. Now, these crimes you mentioned, did a
6 lot of these crimes result in the conviction, at
7 least in family court, of assault and battery of a
8 high and aggravated nature? This is on page 12 of
9 your report.

10 A. Yes.

11 Q. Okay. Now, in -- we'll get to the
12 thing about the sexual assault in a few minutes.
13 Was there also -- this is also on page 12 of your
14 report -- a 2008 probation violation?

15 A. Yes.

16 Q. Why is it important for you to look at
17 probation violations when they occur?

18 A. Well, it's important to see what kind
19 of behavior somebody has when they're on probation.
20 You're under a lot of scrutiny; there are very
21 specific rules that you have to follow; it's very
22 regimented. And when somebody is under that kind
23 of scrutiny, there's a lot of consequences if you
24 violate those rules. You could be taken into
25 custody, I guess they could put you on house

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 arrest, all kinds of restrictions that could occur.

2 So you want to see when somebody is
3 given a second chance, like probation is, how do
4 they handle it. So probation violations are very
5 important because you're seeing that they're
6 failing those conditions when they're given that
7 chance.

8 Q. So turning the clock ahead a little
9 bit, you mentioned there were also references to
10 offenses against children three years old, five
11 years old, and eight years old?

12 A. Yes.

13 Q. Were these family members? Were they
14 not family members? Was one of them not a family
15 member?

16 A. Yeah. The three-year-old was a
17 stepsister, five-year-old stepsister, and an
18 eight-year-old female neighbor.

19 Q. Any significance to the fact that some
20 might be related to him and one girl might not be?

21 A. Yes.

22 Q. Why is that important?

23 A. Well, when we look at the details of
24 the offenses, I'm looking for risk factors for
25 committing future sex offenses. Things that are

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 cues or traits, characteristics, or just details
2 that are related to committing future sex offenses.

3 So the type of victim that somebody
4 targets, whether they're a family member -- if
5 they're a family member versus a non-family member,
6 it's -- it puts you at more risk to commit another
7 sex offense if you offend a non-family member than
8 if you offend a family member. So I'm looking at
9 that type of relationship. It puts you at
10 increased risk to commit another sex offense if
11 you've offended a stranger. That's another risk
12 factor.

13 Q. Okay. Looking on page 14, page 14
14 there's talk of an eight- to ten-year-old neighbor
15 in 2004?

16 A. On page -- yes.

17 Q. Page 14 of your report?

18 A. Yes.

19 Q. What was the conduct described there?

20 A. He put his fingers inside of her vagina
21 penetrating her.

22 Q. Is that the same eight-year-old that
23 you referred to a minute ago?

24 A. I believe this is a different one. And
25 he also forced that girl to touch his penis.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 Q. You also mentioned in 2006 a sexual
2 assault of his half sister?

3 A. Yes.

4 Q. And was there -- was that what led to
5 the assault and battery of a high and aggravated
6 nature conviction?

7 A. I believe so.

8 Q. Okay. What underlying details about
9 that crime did you find significant?

10 A. Well, so it was a female, it was a
11 family member, it was sexual intercourse, rape, and
12 that victim was sleeping when she woke up to this
13 happening to her.. So he is -- he doesn't really
14 care if the person is engaging with him or not. I
15 mean, he's done this before, engaged in sexual
16 behaviors with people who were, you know, asleep,
17 not consenting. That was important to me to look
18 at in regard to that incident.

19 Q. Also, on page 14 and 15 of your report,
20 there is another assault and battery involving
21 kicking a child?

22 A. Yes.

23 Q. What did you find out about that? What
24 did the reports indicate happened there?

25 A. He was accused of kicking a peer who

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 was laying on the ground. Apparently, the school
2 bus driver observed him and said that he basically
3 jumped the kid and was beating him.

4 Q. And then on page 16, there is a
5 reference to a stolen vehicle charge?

6 A. Yes. In 2013, January 2013, he was
7 arrested for possession and disposing of a stolen
8 vehicle that was valued at more than \$2,000 but
9 less than \$10,000.

10 Q. And on page 16, a reference to a
11 failure to appear for a felony charge?

12 A. Yes.

13 Q. Why is that significant?

14 A. Well, you again want to see -- like, if
15 the judge grants them bond and they're not in
16 custody, you want to see how they handle that. Can
17 they comply with the law when they're given a
18 chance to do, so when the stakes are high? The
19 stakes are high if you fail court dates. So you
20 want to see how he handles it.

21 Q. Now, this repeated conduct beginning at
22 a very young age, what is he saying to you about
23 this? When you interviewed him about these
24 different things we talked about, what is he saying
25 to you?

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 A. Well, he said a lot of different
2 things. He said he was a pretty bad kid, that he
3 had a lot of behavior problems. He said he was --
4 I think he called himself a brat. He said he was
5 spoiled. He said he had problems with his sexual
6 behavior when he was younger. He said he had
7 violent tendencies, spoiled brat he called himself.
8 He said if he didn't get his way he took it out on
9 his mom.

10 He was hospitalized, he was placed in
11 group homes. He bounced around quite a bit and it
12 was all related to his behavior. He had very poor
13 behavior in those institutions, he was in a lot of
14 trouble there. He participated in sexual offender
15 treatment and was -- had sexual behavior problems
16 during that same period of time.

17 Q. While he was going through some type of
18 sex offender treatment he had sexual behavior
19 problems?

20 A. Yes.

21 Q. Okay.

22 A. He admitted that he, you know, had a
23 lot of problems with his behavior, and his account
24 -- when I looked at the reports from the Department
25 of Juvenile Justice and from the group homes and

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 things like that, what he told me was generally
2 consistent with what was in the records.

3 Now, in terms of talking to him about
4 the sexual offenses, some of those things he didn't
5 quite say as it happened or as it was documented
6 and some was more consistent with the
7 documentation.

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

10 THE COURT: You may.

11 BY MR. BOGLE:

12 Q. I would like to hand you this document,
13 which has been marked as State's Exhibit Number 1,
14 or Petitioner's Exhibit 1. Would you identify this
15 please?

16 A. Yes. This is an indictment for
17 criminal sexual conduct with a minor in the second
18 degree -- or it says, Sentencing Sheet, for that
19 offense, and it's an indictment for criminal sexual
20 conduct with a minor in the second degree for
21 offenses that happened on or between January 22nd,
22 2008 and July 31, 2012, and involved general
23 intercourse with a female. Her initials are K. O.,
24 and she was born in 1977.

25 Q. Okay.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 A. Or 1997, I'm sorry.

2 Q. Do the markings on the front indicate
3 that to be a certified copy from the Clerk of Court
4 here in Berkeley County?

5 A. Yes; it's stamped and signed.

6 Q. Did this conviction happen in Berkeley
7 County?

8 A. Yes.

9 Q. What is the date of the conviction?

10 A. He was convicted on August 14, 2014.

11 Q. Okay. Is this a document that you
12 would have looked at during the course of your
13 research?

14 A. I would have looked at a copy of that,
15 yeah.

16 MR. BOGLE: Your Honor, at this time we
17 would like to formally move to introduce into
18 evidence as State's Exhibit 1 the certified copy
19 for CSC with a minor in the second degree here in
20 Berkeley County.

21 THE COURT: It's previously been
22 admitted without objection.

23 MR. BOGLE: Thank you, Your Honor.

24 THE COURT: And, ladies and gentlemen,
25 you will have a copy. It's been admitted into

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 evidence. That will go back with you into the jury
2 room during your deliberations.

3 BY MR. BOGLE:

4 Q. The crime that we're looking at on that
5 document, Dr. Gehle, criminal sexual conduct with a
6 minor in the second degree, is that on the list of
7 crimes classified as sexually violent crimes under
8 the sexually violent predator law?

9 A. Yes. It's a sexually violent offense
10 under the sexually violent predator act.

11 Q. Now, the documents relating to them,
12 you've seen them before, right?

13 A. Yes.

14 Q. Did you review these documents relating
15 to this conviction and the others you talked about
16 as part of your evaluation?

17 A. Yes.

18 Q. Is the reviewing of these documents, is
19 that the kind that's typically and reasonably done
20 by experts in your field?

21 A. Yes.

22 Q. Why is it necessary to look at the
23 underlying details, particularly the offense you
24 have in your hand right now?

25 A. Well, again, I'm looking for a pattern

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 of behavior to figure out if he has risk factors
2 that increase his chance of re-offending,
3 committing another sex offense. I'm also looking
4 at whether he has a mental abnormality or
5 personality disorder that would be related to
6 sexually offending in the future.

7 Q. What are the underlying details of this
8 2014 conviction that you found significant? What
9 happened?

10 A. Okay. Well, this involved a girl whose
11 initials were K. O. She said they were cousins,
12 and she was born in 1997, and the offenses occurred
13 between 2008 and 2012. He was initially charged
14 with four sexual offenses. He was charged with
15 three counts of criminal sexual conduct with a
16 minor in the second degree and one count of lewd
17 act upon a minor. And then he pled guilty to one
18 count of criminal sexual conduct with a minor
19 second degree.

20 The offenses involved forced vaginal
21 penetrations. He penetrated the girl's vagina with
22 his penis and with his fingers. The abuse began
23 while she was sleeping. She said that she would
24 wake up to it. And he -- when I spoke to him about
25 this, he said that he just touched her one time

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 when she was 16, but he said that the offenses
2 involving her were sexually based.

3 Q. Now, if you said she was born in
4 1997 --

5 A. Yes.

6 Q. -- and the indictment talks about this
7 conduct starting in 2008, then it would have
8 started when she was about 11?

9 A. Yeah.

10 Q. And the indictment talks about '08 to
11 2012. So about 11 to 13 or 14?

12 A. Yes.

13 Q. Okay. Now, as part of your evaluation,
14 in addition to this sexually violent crime we
15 talked about just now, do you also look at his
16 prison disciplinary history?

17 A. I do.

18 Q. Why is that important?

19 A. I want to see if he's had any sexual
20 behavior problems in the prison. I want to see
21 sort of how he's acted in the prison.

22 Q. Did Mr. Carroll have any prison
23 infractions while confined?

24 A. He had a few. I think he had three
25 during -- during the current period of

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 incarceration, which would have began in 2015.

2 Q. Okay. Any of them sexual?

3 A. No.

4 Q. But the fact that they happened, what
5 does that tell you about his behavior and his risk
6 to re-offend, the fact that he offends under a
7 controlled environment like a prison?

8 A. The fact that what?

9 Q. He offends in a controlled environment
10 of a prison.

11 A. Well, he didn't offend in a controlled
12 environment, at least sexually, but it's -- it's
13 not uncommon for people to have behavior problems
14 when they're in prison. They're in prison not
15 because they're saints. So it really depends on
16 what the things are that they're getting in trouble
17 for.

18 I've seen people who have had, you
19 know, dozens of infractions versus people that have
20 had no infractions. It really depends on sort of
21 where they're housed, how the guards look at their
22 behavior and things like that. So this is a
23 positive for him that he hasn't been in too much
24 trouble.

25 Q. What type of infractions did he have

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 while in prison?

2 A. He had one possession of contraband,
3 one use or possession of paraphernalia, and one use
4 of obscene vulgar profane language or gestures.

5 Q. Now, is it also necessary in these
6 types of violations to look at prior sexual
7 offender treatment that a person might have had?

8 A. Yes, it's important to look at that.

9 Q. Now, a few minutes ago you mentioned he
10 was involved in some kind of sex offender treatment
11 back when he was under the family court juvenile
12 justice system; is that right?

13 A. Yes.

14 Q. And he offended sexually while in
15 treatment?

16 A. Yes.

17 Q. Okay. What about while he was in the
18 Department of Corrections? Did he have any sex
19 offender treatment while incarcerated at the
20 Department of Corrections?

21 A. No.

22 Q. Why is it necessary to look for that?

23 A. Well, I want to see, you know, if he's
24 had any treatment, what did he learn from it. It's
25 really more important to know what they've learned

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 from treatment, what they can tell you about it, if
2 it helped to change their attitudes. Treatment is
3 there to help them change their attitudes, the way
4 they think so that they no longer engage in those
5 behaviors.

6 So it's not -- again, not uncommon that
7 somebody does not participate in treatment during
8 their incarceration. So that's not out of the
9 norm.

10 Q. Okay. But it's necessary to look for
11 that?

12 A. Yes.

13 Q. Is that something done by experts in
14 your field?

15 A. Yes.

16 Q. These types of evaluations?

17 A. Yes.

18 Q. Is that something that you rely upon in
19 forming your ultimate opinion about Mr. Carroll?
20 Is it part of the package?

21 A. It's part of what I consider, yes.

22 Q. Okay. Now, Doctor, what conclusions
23 did you draw from his sex offender treatment, his
24 lack of at the Department of Corrections, and his
25 being in it and then, if you will, flunking out

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 while in the family court system? What did you
2 draw from this?

3 A. Well, I saw that while he was in
4 treatment as a juvenile it didn't help much because
5 he's offended after that. He actually offended
6 before, during, and after that period of treatment.
7 That was inpatient intensive treatment. So it
8 didn't -- it didn't impact his behavior and then
9 he's not had any other treatment since then.

10 And treatment is one of the main ways
11 that people change their behavior. So he's not had
12 any significant, I guess, treatment that would help
13 him change his sexual behavior.

14 Q. Okay. Did you ask him about whether or
15 not he thought he needed sex offender treatment?

16 A. Yes.

17 Q. What did he say?

18 A. Well, he told me that he didn't think
19 he had a problem with his sexual behavior, but he
20 thought that he had a problem with his sexual
21 behavior in the past, but he said he didn't need
22 treatment.

23 Q. Okay. Did he indicate why he thought
24 it was in the past but no longer existed now, how
25 it got fixed, if you will?

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 A. Well, I asked him what -- like, how
2 have you changed from the person that committed
3 these sex offenses until now? And this is a quote,
4 I had so much time to think not being on pills. So
5 he was talking about -- he related the use of drugs
6 and prescription pills to his sexual behavior in
7 the past.

8 So he said, not being on pills I am
9 more of an adult in that I take responsibility for
10 my actions. I'm not going to use my past as an
11 escape goat. I had a problem with sexual
12 aggression. I don't want to put anyone through
13 what I was put through when I was young. He said
14 that there would be -- there would never be a
15 situation where he would be at risk to do this
16 again.

17 Q. Okay. Now, Dr. Gehle, we have been
18 using the term, mental abnormality, and,
19 personality disorder. What type of mental
20 abnormalities were you looking for in this
21 evaluation?

22 A. Well, I look for any mental abnormality
23 that could cause somebody to commit acts of sexual
24 violence and primarily these are paraphilic
25 disorders.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 Q. When you say, paraphilic disorders,
2 what does that mean?

3 A. Well, let me give you the -- a
4 paraphilia denotes any intense and persistent
5 sexual interest, other than sexual interest in
6 genital stimulation or preparatory fondling with
7 phenotypically normal physically mature, consenting
8 human partners.

9 So a paraphilia is really any sexual
10 interest that is outside of the norm. And in order
11 for it to be considered a paraphilic disorder, it
12 has to be that intense sexual arousal, urges or
13 behaviors that occur over a period of at least six
14 months and that have resulted in some sort of
15 problem in the person's life.

16 So it can -- things like being arrested
17 count towards that criteria.

18 Q. Is it safe to say in the overall
19 category of paraphilias, this is deviant sexual
20 behavior?

21 A. Yes.

22 Q. Now, based on your research about
23 Mr. Carroll, your interview with him and things you
24 did in working this report, did you diagnose Mr.
25 Carroll with a mental abnormality?

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 A. Yes.

2 Q. What was that?

3 A. I diagnosed him with other specified
4 paraphilic disorder biastophilia.

5 Q. Biastophilia. What is the definition
6 or criteria for biastophilia? What does that mean?

7 A. Biastophilia is sexual arousal towards
8 engaging in sexual acts with nonconsenting persons.

9 Q. Now, you mentioned earlier that some of
10 his victims were very young. Did you look to see
11 if he qualified for being a pedophile or pedophilic
12 or pedophile disorder?

13 A. Yes.

14 Q. Could you find that?

15 A. Well, he engaged in sexual acts with
16 very young kids, but one of the criteria for
17 pedophilic disorder is, that behavior has to happen
18 after the person is 16 years old, and it has to
19 happen for six months to make that diagnosis.

20 So the majority of the behavior with
21 prepubescent children, so children who haven't had
22 any level of sexual development for the -- from
23 what I understand, all of that behavior happened
24 before he was 16 years old. So he wouldn't qualify
25 for that diagnosis.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 Q. So to meet that diagnosis, the guy, the
2 offender has to be over 16 when he's doing these
3 things?

4 A. Yes.

5 Q. And you couldn't get there with him?

6 A. No.

7 Q. For biastophilia this involves the
8 sexual arousal to nonconsenting sex, is that what
9 it is?

10 A. Yes.

11 Q. What does the definition mean? What
12 does it mean about him?

13 A. What does it mean about him?

14 Q. What are we talking about here? Can
15 this guy control his behavior?

16 A. I don't think that he can control his
17 behavior. I didn't see any evidence throughout all
18 of the records that I reviewed that he's ever been
19 able to control his behavior in general or in
20 sexual behavior. He's been having sexual behavior
21 problems since he was a young kid and that has
22 basically never stopped.

23 He hasn't had any for the last year or
24 two, or couple of years since he's been
25 incarcerated that have been -- that have

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 documented, but that's a short period of time when
2 you're talking he's been having these sexual
3 behavior problems, sexual aggression since he was a
4 young child.

5 Q. Now, let's talk about biastophilia for
6 a minute. The book that you referred to a minute
7 ago, the Diagnostic --

8 A. And Statistical Manual.

9 Q. The DSM I call it for short.

10 A. Yes.

11 Q. This is other specified paraphilic
12 disorder, biastophilia. This is a type of other
13 specified paraphilic disorders, right?

14 A. Yes.

15 Q. Is biastophilia by itself named in that
16 book?

17 A. No.

18 Q. Well, how can you diagnose something
19 that's not in the book? How do you get there?

20 A. Well, there are hundreds of
21 paraphilias. Like I said, a paraphilia is really
22 anything that is outside of what is considered
23 normal sexual behavior. So it's anything that is
24 deviant, deviating from normal. Having sex with a
25 nonconsenting person is abnormal.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 What's considered normal is you engage
2 in sexual behavior with somebody who is engaged
3 with you. If they're not responding to you, that's
4 usually a turnoff for people and they don't want to
5 pursue it. Most people do not fight to do what
6 they want with somebody when that person doesn't
7 want them to do it, and you don't do it repeatedly.

8 So if you're doing those things, if
9 that's what you're into, if that's what you're
10 doing to meet your sexual needs, that's abnormal.
11 And there's a category -- because they cannot list
12 every single paraphilia. There are hundreds of
13 them.

14 Q. There are only about seven or eight
15 listed in the book, right?

16 A. That's correct, yes.

17 Q. Like pedophilia for example?

18 A. Yes. Voyeuristic disorder,
19 exhibitionistic disorder, frotteuristic disorder --
20 there are several of them. But if you're -- if the
21 person you are evaluating does not meet criteria
22 for one of those disorders, there is another term,
23 other specified paraphilic disorder. That's the
24 disorder that you can use.

25 Q. So you look for is -- other specified

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 paraphilic disorder means not in the book and
2 biastophilia is what you found?

