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STATE OF SOUTH CAROLINA

 ORIGINAL

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF WILLIAM BRYAN FETNER,

APPELLANT

APPELLATE CASE NO. 2011-198707

RECORD ON APPEAL

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INDEX

INDEX	i ii
TRIAL TRANSCRIPT (AUGUST 22 – 23, 2011)	1
OPENING STATEMENT BY MR. FLORES	38
OPENING STATEMENT BY MR. SWERLING	41
TESTIMONY	
DR. PEGGY WADMAN	
Direct Examination by Mr. Flores.....	49
Cross Examination by Mr. Swerling.....	81
MOTION FOR A DIRECTED VERDICT	142
RENEWED MOTION FOR A DIRECTED VERDICT.....	147
CLOSING ARGUMENT BY MR. FLORES.....	157
CLOSING ARGUMENT BY MR. SWERLING.....	168
CHARGE ON THE LAW.....	192
VERDICT	202
MOTION TO SET ASIDE VERDICT AND/OR MOTION FOR A NEW TRIAL.....	207
COURT'S EXHIBIT #1 (LETTER)	209
STATE'S EXHIBIT #1 (INDICTMENT AND SENTENCING SHEET).....	212
STATE'S EXHIBIT #2 (INDICTMENT AND SENTENCING SHEET).....	215
STATE'S EXHIBIT #3 (INDICTMENT AND SENTENCING SHEET).....	218

STATE'S EXHIBIT #4 (INDICTMENT AND SENTENCING SHEET).....	222
RESPONDENT'S EXHIBIT #1 (LETTER)	224
RESPONDENT'S EXHIBIT #2 (LETTER)	226
CERTIFICATE OF COUNSEL.....	227

STATE OF SOUTH CAROLINA)

County of Richland)

COURT OF Common Pleas

2011-CP-40-0950

In the Matter of the)
Care and Treatment of)
William Bryan Fetner)

TRANSCRIPT OF RECORD

August 22 & 23, 2011
Columbia, South Carolina

BEFORE:

The Honorable G. Thomas Cooper, Judge and a Jury

APPEARANCES:

Lloyd V. Flores, Jr., Asst. Attorney General
Attorney for the State

Jack Swerling, Esq.
Attorney for the Respondent

KAREN AMBROZIAK
Official Court Reporter

CONTENTS:WITNESSES:

DR. PEGGY WADMAN

Direct Examination by Mr. Flores	49
Cross-examination by Mr. Swerling	81

KATHERINE MOORE

Direct Examination by Mr. Swerling	146
Cross-examination by Mr. Flores	154
Redirect Examination by Mr. Swerling	156

STATEMENTS:

Opening Statement by Mr. Flores	38
Opening Statement by Mr. Swerling	41
Closing Statement by Mr. Flores	168
Closing Statement by Mr. Swerling	179
Jury Charge	203
Verdict	215
CERTIFICATE OF REPORTER	222

EXHIBITS:

STATE'S EXHIBITS:

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
1	Sentencing Sheet/Indictment	5	62
2	Sentencing Sheet/Indictment	5	68
3	Sentencing Sheet/Indictment	5	62
4	Sentencing Sheet/Indictment	5	65

RESPONDENT'S EXHIBITS:

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
1	Letter	146	146
2	Letter	146	146

COURT'S EXHIBITS:

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
1	Letter	146	

1 THE COURT: Is the State ready to proceed?

2 MR. FLORES: Yes, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. SWERLING: Yes, Your Honor.

5 THE COURT: We have been furnished a copy of
6 the ---

7 MR. SWERLING: Yeah, we need Mr. Fetner.

8 THE COURT: Yes. Where is the defendant?

9 THE CLERK: I didn't know he was incarcerated.

10 THE COURT: He's incarcerated.

11 (WHEREUPON, there was an off-the-record
12 discussion.)

13 THE COURT: Well, before he gets here, while
14 we're waiting, I have the State's requested voir dire.
15 Is this the defendant's ---

16 MR. SWERLING: Yes, sir.

17 THE COURT: --- voir dire, the 20 pages, I mean,
18 20 questions?

19 MR. SWERLING: Yes, sir.

20 THE COURT: All right. Well, let me just start
21 by asking Mr. Swerling, do you have any objections to
22 the State's proposed voir dire?

23 MR. SWERLING: No, sir.

24 THE COURT: Does the State have any objections
25 to the defendant's or respondent's proposed voir dire?

1 MR. FLORES: No, Your Honor.

2 THE COURT: All right. Well, Mr. Swerling, I
3 may ask most of it.

4 MR. SWERLING: Yes, sir.

5 THE COURT: I may not ask all of it.

6 MR. SWERLING: I understand.

7 THE COURT: These are unusual cases. This is
8 the defendant's witness list?

9 MR. SWERLING: Yes, sir.

10 Judge, can we approach one second?

11 THE COURT: Yes. State's witness list. Is
12 there a State's ---

13 MR. FLORES: It's right here.

14 THE COURT: Yes, up here.

15 (WHEREUPON, there was a bench conference.)

16 MR. FLORES: May I approach, Your Honor?

17 THE COURT: Yes.

18 Are there any 403's present? Just come up here.
19 We need your name.

20 (Pause)

21 (WHEREUPON, State's Exhibits Nos. 1 - 4 were
22 marked for identification only.)

23 THE COURT: All right. Anything further of a
24 pretrial nature?

25 MR. FLORES: Nothing further from the State,

1 Your Honor.

2 THE COURT: Anything?

3 MR. SWERLING: No, sir.

4 THE COURT: All right. Bring the jury, please.

5 Billy, bring us a jury, Mr. --- or somebody. I
6 hope we can get them all in here. How many are they
7 sending?

8 THE CLERK: Thirty-five.

9 THE COURT: Thirty-five.

10 (WHEREUPON, the jury panel entered the
11 courtroom.)

12 THE BAILIFF: The jurors are seated, Your Honor.

13 THE COURT: Thank you very much. Good afternoon,
14 ladies and gentlemen.

15 THE JURORS: Good afternoon.

16 THE COURT: Glad to see you again. We're about
17 to go into a civil case. Now, this courtroom is a
18 small courtroom, so I apologize in advance for making
19 you feel cramped in here. But I think we'll --- it's
20 an adequate courtroom. We'll be able to move right
21 along.

22 I want to tell you a little bit about this case
23 and this procedure. This is a civil case, as I said,
24 but it's a little bit different civil case than what
25 you might think of.

1 In South Carolina, we have what is known as the
2 Sexually Violent Predator Act. It's a law, and that
3 law provides for treatment and care of an individual
4 who may have been --- who was convicted, of some sort
5 of a sexual offense.