3 A. Well, other specified paraphilic
4 disorder means that that disorder is not explicitly
5 named, but that he meets criteria for a paraphilia,
6 six months of behavior with nonconsenting
7 individuals, and it's caused problems in his life
8 because it's caused repeated arrests,
9 incarceration, being sent to group homes, sex
10 offender treatment, and things like that.

11 Q. Now, a few minutes ago you identified
12 the criteria for the personality disorder that you
13 diagnosed him with. What was the name of that
14 personality disorder?

15 A. Antisocial personality disorder.

16 Q. Okay. What is the effect of having
17 both? This guy's got a mental abnormality that
18 involves deviant sexual behavior and he's got
19 antisocial personality disorder. What is the
20 effect of having both at the same time?

21 A. Well, when we look at why people commit
22 sex offenses, it's for two like kind of broad
23 categories of reasons. The first reason is deviant
24 sexual interest, so abnormal sexual interest. He
25 has that.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 The second category is antisocial
2 character traits or an antisocial world view. He
3 has that. When you have both, you're at increased
4 risk to do this. So he has the deviant sexual
5 interest, that gets him interested in having sex
6 with nonconsenting people; and then the antisocial
7 personality disorder is violating the rights of
8 other people, not having remorse for it, you know,
9 lots of behavior problems.

10 And that means that when he does this
11 to somebody else, he can live with himself, he
12 doesn't feel bad, he can do it again, he can
13 justify it and explain it way. Most people when
14 they do something mean to somebody else, hurts
15 somebody's feelings, physically hurt somebody, you
16 feel bad about it. He's not feeling that.

17 Q. Dr. Gehle, in cases like this, how do
18 you -- what assessment measure do you use to
19 measure a person's risk to re-offend? Is there a
20 scoring system that you use?

21 A. Yes. I use an actuarial risk
22 assessment called a Static 99R.

23 Q. Can you give the jury an example? You
24 said actuarial risk assessment?

25 A. Yes.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 Q. Can you give the jury, and me, an
2 example of, in plain language, the kind of thing
3 they might run into in their ordinary lives which
4 involves a kind of a risk assessment?

5 A. Okay. If you've had a heart attack and
6 you go to the doctor or you're at the hospital and
7 you ask the doctor, what is my risk to have another
8 heart attack, the doctor is going to look at
9 certain factors that are related to another heart
10 attack, things probably like high cholesterol,
11 smoking, whether you drink or exercise, your
12 weight, things like that, and they're going to give
13 you an estimate of how likely you are to have
14 another heart attack if you don't do anything to
15 change.

16 So an actuarial risk assessment in this
17 way, they took thousands of sex offenders and --
18 thousands of sex offenders who were convicted of
19 sex offenses, so they were already sex offenders,
20 and looked at can we figure out what factors
21 differentiate the groups that re-offend, commit
22 another sex offense, or who don't? So Who does it
23 again and who doesn't?

24 And those are the factors that we look
25 at, the ones that help us tell who is going to do

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 it again and who is not. When you do an actuarial
2 risk assessment, the reason why they call it that,
3 you come up with a score and then you can take it
4 to an actuary table and you go with that score.

5 And it will show you people with this score in the
6 research sample of thousands of sex offenders. If
7 a person has this score, how many of those people
8 with that same score went on to commit another sex
9 offense and how many didn't?

10 Q. If I saw my heart doctor and I had ten
11 different risk factors, he could compare that to
12 all the people that had heart attacks and tell me
13 what my chances are.

14 A. Yes.

15 Q. Now, Doctor, when you say static risk
16 factors, what does the word, static, mean in
17 context with static risk factors?

18 A. Static risk factors are things that are
19 typically related to somebody's history of sex
20 offending and they don't typically change. So it
21 gives a good baseline risk of the likelihood of
22 somebody re-offending.

23 Q. Is the Static 99R, the test that you
24 scored him on, is that something used by other
25 experts in your field?

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 A. Yes. Almost everybody who does this
2 work uses that test.

3 Q. Is it part of the basis of your opinion
4 in this case?

5 A. Yes.

6 Q. What was Mr. Carroll's -- looking at
7 the Static 99R, what is the lowest score you can
8 get?

9 A. Well, the scores range from negative
10 three to 12, but the scores really top out at
11 eight. There is hardly anybody who scores beyond
12 eight.

13 Q. What did Mr. Carroll score on this
14 test?

15 A. He scored a seven.

16 Q. And what does that number, the score of
17 a seven, indicate based upon the research and
18 everything about his risk to re-offend?

19 A. Well, it's considered high risk. And
20 when I compare that to the thousands of sex
21 offenders in the research sample, people with the
22 score of seven, 27.2 percent of them re-offended
23 within five years.

24 Q. Is there another way to look at that as
25 far as the research goes, like how more likely he

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 is to re-offend than a typical sex offender?

2 A. Yes. You look at the rate of
3 re-offending -- the expected rate of re-offending.
4 I can say that Mr. Carroll is 5.25 times, so five
5 and a quarter times more likely to re-offend when
6 you compare him to the average sex offender. The
7 average sex offender will get a score of two on
8 this test. So his score is considerably higher and
9 he's, you know, more than five times more likely to
10 re-offend.

11 Q. Is there such a thing -- you mentioned
12 static risk factors in scoring this test?

13 A. Yes.

14 Q. Is there something called dynamic risk
15 factors that you look at in a case of this nature?

16 A. Yes.

17 Q. What does dynamic risk factors mean?

18 A. Dynamic risk factors are things that
19 are more changeable and they are more related to
20 not just offense details, but characteristics of
21 the person and they can be addressed through
22 treatment. So they're treatment targets often.

23 Q. Does Mr. Carroll -- based upon your
24 research, your interview, what you looked at, does
25 he have any dynamic risk factors?

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 A. Yes.

2 Q. What are they?

3 A. He has sexual preoccupation, a lack of
4 history of emotionally intimate relationships with
5 adults. These are the categories that -- this is
6 what the research calls these categories or these
7 risk factors. Another one is lifestyle
8 impulsiveness, poor problem-solving, resistance to
9 rules and supervision, grievance and hostility, and
10 negative social influences.

11 Q. Now, Dr. Gehle, based upon your
12 research into this case -- let me ask you one other
13 question. You mentioned using the Static 99R to
14 get a score on this guy. Now, in the work that
15 I've done over the years, I've seen other types of
16 psychological tests administered to people. You
17 did just one. Why one and why not others?

18 A. Well, in the research there are really
19 relatively few psychological tests that help make
20 opinions in these cases. The one that's the most
21 widely used and accepted and has the best
22 predictive ability is the Static 99R.

23 There are some other actuarial measures
24 or risk assessments that you can do, but the Static
25 99R is the one that almost everybody uses and it

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 has the most support, it's the most accurate. So
2 that's the one that I use and I don't try to overly
3 complicate things by giving tests that are
4 irrelevant to answering the question that I've been
5 asked to answer.

6 Q. Okay. Let me ask you this then: Based
7 upon the interview and the guide, the research you
8 did on Mr. Carroll, looking at all of the
9 documents, the sexually violent conviction we
10 talked about a minute ago that's in evidence, do
11 you have an opinion to a reasonable degree of
12 psychological certainty as to whether he suffers
13 from a mental abnormality, personality disorder, or
14 both? I know we've gone through that before I have
15 to ask it this way.

16 A. Yes. It's my opinion that he suffers
17 from both, the mental abnormality and a personality
18 disorder.

19 Q. And the mental abnormality again is
20 called what?

21 A. Other specified paraphilic disorder
22 biastophilia.

23 Q. And the personality disorder that he
24 has along with that is called what?

25 A. Antisocial personality disorder.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 Q. Do you also have an opinion to a
2 reasonable degree of psychological certainty as to
3 whether or not this biastophilia diagnosis and the
4 antisocial personality diagnosis affect
5 Mr. Carroll's emotional or volitional capacity so
6 that he's predisposed to commit future sexually
7 violent crimes?

8 A. Yes.

9 Q. What is that opinion?

10 A. It's my opinion that those disorders
11 predispose him to commit acts of sexual violence if
12 he's not confined to long-term control, care, and
13 treatment.

14 Q. Do you also have an opinion to a
15 reasonable degree of psychological certainty as to
16 whether or not, based on this diagnosis and what
17 you found, Mr. Carroll has a propensity to be
18 dangerous and commit future sexually violent
19 crimes?

20 A. Yes. It's my opinion that he's
21 dangerous and likely to commit future sex offenses
22 if he's not confined to long-term control, care,
23 and treatment.

24 Q. Do you also have an opinion to a
25 reasonable degree of psychological certainty as to

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 whether this propensity we just talked about to
2 commit future sexually violent crimes is of such a
3 degree that it poses a menace as to the health and
4 safety of others?

5 A. Yes; it is my opinion that it is.

6 Q. And do you have an opinion to a
7 reasonable degree of psychological certainty as to
8 whether or not Craig Carroll has serious difficulty
9 controlling his behavior?

10 A. Yes. My opinion is he does have
11 significant difficulty controlling his behavior.

12 Q. And you've talked about a litany of
13 offenses over many, many years. Is that --
14 anything else other than that that indicates to you
15 his serious difficulty in controlling his behavior?

16 A. Well, that's one thing that I look at
17 specifically. And, you know, in that regard, he
18 had a chronic history of sexual behavior problems,
19 he offended during and after sex offender
20 treatment, he offended after sanctioned by the
21 Courts and after incarceration. There's really
22 been relatively little time where he has not been
23 in trouble for his sexual behavior. That's true of
24 his childhood, of his adolescence, and of his adult
25 years.

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 He told me -- he described himself, his
2 word, hypersexual, and he indicated that he's
3 sexually preoccupied, which is a significant risk
4 factor for sex offending. He also told me that he
5 was rather impulsive in his sex offending, and the
6 offense behaviors that I looked at, it looked like
7 he acted impulsively, meaning that he doesn't have
8 good control over his sexual behavior.

9 Q. Do you have an opinion to a reasonable
10 degree of psychological certainty as to whether or
11 not the diagnosis you came up with, that you found
12 on this guy, the biastophilia, the antisocial
13 personality disorder, do these make him likely to
14 engage in acts of sexual violence if not confined
15 in a secure facility for long-term control, care,
16 and treatment?

17 A. Yes. It's my opinion that -- that both
18 of them make him likely to commit acts of sexual
19 violence.

20 Q. Do you have an opinion to a reasonable
21 degree of psychological certainty as to whether or
22 not Craig Carroll meets the legal criteria to be
23 found a sexually violent predator based upon your
24 evaluation at this time?

25 A. Yes. It's my opinion that he meets the

MARIE GEHLE - CONTINUING DIRECT EXAM BY MR. BOGLE

1 criteria of a sexually violent predator.

2 Q. Okay. Now, there is outpatient sex
3 offender treatment and there's inpatient sex
4 offender treatment. Do you think -- based on your
5 opinion in this case, again, to a reasonable degree
6 of psychological certainty, does Mr. Carroll need
7 to be confined for sex offender treatment as
8 opposed to being let go and get it on the outside?

9 A. It's my opinion that he needs to be
10 confined for that treatment.

11 Q. Is that because of the mental
12 abnormality and personality disorder that you
13 diagnosed?

14 A. Yeah. It's also, you know, for public
15 safety and for his impulsivity. I don't know that
16 him being on probation or under some kind of
17 supervision, it didn't really change his behavior
18 in the past. He didn't -- he violated those rules
19 before so there's -- I think it's likely that he
20 would violate those conditions again if he was
21 treated on the outside.

22 MR. BOGLE: Thank you, Doctor. Please
23 answer any questions that Counsel may have or the
24 Court may have.

25 THE COURT: Mr. Foreman, now would be

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 the appropriate time to take our midmorning break.
2 Do you wish to take a break now or continue on in
3 testimony?

4 THE JURY FOREMAN: We will continue on,
5 Your Honor.

6 THE COURT: Mr. Falk.

7 CROSS-EXAMINATION

8 BY MR. FALK:

9 Q. Let me go back a minute. You are
10 employed by the State of South Carolina; is that
11 correct?

12 A. Yes, by the Department of Mental
13 Health.

14 Q. And so you are not in any type of
15 private practice, you are a State employee?

16 A. I'm a State employee.

17 Q. Okay. Would you agree that, just sort
18 of to simplify things, in order for somebody to
19 meet the definition of a sexually violent predator,
20 they have to have a relevant mental disorder and
21 there has to be a risk to re-offend?

22 A. Well, the definition is, they have to
23 be convicted of a qualifying sexually violent
24 offense, they have to have a mental abnormality or
25 personality disorder that makes them likely to

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 commit acts of sexual violence if not confined in a
2 secure facility for long-term control, care, and
3 treatment.

4 Q. So does that definition that you just
5 said have a component that you need to -- there
6 must be a relevant mental health issue; is that
7 correct? A personality disorder?

8 A. A mental abnormality or personality
9 disorder, yes.

10 Q. So you need to have some type of
11 diagnosis?

12 A. Yes.

13 Q. Of something?

14 A. Yes.

15 Q. And then you also need to have a risk
16 to re-offend?

17 A. Yes.

18 Q. Because it is possible to have a mental
19 diagnosis without a risk to re-offend; is that
20 correct?

21 A. Yes, or -- or your risk is not to a
22 level where you need to be civilly committed.

23 Q. Okay. So just the fact that there's
24 possibly a mental abnormality or personality
25 defect, that alone is not enough; is that correct?

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 A. That's correct.

2 Q. And you can also be at risk to
3 re-offend, but not necessarily be a sexually
4 violent predator if you don't have a relevant
5 mental abnormality; is that correct?

6 A. That's correct.

7 Q. So you need both pieces?

8 A. Yes.

9 Q. You need a diagnosis and a risk?

10 A. You need a relevant mental abnormality
11 or personality disorder, and then risk for that
12 means that you're likely.

13 Q. Now, the commission of a rape, that
14 fact by itself would not make somebody have a
15 mental abnormality; is that correct?

16 A. That's correct.

17 Q. Not everybody who has been convicted of
18 rape has a mental abnormality; is that correct?

19 A. That's correct.

20 Q. And you could commit multiple rapes
21 without having a mental abnormality; is that
22 correct?

23 A. It would depend, but it's possible,
24 especially if they were committed in a short period
25 of time.

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 Q. And there has to be some kind of
2 connection between a mental disease and the risk to
3 re-offend; is that correct?

4 A. Well, the definition is that the mental
5 abnormality or personality disorder makes a person
6 likely.

7 Q. I mean, you could have a mental
8 abnormality -- you could have a schizophrenic
9 disorder and still meet the criteria of the Static
10 99 and not necessarily be an SVP; is that correct?

11 A. That's correct.

12 Q. Now, a paraphilia is an interest in a
13 deviant sexual interest? Was that your
14 terminology?

15 What is a paraphilia again?

16 A. I can give you the definition. The
17 term paraphilia denotes any intense and persistent
18 sexual interest other than sexual interest in
19 genital stimulation or preparatory fondling with
20 phenotypically normal, physically mature consenting
21 human partners.

22 Q. Okay. Now, how can you make a
23 determination if somebody -- when somebody has
24 committed a rape, which is not necessarily the sign
25 of a paraphilic, how can you make a determination

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 that that person has a mental disease as opposed to
2 that person just has a criminal record?

3 A. Well, rape is a sign of a paraphilia.
4 That doesn't mean that it will rise to the level of
5 a paraphilic disorder unless other conditions are
6 met, but you look at, you know, the behaviors
7 involved. Was the person consenting or was the --
8 was the respondent aroused while they had a
9 nonconsenting victim? You look for things like
10 that, and then a pattern of that behavior.

11 Q. Well, certainly, rape by definition is
12 not consensual; is it not?

13 A. Yes. For the most part, yes.

14 Q. Okay. Now, I always use this analogy;
15 if somebody goes into a store, steals a candy bar,
16 steals a chocolate candy bar -- well, there is a
17 disease called kleptomania; is that not correct?

18 A. That's correct.

19 Q. And what is kleptomania?

20 A. It's, I guess, excessive stealing. I
21 would have to look up the specific definition. Do
22 you want me to --

23 Q. It's on page 478.

24 A. Thank you. That's helpful.

25 Kleptomania is recurrent failure to

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 resist impulses to steal objects that are not
2 needed for personal use or for their monetary
3 value, increasing sense -- or, B, increasing sense
4 of tension immediately before committing the theft;
5 C, pleasure, gratification or relief at the time of
6 committing the theft; D, the stealing is not
7 committed to express anger or vengeance and is not
8 in response to a delusion or a hallucination; and,
9 E, the stealing is not better explained by conduct
10 disorder a manic episode or antisocial personality
11 disorder.

12 Q. So there are specific -- you just read
13 that and there are specific diagnostic criteria; is
14 that right?

15 A. Yes.

16 Q. Now, if somebody steals a chocolate
17 bar, how can you tell if that person was accurately
18 craving chocolate or was getting pleasure from
19 stealing the chocolate bar?

20 A. Well, if it's one incident, it's not
21 even going to rise to the level of kleptomania
22 because it has to be repeated. Per this definition
23 it says, recurrent failure to resist that impulse,
24 but you ask them questions... You can ask them
25 questions and see, you know, what was their sense

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 of doing this? Why were they doing this?

2 You also look at whether they had
3 repeated conduct, whether they were financially
4 secure and didn't need to steal. Sometimes you'll
5 see celebrities shoplifting and they're very
6 wealthy. So why are they doing that? That could
7 be an indication that they might have this
8 disorder.

9 Q. So it's safe to say one of the
10 indications, what was the primary motivation
11 for the conduct?

12 A. You're looking at the motivation for
13 this particular disorder.

14 Q. Whether the motivation was to have the
15 piece of chocolate or to steal the piece of
16 chocolate?

17 A. Well, some people still get the
18 pleasure from having it even if they -- you know,
19 it's -- the theft is definitely important, but you
20 don't have to have all these criteria I believe in
21 order to -- maybe you do, I'm not sure. Again, I
22 guess you're looking for the motivation of it.

23 Q. What if my client was motivated in
24 having sex with the person that he was convicted
25 of? How do you know that that wasn't his primary

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 motivation, to have sex?

2 A. I think that was a big part of his
3 motivation. He wanted to have sex and it didn't
4 matter to him if the person was consenting or not
5 consenting.

6 Q. But certainly the motivation for sex is
7 not under these -- the motivation is a -- what were
8 your term -- phenotypical?

9 A. Phenotypical.

10 Q. What does that mean?

11 A. It means that somebody is normal.
12 Phenotypically normal, it means that somebody is
13 genetically normal.

14 Q. So the victim in this case was a
15 phenotypical; is that not correct? I mean, the
16 victim in the case of 2012?

17 A. The victim in the case in 2012?

18 Q. For which he was convicted?

19 A. Yes. Yes.

20 Q. That was a phenotypical victim; is that
21 correct?

22 A. She was phenotypically normal, but she
23 was not physically mature and she was not
24 consenting. She was human.

25 Q. And age appropriate?

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 A. She was not age appropriate.

2 Q. What evidence do you have that he was
3 aroused by the fact that she was sleep?

4 A. The fact that he did it repeatedly.
5 This is how it typically started. She said she
6 woke up frequently --

7 Q. But you never spoke with her; is that
8 correct?

9 A. That's correct.

10 Q. And so you're going on the police
11 reports?

12 A. Well, she was interviewed I believe.
13 She underwent a forensic interview at a -- like a
14 child advocacy center where they do these trained,
15 you know, very formal interviews of children who
16 are victims of abuse.

17 Q. I mean, the State didn't have to prove
18 that she was asleep at the time in order for him to
19 get a conviction; is that correct?

20 A. No.

21 Q. And so why didn't you contact the
22 victim?

23 A. I don't typically contact victims in
24 these cases. I mean, they've already been harmed.
25 The recollections that they had at the time will

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 be more accurate than what they would tell me now,
2 and it's an ethical thing whether -- you should
3 only contact a victim when you need to.

4 Q. So how old was she when she gave that
5 report?

6 A. Give me a second here. She would have
7 been 16 years old I believe. Or maybe 15.

8 Q. You have diagnosed him of having a
9 paraphilia that's called biastophilia; is that
10 correct?

11 A. Yes. Other specified paraphilic
12 disorder biastophilia.

13 Q. And Mr. Bogle had already asked you
14 whether or not you could find that word in this
15 book; is that correct?

16 A. That's right.

17 Q. And it does not exist in there; is that
18 right?

19 A. It is not included in the book, yes.

20 Q. And one of your explanations was that
21 there were lots of paraphilias; is that correct?

22 A. That's correct.

23 Q. And maybe too many to put in a book?

24 A. Yes. To put in this book in
25 particular.

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 Q. Now, if you would look at page 685 of
2 that book, I don't know if you would --

3 MR. FALK: May I approach the witness?

4 THE COURT: You may.

5 BY MR. FALK:

6 Q. Now, that is page 685 of the
7 Diagnostic --

8 A. Diagnostic and Statistical Manual of
9 Mental Disorders, 5th edition. Typically, we call
10 it the DSM5.

11 Q. DSM5, that's page 685?

12 A. That's correct.

13 Q. And is that paragraph that I have
14 highlighted, does that talk about how they define
15 paraphilic disorders? Or does it give a definition
16 of what a paraphilic disorder is?

17 A. No.

18 Q. Does it show -- does it show the
19 criteria they use for listing paraphilic disorders,
20 that highlighted section? Or if you could just
21 read that highlighted section.

22 A. Okay. These disorders have
23 traditionally been selected for specific listing
24 and assignment of explicit diagnostic criteria in
25 DSM for two main reasons. They are relatively

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 common in relation to other paraphilic disorders
2 and some of them entail actions for their
3 satisfaction that because of their noxiousness or
4 potential harm to others are classed as criminal
5 offenses.

6 MR. FALK: May I approach again, Your
7 Honor?

8 THE COURT: You may. You have
9 continuing permission.

10 BY MR. FALK:

11 Q. All right. Is it fair to say that that
12 description there as to why they chose certain ones
13 to put in the book was based on commonality and the
14 risk of harm to other people? Isn't that what you
15 just read?

16 A. That's what it says. It says something
17 to that effect, two main reasons.

18 Q. And then they list -- they specifically
19 list eight paraphilic disorders after that; is that
20 correct?

21 A. Yes.

22 Q. And that is voyeuristic disorder,
23 exhibitionistic disorder, frotteuristic disorder,
24 sexual masochism, sexual sadism, pedophilic
25 disorder, fetishistic disorder, transvestic

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 disorder.

2 A. Yes, and then two others.

3 Q. And what are the other two?

4 A. Other specified paraphilic disorder and
5 unspecified paraphilic disorder.

6 Q. Okay. And then those other two are
7 sort of broad categories?

8 A. Well, they are -- they are not a
9 specific -- they encompass more than one paraphilic
10 disorder.

11 Q. For example, the other specified
12 paraphilic disorder, does it list examples of that?

13 A. There are some -- yes, some listed
14 here.

15 Q. Zoophilia, telephone scatologia,
16 necrophilia --

17 A. Well, it says examples of presentations
18 that can be specified using the other specified
19 designations include, but are not limited to,
20 recurrent intense sexual arousal involving
21 telephone scatologia, which is obscene phone calls;
22 necrophilia, corpses; zoophilia, animals;
23 coprophilia, feces; klismaphilia, enemas; or
24 urophilia, urine, that has been present for at
25 least six months and causes marked distress or

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 impairment and social occupational -- occupational
2 or other important areas of functioning.

3 Q. Are any of those -- how common in the
4 general population would you estimate in your
5 opinion would be zoophilia, telephone scatologia?
6 I mean, how many --

7 A. I have no idea.

8 Q. Do you think it's -- could you make an
9 educated guess based on --

10 A. No. I do not -- I have not seen
11 research as to how common those disorders are.

12 Q. How about some of the other eight
13 paraphilic disorders such as frotteuristic
14 disorder, transvestic disorder? Voyeuristic
15 disorder; how common is that?

16 A. Well, which one do you want to know
17 about?

18 Q. All right. Why don't we do
19 frotteuristic disorder. That's the rubbing on the
20 subway?

21 A. It doesn't just have to be -- do you
22 want to know what it is? It's over a period of at
23 least six months, recurrent and intense sexual
24 arousal from touching or rubbing against a
25 nonconsenting person as manifested by fantasies,

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 urges, or behaviors.

2 So that is simply rubbing up against
3 somebody or brushing up against them for sexual
4 arousal. That is a paraphilic disorder if you do
5 that behavior over a period of at least six months,
6 just rubbing up against somebody. If you look at
7 the commonality, that would probably be noted in
8 this book.

9 Then it says, frotteuristic act,
10 including the uninvited sexual touching of, or
11 rubbing against another individual may occur in up
12 to 30 percent of adult males in the general
13 population. Approximately, 10 to 14 percent of
14 adult males seen in outpatient settings for
15 paraphilic disorders and hypersexuality have a
16 presentation that meets diagnostic criteria for
17 frotteuristic disorder.

18 But then it says, hence, whereas the
19 population prevalence of frotteuristic disorder is
20 unknown, it is not likely that it exceeds the rate
21 found in selected clinical settings.

22 MR. FALK: Your Honor, may we take a
23 break? My client needs a break.

24 THE COURT: Ladies and gentlemen, we
25 will take a break now. Take your notepads or leave

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 them in your chair. Please remember all of my
2 admonitions. Do not begin discussing this case.
3 Please rise for the jury.

4 (Jury out, 10:59 a.m.)

5 THE COURT: Thank you. Be seated.

6 Dr. Gehle, you may step down. We will
7 take about a ten-minute break. Just leave
8 everything right there. You may not discuss this
9 case with anyone and they may not discuss the case
10 with you. Let me know if anybody approaches you
11 inappropriately.

12 Let's take about seven minutes.

13 Who is your next witness?

14 MR. BOGLE: That's it.

15 THE COURT: That's it.

16 MR. BOGLE: Yes, ma'am.

17 THE COURT: And I have made
18 arrangements to order lunch, we will work straight
19 through. We'll take about a 30-minute break and
20 work straight through. Make sure your witnesses
21 are here. All right. Thank you.

22 (A recess transpired.)

23 THE COURT: Thank you. Be seated.

24 Anything before we bring in the jury?

25 MR. BOGLE: No, nothing.

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 MR. FALK: Nothing.

2 THE COURT: Bring in the jury.

3 (Jury in, 11:17 a.m.)

4 THE COURT: You may continue, Mr. Falk.

5 BY MR. FALK:

6 Q. Just to sort of summarize where I was
7 going, there are obviously some unusual
8 descriptions for paraphilic disorders that the DSM
9 actually specifically listed in this book. There's
10 urology -- or whatever the --

11 A. Urophilia. I mean, I don't think that
12 there are unusual descriptions of paraphilic
13 disorders, but there are unusual paraphilias.

14 Q. That they went and actually put in this
15 book?

16 A. Yes.

17 Q. Okay. And they say that the criteria
18 -- one of the criteria is whether or not -- whether
19 or not it's relatively common was one of the
20 criteria, according to the DMS in that paragraph
21 that you read. The commonality of them was one of
22 the reasons that they used for listing it. For
23 example, the next page in the book, the
24 sadomasochism --

25 A. They are relatively common in relation

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 to other paraphilic disorders.

2 Q. So I just -- why would if an interest
3 in coercive sex, it just -- wouldn't that be a
4 common disorder, that if it was a real diagnosis
5 that they would have put in the book?

6 A. Well, it is a real diagnosis, but it
7 says, relatively common. So common compared to
8 other disorders, and as we looked -- when we looked
9 at frotteuristic disorder, that was at what? Ten
10 to 15 percent.

11 And you're saying that maybe 30 percent
12 of men have engaged in that type of behavior, and
13 that -- I have to go back here -- 10 to 14 percent
14 of adult males in outpatient setting for paraphilic
15 disorders and hypersexuality have a presentation
16 that meets criteria for frotteuristic disorder. So
17 that seems fairly common, 10 to 14 percent.

18 Q. Okay. Are you familiar with the term
19 coercive paraphilic disorder?

20 A. I have heard the term.

21 Q. And what is your understanding of what
22 that term would be?

23 A. It is sexual arousal for coercive
24 sexual acts.

25 Q. How is that different from

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 biastophilia?

2 A. Well, biastophilia is -- it's
3 potentially similar, they have some similarities.
4 Biastophilia is a paraphilic disorder with sexual
5 arousal toward nonconsenting victims. Engaging in
6 sexual acts, having arousal urges or behaviors
7 towards a nonconsenting person. I'm not sure
8 exactly what the definition of coercive paraphilic
9 disorder, I haven't seen a standard definition of
10 that disorder.

11 So I'm not sure how it differs or
12 compares specifically, but the word, coercive,
13 typically means coercion was used, and that the
14 arousal would be to that, coercive aspects of the
15 behavior.

16 Q. What is the standard and where would I
17 find the standard definition for biastophilia?

18 A. Well, you could look in other books or
19 you can look in here, other specified paraphilic
20 disorder, and the interest is biastophilia,
21 nonconsenting person.

22 Q. But this is -- whether it's coercive
23 paraphilic disorder or biastophilia, that is not in
24 the DSM5 or any of the prior versions?

25 A. I'm not sure if it was in the prior

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 versions. I know it's not in this version.

2 Q. Now, one of the uses of the DSM5 -- is
3 it fair to say that one of the uses of the DSM5 is
4 that there are some uniformity in the diagnostic
5 criteria?

6 A. Yes. That's one of the purposes that
7 people diagnose based on criteria that have been
8 spelled out.

9 Q. And that there's a uniformity in
10 agreement on those criteria?

11 A. Yes.

12 Q. For example, I mean -- in spite of my
13 client's conduct prior to when he was 16, he does
14 not suffer from pedophilic disorder in your
15 opinion; is that correct?

16 A. There is not enough evidence to
17 diagnose that; that is correct.

18 Q. But pedophilic disorder, there are
19 specific criteria for that, for example, on
20 page 697; is that correct?

21 A. That there is specific criteria?

22 Q. Yes.

23 A. There are three criterion listed with
24 some specifiers.

25 Q. And, for example, you read the criteria

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 before on kleptomania, and there must have been six
2 or eight of those.

3 A. Yes.

4 Q. Where would I find the diagnostic
5 criteria that everyone would agree on for
6 biastophilia?

7 A. Well, the disorder is other specified
8 paraphilic disorder, and that's listed on page 705
9 of the manual.

10 Q. So what is the diagnostic criteria for
11 that?

12 A. Well, I'm going to read the whole
13 paragraph here. It says, this category applies to
14 presentations in which symptoms characteristic of a
15 paraphilic disorder that caused clinically
16 significant distress or impairment in social,
17 occupational, or other important areas of
18 functioning predominate, but do not meet the full
19 criteria for any of the disorders in the paraphilic
20 disorders diagnostic class.

21 The other specified paraphilic disorder
22 category is used in situations in which the
23 clinician chooses to communicate the specific
24 reasons that the presentation does not meet the
25 criteria of any specific paraphilic disorder. This

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 is done by recording other specified paraphilic
2 disorders followed by the specific reasons, e.g.,
3 zoophilia.

4 Examples of presentations that can be
5 specified using the other specified designation
6 include, but are not limited to recurrent and
7 intense sexual arousal involving telephone
8 scatologia, obscene phone calls, necrophilia,
9 corpses, zoophilia, animals, coprophilia, feces,
10 klismaphilia, enemas, or urophilia, urine, that has
11 been present for at least six months and caused
12 marked distress or impairment in social,
13 occupational, or other important areas of
14 functioning.

15 Other specified paraphilic disorders
16 can be specified as in remission and or as
17 occurring in a controlled environment.

18 Q. None of that seems specific to an
19 interest in sex with nonconsenting partners?

20 A. Well, the definition of a paraphilia is
21 -- I mean, one of the things that are considered a
22 paraphilia is, you know, anything other, having sex
23 or interest in, consenting human beings. So if
24 it's outside consenting, the person is
25 nonconsenting, it's a paraphilia; and it can be a

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1 paraphilic disorder if that behavior, behaviors,
2 arousal, interest lasts over a period of six months
3 and causes them problem in some area of
4 functioning.

5 Q. Well, this just seems like it's a
6 catch-all provision.

7 A. What seems like it's a catch-all
8 provision?

9 Q. Not otherwise specified or unspecified.
10 I mean, what you're saying is there are a bunch of
11 other paraphilias too numerous to mention here.

12 A. Yes. I mean, there's hundreds and -- I
13 mean, I've -- I evaluated somebody once and maybe
14 had to diagnose, I don't know, I think it was like
15 maybe eight paraphilias, including paraphilia that
16 I didn't know -- that weren't maybe even
17 recognized, but their interest was intense.

18 Q. So it's the strength of the interest is
19 one of the diagnostic criteria?

20 A. Not necessarily.

21 Q. Let me just move on then.

22 We talked before that there has to be a
23 disease, there has to be a diagnosis, and you have
24 to have a risk to re-offend in order to meet the
25 definition of an SVP; is that correct? Must be

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 a --

2 A. Mental abnormality or personality
3 disorder.

4 Q. And the risk to re-offend?

5 A. Likelihood, yes.

6 Q. And you were able to quantify the risk
7 to re-offend using the Static 99?

8 A. Yes. The Static 99R gives quantifiable
9 risks.

10 Q. Okay. And as we said earlier, just
11 having the risk to re-offend is not necessarily
12 indicative or determinative of being an SVP if you
13 don't have the diagnosis?

14 A. That's correct.

15 Q. Okay. What can you use to quantify
16 your diagnosis of biastophilia?

17 A. What can I use to quantify?

18 Q. Are there any tests that can quantify
19 your result so that another doctor could look at
20 your test results and agree with your decision?

21 A. No. The way that mental health
22 disorders -- psychiatric disorders, the way that
23 this book is designed is that primarily those
24 disorders are based on talking to a person, and
25 they're based on looking at other information. So

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1 looking for evidence and comparing that to the
2 criteria, comparing to see if the person meets that
3 disorder.

4 There are -- there are some tests that
5 may speak to or may give you some information about
6 personality disorders, but there are really no
7 psychological tests that are valid and reliable
8 that would tell you whether somebody has a
9 paraphilia.

10 Q. Well, Mr. Bogle -- when you-all were
11 talking about the actuarial risk, you started with
12 the example of going into the hospital, having a
13 heart attack, and the doctor being able to give you
14 the risk of having another heart attack?

15 A. Yes.

16 Q. If you went to the hospital, though,
17 presumably that doctor could run some tests and he
18 could maybe do an MRI, he could look to see if you
19 had any damage to your heart muscle, you may have
20 some proteins in your blood or whatever that
21 indicate the stress of a heart attack, and those
22 would be quantifiable results that he could then
23 confirm that, yes, in fact this person has had a
24 heart attack?

25 A. Yes.

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 Q. And he could call another doctor in
2 California and tell him those results, and the
3 other doctor presumably would agree, you meet these
4 specific things. He has a blood pressure of this,
5 a pulse this, blah, blah, blah. You don't have
6 anything like that for this; is that correct?

7 A. We don't have anything like that for
8 almost any mental disorder. Human behavior and the
9 brain -- the brain is the most complicated thing in
10 the whole entire universe. And human behavior is a
11 very complicated thing.

12 We don't have tests like that for
13 mental health disorders. If you go to the hospital
14 with schizophrenia, they're not going to be able to
15 run tests and confirm that you have schizophrenia.
16 We are not to that level yet.

17 Q. However, I believe that you were saying
18 that in order to differentiate whether or not
19 somebody wants to have sex or whether or not they
20 have an interest in having coercive sex, we're
21 looking at the primary motivation?

22 A. I didn't say that. I think you were
23 saying that in terms of kleptomania.

24 Q. So how can you determine whether or not
25 somebody has nonconsensual sex with somebody

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 because he wants to have sex right now or whether
2 or not he desires -- he somehow gets aroused by the
3 nonconsensual portion of it?

4 A. Well, I asked him and he told me, you
5 know, the reasons he did that stuff. He said that
6 his behaviors were sexually based. He repeatedly
7 engaged in those behaviors over and over and over.
8 He told me that he had consenting sexual partners
9 beginning at age ten when he first had sex.

10 So presumably he could have had
11 consensual sex with someone and chose to have sex
12 with a nonconsenting person and take all the risks
13 that are associated with that. That indicates that
14 he has a problem with that behavior. He also told
15 me that in the past some of his sexual behaviors
16 were motivated by anger and things like that.

17 But this paraphilia, I mean, by its
18 definition, if the person is not consenting -- if
19 you're engaging in sexual behaviors with a
20 nonconsenting person, that denotes a deviant sexual
21 interest.

22 Q. Or denotes that you committed a rape?

23 A. Well, that would be a criminal offense.
24 We're talking about the mental health.

25 Q. But, again, you said not everybody who

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 commits rape has a mental health issue?

2 A. That's correct.

3 Q. You said that there is no way, but if
4 we wanted to find -- is there a way -- if we wanted
5 to find out if somebody was interested in having
6 coercive sex, is there a test that you're aware of
7 that could be done?

8 A. Any type of test whether somebody is
9 interested in coercive sex? There are tests that
10 you could potentially give, but they're not very
11 valid or reliable, and especially they're not
12 reliable to measure interests in coercive sex.

13 Q. Are you familiar with the PPG test?

14 A. Yes.

15 Q. And what is your understanding of the
16 PPG test?

17 A. The PPG test is the penile
18 plethysmography. And that's a test where you have
19 somebody put a gauge on their penis, or they can
20 put a tube over their penis. They show them some
21 pictures or have them listen to stories and they
22 measure whether that person gets sexually aroused.

23 Q. And can they make comparative -- can
24 they make comparisons onto different type of
25 scenarios as to what is more arousing than others?

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 A. Yes. That's what the results will -- I
2 mean, that's what they're saying; they measure
3 arousal. So they measure like how erect the penis
4 gets, how much blood flow changes into the penis
5 from flaccid to, you know, verging on erections.
6 They measure minute changes.

7 Q. That's a test that would measure
8 whether or not he has an interest in coercive sex,
9 isn't that correct?

10 A. Well, potentially, but that test is not
11 very valid or reliable, and -- especially when
12 you're talking about using it with people who have
13 committed rapes. It's generally better at figuring
14 out whether somebody has an interest in children.
15 It's not very good at all -- I mean, I think
16 overall, but it's better at telling whether
17 somebody has an interest in children than in
18 nonconsenting victims.