6 Before they can be admitted to this program of
7 treatment and care, a jury must determine that they
8 are qualified or meet the requirements of the law to
9 be put into this program because it's not a voluntary
10 program. It's an involuntary program run by the
11 Department of Mental Health in conjunction with the
12 Department of Corrections.

13 So those of you who are seated on this jury
14 today will be just asked one question, and that is
15 does the respondent, the individual that's here for
16 trial, qualify to be in this --- or is he going to be
17 required, I should say, to go into this program of
18 treatment and care?

19 Now, as I say, it's a little bit different than
20 what you might have expected. It's a little bit
21 different procedure for us, but this is what the law
22 requires, that a jury determine whether or not an
23 individual is a sexually violent predator and should
24 be committed to this treatment program.

25 Now, with that in mind, I'm going to ask you

1 several questions to see if you have any connection
2 with this case or knowledge of the case, if you have
3 any knowledge of the individuals involved and whether
4 you have any reasons why you could not be fair and
5 impartial, decide this issue and sit through this
6 case. It's not going to be a very long case.

7 At the most, I think we'll run through tomorrow,
8 at the latest. It's a lot simpler in one sense than
9 some of the complicated cases we have to come before
10 us up here.

11 The action, or this case, is basically brought
12 by the South Carolina Attorney General. They are the
13 entity that's charged with the enforcement of this
14 law.

15 Now, today the Attorney General's Office will be
16 represented by Mr. Lloyd Flores.

17 Mr. Flores, if you will stand and face the jury.

18 I need to know if any member of the jury panel
19 is related by blood, connected by marriage or
20 employment or a close personal acquaintance of Mr.
21 Lloyd Flores? If so, please stand.

22 Anybody know Mr. Flores? Thank you very much,
23 sir.

24 PROSPECTIVE JUROR: Your Honor.

25 THE COURT: Yes. I'm sorry. I didn't see you.

1 PROSPECTIVE JUROR: I don't personally know him,
2 but I worked for the Attorney General's Office as a
3 law clerk the past few years up until April.

4 THE COURT: All right. What's your number,
5 please?

6 PROSPECTIVE JUROR: Sixty-five.

7 THE COURT: All right. Well, that was my next
8 question: Did anybody work for the Attorney General.
9 So let me just move on to that.

10 Mr. 65, I'm going to --- folks, I'm going to
11 identify you by your number. If you will --- when
12 you stand, if you answer any questions, if you'll
13 please give me your number. We found that in a lot
14 of cases that come before us, jurors are much more
15 comfortable being known by a random number than by
16 their --- by your name.

17 Mr. 65, did you work in the department which
18 handles this type of activity?

19 PROSPECTIVE JUROR: Not exactly, but I work for
20 the Internet Crimes Against Children, which is close
21 to that, as his department head was also my
22 department head.

23 THE COURT: Okay. Well, let me ask you this:
24 Based on that experience, do you think you could be
25 fair and impartial to both the State and the

1 defendant in this matter, or do you think it would
2 somehow color your judgment?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Yes, sir what?

5 PROSPECTIVE JUROR: I could be fair.

6 THE COURT: All right. Thank you very much,
7 Mr. 65.

8 Anybody else? Any member of the jury panel or
9 any member of your family ever work with the State
10 Attorney General's Office.

11 (There was no response.)

12 All right. The --- what we call the Respondent
13 in this matter today is Mr. William Bryan Fetner.

14 Mr. Fetner, will you stand and face the jury,
15 please?

16 Any member of the jury panel related by blood,
17 connected by marriage or employment or a close
18 personal acquaintance of Mr. William Bryan Fetner?
19 If so, please stand. Anybody know Mr. Fetner?

20 (There was no response).

21 Thank you very much, sir.

22 Mr. Fetner is represented in this matter today
23 by Mr. Jack Swerling, an attorney practicing law here
24 in Columbia.

25 Any member of the jury panel related by blood,

1 connected by marriage or employment or a close
2 personal acquaintance of Mr. Jack Swerling or perhaps
3 been represented by him at some time in the past or
4 even being represented by him at the present? Any
5 member of the jury panel know Mr. Swerling?

6 (There was no response.)

7 All right. Has any member of the jury panel or
8 any --- a close personal acquaintance of relative
9 been charged with or convicted of a sexual offense?
10 I'm not going to ask you a whole lot about it. I
11 just need to know --- and who was it?

12 Let me get your number first.

13 PROSPECTIVE JUROR: Seventy-eight.

14 THE COURT: Ms. 78. Let me find you on the list.

15 (Pause)

16 A relative or a friend?

17 PROSPECTIVE JUROR: Relative.

18 THE COURT: All right. And how long ago?

19 PROSPECTIVE JUROR: About three, three years ago.

20 THE COURT: Three or four years ago?

21 PROSPECTIVE JUROR: Uh-huh.

22 THE COURT: Has that matter concluded now?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. Were you a --- were you
25 a victim or ---

1 PROSPECTIVE JUROR: I mean, it's a different
2 state.

3 THE COURT: A different state. Thank you very
4 much, Ms. 78.

5 Anybody else?

6 (There was no response.)

7 Any member of the jury panel or any member of
8 your family or close personal acquaintance been the
9 victim of a sexual assault?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Just stand and give me your number.
12 I'm not going to --- I don't want to embarrass
13 anybody.

14 PROSPECTIVE JUROR: 255.

15 THE COURT: All right.

16 PROSPECTIVE JUROR: My granddaughter, my
17 granddaughter.

18 THE COURT: 255, you're granddaughter?

19 PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: How long ago?

21 PROSPECTIVE JUROR: She is 12 at the --- when
22 she was seven.

23 THE COURT: Five years ago?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Was that in Richland County?

1 PROSPECTIVE JUROR: No, Lexington County.

2 THE COURT: Lexington.

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: All right. Thank you very much,
5 Mr. 255.

6 Let me ask you this: Would that fact ---

7 PROSPECTIVE JUROR: No.

8 THE COURT: --- in any way interfere with your
9 ability to give both the State and the Respondent a
10 fair and impartial trial in this case?

11 PROSPECTIVE JUROR: No.

12 THE COURT: You could be fair to both parties?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Thank you very much, Mr. 255.

15 Any member of the jury panel have any training
16 or experience or expertise in the field of psychiatry
17 or psychology? Any member --- because there will be
18 people and --- witnesses may get involved with some
19 psychological testimony, so I need to know if anybody
20 is familiar with that sort of thing.