19 Q. That's a test that is available here in
20 South Carolina, is it not?

21 A. Yes.

22 Q. In fact, Dr. Burke conducts that test,
23 does he not?

24 A. Yes.

25 Q. Well, then there's another test that

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 could have given the quantifiable number relative
2 to your diagnosis, and I'm talking about -- did you
3 do a Hare, H-A-R-E, Psychopathy Checklist?

4 A. It's called a Psychopathy Checklist
5 Revised, the PCL-R, and Robert Hare is the author
6 and creator of that test.

7 Q. And that gives you a numerical scale,
8 does it not?

9 A. Well, it's a test to measure
10 psychopathy which is considered on -- like if
11 you're looking at antisocial personality disorder,
12 you could say it's an extreme form of antisocial
13 personality disorder.

14 Q. But you did not give him that test in
15 order to validate your diagnosis on the antisocial
16 personality disorder?

17 A. That test is an interview guide and
18 then you do a rating on those facets. It's not
19 necessary to give that test, and it doesn't lead to
20 a diagnosis that's included in this book.
21 Psychopathy is not a diagnosis that's included in
22 the DSM.

23 Q. You didn't give the test, though; is
24 that correct?

25 A. That's correct.

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 Q. Did you have a chance to talk to any of
2 Mr. Carroll's romantic interests, any of the people
3 who he's had a romantic relationship with?

4 A. No.

5 Q. And why is that?

6 A. Why? I didn't have contact information
7 for them.

8 Q. Did you ask for it?

9 A. I cannot recall whether I asked for it
10 or not.

11 Q. Well, if you were trying to find out
12 whether or not somebody has this interest in
13 nonconsensual sex, is that not a good person to
14 ask?

15 A. What I did was I asked Mr. Carroll, and
16 he told me that he frequently had sex with his sex
17 partners, consenting sex partners, while they were
18 asleep and that it didn't cause problems in his
19 relations.

20 Q. So you did not contact the mother of
21 his child; is that right?

22 A. That's correct.

23 Q. What do you know about his -- as part
24 of your interview, did you reach any conclusions
25 about his family history, as far as whether or not

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 there were instances of abuse in his history?

2 A. I looked at information related to his
3 history. I believe he reported that he had a
4 history of sexual abuse. He reported a history of
5 sexual abuse and physical abuse.

6 Q. And this was at what time in his
7 history? What age?

8 A. I would have to look at my notes
9 specifically. It's my understanding that it was in
10 his earlier years, like possibly under age ten.
11 Just a little quick review of this.

12 Q. Could that have been the cause of some
13 of his defiant conduct that he had at that time?

14 A. Might have been.

15 Q. Now, you have put emphasis on some of
16 his conduct that occurred while he was a juvenile;
17 is that correct?

18 A. Yes. I looked at his --

19 Q. In reaching your diagnosis?

20 A. Yes.

21 Q. Isn't there a likelihood though that
22 juvenile conduct doesn't necessarily mirror adult
23 conduct? Can't people grow out of some conduct?

24 A. Sure.

25 Q. I mean, you're -- you're a forensic

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 psychiatrist. Have you made any evaluations
2 pursuant to Miller V. Alabama, or Aiken V. Byars?

3 A. I'm a forensic psychologist, not a
4 forensic psychiatrist. Have I made any evaluations
5 in relation --

6 Q. Miller V. Alabama?

7 A. No.

8 Q. Are you familiar with that case?

9 A. I'm not sure. If it's the case I'm
10 thinking of --

11 Q. Did you --

12 A. -- I'm not sure.

13 THE COURT: Don't interrupt her. Let
14 her finish.

15 BY MR. FALK:

16 Q. Sorry. The juvenile death penalty
17 cases?

18 A. Are they death penalty cases or life
19 without parole sentenced as a juvenile?

20 Q. Aiken V. Byars is that case, sentenced
21 to life without parole as a juvenile.

22 A. Okay.

23 Q. But some of the factors that the Court
24 looked at in saying there's significant gaps
25 between juveniles and adults. Would you agree

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 there's significant -- when you're looking at
2 juvenile conduct, there's a significant difference
3 in comparing a juvenile's conduct with an adult's
4 conduct?

5 A. I mean, yeah, there's an age
6 difference. There can be -- there can be a
7 difference between that, yes.

8 Q. One other criteria, for example, the
9 Court said is that children have a lack of maturity
10 and an undeveloped sense of responsibility leading
11 to recklessness, impulsivity and heedless
12 risk-taking. Do you agree with that statement?

13 A. It can be true, yes.

14 Q. And the Court also said that children
15 are more vulnerable to negative influences and
16 outside pressures including from their family and
17 peers. They have limited control over their own
18 environment and lack the ability to extricate
19 themselves from their environment.

20 MR. BOGLE: Your Honor, we would object
21 at this time based on relevancy.

22 THE COURT: Sustained.

23 BY MR. FALK:

24 Q. Now, you had said that needed treatment
25 -- just because he needs treatment doesn't justify

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 a diagnosis as a sexually violent predator; is that
2 correct?

3 A. I'm sorry?

4 Q. Just the fact that he needs treatment
5 doesn't mean that he's a sexually violent predator?

6 A. That's correct.

7 Q. Okay. And is it accurate to say that
8 the treatment that's provided in a secure facility
9 is no more effective as far as the patient is
10 concerned than treatment that can be provided on an
11 outpatient basis?

12 A. The effectiveness of treatment depends
13 on a wide variety of factors. One of the most
14 important factors is the motivation of the person
15 and whether they get it. Like, whether they get
16 treatment, whether they understand it, whether they
17 buy into it.

18 Q. Are there any studies that show that
19 treatment provided in a confined environment is any
20 more effective than treatment provided on an
21 outpatient basis?

22 A. But there are probably studies that say
23 that.

24 Q. You're not aware of studies that say
25 inpatient treatment is no more effective than

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 outpatient treatment?

2 A. There are studies that say that
3 outpatient treatment is more effective. There are
4 studies that say that inpatient treatment is more
5 effective.. There are studies that say that they
6 are of the same effectiveness in terms of whether
7 someone re-offends.

8 Q. Now, your report says that you don't
9 have any information on treatment that he received
10 while he was at DJJ; is that correct?

11 A. I believe that I tried to get treatment
12 records from one of the facilities that he went to
13 and those treatment records from that facility were
14 not available. There was information about --
15 about sex offender treatment and other evaluations.

16 Q. On page 6 of your report at the end of
17 the last full paragraph, you said treatment records
18 from SCDJJ were not available?

19 A. Yes..

20 Q. And he was in custody there between
21 March of 2008 and April 2009?

22 A. Yes.

23 Q. Now, do you have a sentencing sheet up
24 there?

25 A. Yes.

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 Q. Let me just ask you if you are aware
2 what this means? (Indicating) That line there.
3 If you will look at that sheet, what does that say
4 about what his sentence was?

5 A. He was sentenced to seven years of
6 incarceration provided upon the service of three
7 years of incarceration and five years of probation.

8 Q. So he's going to be -- so based on that
9 sentencing sheet, he would be on probation for five
10 years?

11 A. That's what it says.

12 Q. Did you confirm that with Probation or
13 Parole?

14 A. Actually, I just talked to Probation,
15 Pardon, and Parole today, and they said he would be
16 on community supervision until June of 2018, so a
17 little bit longer than a year. And then his
18 supervision and probation will be complete.

19 Q. Do you know whether or not he was
20 offered any sex offender treatment while he was in
21 custody? While he was at -- with the South
22 Carolina Department of Corrections?

23 A. I know that he did not participate in
24 treatment. I don't know if he was offered
25 treatment.

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 Q. You also listed some of the diagnostic
2 criteria for antisocial personality disorder?

3 A. Yes.

4 Q. Do you have an opinion as to how many
5 members of the general prison population would be
6 diagnosed with antisocial personality disorder?

7 A. I have heard various numbers, but I
8 don't have -- I don't have a specific opinion about
9 how many people in prison would be diagnosed with
10 that.

11 Q. Do you think it's a significant portion
12 of the population?

13 A. It's probably a large portion of the
14 population in prison.

15 Q. It sounds like -- the criteria sounds
16 like it's basically criminal conduct.

17 A. It's -- it's not just criminal conduct.
18 Some of those -- I mean, one of the criterion is
19 unlawful behaviors, engaging in repeated behaviors
20 that are grounds for arrest. So that's part of it,
21 but it's not all of it.

22 MR. FALK: One moment, Your Honor.

23 THE COURT: Take your time.

24 BY MR. FALK:

25 Q. Did you speak with any of his family

MARIE GEHLE - CROSS EXAM BY MR. FALK

1 members?

2 A. No, I don't believe so.

3 Q. And you would admit that he was candid
4 with his interview?

5 A. He talked to me for a long time. He --
6 I would say, yes, he was talkative, candid.

7 MR. FALK: No further questions.

8 THE COURT: Mr. Bogle, redirect?

9 MR. BOGLE: Nothing on redirect, Your
10 Honor. Thank you.

11 THE COURT: Dr. Gehle, you may step
12 down. You're free to leave, but you're also free
13 to stay with us.

14 THE WITNESS: Thank you.

15 THE COURT: Thank you.

16 Call your next witness.

17 MR. BOGLE: May it please the Court,
18 the State would rest.

19 THE COURT: Reserving all motions and
20 matters, call your first witness.

21 MR. FALK: At this time, I would call
22 my client to the stand.

23 THE COURT: Okay. Mr. Carroll, please
24 come forward to be sworn.

25 CRAIG ALLEN CARROLL,

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 being first duly sworn, testified as follows:

2 THE CLERK: Please state your full name
3 for the record and spell your last name.

4 THE DEFENDANT: Craig Allen Carroll,
5 C-A-R-R-O-L-L.

6 DIRECT EXAMINATION

7 BY MR. FALK:

8 Q. Mr. Carroll, where were you last night?

9 A. I was here at Hill-Finklea Detention
10 Center.

11 Q. How long have you been there?

12 A. I've been here since June of last year.

13 Q. And prior to that, where were you?

14 THE COURT: Mr. Carroll, could you pull
15 that microphone closer to you? The chair doesn't
16 move, so you have to move the microphone. Thank
17 you.

18 THE DEFENDANT: Could you repeat the
19 question, sir?

20 BY MR. FALK:

21 Q. Prior to being at the Hill-Finklea
22 Detention Center, where were you?

23 A. I was incarcerated at Evans
24 Correctional.

25 Q. Were you at Evans the entire time?

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 A. Yes, sir.

2 Q. Did they ever offer you sex offender
3 treatment?

4 A. No, they didn't.

5 Q. Do you know if it was offered at that
6 facility?

7 A. I'm not sure, but I did request it.

8 Q. You did request it?

9 A. Yes, sir.

10 Q. Did you receive any sex offender
11 treatment when you were at DJJ?

12 A. Yes, sir, I did.

13 Q. Can you tell me what that was about?

14 A. It went into a detail of my history and
15 my past offenses --

16 Q. That was a poor question. You were
17 there for a little over a year; is that correct?

18 A. Yes, sir.

19 Q. About how much of that time were you
20 doing sex offender treatment?

21 A. The whole entire time was dedicated to
22 sexual offender treatment.

23 Q. What were you doing specifically? Did
24 you meet in classes with groups of other people?

25 A. It was mainly one-on-one with my

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 counselor, but there were times we interacted with
2 each other and we disclosed information about our
3 cases with each other.

4 Q. How often would you meet with the
5 counselor?

6 A. Weekly.

7 Q. And for what period of time?

8 A. As far as --

9 Q. How long during the day?

10 A. It was lengthy. It lasted anywhere
11 from three to four hours.

12 Q. Did you have any work to do in between
13 meetings?

14 A. Yes, sir, I had a workbook.

15 Q. What was the workbook about?

16 A. Just realizing and identifying triggers
17 and ways -- prevention in the past, just a detailed
18 log of everything that had happened to me in my
19 abuse history and my offenses.

20 Q. What do you mean by triggers?

21 A. Triggers are things that make it --
22 factors that would make it more readily available
23 for more offenses in the future.

24 Q. Your counselor, was that a DJJ employee
25 or was that somebody from the outside?

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 A. She was working for DJJ, but she had --
2 she was associated with -- with mental health.

3 Q. Okay. So as you understood it, she was
4 part of the South Carolina Department of Mental
5 Health working at South Carolina Department of
6 Juvenile Justice?

7 A. Yes, sir.

8 Q. Okay. And you said that you had a
9 workbook?

10 A. Yes, sir.

11 Q. Okay. I'm sorry, then we were talking
12 about triggers. So, again, the trigger -- what are
13 your particular triggers?

14 A. I wouldn't say that I have any. The
15 triggers that I went over in the book were the
16 triggers -- they're basically identifiers if they
17 relate to you, but, I mean, there wasn't any
18 specific ones that I related to aside from just
19 being sexually aroused. That was the main trigger.

20 Q. Are you sexually aroused to having sex
21 with people who are asleep?

22 A. No.

23 Q. But you did that all the time. What
24 can you explain about that conduct?

25 A. Well, I will explain further that she

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 didn't elaborate on what I -- what I disclosed to
2 her. I stated that I had woken my partners up to
3 sex, not that I had sex with them while they were
4 asleep. That never happened.

5 I'm pretty sure that anybody would be
6 offended by that kind of behavior. I don't think
7 anybody would allow me to do that and not cause
8 some type of a rift in our relationship. So that's
9 not what happened. What happened is, I woke them
10 up and we proceeded to have consensual sexual
11 intercourse.

12 Q. Now, you've had some more serious
13 relationships with females?

14 A. Yes.

15 Q. Who are those?

16 A. The most recent would be my
17 ex-girlfriend, Krista Skidmore, the mother of my
18 child, Kirsten Wild, who I am in contact with
19 constantly, and I talk to my daughter every day.
20 And as far as -- there's about five total as far as
21 like really committed relationships.

22 Q. Let's talk about Kirsten Wild. How
23 long were you together?

24 A. We were together off and on for five
25 years, almost five years.

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 Q. And how old is your child?

2 A. She is six years old.

3 Q. And Skidmore, how long were you
4 together?

5 A. We were together a little over a year.

6 Q. And when you say, together, were you
7 living together?

8 A. No, sir.

9 Q. Okay. Where were you living?

10 A. I was living with my mother and my
11 grandparents.

12 Q. Okay. When you were with Kirsten, were
13 you-all in the same place?

14 A. She actually did live with me for a
15 short period.

16 Q. Okay. So the sex offender -- do you
17 have any plans for relapse prevention so this --
18 how do we know this isn't going to happen again?

19 A. I fully intend to -- if I am released
20 to -- it's actually a condition of my probation
21 that I attend sex offender program, but I would do
22 it anyway even if it wasn't court appointed,
23 because I want to ensure to myself and my community
24 and my family that I'm not going to make these same
25 mistakes again. And I will take any necessary

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 action to make sure that I don't.

2 Q. Now, back during one of your
3 probationary sentences you were getting some sex
4 offender treatment; is that correct?

5 A. Yes, sir.

6 Q. And Dr. Gehle's report says that you
7 failed the treatment?

8 A. That's --

9 Q. What happened? Why don't you explain
10 what happened there?

11 A. Well, I successfully completed the one
12 at the Department of Juvenile Justice. The one
13 that -- that wasn't successfully completed was at a
14 group home and it was a condition to my being
15 arrested. I was sent there before I was sent to
16 the juvenile center, and I was kicked out for
17 behavioral issues.

18 Q. What were those behavioral issues?

19 A. Mostly not complying with staff and a
20 couple of altercations with other residents.

21 Q. Who was providing the sex offender
22 treatment at that group home?

23 A. There was -- there were team leaders
24 that were assigned to specific groups, but one of
25 them was -- his name was Mr. Steven, and then

CRAIG ALLEN CARROLL -- DIRECT EXAM BY MR. FALK

1 another one, his name was Mr. Rashad. So there was
2 two different ones. One quit.

3 Q. And were they State employees or
4 volunteers?

5 A. I'm not sure, to be honest. I wouldn't
6 -- I would say they were incompetent, so I'm pretty
7 sure they didn't work for the State.

8 Q. Well, you indicated that you thought
9 that your counselor at DJJ was with the Department
10 of Mental Health?

11 A. Yes, sir.

12 Q. Were these people with the Department
13 of Mental Health, to your knowledge?

14 A. No.

15 Q. And there was a failure to report on a
16 felony charge. Can you explain that?

17 A. I was arrested in Charleston for
18 possession of a stolen vehicle. The girlfriend
19 that I referred to earlier, Cassandra Skidmore, she
20 stole a vehicle from somebody that she knew. And
21 we were in an apartment complex, she was trying to
22 buy drugs, and I was in the car.

23 I became impatient and I started to
24 kick on a couple of doors trying to figure out
25 where she was. Somebody called the police. They

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 found me with the keys and my ID in the console,
2 and I was detained until they figured out what was
3 going on.

4 Q. Did you fail to appear in court?

5 A. Yes, sir.

6 Q. Why was that?

7 A. I was in Columbia with my father at the
8 time.

9 Q. So you said that you were with Skidmore
10 and buying drugs. She was buying drugs?

11 A. She was buying drugs.

12 Q. What impact does that have? Are you a
13 drug addict? Are you a recovering drug addict?

14 A. Do I have abuse history? Yes, I do.

15 Q. Drug abuse history?

16 A. Yes.

17 Q. Dating back to when?

18 A. Significant use didn't start until I
19 was about 13 years old.

20 Q. Is there a connection between the drug
21 abuse and some of your sexual offenses?

22 A. I would certainly say so.

23 Q. Why is that?

24 A. Well, mainly because I'm not in control
25 of my actions at the time, but it also stimulates

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 more sexual arousal because of the drugs.

2 Q. When was the last time that you were
3 around drugs?

4 A. 2013.

5 Q. When you -- one of your charges at
6 South Carolina Department of Corrections was a
7 contraband infraction?

8 A. Yes, sir.

9 Q. What was the contraband?

10 A. There was two. There was the tattoo
11 paraphernalia and there was tobacco.

12 Q. Cigarettes?

13 A. Yes.

14 Q. Is there other drugs available at
15 Evans?

16 A. Yes.

17 Q. Is there alcohol available at Evans?

18 A. Yes, sir.

19 Q. If you were released today, where would
20 you go?

21 A. I would go to the care of my mother and
22 grandparents.

23 Q. Where is that?

24 A. Summerville.

25 Q. Okay. What are you going to do for

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 money?

2 A. I have a job readily available with my
3 uncle. He's a contractor for construction, but I
4 intend to make my own means of employment as soon
5 as I can so I can get my license reinstated and
6 begin to become a fixture in my daughter's life.

7 Q. What kind of license did you have?

8 A. I had a regular license, a car license.

9 Q. Oh, a driver's license?

10 A. Yes, sir.

11 Q. What trade do you have that your uncle
12 would employ you?

13 A. Well, I'm very skilled in construction,
14 specifically his field, which is drywall and
15 Sheetrock. And I'm also very skilled in brick
16 masonry, which my dad does the installation of
17 granite and marble countertops. And that's my
18 ambition as I progress in my adult life on the
19 outside.

20 Q. Without looking at an excuse, what
21 explanation is there for some of your conduct when
22 you were a child?

23 A. I wouldn't use any excuses.

24 Q. I'm not asking for an excuse, but you
25 obviously had moved and you were put in foster care

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1 for a period of time?