21 Yes, ma'am, your number?

22 PROSPECTIVE JUROR: 260.

23 THE COURT: 260? Yes, ma'am.

24 PROSPECTIVE JUROR: I'm a psychology professor.

25 THE COURT: And where are you?

1 PROSPECTIVE JUROR: The University of Phoenix.
2 I'm actually the lead psychology faculty there.

3 THE COURT: At the University of Phoenix?

4 PROSPECTIVE JUROR: Yes. I'm also a licensed
5 therapist at a psychiatric hospital.

6 THE COURT: Which hospital?

7 PROSPECTIVE JUROR: Three Rivers.

8 THE COURT: All right. All right, ma'am, let me
9 ask you the same question I ask everybody else.
10 Based on your knowledge and experience and background,
11 do you think you could be fair and impartial to both
12 the State and to the Respondent in this case?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: No preconceived ideas?

15 PROSPECTIVE JUROR: No. I actually work with
16 victims and I ---

17 THE COURT: I have to ask you to stand because
18 this ---

19 PROSPECTIVE JUROR: Oh, okay.

20 THE COURT: --- lady over here has to hear what
21 you have to say.

22 PROSPECTIVE JUROR: I have actually worked with
23 victims who have been sexual abused, and I've also
24 worked in the Public Defender's Office two years ago.

25 THE COURT: In the Richland County Public

1 Defender's Office?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. Thank you very much,
4 Ms. 260.

5 Anybody else?

6 (There was no response.)

7 Any member of the jury panel been involved in a
8 prison ministry or prison outreach program or other
9 program involving contact with individuals who happen
10 to be incarcerated? Any member of the jury panel?

11 Yes, sir, your number, please?

12 PROSPECTIVE JUROR: 164.

13 THE COURT: Yes, sir. And what experience have
14 you had?

15 PROSPECTIVE JUROR: I've worked with the
16 Epiphany Program at DJJ.

17 THE COURT: DJJ?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: You still do?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: All right. Is that a full-time job,
22 or is that a volunteer job?

23 PROSPECTIVE JUROR: Volunteer.

24 THE COURT: All right. Mr. 164, would that fact
25 in any way interfere with your ability to give both

1 the State and the Respondent a fair and impartial
2 trial in this case?

3 PROSPECTIVE JUROR: I'll be fair.

4 THE COURT: Thank you very much, Mr. 164.

5 Yes, sir?

6 PROSPECTIVE JUROR: Juror 32.

7 THE COURT: Number 32. Let me find you on the
8 list. All right.

9 PROSPECTIVE JUROR: Yes, sir. I worked as a
10 correctional officer for the South Carolina
11 Department of Corrections from 1996 to 2000.

12 THE COURT: All right. And which institution
13 did you work at?

14 PROSPECTIVE JUROR: Walden Correctional
15 Institution.

16 THE COURT: Walden. You had no contact with the
17 Respondent in this case?

18 PROSPECTIVE JUROR: No, sir, not that I recall.

19 THE COURT: Okay. Mr. 32, would that fact in
20 any way interfere with your ability to give ---

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: --- both the State and the defendant
23 a fair and impartial trial?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: I have to get the whole thing out,

1 because she is writing down everything I say.

2 Anybody else?

3 Any member of the jury panel or any member of
4 your family or close personal acquaintance been
5 civilly committed to an institution, either
6 voluntarily or involuntarily committed to an
7 institution?

8 (There was no response.)

9 All right. Now, let me tell you a little bit
10 about the case. In 1998, 1998, Mr. Fetner pled
11 guilty to three counts of kidnapping and one count of
12 lewd act on a minor. He has served his sentence as a
13 result of that plea.

14 As I said, the State is now seeking in this
15 proceeding to have him found a sexually violent
16 predator. If he is found to be a predator, as I say,
17 he would be committed to a secure facility operated
18 by the Department of Mental Health.

19 Now, given that little bit of background, does
20 the fact that he pled guilty to those charges at that
21 time, do you think that it would be in any way ---
22 interfere with your ability to be fair and impartial
23 to him in this proceeding, which is a completely
24 different proceeding?

25 It's not guilt or innocence. He has already

1 served his sentence for that. Any member of the jury
2 panel feel that they could not sit and evaluate the
3 evidence in this case and be fair and impartial to
4 both the State and Mr. Fetner?

5 (There was no response.)

6 I'm going to let you think about it for just a
7 minute.

8 Any member of the jury panel employed by any law
9 enforcement agency or any member of your family? Any
10 member of the jury panel or any member of your family
11 employed by a law enforcement agency? That could
12 include anything from the sheriff's department, the
13 city police, military police, SLED, FBI, anything
14 that is a police department.

15 Yes, ma'am, your number?

16 PROSPECTIVE JUROR: 187.

17 THE COURT: 187. Yes, ma'am, what ---

18 PROSPECTIVE JUROR: My brother-in-law is a
19 captain in the police force in New York, and my other
20 brother-in-law is a policeman in the Bronx.

21 THE COURT: In the Bronx? All right.

22 Ma'am, would that fact that you have those
23 relatives that are involved in law enforcement, would
24 that fact in any way interfere with your ability to
25 give both the State and the defendant a fair and

1 impartial trial?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: All right. Mr. Swerling is smiling
4 because that's his home territory, it was his home
5 territory.

6 MR. SWERLING: Brings back good memories, Your
7 Honor.

8 THE COURT: Any member of the jury panel or any
9 member of your family employed by the solicitor's
10 office, that is the prosecuting office here in
11 Richland County? Employed by the solicitor's office?

12 (There was no response.)

13 Any member of the jury panel heard, read or seen
14 anything about this case? As I said, it's from 1998.
15 It's not likely that you would --- even if you did,
16 you would remember it, but I've got to ask the
17 question.

18 (A vacuum cleaner turned on.)

19 (Laughter)

20 (Pause)

21 (A vacuum cleaner turned off.)

22 THE COURT: Thank you.

23 (Pause)

24 All right. Let me call out a list of just a few
25 names, and I need to know if any member of the jury

1 panel is related by blood, connected by marriage or
2 employment or a close personal acquaintance of any of
3 the following, or if you have any knowledge of these
4 people that I'm going to call: Dr. Peggy Wadman.
5 Will you stand, please, Dr. Wadman? Anybody know
6 Dr. Wadman, she practices here in Columbia at ---
7 where do you practice, Doctor?

8 THE WITNESS: At the Department of Mental Health
9 in the Forensic Division.

10 THE COURT: The Department of Mental Health in
11 the Forensic Division.

12 Child 1; Child 1; Child 3;
13 ; Child 2;

14 Now, it's my understanding that although --- are
15 there some relatives of Child 3 here? If
16 you'll stand, please?

17 (Complies)

18 I'm not going to ask you --- anybody recognize
19 either of these two ladies?

20 All right. Thank you. Thank you, ladies.

21 Any member of the jury panel that has children
22 under the age of 13 years? Any member of the jury
23 panel have children under the age of 13 years?

24 We've whole list of them. All right. If you'll
25 just --- I don't want your names. I just want ---

1 well, we have more --- we've got more standing than
2 we do sitting, which is a good thing.

3 Let's just start from my left. If you'll just
4 identify the ages of your children and your number,
5 please. Just give me your number and the ages of
6 your children.

7 PROSPECTIVE JUROR: 147.

8 THE COURT: 147.

9 PROSPECTIVE JUROR: I have five, five kids. I
10 have three girls and two boys ranging from nine to 18.

11 THE COURT: Thank you very much, Mr. 147.

12 PROSPECTIVE JUROR: Eighteen, and I have one
13 that's 11.

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

15 PROSPECTIVE JUROR: 218.

16 THE COURT: 218?

17 PROSPECTIVE JUROR: I have a daughter that's
18 nine.

19 THE COURT: All right. Thank you very much.

20 PROSPECTIVE JUROR: Juror 305. I have a
21 five-year-old.

22 THE COURT: Thank you, ma'am.

23 Yes, green shirt.

24 PROSPECTIVE JUROR: Juror 159, I have one
25 eight-year-old son.

1 THE COURT: Thank you very much, sir.

2 Let's go ahead and get the plaid shirt.

3 PROSPECTIVE JUROR: Yeah, I'm juror 299, and I
4 have a ten year old.

5 THE COURT: Green, aqua?

6 PROSPECTIVE JUROR: Ninety-four. I have five
7 children, three girls, two boys, between the ages of
8 nine and 17.

9 THE COURT: Thank you very much.

10 Yes, ma'am?

11 PROSPECTIVE JUROR: I'm 57, and I have a 12 year
12 old and a nine year old.

13 THE COURT: Thank you, ma'am.

14 PROSPECTIVE JUROR: Juror 32. I have a son
15 that's seven.

16 THE COURT: Thank you very much, sir.

17 PROSPECTIVE JUROR: Thank you.

18 THE COURT: Yes, ma'am.

19 PROSPECTIVE JUROR: 2 ---

20 THE COURT: The lady with the gray shirt.

21 PROSPECTIVE JUROR: I'm juror 288, I have two
22 sons, one eight and one 12.

23 MR. SWERLING: What number is that, Your Honor?

24 THE COURT: 288.

25 Yes.

1 PROSPECTIVE JUROR: Juror 136. I have got a
2 child five and one nine.

3 THE COURT: Thank you very much.

4 PROSPECTIVE JUROR: Juror 42. I have seven and
5 one at 11.

6 THE COURT: What age?

7 PROSPECTIVE JUROR: From 22 to 11.

8 THE COURT: I still didn't quite hear you.

9 PROSPECTIVE JUROR: Twenty-two, 21, 19, 18, 15
10 and 11.

11 THE COURT: Just keep on going.

12 PROSPECTIVE JUROR: I have seven, a
13 five-year-old old and two boys.

14 THE COURT: You've been busy.

15 MR. SWERLING: What number is that, 142?

16 THE COURT: Twenty-two.

17 MR. FLORES: Your Honor, what was that last
18 juror number?

19 THE COURT: Twenty-two.

20 PROSPECTIVE JUROR: That's not it.

21 THE COURT: Didn't you say 22, ma'am?

22 PROSPECTIVE JUROR: Forty-two.

23 THE COURT: Forty-two, I'm sorry.

24 All right. Back to my witness list, again, the
25 question is, is any member of the jury panel related

1 by blood, connected by marriage or employment or a
2 close personal acquaintance of Hilda Fetner?

3 Anybody --- is this Ms. Fetner?

4 Anybody know Ms. Fetner?

5 THE WITNESS: I don't know them.

6 THE COURT: Thank you very much.

7 Katherine Moore.

8 MR. SWERLING: Not here, Your Honor.

9 THE COURT: And Andrea Thompson?

10 All right. Ladies and gentlemen, a minute ago I
11 asked you a question about being fair and impartial,
12 and I said I was going to let you think about it for
13 a minute.

14 Based on what I've told you, and what I told you
15 is about what I know about the case at this point,
16 does any member of the jury panel feel for any reason
17 that they could not sit fairly, listen to the
18 evidence and decide the issue in this case based on
19 the evidence you hear in this courtroom, the
20 arguments of the lawyers and my instructions to you
21 on the law as it applies to this case, which that ---
22 those instructions, I can't give them before a trial.

23 I'll give you as much as I can tell you about
24 the case before a trial. I never know what's going to
25 happen during the trial, so I can't give you final

1 instructions until the end of the case, but knowing
2 what you do know about the case as it stands right
3 now, any member of the jury panel feel that they
4 could not sit and fairly determine the issue to be
5 decided in this case?

6 You could be fair to both parties, both to
7 Mr. Fetner and to the State of South Carolina?

8 (There was no response.)

9 Anything further from the State?

10 MR. FLORES: Nothing further from the State,
11 Your Honor.

12 MR. SWERLING: Judge, can we approach one second?

13 THE COURT: Sure.

14 (WHEREUPON, there was a bench conference.)

15 THE COURT: One more question, ladies and
16 gentlemen.

17 Now, Ms. 260, of course, you answered my
18 question, but I probably should have followed that up
19 with asking if any other member of the jury panel ---
20 you're fine.

21 PROSPECTIVE JUROR: Oh.

22 THE COURT: Any other member of the jury panel
23 does any sort of counseling, or any member of your
24 family do any sort of counseling to or any other
25 assistance to the victims of sexual assault, even

1 things, for example, like you might be a volunteer
2 with something like Sistercare or something assisting
3 people who have been the victims of either sexual
4 violence or criminal domestic violence. Any of those
5 type things where you or any member of your family
6 does that type of counseling either as a volunteer or
7 as a professional? Any member of the jury panel?

8 Okay. I'm glad I asked the second question.
9 Your number, please?

10 PROSPECTIVE JUROR: Your Honor, I'm number 299.
11 My wife is a clinical psychologist. She has
12 performed therapy for a number of --- you know, just
13 all sorts of different ---

14 THE COURT: Different kinds of cases?

15 PROSPECTIVE JUROR: Right, and she is also a
16 forensic psychologist who does competency to stand
17 trial.

18 THE COURT: Okay. Who does she work for?

19 PROSPECTIVE JUROR: Well, she works for the
20 Department of Disabilities and Special Needs.

21 THE COURT: DDSN?

22 PROSPECTIVE JUROR: Correct, in the competency
23 to stand trial environment, and then she is
24 self-employed in some of the therapeutical activities.

25 THE COURT: Thank you very much. I'm glad I

1 asked the last question. I forgot to do it.