2 A. Yes.

3 Q. You were defiant, is that safe to say?

4 A. Very.

5 Q. Now, Dr. Gehle referred to -- that
6 there possibly was sexual abuse that you were the
7 victim of?

8 A. Yes, sir.

9 Q. What can you tell me about that?

10 A. Well, the first -- the first incident
11 occurred when I was about six years old, a cousin
12 of my grandmother, he was about 40 years old at the
13 time. My mother was in a halfway house, and there
14 was a couple of instances when he forced me to
15 perform oral sex on him.

16 Q. Who were you living with if your mother
17 was in a halfway house?

18 A. I was living at my grandparents.

19 Q. And how often did that occur?

20 A. It happened about three times.

21 Q. And were you -- was there any physical
22 abuse from --

23 A. There was -- sometimes he would hit me
24 on top of the head or like hit me with -- he would
25 put soap in a sock and hit me with the soap in the

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1 sock so it wouldn't leave bruises. And he would --
2 there were some times when he would be the person
3 who would drive me to see my mother, and he would
4 threaten to not let me visit with my mother if I
5 didn't perform the acts.

6 Q. Where would he be driving you to?

7 A. I believe at the time she was on.--

8 Q. This is when she was still at the
9 halfway house?

10 A. Yes, sir. It was on Remount Road.

11 Q. To your recollection, how long was she
12 in the halfway house?

13 A. She was there about six months.

14 Q. Okay. And when she got out, where did
15 you live?

16 A. I was living in the same place, my
17 grandparents and her.

18 Q. She came back to your grandparents'
19 house?

20 A. Yes, sir.

21 Q. I see. Okay. What do you know about
22 the victims of your sexual offenses?

23 A. As far as what?

24 Q. How have your acts affected them?

25 A. I'm sure they've caused irreparable

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1 psychological damage of which I'm very remorseful
2 for, I'm sorry for, but, obviously, I can't take
3 back. Aside from that I'm not sure, but I'm
4 definitely aware of psychological damage.

5 Q. If you needed -- if you were going to
6 go to sex offender treatment, would you have
7 transportation for that?

8 A. Yes, sir.

9 Q. What would happen if you failed your
10 community supervision? How much time would you be
11 facing?

12 A. Seven years.

13 Q. Or would it be five years? Because
14 wasn't it seven suspended to --

15 A. It was a suspended sentence of seven
16 years with the service of three years. So if I was
17 to violate my probation, I would go do the full
18 seven on 85 -- seven years on 85 percent, which
19 would be about six years -- five-and-a-half-years..

20 Q. What's the chance of you wanting to go
21 back to prison?

22 A. There is no chance.

23 Q. Did they offer any types of class that
24 you could -- any type of rehabilitation classes
25 when you were at Evans?

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 A. Yes, sir. They did offer -- they did
2 offer a program called Second Chance. By the time
3 I was -- I didn't have enough time left on my
4 sentence to enroll in it or I would have. It was
5 basically, you know, you take like -- you take,
6 courses for vocational purposes and anger
7 management. There was some like, you know, Reiki
8 techniques. Reiki is like a self enlightenment,
9 basically, meditation, but at the time I was
10 already out the door so I couldn't participate.

11 Q. Are you going to have to register as a
12 sex offender?

13 A. Yes, sir.

14 Q. How often?

15 A. Every 90 days actually.

16 Q. How has your time at Evans changed you?

17 A. Well, in several ways. It's very
18 different than the time that I did as a juvenile,
19 because when I was a juvenile I was still
20 developing and my mind wasn't as sharp and
21 attentive as it is now. It has changed me in a way
22 that I've had -- I've had time to gain a lot of
23 perspective and a lot of -- I've had time to
24 actually look at the things that I have done in my
25 life to a very lengthy regard.

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1 And, you know, I'm sickened with a lot
2 of the things I've done. As I said earlier, I
3 can't take those things back. I wish I could every
4 day. I struggle with myself every day on how I
5 wish that I could take them back, but, obviously, I
6 can't.

7 All I can do is make sure and ensure
8 that I will be a better person for myself, my loved
9 ones, and my community in the future. And I intend
10 to take every step necessary to make sure that's a
11 reality.

12 Q. What steps would those be?

13 A. Participating in my treatment, my work,
14 my daughter, and just having a normal healthy
15 lifestyle.

16 Q. How much contact have you had with your
17 daughter and wife -- the mother of your daughter?

18 A. I talk to her almost every day.

19 Q. Did you have -- did you communicate
20 with them while you were in Evans?

21 A. Yes. She's very supportive.

22 Q. Did you pick up any infractions while
23 you were -- you've been here since June, so nine
24 months?

25 A. Yes.

CRAIG ALLEN CARROLL - CROSS EXAM BY MR. BOGLE

1 Q. Have you had any infractions here at
2 Hill-Finklea?

3 A. I had one infraction. It was --
4 actually, it was recent, but it was -- I had just
5 got woken up and I was going downstairs to medical,
6 and I believe I said a couple of cuss words to an
7 employee. And I was put in lockup, but only for
8 ten days.

9 Q. You were in medical. Are you on
10 medication right now?

11 A. No.

12 MR. FALK: No further questions.

13 THE COURT: Mr. Bogle.

14 MR. BOGLE: Thank you, Your Honor. May
15 it please the Court.

16 CROSS-EXAMINATION

17 BY MR. BOGLE:

18 Q. Mr. Carroll, so you were saying that
19 while at the local detention center you said a
20 couple of cuss words and they put you in lockup for
21 ten days?

22 A. Yes, sir.

23 Q. That's all that happened?

24 A. That's all that happened. The way that
25 the report was written up is that it was a threat,

CRAIG ALLEN CARROLL - CROSS EXAM BY MR. BOGLE

1 but I did not threaten the employee.

2 Q. So a threat would mean the ten days,
3 right?

4 A. Yes.

5 Q. You talked about going to sex offender
6 treatment while in DJJ?

7 A. Yes, sir.

8 Q. But that didn't take, did it? I mean,
9 you re-offended again as an adult?

10 A. Yes, sir.

11 Q. Right?

12 A. Yes, sir.

13 Q. And the drug history you reported to
14 Dr. Gehle includes a history of heroin, cocaine,
15 alcohol, marijuana and prescription pain meds,
16 right?

17 A. Yes, sir.

18 Q. And as far as work history, what you
19 told Dr. Gehle was, not much. That you worked in
20 construction, drywall, landscaping, but basically
21 lived off of girls for the last couple of years
22 before you went to prison?

23 A. I didn't put it as vaguely as that,
24 but, yes --

25 Q. You were basically living off of the

CRAIG ALLEN CARROLL - CROSS EXAM BY MR. BOGLE

1 two girls before you went to prison --

2 A. Yes.

3 Q. -- for the last two years? Okay. How

4 long -- was Evans the only Department of

5 Corrections prison you served your time at?

6 A. Yes.

7 Q. And you were there about three years,

8 right?

9 A. I was there about two years and a
10 month.

11 Q. Did you take any classes at Evans, like
12 trade classes? How to learn do this? Education
13 classes, motivation classes? Anything besides
14 sitting there?

15 A. Well, as I stated earlier, by the time
16 they had those things readily available, I was out
17 the door.

18 Q. For two-and-a-half-years?

19 A. Yes, sir.

20 MR. BOGLE: Thank you, Your Honor.

21 THE COURT: Mr. Falk.

22 REDIRECT EXAMINATION

23 BY MR. FALK:

24 Q. Do you recall getting credit for time
25 served when you were sentenced?

CRAIG ALLEN CARROLL - REDIRECT EXAM BY MR. FALK

1 A. Sir?

2 Q. Before you went to Evans you were at
3 the Hill-Finklea Detention Center, were you not?

4 A. Yes, sir.

5 Q. For about 280 days?

6 A. Yes.

7 Q. That got credited to your sentence; is
8 that right?

9 A. Yes, sir.

10 Q. So part of the time of your three-year
11 sentence, almost nine months was spent here at the
12 detention center?

13 A. Yes, sir.

14 MR. FALK: No further questions.

15 THE COURT: Any recross?

16 MR. BOGLE: No, Your Honor.

17 THE COURT: You may step down. Thank
18 you.

19 THE DEFENDANT: Thank you.

20 THE COURT: Call your next witness.

21 MR. FALK: We call the defendant's
22 mother.

23 LISA DIANE O'CONNELL,

24 being first duly sworn, testified as follows:

25 THE CLERK: State your full name for

LISA DIANE O'CONNELL - DIRECT EXAM BY MR. FALK

1 the record and spell your last name.

2 THE WITNESS: My name is Lisa Diane
3 O'Connell, O-C-O-N-N-E-L-L.

4 THE COURT: Mr. Falk.

5 DIRECT EXAMINATION

6 BY MR. FALK:

7 Q. Ms. O'Connell, where are you currently
8 living?

9 A. I live at [REDACTED], Summerville.

10 Q. Okay. If your son is released today,
11 where would he live?

12 A. He would live there with me and my
13 parents.

14 Q. And so would he have his room there?

15 A. He has a room. I have it all fixed up.
16 Got all of his stuff in there, and it's just the
17 three of us there.

18 Q. Where would he work?

19 A. My brother has a job waiting for him,
20 hanging drywall with him.

21 Q. That's the uncle that --

22 A. Yes, my younger brother.

23 Q. Where is that?

24 A. Well, it's just O'Connell Drywall.

25 Q. Here in Berkeley County?

LISA DIANE O'CONNELL - DIRECT EXAM BY MR. FALK

1 A. It's in Summerville mostly, but my
2 brother does work all over South Carolina.

3 Q. Okay. It might take him awhile to
4 start working. What would he do for money between
5 now and then?

6 A. Well, I would help him with that. I
7 have set aside money every month for him so he
8 would have his own and, you know, for wherever he
9 needed it. We live approximately five miles away
10 from the drug and alcohol commission which would
11 provide the counselling that he's talking. About
12 five miles, maybe not even that.

13 Q. Okay. And if he needed transportation
14 to sex offender treatment or --

15 A. He would have it. There is always
16 going to be ready transportation for him. My
17 father's retired, my mom's retired, I'm on
18 disability. Everyone is there and we're all very
19 supportive. We want him to come home.

20 Q. What is the basis of your disability?

21 A. I have bipolar disorder.

22 Q. How long have you suffered from that?

23 A. Since I was about 15.

24 Q. Okay. Obviously, there were periods of
25 time you had difficulty controlling yourself?

LISA DIANE O'CONNELL - DIRECT EXAM BY MR. FALK

1 A. Yes.

2 Q. What was that about?

3 A. Well, I mean, I had a lot of stuff
4 happening to me. My father had just gotten shot,
5 he was a Charleston County police officer, that
6 brought it on. I just got really impulsive and
7 started doing really bad in school and I got
8 diagnosed with bipolar disorder, class I.

9 When I was 30, it was -- I attempted
10 suicide and I got diagnosed with it and got put on
11 meds. And I haven't had any -- there's been no
12 more suicide attempts and that was 16 years ago,
13 but I have to take medication every day.

14 Q. But you filed a petition that he was
15 incorrigible?

16 A. That Craig was?

17 Q. Yes.

18 A. I don't recall.

19 Q. Did he -- he went to foster care at
20 some point?

21 A. Not while he was with me. That's when
22 he was with his father.

23 Q. What was that?

24 A. Yeah. And that was incorrigible
25 because his father said he wouldn't go to school.

LISA DIANE O'CONNELL - DIRECT EXAM BY MR. FALK

1 He was getting beat by his father and his
2 stepmother at that time, and that's why he was
3 taken out of their home and put in foster care.

4 I tested positive for marijuana, so he
5 got taken from me. Okay? He was 13. And he went
6 to his father's house and that's when he went to
7 foster care.

8 Q. Okay. Did he have any mental health
9 treatment prior to 13?

10 A. Yes. Since he was six years old he was
11 going to mental health and he had been on meds for
12 ADHD. When he was 11, Dr. Alexander, at Dorchester
13 County Mental Health, diagnosed him with bipolar
14 disorder, same as me. And they were giving him
15 meds for it and he was doing really good, but then
16 we couldn't get the meds anymore and something
17 happened with -- his Medicaid wouldn't pay for it.
18 So he couldn't get the medication that he needed.

19 When he went to juvenile detention, he
20 was on it and he had started doing really good. If
21 he's on his medication for his bipolar disorder, he
22 does well. And it's Adderall and Gabapentin.
23 Those are the two things that he's always done much
24 better with when he's on. So those are his
25 medications.

LISA DIANE C'CONNELL - DIRECT EXAM BY MR. FALK

1 He will -- obviously, if he gets out,
2 he will go to the mental health facility and we
3 will get him back on his meds right away. That's
4 the first thing I want to do. He hasn't had his
5 medication since he's been locked up for over three
6 years. So that's the first thing we would do. And
7 then, of course, get him enrolled in whatever, you
8 know, his probation dictates. We would follow it
9 to the letter.

10 Q. How would you pay for the medication?

11 A. I will pay for it. That's not a
12 problem. Me and my parents will pay for it until
13 he can pay for it on his own. Me and him discussed
14 this at length and I'm ready to help him out with
15 the first three months with money to get his meds
16 and whatever else he needs, but then, you know,
17 hopefully, he's going to have enough money saved or
18 a job by then after that three months to get his
19 own stuff. I'll help him out as long as he needs
20 it.

21 MR. FALK: I have no further questions.

22 THE COURT: Mr. Bogle.

23 MR. BOGLE: Yes, ma'am, if I may
24 briefly.

25 CROSS-EXAMINATION

LISA DIANE O'CONNELL - DIRECT EXAM BY MR. FALK

1 BY MR. BOGLE:

2 Q. So the family court charge of being
3 incorrigible, being out of control, was when he was
4 living with his dad?

5 A. Yes.

6 Q. He got taken away from you because --

7 A. Because I tested positive for marijuana
8 in the emergency room.

9 Q. Is that because you'd had a criminal
10 conviction of some sort?

11 A. No. I don't have a criminal
12 conviction.

13 Q. When were you in a halfway house?

14 A. I was in a halfway house because the
15 hospital thought it might be best that I go there
16 for awhile instead of going straight back home to
17 where all these triggers were.

18 My kids -- you know, I was a single
19 mom. Me and his dad divorced when he was a baby.
20 Okay. So I went to -- it was advised by the
21 hospital I was at that I go to the halfway house.

22 Q. So --

23 A. So I went.

24 Q. You were hospitalized because of
25 testing for marijuana?

LISA DIANE C'CONNELL - DIRECT EXAM BY MR. FALK

1 A. No. That was when I tested -- when
2 they diagnosed me with bipolar. When I tested for
3 marijuana, I had a kidney infection and it was just
4 routine blood. You know, they took my blood and
5 said I had marijuana. And they took my son away
6 and my parents got temporary custody of him. Then
7 his dad stepped in and said that he wanted him.

8 Q. So you're saying a simple test for
9 marijuana got him taken way from you?

10 A. Yes.

11 Q. Okay. He tested -- when he was on the
12 stand he testified about being beaten by his
13 grandfather in the past. Is this the same
14 grandparents that he's going to go live with you
15 with?

16 A. My father has never beat him, no.

17 Q. My question is --

18 A. No, it's not the same. I don't know
19 exactly what grandparent he's talking about, but
20 it's not my parents.

21 Q. How many sets of grandparents living
22 right now --

23 A. Well, he's got two, so...

24 Q. There is another set of grandparents?

25 A. His father's parents.

1 MR. BOGLE: Nothing further.

2 THE COURT: Mr. Falk.

3 MR. FALK: No redirect.

4 THE COURT: You may step down. Thank
5 you.

6 Call the next witness.

7 MR. FALK: May I call my -- Your Honor,
8 I have one other witness who is trying to get here.
9 Can I have a few minutes to try to reach her to see
10 what her progress is?

11 THE COURT: We're ready.

12 MR. FALK: Can I ask for a continuance?

13 THE COURT: Of this trial?

14 MR. FALK: For an hour, just so I can
15 allow -- maybe lunchtime for me to get my witness
16 here.

17 THE COURT: So you have no additional
18 witnesses to call that are ready?

19 MR. FALK: That is correct.

20 THE COURT: Ladies and gentlemen, there
21 is a matter of law that I must take up outside of
22 your presence. Do not begin your deliberations and
23 do not discuss the case among yourselves. Again,
24 take your notepads with you or leave them in your
25 seats.

1 Again, please rise for the jury.

2 (Jury out, 12:17 p.m.)

3 THE COURT: Thank you. Be seated. We
4 will go ahead and do the motions for directed
5 verdict at this time. Happy to hear from you.

6 MR. FALK: Your Honor, at this time we
7 would move for a directed verdict. I don't believe
8 that the State has proven that he suffers from a
9 mental disease or defect, and that is the
10 requirement that he -- in order to be a sexually
11 violent predator you have to suffer from a mental
12 disease or defect. We believe that the diagnosis
13 of biastophilia being not found in the DSM4 is
14 indicative of the fact that it is not a recognized
15 mental disease or defect. So failing that.

16 THE COURT: Mr. Bogle, happy to hear
17 from you.

18 MR. BOGLE: Your Honor, we would submit
19 respectfully that in the directed verdict light,
20 the light most favorable to the nonmoving party,
21 the State has shown the existence of the sexually
22 violent crime, we've shown the mental abnormality
23 and a personality disorder. And while the mental
24 abnormality has been challenged, the personality
25 disorder has not, and we would submit that the

1 mental abnormality she chose is within the realm
2 of, included, but not limited to, mental
3 abnormalities, so it doesn't have to be in the
4 diagnostic manual, edition five.

5 We've also seen a lack of control for a
6 repeated history of year after year after year of
7 re-offending sexually, despite prior sexual
8 offender treatment. So our contention is, we've
9 presented sufficient evidence right now to get past
10 the directed verdict motion and we would ask that
11 it be denied.

12 THE COURT: Anything else, Mr. Falk?

13 MR. FALK: No, Your Honor.

14 THE COURT: Pursuant to Rule 50(a) of
15 the South Carolina Rules of Civil Procedure, in
16 ruling on a motion for a directed verdict, this
17 Court must weigh the evidence in all reasonable
18 inferences in the light most favorable to the
19 nonmoving party.

20 I am concerned only with the existence
21 or nonexistence of the evidence. In this case, the
22 elements which the State must prove are that the
23 respondent has been convicted of a sexually violent
24 offense, and that the respondent suffers from a
25 mental abnormality or personality disorder that

1 makes him likely to engage in acts of sexual
2 violence if not confined in a secure facility for
3 long-term control, care, and treatment.

4 The State has introduced a certified
5 copy of the defendant respondent's prior conviction
6 for a criminal sexual conduct with a minor in the
7 second degree, admitted it without objection. Dr.
8 Gehle testified that -- testified that she had
9 reviewed this conviction in creating her report.
10 The mental abnormality that can cause someone to
11 commit acts of sexual violence or disorders over a
12 period of at least six months and result in a
13 problem -- sorry, indicated that she diagnosed
14 Mr. Carroll with other specified paraphilic
15 disorders, biastophilia.

16 Based upon the tests administered to
17 Mr. Carroll, his score of seven indicated that he
18 is at a high risk to re-offend, and out of those
19 who scored a seven, 27.2 percent re-offended within
20 five years based upon the research examined by Dr.
21 Gehle.

22 Mr. Carroll, according to the
23 testimony, is 5.25 times more likely to re-offend
24 compared to the average sex offender. She also
25 found that Mr. Carroll has dynamic risk factors.