2 Thank you very much, Mr. 299.

3 Let me ask you this again, do you think you
4 could be fair and impartial to both parties in this
5 case?

6 PROSPECTIVE JUROR: I do.

7 THE COURT: You do? Good.

8 Yes, ma'am?

9 PROSPECTIVE JUROR: Number 57. My husband is a
10 therapist, and he works primarily with drug and
11 alcohol abuse, but, you know ---

12 THE COURT: Who does he work for?

13 PROSPECTIVE JUROR: His own company. It's
14 called Insights.

15 THE COURT: Okay. Again, do you think you ---
16 given that family relationship, do you think you
17 could be fair and impartial to both parties in this
18 case?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: All right. Thank you very much,
21 Ms. 57.

22 Anybody else that --- anybody work for the
23 Department of Mental Health or any member of your
24 family other than those who have already spoken?

25 Yes, ma'am, your number?

1 PROSPECTIVE JUROR: 208..

2 THE COURT: Yes, ma'am. You or a member of your
3 family?

4 PROSPECTIVE JUROR: Yes. I manage the grants
5 management department.

6 THE COURT: All right. Again, I'll ask the same
7 question: Would that fact in any way interfere with
8 your ability to give both the State and the
9 Respondent a fair and impartial trial?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Thank you very much, Ms. 208.
12 Yes, ma'am?

13 PROSPECTIVE JUROR: 108.

14 THE COURT: 208 and 108.

15 Yes, ma'am?

16 PROSPECTIVE JUROR: My mother works for Bryan
17 Psychiatric Hospital.

18 THE COURT: Okay. Would that fact in any way
19 interfere with your ability to give both the State
20 and the Respondent a fair and impartial trial in this
21 case?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Thank you very much, Ms. 108.

24 Anything further?

25 MR. SWERLING: Your Honor, I do have one request.

1 I'm sorry.

2 THE COURT: All right.

3 (WHEREUPON, there was a bench conference.)

4 THE COURT: All right. Ladies and gentlemen,
5 the process we're going to go through now is that the
6 attorneys have a list of your names, and they have
7 the option --- they've got 20 names, basically, and
8 they have the option to strike four off the list for
9 whatever reason they choose.

10 If each side strikes four, that's eight minus
11 the 20 is 12. You end up with 12 jurors, so that
12 process is going to begin right now.

13 All right. Ms. Becky, if you'll...

14 THE CLERK: Thank you, Your Honor.

15 Beginning with the Plaintiff, if you use the
16 numbers to the left, please, beginning with the
17 plaintiff.

18 THE COURT: Let me just tell you in advance, the
19 numbers that are called out, they're not your numbers.
20 We've switched them around, so don't get excited if
21 you hear a number that you think is your number
22 called.

23 The State strikes first.

24 MR. FLORES: The State would strike number 9.

25 THE CLERK: The State strikes nine.

1 MR. SWERLING: Do you want me to just go ahead?

2 THE CLERK: Yes.

3 MR. SWERLING: Three.

4 THE CLERK: Three. Plaintiff strikes --- I'm
5 sorry, the defendant strikes 3.

6 MR. FLORES: State strikes number 21.

7 THE CLERK: Plaintiff strikes 21.

8 MR. SWERLING: Number 5.

9 THE CLERK: Defendant strikes 5.

10 MR. FLORES: The State strikes number 4.

11 THE CLERK: Plaintiff strikes 4.

12 MR. SWERLING: Six.

13 THE CLERK: Defendant strikes 6.

14 MR. FLORES: The State strikes 1.

15 THE CLERK: Plaintiff strikes 1.

16 MR. SWERLING: Excuse me one moment.

17 (Pause)

18 You struck 9; didn't you strike 9?

19 MR. FLORES: I did.

20 MR. SWERLING: That's what I thought. I'll
21 strike 11.

22 THE CLERK: Plaintiff strikes 11. I'm sorry,
23 defendant strikes 11.

24 THE COURT: Defendant strikes 11.

25 THE CLERK: I'm sorry.

1 THE COURT: Just get one alternate. Strike from
2 22 to 24.

3 MR. FLORES: The State would strike 23.

4 THE CLERK: The plaintiff strikes 23.

5 MR. SWERLING: Twenty-four.

6 THE CLERK: Defendant strikes 24. Gentlemen,
7 please allow me to review your strikes. For the
8 State, I have 9, 21, 4, 1, and 23.

9 MR. FLORES: That's correct.

10 THE CLERK: Thank you. For the defendant, I
11 have 3, 5, 6, 11, and 24.

12 MR. SWERLING: That's correct.

13 THE CLERK: Thank you.

14 THE COURT: Seat the jury.

15 THE CLERK: Ladies and gentlemen of the jury, as
16 I call your number, please come up. Have a seat in
17 the jury box and bring all your belongings with you.

18 Number 163 (White Male).

19 Number 53 (White Male).

20 THE BAILIFF: Watch your step.

21 THE CLERK: Number 187 (White Female).

22 Number 266 (White Male).

23 Number 18 (Black Female).

24 Number 305 (White Female).

25 Number 249 (Black Female).

1 Number 228 (Hispanic Female).

2 Number 184 (Black Female).

3 Number 263 (Black Female).

4 Number 244 (Black Female).

5 Number 32 (Black Male).

6 Number 22 --- I'm sorry, number 136 (Black Male).

7 THE BAILIFF: The jury is seated, Your Honor.

8 THE COURT: Any objection to the jury selection
9 process from the State?

10 MR. FLORES: Nothing from the State, Your Honor.

11 MR. SWERLING: No, Your Honor.

12 THE COURT: All right. Thank you.

13 All right. Remaining members of the jury panel,
14 obviously, you were not drawn out of the hat selected
15 on this case, so I'm going to ask you to return to
16 the jury assembly room for further instructions.

17 I don't know whether there --- I know there are
18 other trials that are going to be drawn tomorrow
19 morning. I don't know about this afternoon. You're
20 probably --- don't hold me to it, but you'll probably
21 be released for the afternoon.

22 I do want to thank you for coming. I mentioned
23 this morning how appreciative I am and the whole
24 court staff and everybody else is of your willingness
25 to come and serve and help us resolve these matters

1 in our community.

2 Good luck to all of you. I may see you later in
3 the week. I may not.

4 (WHEREUPON, the unselected members of the jury
5 left the courtroom.)

6 THE COURT: All right. Ladies and gentlemen, in
7 just a moment, we'll get started with the trial.
8 We'll take about a five-minute break while I talk to
9 the lawyers about some of the procedural matters that
10 I need to cover with them.

11 The bailiff is going to take you to your jury
12 room. I don't know if you have got any refreshments
13 in there or not, but...

14 THE BAILIFF: We'll get them.

15 THE COURT: These --- where is the other
16 gentleman?

17 The gentlemen with the red coat, the maroon
18 coats on, they are our bailiffs. They are here for
19 your benefit. They are here if you need something or
20 you need to make a phone call, you need to take a
21 break or anything, please notify one of them, because
22 they are --- they are your way of communicating with
23 me. They're also here just for the purpose of
24 helping you and making sure your time here is
25 comfortable.

1 So if you'll just go to the jury room for a few
2 minutes. They'll show you where your jury room is.

3 Mr. Bryant, when we return from the jury room,
4 I'm going to ask you to serve as foreperson of this
5 jury.

6 THE JUROR: Yes, sir.

7 THE COURT: The bailiff will show you where to
8 sit. I think you'll take a seat where the lady with
9 the pink blouse on is seated during the course of the
10 trial.

11 THE JUROR: Yes, sir.

12 THE COURT: Thank you very much.

13 THE JUROR: You're welcome.

14 THE COURT: They're excused to go to the jury
15 room.

16 (WHEREUPON, the jury left open court at
17 approximately 3:12 p.m.)

18 THE COURT: All right. Counsel, anything? I
19 just wanted to give the jury a short break.

20 Let's take a ten-minute break, and then we'll be
21 ready to proceed with your opening statements.

22 MR. FLORES: Thank you, Your Honor.

23 (WHEREUPON, a short break was taken.)

24 THE BAILIFF: You ready, Your Honor?

25 THE COURT: Yes, sir.

1 THE BAILIFF: All the way down.

2 (WHEREUPON, the jury came into open court at
3 approximately 3:24 p.m.)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: Thank you very much. Madam clerk,
6 swear the jury. please.

7 (WHEREUPON, the jury was sworn.)

8 THE COURT: All right. Ladies and gentlemen,
9 before counsel makes their opening remarks, let me
10 just take a few minutes to tell you about our
11 procedure.

12 I think I have explained what this case is about.
13 It's a fairly simple issue. There's not going to be
14 a lot of witnesses, but your job, your responsibility,
15 is to evaluate the witnesses as they come before you,
16 try not to make any prejudgment about this case until
17 you've heard all of the evidence.

18 You will be asked to --- you'll retire to the
19 jury room, make your decision at that time, after you
20 have heard all of the evidence. I ask you to keep an
21 open mind, please pay attention.

22 At the end of the case, we're obviously going to
23 ask you for a decision, and I want you to have been
24 fully informed about the facts of this case as we go
25 through it.

1 I'm going to instruct you about the law of this
2 case. As I told you, it's under is special statute
3 called the Sexually Violent Predator Act, and I will
4 tell you more about that at the end of the case in
5 terms of what the State's responsibility is to prove
6 to you in order to have someone admitted into this
7 program.

8 I think the attorneys are well versed in the law,
9 and I think they will --- will do their best to
10 convince you of their position. Now, I'm going to
11 ask you when we leave today and also when you're back
12 in the jury room, I'm going to ask you not to discuss
13 this case among yourselves until all of the evidence
14 has been presented. It would be inappropriate to
15 start discussing the case before you've heard all the
16 evidence.

17 I'm going to ask you when you go home, I'll
18 remind you again at that time not to discuss this
19 case with anyone else, even your family or friends
20 over the evening hours.

21 If you were to tell somebody about what this
22 case is about, somebody is likely to offer you an
23 opinion as to what they think you ought to do, and
24 the decision is entirely up to you. It should not be
25 influenced by anything that anybody else might say or

1 do outside this courtroom.

2 So I'll ask you, and I will remind you again as
3 we leave, not to discuss this case. It's very easy
4 for you to just say, "I've been instructed by the
5 judge not to talk about this case."

6 It inevitable that your family or friends will
7 ask you what you did today. It's a natural thing,
8 but it's easy for you to say, "The judge told me ---
9 I am on a jury, but the judge told me I can't talk
10 about it until the case is over." Then you can talk
11 about it with whomever you please.

12 The other thing I'll ask you to do before we
13 leave, and I'll remind you again is what I talked to
14 you about this morning in jury qualification, that is
15 the use of the internet or any other personal devices
16 to try to do any independent research about this case.
17 That would be highly improper also.

18 So with that in mind, the attorneys are going to
19 make what are known as the opening statements to you
20 at this time, and I will remind you that the --- what
21 they tell you is just their opinion as to what's
22 going to take place over the next day or two. It's
23 not evidence in this case.

24 The evidence in this case will come from this
25 witness stand from the sworn witnesses that will take

1 the stand. That is the evidence that you are
2 supposed to consider in this case, not what the
3 attorneys tell you.

4 The attorneys may try to convince you of
5 something, but what they tell you is not evidence.
6 It's only their opinion as to what the evidence may
7 show or what the --- they believe the witnesses are
8 going to say to you.

9 With that in mind, counsel, you may begin with
10 your opening remarks. Mr. Flores.

11 MR. FLORES: Thank you, Your Honor. May it
12 please the Court.

13 THE COURT: Yes.

14 MR. FLORES: Mr. Swerling, Mr. Fetner. Good
15 afternoon, ladies and gentlemen.

16 THE JURORS: Good afternoon.

17 OPENING STATEMENT:

18 MR. FLORES: My name, as Judge Cooper said, is
19 Lloyd Flores. I work for the Attorney General for
20 the State of South Carolina.

21 Myself and one other attorney, Mr. Jim Vogel,
22 are responsible for conducting these civil commitment
23 trials under the Sexually Violent Predator Act.

24 This case is about the protection of the
25 citizens of Richland County and the State of South

Opening by Flores

39

1 Carolina. We are here today, as the judge has said,
2 to decide whether or not Mr. William Bryan Fetner is
3 a sexually violent predatory or if he is not.

4 About 13 years ago, in 1998, our legislators met
5 here in Columbia to decide whether or not this act
6 should be in existence. When they passed this law,
7 they had two thoughts in mind: First, there are
8 certain individuals who live in our state that suffer
9 from mental abnormalities or personality disorders
10 that make them more likely to commit acts of sexual
11 violence; and second, that these individuals need
12 treatment in a secure setting to protect the public
13 during the treatment process because they are
14 extremely dangerous individuals.

15 The State contends that Mr. Fetner is one of
16 those individuals our legislators had in mind when
17 they passed this act.

18 How do we know that? As the judge has stated,
19 he is --- he is the one who will tell you what the
20 law is at the end of the case.

21 If I am to misspeak at any point, ignore what I
22 say. Anything I have said with regard to the law, if
23 it conflicts with what the judge says, he will
24 instruct you exactly what the law is.