1 To a reasonable degree of psychological
2 certainty, Dr. Gehle is of the opinion that
3 Mr. Carroll suffers from both a mental abnormality,
4 other specified paraphilic disorders, and
5 personality disorder, and testified that she is of
6 the opinion that these predispose Mr. Carroll to
7 commit acts of sexual violence if he is not civilly
8 committed.

9 She is also of the opinion that he's
10 dangerous and likely to re-offend to such a degree
11 that it causes a menace to society and that he has
12 significant difficulty controlling his behavior.

13 Viewed in the light most favorable to
14 the nonmoving part, in this case the State, the
15 respondent's motion for directed verdict is denied.
16 Note your exception to my ruling.

17 MR. FALK: Thank you, Your Honor.

18 THE COURT: Mr. Falk, where is your
19 witness?

20 MR. FALK: All I can do is try to call
21 her.

22 THE COURT: You may step
23 out.

24 (A recess transpired.)

25 MR. FALK: Your Honor, she reports that

1 she's not able to get here, she has a car issue.
2 And she's not under Subpoena because she was my
3 witness, and she is at her house. She has a child
4 with her that needs a car seat. She's not
5 available right now. She's trying -- I didn't know
6 if it's a possibility that if we took a lunch break
7 and give her another hour or something, I could --
8 maybe I could go pick her up. I'm just trying to
9 figure out something.

10 THE COURT: I indicated to you on
11 Monday that all of your witnesses needed to be
12 here, and so if that was going to be an issue you
13 should have sent the appropriate Subpoena for her,
14 and I indicated to you at our midmorning break that
15 we were working through lunch. And so your request
16 for a continuance is denied.

17 MR. FALK: I would just want to call --
18 call my client as a rebuttal witness regarding the
19 question in Mr. Bogle's testimony about a
20 grandfather beating him. I don't think that was
21 accurate.

22 THE COURT: I don't know of the
23 appropriate procedure. I don't know that he's a
24 rebuttal witness. Are you specifically going to
25 recall him?

1 MR. FALK: I guess I would recall
2 him --

3 THE COURT: Mr. Bogle, do you have any
4 objection?

5 MR. BOGLE: No, Your Honor. It's -- I
6 guess it's not a rebuttal witness. It's recalling
7 the same witness. Rebuttal, to me, means after I
8 rested -- after he rested, I recall Dr. Gehle. I
9 will do whatever you think is fair.

10 THE COURT: And I'm just trying to
11 follow the Rules. So Mr. Bogle, do you have any
12 rebuttal witnesses?

13 MR. BOGLE: I do not.

14 THE COURT: So this would be your
15 last --

16 MR. FALK: Yes.

17 (Off-the-record conference.)

18 THE COURT: We will bring the jury back
19 in. Call your witness.

20 Bring them back in.

21 MR. BOGLE: Judge, what I would like to
22 suggest to the Court, that if he's going to be
23 called back on the stand that he be limited to the
24 one issue --

25 THE COURT: I think that's acceptable.

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 That's what -- Mr. Falk indicated that's what he
2 was going to do.

3 (Jury in, 12:28 p.m.)

4 THE COURT: Thank you. Please be
5 seated. Call your next witness.

6 MR. FALK: Recall my client to the
7 stand.

8 CRAIG ALLEN CARROLL,
9 being previously duly sworn, testified as follows:

10 THE COURT: Sir, I will remind you that
11 you are still under oath.

12 THE DEFENDANT: Yes, ma'am.

13 DIRECT EXAMINATION

14 BY MR. FALK:

15 Q. Mr. Carroll, you were here when
16 Mr. Bogle asked your mother about his recollection
17 of testimony you had about abuse from your
18 grandfather?

19 A. Yes, sir.

20 Q. Can you -- did you -- did you ever
21 suffer abuse from your grandfather?

22 A. I did not.

23 Q. Who were you saying was the adult that
24 had abused you?

25 A. It was the cousin of my grandmother.

CRAIG ALLEN CARROLL - DIRECT EXAM BY MR. FALK

1 Q. The cousin of your grandmother.

2 A. His name was Ricky Ray. Lee Ray,
3 sorry.

4 Q. And is that your maternal grandmother
5 or -- your father's mother or your mother's mother?

6 A. My mother's mother.

7 Q. Okay. But that's who the person was?

8 A. Yes.

9 MR. FALK: No further questions.

10 THE COURT: Mr. Bogle?

11 MR. BOGLE: Nothing, Your Honor.

12 THE COURT: You may step down. Thank
13 you.

14 Call your next witness.

15 MR. FALK: We would rest.

16 THE COURT: Reserving all motions and
17 matters, any rebuttal?

18 MR. BOGLE: No, Your Honor.

19 THE COURT: Ladies and gentlemen, you
20 have now heard all the testimony that you will hear
21 in this case and received into evidence all of the
22 exhibits that have been made part of the record in
23 this case. What you will now hear is closing
24 argument on behalf of counsel and then I will
25 instruct you on the law applicable to this case.

1 The pizza is almost here so we're going
2 to go ahead and take a lunch break, and then when
3 you return we will hear closing arguments on behalf
4 of counsel and then you will receive your
5 instructions.

6 Ladies and gentlemen, please remember
7 all of my admonitions. You may not begin deciding
8 any issue in this case. You have not been
9 instructed on the law applicable to this case. Do
10 not discuss this case, do not decide any issue in
11 this case.

12 Please take your notepads with you, and
13 you may keep them with you during the lunch break
14 and then we will receive you back in this
15 courtroom. Please rise for the jury.

16 (Jury out, 12:30 p.m.)

17 THE COURT: Please be seated.

18 Mr. Falk, I'll allow you to proffer
19 what the witness would testify to just for the
20 record.

21 MR. FALK: Based on my understanding of
22 my conversations with Kiersten Wilde -- her name is
23 K-I-E-R-S-T-E-N, W-I-L-D-E, she's the mother of my
24 client's five-year-old daughter -- excuse me,
25 six-year-old daughter. And based on my

1 conversations with her, I asked her -- I advised
2 her that Dr. Gehle suggested that my client has
3 sexual interest in having sleep -- interest in
4 having sex with people who were asleep and then
5 having sex with nonconsenting partners.

6 And I asked her whether or not that was
7 her understanding of what his sexual motivation --
8 if that's what their sex life was. I asked her
9 whether or not he was primarily motivated for sex
10 with somebody who was nonconsenting or nonsleeping.
11 She said that that was not.

12 It's my understanding that her
13 testimony would have been that that was not her
14 experience of their sex life and it's not who she
15 believed my client was.

16 THE COURT: Okay. And when -- and did
17 she indicate to you that she was going to be here?
18 When did you first realize she was not going to be
19 here.

20 MR. FALK: I called her this morning,
21 and then when you had -- I called her again this
22 morning and then I called her --

23 THE COURT: What time did you tell her
24 to be here today?

25 MR. FALK: I told her at -- I

1 originally told her 2:00 today. And then we were
2 moving through lunch, that's when I called to see
3 if she could get here as soon as she could. Her
4 issue was that they have one car and her husband
5 wasn't back from Columbia. He has the car and the
6 car seat and she was there with no transportation
7 to take care of her daughter.

8 THE COURT: So 9:00, 2:00 would not
9 have made a difference; is that correct?

10 MR. FALK: I don't know when the
11 husband would have been back.

12 THE COURT: Okay. Thank you.
13 Anything further?

14 MR. FALK: No, Your Honor.

15 THE COURT: Do you wish to place any
16 motions or matters?

17 MR. FALK: We would renew our motion
18 for directed verdict and renew my motion for
19 continuance in this matter.

20 THE COURT: Mr. Bogle.

21 MR. BOGLE: Regarding the directed
22 verdict issue, Your Honor, we would rely upon the
23 testimony presented. In light of both sides you've
24 heard from, I think the testimony is still pretty
25 much uncontradicted that he has a personality

1 disorder and fairly uncontradicted he has an
2 established mental abnormality. He's been
3 convicted of the right kind of crime and his entire
4 record, the total history package of this man shows
5 that he has a lack of control of himself, that he
6 can't control himself, and the event that he keeps
7 re-offending over and over and over again, and this
8 goes back an awful long time.

9 We've got the diagnosis, we got the
10 crimes. We think there has been sufficient
11 information presented to show that he cannot
12 control himself to the extent that he needs to be
13 confined for long-term control, care, and
14 treatment. Again, all sufficient to make it a jury
15 issue to decide, not one for the Court to decide.

16 THE COURT: I didn't ask you, do you
17 have any opinion about a continuance?

18 MR. BOGLE: No opinion about that, Your
19 Honor.

20 THE COURT: Okay. Thank you.
21 Anything further, Mr. Falk?

22 MR. FALK: No, Your Honor.

23 THE COURT: I have heard nothing to
24 make me change my initial ruling at the close of
25 the petitioner's case. I stand by my initial

1 ruling, your motion for a directed verdict is
2 denied.

3 Please come view the verdict form.

4 (Counsel complies)

5 Be back at 1:15. Thank you.

6 (A luncheon recess transpired.)

7 THE COURT: Anything before we bring in
8 the jury, Mr. Bogle?

9 MR. BOGLE: No, Your Honor.

10 THE COURT: Mr. Falk.

11 MR. FALK: No, Your Honor.

12 THE COURT: Bring in the jury.

13 All right. Ladies and gentlemen, I
14 hope that you enjoyed your lunch. We are now going
15 to hear closing argument on behalf of counsel.
16 Just as I instructed you what was contained in
17 their opening statement was not evidence, neither
18 is what is contained in their closing argument. It
19 is merely their intention as to what the evidence
20 has shown you.

21 After you have heard closing arguments
22 on behalf of counsel, I will instruct you on the
23 law applicable to this case and you will retire to
24 consider your verdict. Please give your strict
25 attention.

CLOSING ARGUMENT - BY MR. BOGLE

1 Mr. Bogle.

2 MR. BOGLE: Thank you, Your Honor. May
3 it please the Court. Mr. Falk.

4 Again, I would like to thank you for
5 doing your job for Berkeley County, the State of
6 South Carolina, and Mr. Carroll.

7 Now is the time for you to go back and
8 apply your common sense to what you heard from the
9 witness stand because these are the facts that you
10 heard today, interpret the facts as to what
11 happened, look at the exhibits you'll receive,
12 which is right here, (Indicating) this is the copy
13 of the prior conviction, and reach a verdict.

14 Now, again, the burden of proof is on
15 the State to show beyond a reasonable doubt -- a
16 fairly high burden, and it should be because it
17 affects Mr. Carroll's liberty. The judge will
18 explain what that means, beyond a reasonable doubt
19 -- that he is a sexually violent predator.

20 I read part of the statute that they
21 passed when I first started. Let me give you
22 another paragraph here. It says, they also wrote,
23 because the existing civil commitment process is
24 inadequate to address the special needs of sexually
25 violent predators and the risks they present to

CLOSING ARGUMENT - BY MR. BOGLE

1 society, the general assembly has determined that a
2 separate involuntary civil commitment process for
3 the long-term control, care, and treatment of
4 sexually violent predators is necessary. So that's
5 where you are today.

6 Now, again, what does the State have to
7 prove? Number one, has he been convicted of a
8 sexually violent crime? No question about that.
9 You have it right here, criminal sexual conduct
10 with a minor in the second degree. And, remember,
11 look at the sentencing sheet and look at the words
12 of the indictment. Remember, there was testimony
13 that the crime began -- it covered a couple of
14 years. It began when the little girl was as young
15 as 11 years old and continued until she was about
16 13 or 14. So keep that in mind.

17 Now, one thing you might want to think
18 is, okay, you know, this is what he was back then,
19 all the testimony I've heard from Dr. Gehle, the
20 expert witness, was what he was back then. What is
21 he now? That's a valid consideration, but I would
22 suggest to you, don't ignore what he was back then
23 and what he was right here. Because the best
24 predictor of past behavior of any type -- of future
25 behavior, rather, of any type is what you did in

CLOSING ARGUMENT - BY MR. BOGLE

1 the past. People tend to repeat their good things
2 and their mistakes.

3 The burden of proof is to show the
4 crime. We got that.

5 The next thing is, does he have a
6 mental abnormality? And the statute says, mental
7 abnormality or personality disorder. One or the
8 other, or both. In this case, he has both. He has
9 the other specified paraphilic disorder
10 biastophilia.

11 There's been a lot of talk about what
12 that means. Is it in the book? Is it not in the
13 book? Remember what the book said -- and the book
14 is only so big. It listed some common ones and
15 then it said you could make this diagnosis, other
16 specified disorder, including but not limited to
17 the list that they gave you. So that opens the
18 door to other legitimate diagnoses and that's what
19 we have here.

20 I don't believe that diagnosis has
21 really been seriously challenged, especially so
22 when you consider all of the evidence. This is
23 basically getting aroused by the nonconsent of the
24 victim. And we have a history of that going on as
25 far back as when this young man was a juvenile, 15,

CLOSING ARGUMENT - BY MR. BOGLE

1 14, 13 years of age. It started a long time ago.

2 You have that.

3 But, also, and this is somewhat
4 unchallenged, he has a personality disorder,
5 antisocial. He doesn't obey the rules and never
6 has since he was about five or six years old. He
7 just does not obey the rules. And some of these
8 rules are the kind of thing that got him arrested,
9 some of the kind of things that could have gotten
10 him arrested, and the psychologist has to look at
11 both. She's looking at the global picture, the
12 total picture of this man to see if he fits this
13 risk, and she found that he did.

14 So we have the mental abnormality, we
15 have the personality disorder, and the issue next
16 is, can he control himself? Is he able to control
17 his behavior? And I would submit, based on a life
18 history starting before he was about ten years old,
19 up to his age now, he's about 27, it just goes on
20 and on and on.

21 In fact, when I look at a case I try to
22 think if the case has a theme, a theme that I can
23 use in just a couple of words. And the theme I
24 found here was, he doesn't stop. And that's what
25 Dr. Gehle found over and over and over again.

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1 Sexual offenses, some not charged, some
2 not convicted, but still sexual charges, and then
3 the ones we have him convicted of right here and
4 the one back in family court as well. So there's
5 also been talk about, well, Dr. Gehle, you just ran
6 one test, you didn't run a bunch of test. This is
7 what she does for a living. She testified for the
8 last three or four years she's done nothing but
9 these pre-commitment evaluations.

10 And she has found in her research that
11 one of the most reliable things is the Static 99R.
12 And what is it? It's based on the study of
13 thousands of sex offenders who have re-offended and
14 looks for common factors among those people. Then
15 you add up those factors, see how many a guy has.
16 In this case, he scored a seven. Now, the lowest
17 you can get is a minus three. The highest is 12.
18 Seven is only four or five from the top. There's
19 about ten points below that.

20 A seven gives him -- based upon the
21 analysis and research that's been done, he's got
22 about a 27 percent chance of committing another
23 sexual offense. You have to put that into
24 perspective. Not knocking off a grocery store, not
25 shoplifting, not stealing something out of

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1 someone's pocketbook, but another sexually violent
2 offense. That's pretty serious.

3 In fact, the information in the case,
4 he's a little over five times more likely than the
5 average sex offender to re-offend. So can he
6 control himself? No. His history shows that. Is
7 he likely to re-offend, and the judge will explain
8 to you what that means in a few minutes? Yes, he
9 is. He's got that likelihood so that he is likely
10 to commit acts of sexual violence.

11 I think when he testified he talked
12 about that -- the question came about having --
13 forcing sex upon somebody while they're asleep.
14 And he talked about he would wake them up first,
15 but, you know, if he's got consensual sexual
16 partners out there to have sex with, we're fine
17 with it. And yet, despite that availability, he
18 has forced sex with someone else. That shows the
19 deviance, it shows the lack of control.

20 There was talk of sex offender
21 treatment. Now, admittedly, he did not get it
22 while at the Department of Corrections. Don't know
23 why; maybe it wasn't offered, maybe he wasn't at
24 the right place. At the same time, he was enrolled
25 and he talked about how extensive it was, back when

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1 he was in the Department of Juvenile Justice. And
2 yet, it didn't take because what do we have him
3 doing? We have him offending while he's in sex
4 offender treatment and then we have him offending
5 right here. So that didn't work.

6 What are we left with? Has the State
7 met its burden beyond a reasonable doubt? We have
8 the crime, we have the mental abnormality, we've
9 proven the personality disorder and the lack of
10 control. I would submit to you, when you go back
11 and you listen to what you've heard and you find
12 the facts on this case, I would submit to you that
13 the appropriate verdict would be, yes, Craig
14 Carroll is a sexually violent predator. Your
15 Honor.

16 THE COURT: Mr. Falk.

17 MR. FALK: Your Honor. Mr. Bogle.

18 Don't commit my client as a sexually
19 violent predator just because he has a criminal
20 record. It's a very easy thing to do here. If you
21 remember, Dr. Gehle said right off of the bat when
22 I was asking her questions, just because somebody
23 has committed a rape does not mean they're a
24 sexually violent predator. And she also said that
25 you can commit more than one rape without being a

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1 sexually violent predator.

2 The focus that we are here today on is
3 what I've been talking about since the beginning,
4 is he a bad person because he has a criminal record
5 or is he mad? Bad, mad, they rhyme. That's why I
6 always say it that way. Does he have a mental
7 disease? Dr. Gehle told you right off the bat that
8 just because you commit a rape doesn't mean that
9 you have a mental disease. It could, but you just
10 don't know.

11 We do know he committed the rape. I
12 told you that from the beginning. I told you that
13 you would hear some kind of horrendous facts and
14 that it would be very easy to use those facts to
15 try to punish my client further. That's not your
16 job today. Your job today is to find out whether
17 or not you believe that he has a mental disease.

18 What do we know? He committed a rape.
19 And, also, when you look at this sheet right here,
20 it shows that he's on probation for five years.
21 It's on the sentencing sheet.

22 What do we know about his childhood? I
23 think it's safe to assume that during his
24 childhood, based on the testimony that you've
25 heard, that he suffered from physical and sexual

CLOSING ARGUMENT - BY MR. FALK

1 abuse, he was taken away from his mother. His
2 mother had her own issues with mental -- mental
3 disease and a bipolar diagnosis and, obviously, had
4 the child taken from her because of testing
5 positive for marijuana. We can assume that that
6 was somewhat of a traumatic household that he was
7 raised up in.

8 And Dr. Gehle certainly acknowledged
9 that some of the abuse that he suffered while he
10 was a child could have contributed to some of his
11 defiant childhood behavior. I'm certainly not
12 putting that out as any type of excuse for my
13 client's conduct, but that is the hand that my
14 client was dealt. And to a large part of time, he
15 played that hand poorly.

16 He committed crimes, he went to the
17 Department of Juvenile Justice and he went to Evans
18 Corrections, which is part of the South Carolina
19 Department of Corrections. He's also had issues
20 with drugs and yet he's had a -- he's not had the
21 normal childhood that most people would have.

22 Dr. Gehle wants you to commit him today
23 because she says he has antisocial personality
24 disorder and that she says he suffers from
25 paraphilia which she called biastophilia. Now, she

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1 read to you the criteria for antisocial personality
2 disorder. And I don't know if you want to review
3 that testimony later, but it sounded to me as
4 though she was describing, again, somebody who was
5 a criminal.

6 And she acknowledged that, you know,
7 almost -- I'm not sure what percentage she said,
8 but she said a high degree of people who are in
9 Department of Corrections could meet the diagnosis
10 of an antisocial personality disorder. I'm not
11 sure if she said three-quarters of the prison
12 population. I think she said it was a high number,
13 but she really didn't know. People don't follow
14 the law. My client didn't follow the law in the
15 past. He suffered the penalties for it.

16 But the diagnosis that I had the
17 biggest problem with is his diagnosis of what she
18 is calling biastophilia. Now, you saw her a couple
19 of times on her direct testimony pull out this
20 book, the Diagnostic and Statistical Manual, and
21 she looked in here when she was on her direct
22 testimony. I mean, this is the book that they rely
23 on. And she also admits that the word,
24 biastophilia, is not found anywhere in this book.

25 Now, admittedly, there are a lot of

CLOSING ARGUMENT - BY MR. FALK

1 paraphilias, sexual diseases. And as Mr. Bogle
2 said, this is not a small book, granted; however,
3 they do include some rather, what we would assume
4 would be, unusual diseases -- well, first of all,
5 Dr. Gehle read from that section that I asked her
6 to read, to explain to you that the reason they put
7 some things in the book is so that the
8 decision-making that they say in the book is they
9 look at how common or the commonality of the
10 particular disease. And that was one of the
11 criteria that they followed.

12 And then they list eight specific ones
13 that they're going to list in the book presumably
14 based on this criteria that they talk about, the
15 commonality. And they list specifically
16 voyeuristic disorder, exhibitionistic disorder, on
17 and on, sexual masochism, sexual sadism. All of
18 these, they're all listed. They decided that --
19 the people who wrote this book, the American
20 Psychiatric Association decided that that was
21 necessary to put that in the book.

22 And then they went on and, you know,
23 certainly acknowledging that there can be lots of
24 paraphilias and that's why they have this
25 unspecified category. And then they gave some

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1 examples of what would be considered as unspecified
2 paraphilia. And they gave examples of zoophilia,
3 telephone scatologia, necrophilia, coprophilia.
4 Again, assuming that they're going on what are
5 common paraphilias. I mean, the ones that they're
6 going to talk about in the book. Why -- if there
7 is such a thing as biastophilia, why is it not in
8 the book?

9 Dr. Gehle said that you need a mental
10 health diagnosis and a risk of reoccurrence in
11 order to have somebody qualified as a sexually
12 violent predator. You have to have both things. I
13 submit that we don't have the mental health
14 diagnosis here that says that my client is a
15 sexually violent predator. Again, her diagnosis is
16 not in the book.

17 Also, what's important about her
18 diagnosis is that there is no published criteria in
19 the book as to how you diagnose it. I mean, maybe
20 it exists, maybe it doesn't exist, but how do you
21 make a diagnosis here? On the other diseases, they
22 list specific things that you have to look for in
23 order to reach this diagnosis, and presumably
24 that's so there can be some common understanding
25 among the community as to what makes somebody a

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1 pedophile and what makes somebody not a pedophile.

2 There's some common understanding what
3 the diagnostic criteria are. I asked her to read
4 the ones for kleptomania, because I was making a
5 comparison between someone who likes chocolate and
6 somebody who likes to steal something, and she read
7 you six or seven specific ones.

8 I asked her, what's the diagnostic
9 criteria for your diagnosis here? And she read a
10 paragraph of something, but nothing was specific.
11 So why would it not be in the book?

12 Now, it would make sense obviously why
13 something like pedophilia would be in the book.
14 And Dr. Gehle has said that my client is not a
15 pedophile, but it just makes intuitive sense that
16 pedophilia would be a mental disorder because
17 there's nothing natural about an adult being
18 attracted to a child.

19 I submit to you the only thing that my
20 client is attracted to is having sex with other
21 females. That's what his attraction is and that is
22 not a deviant sexual interest. Obviously, an
23 attraction to children is a deviant sexual
24 interest, and my client doesn't really have any
25 sexual deviant interest.

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1. If biastophilia was something, why is
2 it not in the book? Now, just pick up -- just
3 think about reading the "Post and Courier"
4 newspaper, that's the one I read. I don't think
5 you can go a week without reading in the paper
6 about somebody being assaulted, a sexual assault.
7 Unfortunately, it's a common occurrence. Sexual
8 assaults happen all the time. It's a common
9 occurrence.

10 But for whatever reason, for Dr. Gehle,
11 although a sexual assault is a common occurrence --
12 if it's a common occurrence, why would the
13 committing of a sexual assault, if it was a mental
14 disease, why would they not talk about it here?
15 Again, they talk about how -- when something is
16 common. I submit to you it is criminal conduct.
17 My client committed criminal conduct. There is no
18 doubt about that. He suffered a penalty for it.

19 The issue is whether or not he has a
20 mental disease. He committed a crime, but he does
21 not have a mental disease. He's been bad, he is
22 not mad. That's the determination you have to
23 make. You can only reach that determination if you
24 think -- if you can accept Dr. Gehle's diagnosis
25 that biastophilia, or an interest in having sex

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1 with nonconsenting adults, is in fact a mental
2 disease. There is no question about it that it's
3 criminal conduct, that some criminal conduct can be
4 punished very severely in the State of South
5 Carolina, but it is not a basis for a mental health
6 diagnosis.

7 When they were talking about the Static
8 99, and that's the actuarial assessment -- and,
9 again, Dr. Gehle said that you can have a risk to
10 re-offend without having a mental disease, but you
11 have to have both in order to be a sexually violent
12 predator. The reality is, people who commit crimes
13 often commit crimes again. Lots of people commit
14 crimes and they commit crimes again. It's only
15 people fitting this definition right here when
16 they're tried, put them away for some additional
17 treatment and take them out of society for an
18 additional period of time as opposed to just
19 letting the criminal justice system take care of
20 it.

21 I thought it was interesting that they
22 used the comparison of a heart attack. And they
23 said that, you know, if you go to the doctor and
24 the doctor can tell you, well, you have these
25 things, so here's the odds that you will have

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1 another heart attack. They want you to use that
2 sort of as a comparison, how you might use an
3 actuarial assessment test. Doctors can say people
4 who have A, B, and C, there is a good chance they
5 will have another heart attack if they don't do
6 something about their cholesterol or lower the
7 blood pressure.

8 The problem is, when you go into an
9 emergency room and you're suffering from chest
10 pains, the doctor can take your blood test, he can
11 take your pulse, and through the blood test and
12 pulse they can tell whether or not you're having a
13 heart attack. They can hook you up to the EKG
14 machine, whatever it is, and they can tell whether
15 or not you're having a heart attack. There is
16 quantifiable testing they can do to prove that
17 you've had a heart attack; therefore, it would make
18 sense to be concerned, well, I've had this heart
19 attack, now I need to know what I can do to prevent
20 it.

21 But they can diagnose it. There is no
22 quantifiable way to diagnose that my client has any
23 type of mental disease. And that's important,
24 because other doctors could look at the same kind
25 of results and reach a different conclusion. Now,

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1 a medical doctor -- somebody goes into the doctor's
2 office, they have the results. The doctor says
3 he's suffering from a heart attack. And as I asked
4 her, you know, you can call a doctor in California
5 and tell him the same results and, yeah, I agree
6 with you, you suffered from a heart attack.
7 Because they can look at the numbers, it's
8 something that's quantifiable.

9 You can't quantify -- at least Dr.
10 Gehle didn't try to quantify this, so we're just
11 really going on her experience. But, again, she
12 acknowledged that, you know, the brain is a
13 complicated organism and that we don't really --
14 she acknowledged that they didn't have those tests.

15 I do think they have one test they
16 could have used. I do think that they could have
17 hooked him up to what is called a PPG machine where
18 they could measure whether or not he was attractive
19 to certain types of sexual situations. Dr. Gehle
20 knows that the test is available here. In fact,
21 Dr. Burke in Summerville provides the testing. And
22 that would have told them whether or not he was
23 interested in a sexual situation where you are
24 forcing the other person to have sex. She says
25 it's not reliable.

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1 Other doctors apparently believe that
2 it is reliable, but the point is, it is at least
3 something to look at so you could look at a number
4 and say, yes, I agree, he scored this on that test,
5 I agree with you. All we have is Dr. Gehle's
6 review of his history to determine whether or not
7 she believes that he has a mental health disease.

8 Now, was the -- was the person next to
9 him asleep when he started having sex with the
10 person or did he wake them up? I don't know, we
11 don't know, but that would make a huge difference
12 in whether or not this is somebody who enjoys
13 having -- you know, you can't reach your conclusion
14 unless you are sure that that's what was going on.

15 If he woke them up and he was having
16 sex with them, then that's not an interest in
17 having sex with someone who is asleep. That's
18 nothing that the Court had to prove, I mean, but
19 you need to be concerned -- you need to be
20 concerned that that is what happened because that's
21 the only way that that supports her diagnosis. You
22 can't just equate the fact that he has a high
23 Static 99 result. You have to have a mental
24 disease.

25 The other thing that Dr. Gehle said is

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1 that my client may need treatment. My client said
2 that he would get treatment. He is probably going
3 to need drug and alcohol treatment on a continuing
4 basis. He said he's had a history of drug and
5 alcohol problems, said that the drug and alcohol
6 problems could have contributed to some of his
7 conduct in the past. But he can also get
8 outpatient sex offender treatment.

9 Dr. Gehle said that there is no --
10 there is no evidence -- I guess she said you can
11 say -- some people say it's more effective in
12 custody and some people say it's not more effective
13 in custody. There is no proof that the treatment
14 that he needs in order to be effective for him
15 needs to be done while he's in custody. You may
16 think that he needs treatment, but you have to
17 determine whether or not you think he needs
18 treatment in a confined environment.

19 He's going to have seven years on --
20 he's going to be on probation for a period of time.
21 The sentencing sheet said he's on probation for
22 five years. Dr. Gehle talked to Probation. She
23 said there was a difference in terms of community
24 service. I don't know if community service and
25 probation are overlapped or how it works, but he is

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1 going to be on that for a period of time. And if
2 he does not abide by the terms of his probation,
3 he's going to go back to jail for -- he's going to
4 go to prison for seven years. That's our assurance
5 that this is not going to happen again.

6 He'll be a registered sex offender and
7 he's going to get treatment. He has family support
8 that he'll get treatment, he's going to maybe get
9 some other mental health disease treatment,
10 medicine for his bipolar, he'll get back on his
11 meds, he's going to go back into a normal family
12 environment, he's going to get treatment. He
13 doesn't need to be committed to a long-term care
14 facility. If he needs treatment, he can get it on
15 an outpatient basis. The reason why he doesn't
16 need to go to a long-term care facility is because
17 he doesn't have a mental disease.

18 He may have the same personality
19 characteristics that a huge portion of the prison
20 population has, but, again, that's not a basis to
21 put him into the sexually violent predator
22 treatment program. Without belittling the comment,
23 he may really like chocolate, he may be that guy
24 that goes into the candy store and steals a bar of
25 chocolate because he really wants chocolate. Not

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1 because he gets some kind of thrill from stealing
2 the chocolate, but because he wanted chocolate at
3 the time.

4 I submit to you that my client has a
5 criminal record, he's had bad behavior in the past,
6 he's paid the penalty for bad behavior in the past,
7 but he -- if he had a mental disease that would
8 justify putting him in this program, it would be
9 listed in this book. The fact that it's not listed
10 in the book I think is recognition by the American
11 Psychiatric Association that an interest in
12 nonconsensual sex is not the basis for a mental
13 disease. It's not like saying somebody is
14 interested in sex with children. An interest in
15 nonconsensual sex is not a mental health disease.
16 It's criminal conduct. It's punished by the
17 criminal justice system. It's not the focus of
18 today.

19 I think if you consider Dr. Gehle's
20 result, see if that rings true. See if it rings
21 true that that is a mental disease that she said
22 that he has. I think once you consider it -- you
23 saw my client on the stand, he testified. At the
24 end of the day you may think that my client needs
25 treatment and you may think he's done some bad

JURY CHARGE

1 stuff in the past, but I do not believe that you
2 can reach beyond a reasonable doubt that he suffers
3 from a mental disease for a justified verdict that
4 he's a sexually violent predator. Thank you.

5 THE COURT: Mr. Bogle.

6 MR. BOGLE: Nothing in reply, Your
7 Honor. Thank you.

8 THE COURT: All right. Ladies and
9 gentlemen, I will now instruct you on the law
10 applicable to this case. Please listen very
11 carefully; I typically do not send a copy of my
12 instructions back with you. As I indicated to you,
13 Mr. Foreman, you are responsible for completing the
14 verdict form.

15 As the trial judge under the
16 constitution of this state, I have the duty to
17 charge and instruct you on the law applicable to
18 this case. It is your duty as jurors to accept the
19 law and apply the law exactly as I state it to you
20 now.

21 The State has brought this case under
22 the sexually violent predator law of South
23 Carolina. Ladies and gentlemen, you may have heard
24 several terms interchanged, the State, the
25 petitioner, or the Plaintiff. Those are all the

JURY CHARGE

1 the same entity, the State of South Carolina who is
2 represented here today by Mr. Bogle.

3 The State seeks the civil commitment of
4 Craig Allen Carroll, the respondent. Likewise, you
5 have heard several interchangeable terms for
6 Mr. Carroll, perhaps the defendant or the
7 respondent. Mr. Carroll has been represented here
8 today by Mr. Falk.

9 The State seeks a civil commitment of
10 the respondent for long-term care, control, and
11 treatment in a secure facility. I remind you this
12 is not a criminal proceeding seeking incarceration,
13 but rather a proceeding seeking civil commitment.

14 The State of South Carolina alleges or
15 claims that the respondent is a sexually violent
16 predator under the law of South Carolina. The
17 respondent denies that he is a sexually violent
18 predator, and the burden of proof is on the State
19 to prove by evidence sufficient to satisfy each of
20 you beyond a reasonable doubt that Mr. Carroll is a
21 sexually violent predator. If the State is unable
22 to meet the burden of proof as to one or more of
23 the elements of this claim, the respondent is
24 entitled to a finding that he is not a sexually
25 violent predator.

JURY CHARGE

1 Ladies and gentlemen, I want to make
2 sure that you understand that Mr. Carroll is not
3 accused of committing a crime in this proceeding.
4 As you have heard from the testimony, he did have
5 previous charges for which he was sentenced by the
6 Court. The respondent has now completed his
7 sentence for those charges and the State is now
8 alleging that Mr. Carroll is a sexually violent
9 predator.

10 The State has the burden of proof in
11 this case and the State must prove its case beyond
12 a reasonable doubt. If you find that the State has
13 not met this burden, the respondent will be
14 released. If you find that the respondent is a
15 sexually violent predator, he will not be released,
16 but he will be committed to a secure treatment
17 facility operated by the South Carolina Department
18 of Mental Health.

19 I remind you that during this trial you
20 and I have had certain duties to perform. As the
21 trial judge it's my responsibility to preside over
22 the trial of this case, and I have the duty to rule
23 on the admissibility of the evidence offered during
24 this trial. You are to consider only the competent
25 evidence before you. You are to consider only the

JURY CHARGE

1 testimony that has been presented from the witness
2 stand as well as the exhibits that have been made
3 part of the record of the case.

4 I have the additional duty to charge
5 you the law applicable to this case. As the
6 presiding judge, I am the sole judge of the law in
7 this case, and it is your duty to accept the law
8 and apply the law exactly as I state it to you now.

9 Again, if you have any idea as to what
10 the law is or what the law ought to be and it does
11 not agree with what I'm about to tell you, you must
12 abandon your own ideas because you were sworn to
13 accept the law and apply the law exactly as I state
14 it to you now.

15 In every case tried in this court
16 before a jury, the jury becomes the sole and
17 exclusive judges of the facts. A trial judge may
18 not make any comments regarding the facts of this
19 case. You, the jury, are the sole judges of the
20 facts of this case. You are not to infer from
21 anything that I have said or done throughout the
22 progress of this trial in ruling upon the
23 admissibility of evidence or otherwise, or anything
24 that I say to you now during the course of the
25 instructions that I have any opinion about the

JURY CHARGE

1 facts in this case.

2 The law does not allow me to have an
3 opinion about the facts in this case. This is a
4 matter solely for you, the jury, to determine based
5 upon the effect, value, and weight of the evidence
6 that has been presented during this trial.

7 Ladies and gentlemen, in most civil
8 cases tried in this court the burden of proving a
9 claim is by a preponderance or greater weight of
10 the evidence; however, in this type of case under
11 this particular statute, the State's burden is
12 greater than that. It must be beyond a reasonable
13 doubt.

14 As I have stated to you, the State has
15 the burden of proof. Under the law of this State,
16 according to the sexually violent predator statute,
17 the State must prove its case to the standard of
18 proof beyond a reasonable doubt. Proof beyond a
19 reasonable doubt is proof that leaves you firmly
20 convinced that Mr. Carroll is a sexually violent
21 predator. There are very few things that we do
22 know in this world with absolute certainty, and in
23 this type of case the law does not require proof
24 that overcomes every possible doubt.

25 If, based upon your consideration of

JURY CHARGE

1 the evidence, you are firmly convinced that Mr.
2 Carroll is a sexually violent predator, you must
3 return a verdict for the State. If, on the other
4 hand, you think there's a real possibility that
5 Mr. Carroll is not a sexually violent predator, you
6 must give him the benefit of the doubt to return a
7 verdict for the respondent.

8 There are two types of evidence
9 generally presented throughout a trial, direct
10 evidence and circumstantial evidence. Direct
11 evidence is the testimony of a person who claims to
12 have actual knowledge of the facts such as an eye
13 witness. It is evidence which immediately
14 established the main fact to be proved.

15 Circumstantial evidence is proof of a
16 chain of facts and circumstances indicating the
17 existence of a fact. It is evidence which
18 immediately established collateral facts from which
19 the main facts may have occurred. Circumstantial
20 evidence is based on inference and not on personal
21 knowledge. It is proof that does not actually
22 establish the facts in question, but that it serves
23 to describe something else from which you may
24 either reasonably infer the truth of that fact or
25 at least reasonably infer and agree in the

JURY CHARGE

1 probability that that fact is true.

2 For circumstantial evidence to be
3 sufficient to warrant the finding of a fact, the
4 circumstances must lead to that fact with
5 reasonable certainty in light of ordinary
6 experience and common sense. The existence of a
7 fact cannot be based on speculation or surmise.

8 The law makes absolutely no distinction
9 between the weight or value to be given to either
10 direct or circumstantial evidence, nor is a greater
11 degree of certainty required of circumstantial
12 evidence than that of direct evidence.

13 Necessarily, you must determine the
14 credibility of the witnesses who have testified in
15 this case. Credibility simply means believability.
16 It becomes your duty as jurors to analyze the facts
17 and determine which evidence convinces you.

18 In determining the believability of the
19 witnesses who have testified in this case, you may
20 believe one witness over several witnesses or
21 several witnesses over one witness. You may
22 believe a part of the testimony of a witness and
23 reject the remaining part of the testimony of that
24 witness. You may believe the testimony of a
25 witness in its entirety or reject the testimony of

JURY CHARGE

1 the witness in its entirety. You may consider
2 whether the witness has exhibited to you any
3 motive, bias, interest, prejudice in this case, and
4 you also may consider the manner and appearance of
5 that witness while he or she was on the witness
6 stand.