25 The Sexually Violent Predator Act requires two

1 things to be found a sexually violent predator:

2 First, an individual must have been convicted of a
3 sexually violent offense as defined by the act.

4 The State contends, and as you have heard
5 already, that Mr. Fetner has been convicted of a
6 sexually violent offense.

7 In 2000, in the year 2000, Mr. Fetner pled
8 guilty to acts he had done in 1998. He pled guilty
9 to committing a lewd act on a minor under the age of
10 16.

11 You will hear facts regarding that offense. His
12 victim was a ten-year-old girl whom he abducted from
13 a local retail store and pulled into a restroom in
14 order to sexually assault her. I don't think
15 Mr. Swerling will contest the existence or the facts
16 behind that conviction.

17 The second requirement under the act is that
18 Mr. Fetner must suffer from some mental abnormality
19 or personality disorder that makes him more likely to
20 commit acts of sexual violence.

21 You will hear testimony today from a
22 psychiatrist, Dr. Peggy Wadman, who is employed by
23 the Department of Mental Health who has conducted
24 such an evaluation and has determined that Mr. Fetner
25 suffers from pedophilia. She will describe what

Opening by Swerling

41

1 pedophilia is and its course of treatment.

2 You'll also hear testimony from which you can
3 decide yourselves whether Mr. Fetner lacks control
4 over this pedophilia and whether or not he should be
5 committed for long-term control, care and treatment
6 at the Department of Mental Health to treat him for
7 this pedophilia.

8 Now, these cases by their very nature contain
9 disturbing facts, but I ask you to do one thing
10 throughout this case: Listen to the evidence.
11 Listen to the testimony you will hear from this stand,
12 not just the State's evidence, but anything that
13 Mr. Fetner will put up.

14 We believe that as you listen to the evidence,
15 the testimony you will hear, perhaps the testimony
16 you will not hear, will lead you to one decision, and
17 that decision will be that Mr. Fetner is a sexually
18 violent predator who needs to be committed for
19 treatment, long-term control, care, and treatment, at
20 the Department of Mental Health. Thank you.

21 THE COURT: Mr. Swerling?

22 OPENING STATEMENT:

23 MR. SWERLING: May it please the Court.
24 Mr. Flores.

25 Good afternoon, ladies and gentlemen.

1 THE JURORS: Good afternoon.

2 MR. SWERLING: Well, you won the lottery, and
3 you got selected to sit in the trial of this case.

4 Of course, I'd like to welcome you to Richland
5 County court. We were together this morning in the
6 other courtroom while you were being qualified as
7 jurors, and I look forward to trying this case in
8 front of you.

9 This is a --- this is something we do week in
10 and week out, the judge, the lawyers, but this is
11 going to be your --- maybe your first opportunity
12 ever to sit in a jury and decide facts and what the
13 result should be as a result of those facts and the
14 law in a case.

15 Now, this has some quasi criminal aspects to it.
16 Mr. Fetner was convicted of some crimes back in 1998,
17 and now the State is seeking to hold him as a
18 sexually violent predator with the Department of
19 Mental Health, as Mr. Flores has stated.

20 So you have now a civil proceeding to make that
21 determination. This is not a criminal proceeding,
22 but this is a little bit different here. In regular
23 civil court, we do a civil trial. The Government or
24 the State has the burden of persuasion or the
25 plaintiff has burden of persuasion over a

Opening by Swerling

43

1 preponderance of the evidence.

2 Now, they have to just offer a little bit more
3 evidence than not that those facts are in existence
4 and that they're entitled to a verdict in the case.

5 So they only have to weigh a little bit. They
6 have to tip the scale just a little bit in their
7 favor with the evidence in order to be entitled to a
8 verdict in the case.

9 In a criminal case, and in this particular case
10 even though it is a civil case, the State has the
11 burden of proof, as they would in a criminal case, to
12 prove the elements of this offense beyond a
13 reasonable doubt or the elements of what they intend
14 to show that he has this mental abnormality beyond a
15 reasonable doubt.

16 Now, that places on the State a heavier burden
17 than it would a plaintiff in an ordinary civil case.
18 When they present this evidence and you go in and
19 eventually deliberate and you listen to the judge's
20 instructions on the law, you'll be told that if the
21 State fails to prove beyond a reasonable doubt the
22 elements that they contend exist in this case, then
23 you must find in favor of the defendant or the
24 Respondent in this case. There is no choice.

25 Reasonable doubt is defined in a number of

1 different ways, but basically what it comes down to
2 is that you have a doubt for which you can give a
3 reason or you hesitate or you are concerned, and
4 there's a reasonable concern and a reasonable doubt
5 in your mind as to whether or not the State in this
6 case has met its burden of proof, has proved those
7 elements beyond a reasonable doubt.

8 If they proved the elements beyond a reasonable
9 doubt, they are entitled to a verdict. If they don't
10 prove those elements beyond a reasonable doubt, they
11 are not entitled to a verdict. The defendant or the
12 Respondent is entitled to a verdict in this case.

13 We contend that there will be a reasonable doubt
14 in this case. At the conclusion of the case and
15 hearing the evidence and hearing the judge's
16 instruction on the law, you'll go back and deliberate
17 and not be satisfied beyond a reasonable doubt that
18 the State has met its burden of proof in this case,
19 and as a result, we submit that you should come back
20 with a verdict in favor of Mr. Fetner.

21 Now, let me say this at the outset, just like
22 Mr. Flores did: What happened in 1998 was very
23 disturbing.

24 Mr. Fetner was accused of several criminal
25 offenses which involved taking young girls and trying

Opening by Swerling

45

1 to get them out of a store or get them into the
2 bathroom. He had --- at one time --- and you'll hear
3 about it --- he confessed to those crimes.

4 As a matter of fact, when he was being evaluated
5 by Dr. Wadman, he confessed to those crimes. The
6 facts of those particular offenses are not pretty.
7 They are very, very disturbing.

8 But Mr. Fetner entered a guilty plea in the year
9 2000 to those offenses, and he was sentenced to 15
10 years in the penitentiary for the three counts of
11 kidnapping and the one count of lewd act on a minor.

12 He started serving his sentence, actually, in
13 1998 when he was arrested, because he was not allowed
14 out on bond. So he has been in custody for 13 years.

15 He came up for release in August, just the
16 beginning of this month, came up for his release from
17 the Department of Corrections, having fully served
18 his sentence that was imposed on him by a court.

19 Then the State comes in and tries to hold him
20 further for mental health treatment in a secure
21 facility because he fits the definition of a sexually
22 violent predator.

23 Now, during the course of the next two days, I
24 ask you to consider this: Mr. Fetner paid his price,
25 paid for what he had done, and he served the 15-year

1 sentence that was imposed on him by the court.