7 The Rules of Evidence ordinarily do not
8 permit witnesses to testify to opinions or to
9 conclusions. There does exist an exception for
10 certain witnesses we call expert witnesses who by
11 education and experience has become an expert in
12 some art, science, or professional calling. That
13 witness may state an opinion as to a relevant and
14 material matter in the case and may also state the
15 reasons for that opinion.

16 You should consider any expert opinion
17 received in this case and, like any other evidence,
18 give it the weight that you think it deserves. If
19 you decide that the opinion of an expert is not
20 based on sufficient education or experience, or if
21 you conclude that the reasons given in support of
22 that opinion are not sound, or that the opinion is
23 outweighed by other evidence, you may disregard the
24 expert opinion entirely.

25 An expert witness's testimony is to be

JURY CHARGE

1 given no greater weight simply because the witness
2 is an expert. You are not required to accept the
3 witness's opinion even though it was not
4 contradicted.

5 The elements which the State must prove
6 beyond a reasonable doubt are that the respondent
7 has been convicted of a sexually violent offense.
8 I charge you that criminal sexual conduct with a
9 minor in the second degree is a sexually violent
10 offense under the laws of our State.

11 The State must also prove that the
12 respondent suffers from a mental abnormality or
13 personality disorder that makes him likely to
14 engage in acts of sexual violence if not confined
15 in a secure facility for long-term control, care,
16 and treatment. Inherent in these two elements is
17 that the State must prove the requirement that the
18 respondent's mental abnormality or personality
19 disorder causes him serious difficulty in
20 controlling his behavior.

21 In other words, the State must prove
22 beyond a reasonable doubt that the individual it
23 seeks to commit suffers from a mental illness which
24 he cannot sufficiently control without structure
25 and care provided by a mental health facility

JURY CHARGE

1 rendering him otherwise likely to commit a
2 dangerous act.

3 In order for you to better understand
4 the elements of the State's cause of action I am
5 going to define for you some of the terms that I
6 have just used. Mental abnormality means a mental
7 condition affecting a person's emotional or
8 volitional capability that predisposes the person
9 to commit sexually violent offenses. This mental
10 abnormality or personality disorder must cause
11 Mr. Carroll serious difficulty controlling his
12 behavior.

13 Likely to engage in acts of sexual
14 violence means the person's propensity to commit
15 acts of sexual violence is of such a degree as to
16 pose a menace to the health and safety of others.

17 Again, I remind you that the burden of
18 proof is on the State to prove to your satisfaction
19 beyond a reasonable doubt that the defendant has
20 been convicted of a sexually violated offense as I
21 have instructed you, and also suffers from the
22 mental abnormality or personality disorder that
23 makes him likely to engage in acts of sexual
24 violence if not confined in a secure facility for
25 long-term control, care, and treatment.

JURY CHARGE

1 If the State carries its burden of
2 proof and convinces you beyond a reasonable doubt
3 as to each of these two elements of its cause of
4 action, it is entitled to a finding that
5 Mr. Carroll is a sexually violent predator. If the
6 State does not meet that burden of proof as to one
7 or both of these elements, the respondent is
8 entitled to a finding that he's not a sexually
9 violent predator.

10 Ladies and gentlemen, I'm going to go
11 over the verdict form with you. It is your
12 responsibility to complete this form.

13 In the Court of Common Pleas for the
14 Ninth Judicial Circuit, Case No. 2015-CP-08-2677,
15 State of South Carolina, County of Berkeley. In
16 the matter of the care and treatment of Craig Allen
17 Carroll.

18 Question: Has the Petitioner, the
19 State of South Carolina, proved beyond a reasonable
20 doubt that Craig Allen Carroll is a sexually
21 violent predator under the South Carolina sexually
22 violent predator act?

23 Mr. Foreman, once you have reached a
24 unanimous decision, you will check one of these,
25 either yes or no. We, the jury, unanimously answer

JURY CHARGE

1 the question as follows; no, Craig Allen Carroll is
2 not a sexually violent predator or, yes, Craig
3 Allen Carroll is a sexually violent predator.

4 I remind you, it's a unanimous
5 decision, all 12 of you must agree. Once you have
6 a unanimous decision as to either yes or no, you
7 will sign the verdict form, date it indicating that
8 you have reached a unanimous decision. Once you
9 have done so, you will knock on the jury room door
10 indicating to the bailiff that you have reached a
11 verdict and we will receive you back in the
12 courtroom.

13 Ladies and gentlemen, this is the last
14 time that I will say this to you, do not begin your
15 deliberations, do not begin discussing this case
16 amongst yourselves. We are gathering the verdict
17 form and the exhibits to go back with you. Once we
18 have done that, we will tell you when you may begin
19 your deliberations.

20 To my first 12, is there any reason
21 that any of you cannot complete your deliberations
22 at this time? If so, please stand.

23 Thank you. All 12 of my first 12 have
24 indicated that they are able to complete their
25 deliberations. So that means to my two alternates,

JURY CHARGE

1 at this time you have completed your service, but
2 I'm going to have you stay with us until my 12 have
3 gotten the verdict form and exhibits and indicated
4 that they are able to continue.

5 Do not discuss the case with anyone and
6 did not begin deciding any issues in the case until
7 I tell you otherwise.

8 Please rise for the jury.

9 (Jury out, 2:09 P.M.)

10 THE COURT: Please be seated. Any
11 additions or corrections to the charges read?

12 MR. BOGLE: Your Honor, the State would
13 have one addition.

14 THE COURT: Yes.

15 MR. BOGLE: That you explain to the
16 jury that there is no particular significance to
17 the order in which the two alternatives are listed,
18 no and yes, or yes and no, it's just that they have
19 to be listed one way or the other.

20 THE COURT: Anything else?

21 MR. BOGLE: No.

22 MR. FALK: I have no additions to the
23 charge, but I do have another matter.

24 THE COURT: All right.

25 MR. FALK: I would like to see the note

1 that the three jurors were passing during my
2 closing argument, if it's an indication that they
3 have started deliberating during my closing.

4 THE COURT: I did not observe that they
5 were passing a note.

6 A DEPUTY: They did.

7 THE COURT: All right. I need the
8 foreman please.

9 (Whereupon, the Foreman entered the
10 courtroom.)

11 THE COURT: Mr. Foreman, it has come to
12 my attention that perhaps there was a note being
13 passed, or some sort of piece of paper, amongst
14 some of the members of your panel. If you would
15 please go inquire as to what that was and I will
16 need that note.

17 THE FOREMAN: Sure. Would you like to
18 see it?

19 THE COURT: Yes. If you will give it
20 to the bailiff.

21 (The foreman left the courtroom.)

22 THE COURT: And at this time I'm not
23 going to recharge the jury.

24 MR. BOGLE: Okay.

25 THE COURT: Thank you.

1 (Note brought into the courtroom.)

2 THE COURT: That's okay. Let me just
3 see the note.

4 Please mark this as Court's Exhibit
5 Number 3.

6 (COURT EXH. 3, note, was marked for
7 identification.)

8 THE COURT: I need to see Juror 153.

9 THE BAILIFF: She is in the rest room.
10 I'll get her.

11 (Juror 153 in the courtroom.)

12 THE COURT: Hi. You are juror 153?

13 JUROR NO. 153: Yes.

14 THE COURT: All right. So I just have
15 a few questions. It was brought to my attention
16 that there were notes being passed and so I have
17 asked for the note to be retrieved. And, just for
18 the record we have marked it as a Court's Exhibit.
19 If you need it back for deliberations, I'll give it
20 back to you.

21 Did -- tell me how -- why you shared
22 your note?

23 JUROR NO. 153: I just -- in the
24 interest of moving things along, I just was giving
25 it to them. So if that was impolite of me, I

1 apologize.

2 THE COURT: Who were you giving it to?

3 JUROR NO. 153: The foreman.

4 THE COURT: And so this was just kind
5 of in response to one of my statements early on,
6 that if you had any questions to give it to him?

7 JUROR NO. 153: Yeah.

8 THE COURT: Had you already begun to
9 make a decision?

10 JUROR NO. 153: I just -- and, to me,
11 my questions really don't affect the decision
12 before us. I just was curious as to what -- if we
13 did rule that way, what that entailed.

14 THE COURT: And did my charge on the
15 law answer those questions for you?

16 JUROR NO. 153: Not really because they
17 don't really -- your charges really didn't address
18 the questions.

19 THE COURT: Okay. And so is there any
20 -- have you followed the Court's instructions
21 throughout the progress of this trial?

22 JUROR NO. 153: Yes.

23 THE COURT: Is there anything that --

24 JUROR NO. 153: Except for that.

25 THE COURT: -- about me bringing you

1 out here that will affect your ability to be fair
2 and impartial in this case?

3 JUROR NO. 153: No.

4 THE COURT: All right. And -- thank
5 you.

6 JUROR NO. 153: Okay. Again, I
7 apologize.

8 THE COURT: Thank you.

9 Counsel, let me let you see the note.

10 (Bench conference)

11 THE COURT: All right. Mr. Falk.

12 MR. FALK: Your Honor, based on the way
13 I interpret that note -- I know that she had
14 written it, she handed it to the foreman, I believe
15 she handed it to the gentleman behind the foreman
16 first. I don't know who saw the note. I think
17 it's indicative of the fact that during my closing
18 argument she was already deliberating on the -- on
19 what she thought the results of this case was and
20 that she was asking if we commit what would happen
21 next. I think it's a clear indication that she was
22 deliberating prior to my close, prior to your
23 instructions, and we would move for a mistrial.

24 THE COURT: The question says, if vote
25 to commit, just what does that entail? So clearly

1 she has not come to -- she was not deciding an
2 issue in this case. She needed more information.
3 Time treated, release criteria, when he would his
4 parole hearing, to be explained. I -- that would
5 be the Court's position. So what are you
6 requesting?

7 MR. FALK: I would ask for a mistrial.

8 THE COURT: Motion for a mistrial is
9 denied. I have two alternates.

10 MR. FALK: Well, she also showed that
11 to -- the fact that -- my position would be, I
12 believe she showed it to more than just the foreman
13 because I thought it went through somebody else. I
14 don't know if it was read.

15 So my position would be that she had
16 already started deliberating. I think it's an
17 indication of where she was going with this case
18 and she communicated it to another member of the
19 jury while I was still arguing.

20 THE COURT: Do you know that he read
21 the note?

22 MR. FALK: No, Your Honor.

23 THE COURT: Mr. Bogle, happy to hear
24 from you.

25 MR. BOGLE: It looks to me like she was

1 one step ahead of all of us, thinking of questions
2 she's going to have despite what you charged her.
3 I'm not seeing premature deliberations. When you
4 questioned her on that specifically, she answered
5 under oath, the same oath she's taken all day, no,
6 she has not begun prior deliberations.

7 I would think that -- I wish the note
8 hadn't happened, to be honest with you, but it
9 looks like the kind of thing that they deliberate
10 for awhile and then come back with a question, but
11 I don't think the note suggests in and of itself
12 that there has been pre-jury deliberations. And
13 she answered your questions.

14 THE COURT: Okay. And so, Mr. Falk, I
15 have an alternate. So I'm not going to grant a
16 mistrial. Do you want me to replace juror 153 with
17 the first alternate?

18 MR. FALK: Yes.

19 THE COURT: And so we will -- so
20 please have juror 153 gather her belongings and
21 just put her in a -- separate from everyone else,
22 and place Ms. Frooge, who is the first alternate,
23 in there.

24 THE BAILIFF: Okay.

25 THE COURT: Any other requests?

1 MR. FALK: Noting my objection, no,
2 Your Honor.

3 THE COURT: And, Mr. Falk, you
4 indicated that you did not see the other two
5 individuals read the note and so I'm not going to
6 replace any of those, but to your request, I will
7 replace 153.

8 Anything else?

9 MR. BOGLE: Not from the State.

10 MR. FALK: No, Your Honor.

11 THE COURT: I'm going to explain what
12 happened in a very generic way now that somebody
13 new has gone in there.

14 So now I need everybody back but 153,
15 including Mr. Haynes.

16 .(Jury in, 2:21 p.m.)

17 THE COURT: Move on down. I just need
18 to explain a couple of things to you.

19 Thank you. Please be seated.

20 Ladies and gentlemen of the jury, a
21 couple of things have happened. I've had to remove
22 one of the first 12 and replace it with our first
23 alternate. Please do not speculate as to what
24 happened. I am merely following the law.

25 So you are to draw no conclusion

1. whatsoever from the fact that one of the alternates
2. has now been made part of the first 12. And,
3. again, just as I gave -- whenever I went over the
4. verdict form with you, please understand there is
5. absolutely no significance in the way that I lay
6. things out on the verdict form. It's simply
7. something has to go on the paper first. So just
8. because one statement was made before the other
9. one, there is no significance to that.

10. Ladies and gentlemen, I now will ask
11. you one more time, is there any reason that my
12. first 12 -- my first new 12 cannot begin and
13. complete their deliberations in this case? If you
14. cannot do so, please stand.

15. Thank you. All 12 have indicated they
16. are able to begin and continue through
17. deliberation.

18. Mr. Foreman, now please get your jury
19. back in the jury room and once everybody is seated,
20. we will bring the verdict form and the exhibits
21. back to you.

22. Mr. Haynes, you're going to be in that
23. same position back in my chambers until I come
24. release you.

25. (Jury out, 2:23 p.m.)

VERDICT

1 THE COURT: Thank you. Please be
2 seated. Did that remove your objection?

3 MR. BOGLE: Thank you, Your Honor.
4 Yes, it does.

5 THE COURT: Anything further before we
6 send back the verdict form?

7 MR. BOGLE: No, Your Honor.

8 MR. FALK: No, Your Honor.

9 THE COURT: Thank you. We will be at
10 ease.

11 (Jury deliberating 2:27 p.m.)

12 (Verdict, 3:32 p.m.)

13 THE COURT: Anything before we bring in
14 the jury?

15 MR. BOGLE: Nothing from the State.

16 MR. FALK: No, Your Honor.

17 (Jury in, 3:37 p.m.)

18 THE COURT: Thank you. Be seated.

19 Mr. Foreman, please hand the verdict
20 form to the bailiff.

21 THE COURT: Madame Clerk.

22 THE CLERK: In the State of South
23 Carolina, in the Court of Common Pleas for the
24 Ninth Judicial Circuit, County of Berkeley, In the
25 matter of the care and treatment of Craig Allen

VERDICT

1 Carroll, case no. 2015-CP-08-2677, the verdict form
2 reads: Has the petitioner, the State of South
3 Carolina, proved beyond a reasonable doubt that
4 Craig Allen Carroll is a sexually violent predator
5 under the South Carolina sexually violent predator
6 act?

7 We, the jury, unanimously answer the
8 question as follows: Yes, Craig Allen Carroll is a
9 sexually violent predator. And this is signed by
10 the Foreperson Gerald Addison.

11 Ladies and gentlemen of the jury, if I
12 have accurately published the verdict, please
13 indicate by raising your right hand.

14 THE JURY: (Raised hands.)

15 THE COURT: Thank you. You may put
16 your hand down.

17 Anything further required? Mr. Bogle?

18 MR. BOGLE: No, Your Honor.

19 THE COURT: Mr. Falk?

20 MR. FALK: No, Your Honor.

21 THE COURT: Ladies and gentlemen, this
22 concludes your service to this case. It also
23 concludes your service for the week. Please return
24 back to your jury room. I'll be there in just a
25 few moments to thank you.

1 Please rise for the jury.

2 (Jury out, 3:39 p.m.)

3 THE COURT: Thank you. Please be
4 seated.

5 Do you have the proposed order?

6 MR. BOGLE: Yes, Your Honor.

7 THE COURT: Mr. Falk, were you able to
8 review the proposed order?

9 MR. BOGLE: I gave him a copy.

10 I note at the very bottom it's says, at
11 such a time and place as they coordinate with
12 mental health. What I will give, whoever has him,
13 is the name and direct number of the person to set
14 up the time to bring him.

15 THE COURT: Mr. Falk, is there any
16 reason I should not sign this proposed order of
17 commitment?

18 MR. FALK: No, Your Honor.

19 THE COURT: Have you gone over with
20 your client his right to appeal?

21 MR. FALK: Yes, Your Honor.

22 THE COURT: Mr. Carroll, good luck to
23 you.

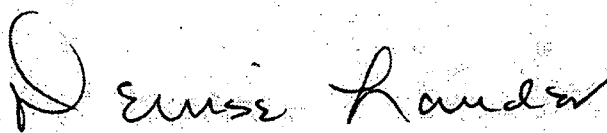
24 (These proceedings were concluded at
25 3:44 p.m.)

1 CERTIFICATE OF REPORTER

2
3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 10th day of July, 2017 at
13 Charleston, Charleston County, South Carolina.
14

15
16 
17 S/Denise Lauder
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017
23
24
25

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

259

COUNTY OF Berkeley
STATE VS.
Craig Allen Carroll

AKA:

Race: WHITE Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Summerville, SC 29483-7852DL#: [REDACTED] SID#: SC02089247*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal Sexual Conduct w/ Minor 2nd Degree < 16INDICTMENT/CASE#: 2014GS0800649A/W#: 2014GS0800649Date of Offense: 8/1/2012S.C. Code §: 16-03-0655(C)CDR Code #: 0397

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 0397
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Williams, Anne M.76463
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant4981
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of 3 days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 251 Days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Crim Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

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PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: No Contact with Victim or Family of Victim
☒ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2139Sentence Date: August 14, 2014CERTIFIED TRUE COPIES OF RECORD
IN THIS COUNTYPLAINTIFF'S
EXHIBIT

DATE 3/28/17
CLERK OF COURT, C.P. & G.S.
BERKELEY COUNTY, SC

Clerk of Court/ Deputy Clerk

Court Reporter: Natalie Dahl

SCCA/217 (03/2011)

260

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
CRAIG ALLEN CARROLL,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-08-02677

ORDER OF COMMITMENT

FILED

APR 12 2017

CASE NO. YB
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

The trial of this case was held in the Berkeley County Court of Common Pleas the week of April 10, 2017. A jury of citizens from Berkeley County heard this case pursuant to a request for a jury trial filed by the State. Senior Assistant Attorney General James G. Bogle, Jr. represented the State and 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:

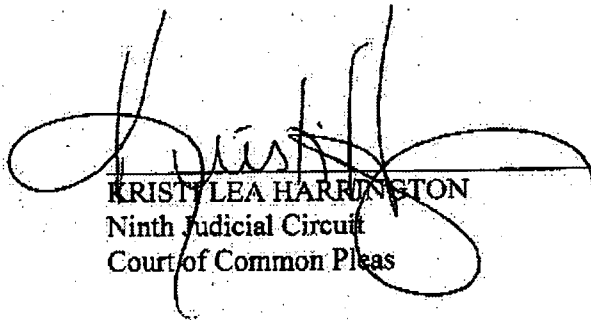
The State has proven beyond a reasonable doubt that Respondent, Craig Allen Carroll, is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED THAT:

(a) Respondent Craig Allen Carroll is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent Craig Allen Carroll is to continue to be detained at the Berkeley County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health, Columbia, SC. The Detention Center is to transport Respondent on such scheduled date and to such location as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.


KRISTYLEA HARRINGTON
Ninth Judicial Circuit
Court of Common Pleas

 April 12, 2017
Moncks Corner, South Carolina

WJB
JF

VB

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,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 15th day of June, 2018.

RECEIVED

JUN 15 2018

SC Court of Appeals