2 Now the State is coming in and wants a little
3 bit more. They just want something else. They want
4 to hold him, again, on an involuntary commitment
5 because they say he's a sexually violent predator.

6 Now, I'm not asking you have any sympathy for Mr.
7 Fetner, but what I am asking you is to consider is
8 this: That after someone serving their sentence and
9 having paid their debt to society and having served a
10 sentence that a judge imposed on him, you have to
11 decide whether or not the State is proving their case
12 beyond a reasonable doubt that he is a sexually
13 violent predator under the law. That's what you're
14 going to have to decide, whether he should be held
15 further, longer than his sentence that was imposed by
16 that court.

17 Now, they have to prove, the State has to prove
18 in order to go ahead and put him in this facility on
19 an involuntary basis that he is a sexually violent
20 predator; that he has, number one, pled guilty to
21 some serious sexual offense, which is not contested,
22 by the way.

23 You're not going to have to make that decision
24 as to whether or not he was convicted of a qualifying
25 offense, but you will have to decide whether or not

Opening by Swerling

47

1 --- if as result of this mental abnormality or
2 personality disorder he is likely --- or the State is
3 proving beyond a reasonable doubt that he is likely
4 to commit another sexual crime in the future, that
5 he's predisposed to commit another sexual crime in
6 the future; that he lacks the control about
7 committing another sexual crime in the future.

8 That's what you will have to determine based
9 upon the testimony of Dr. Wadman, who did not see
10 Mr. Fetner until the last couple of months.

11 Now, the data you will hear, and the opinion
12 that you will hear over the course of the next few
13 hours, is all based upon conduct that's 13 years ago,
14 that's 13 years old.

15 There is no other conduct that you will hear
16 since 1998 that Mr. Fetner is a sexually violent
17 predator. The doctor is going to render an opinion
18 that he qualifies under that definition based upon
19 data and facts that existed 13 years ago.

20 In the last 13 years, Mr. Fetner has been locked
21 up. He's been on protective custody status, as you
22 will hear. He has not reoffended. He has not had a
23 disciplinary. He has not had an infraction, and he
24 was scheduled to be released in August. We ask you
25 to consider those things, as well.

1 At the end of the case, again, we submit that
2 you will have a reasonable doubt as to whether or not
3 Mr. Fetner should be held as a sexually violent
4 predator or should he be released to the community.

5 Now, let me say this as I sit down: When
6 someone is convicted of a sexual offense, they are
7 not simply released to the community. There are
8 controls on those individuals when they are released
9 to the community, and you will hear about that.

10 They are on community supervision for a period
11 of two years. They have to wear a monitor for six
12 months. They have to be under home detention. They
13 have to get counseling for a period of two years. If
14 they violate any of that, then they can go back to
15 prison.

16 There are all sorts of restrictions on a sexual
17 offender when he's released from prison, can't go
18 within 1,000 yards of a park, a school or any other
19 kind of facility which houses children. He can't go
20 near any children.

21 So I wouldn't want you to think that by
22 releasing or saying he is not a sexually violent
23 predator and should be involuntarily committed to the
24 secure long-term facility, that he is released in the
25 community, immediately poses a danger to the

Direct of Wadman by Flores

49

1 community.

2 No one with the State ever wants to talk about
3 that; that there are controls in place for every
4 person who is convicted of a sexual offense so that
5 they don't reoffend. We submit that those are
6 adequate in this case, surely based on conduct that's
7 13 years old.

8 Thank you very much for your attention over the
9 next couple of days. I look forward to being with
10 you, and I hope this experience for you opened your
11 eyes to what happens in your courts, and it's a
12 rewarding and satisfying experience. Thank you.

13 THE COURT: Mr. Flores, call your first witness.

14 MR. FLORES: Thank you, Your Honor. The State
15 would call Dr. Peggy Wadman.

16 PEGGY WADMAN,
17 after being duly sworn, testified as follows:

18 THE CLERK: Thank you. Have a seat in the
19 witness stand please. State your name for the record.

20 THE WITNESS: It's Peggy Wadman, W-A-D-M-A-N.

21 DIRECT EXAMINATION:

22 BY MR. FLORES:

23 Q Good afternoon, Dr. Wadman.

24 A Hey.

25 Q Dr. Wadman, how are you currently employed?

1 A I am the medical director for the forensic
2 division for the South Carolina Department of Mental
3 Health.

4 Q And what professional degrees do you possess?

5 A I have an undergraduate degree from the
6 University of South Carolina, and then I went on and
7 went to medical school and have an MD degree.

8 When it came time to decide what type of
9 medicine I was going to practice, I decided on
10 psychiatry, and I went in and completed a four-year
11 residency in adult psychiatry.

12 At the end of that, I did an extra year of a
13 forensic fellowship and became board certified in
14 both forensic psychiatry and also general psychiatry.
15 I also have a Master's degree in public health.

16 Q Doctor, could you briefly describe to the jury
17 what the study of psychiatry is?

18 A Well, psychiatry, particularly forensic
19 psychiatry, is the interface between --- forensic
20 psychiatry is the interface between psychiatry and
21 the law. In psychiatry, we study the mind and why
22 people --- we look at behaviors, why people do what
23 they do.

24 Psychologists do more, probably, the research
25 and therapy. Psychiatrists look at a lot of the

1 medical reasons that people could have psychiatric
2 illnesses or, you know, brain disorders, illnesses.

3 Psychiatrists prescribe medications. A
4 psychologist doesn't --- a psychologist will do like
5 a doctoral degree at a university, and a psychiatrist
6 is someone who goes to medical school.

7 Q Now, just a moment ago you mentioned that you
8 were board certified in forensic psychiatry. Could
9 you please tell the jury what board certification
10 means?

11 A Yeah. At the end of --- at the end of medical
12 school, we all have to pick a residency that we're
13 going to go into, and I picked psychiatry. That's
14 one of the longest ones. It's four years, because we
15 have to do both medicine and then the psychiatric
16 part of it.

17 Then at the end of that, we apply to become what
18 we call board certified, which is nationally
19 recognized. We have to take examinations and travel
20 to cities and do oral board exams in front of other
21 board certified psychiatrists. So probably about
22 half of the people who take the boards pass them.

23 MR. SWERLING: I'll stipulate to her
24 qualifications, further qualifications.

25 THE COURT: All right.

1 MR. FLORES: Then we would ask that Dr. Wadman
2 be recognized as an expert in forensic psychiatry.

3 THE COURT: So recognized.

4 MR. FLORES: Thank you, Your Honor.

5 BY MR. FLORES:

6 Q Doctor, how often --- excuse me. Have you
7 previously been recognized as an expert in the field
8 of forensic psychiatry in the courts of law in this
9 state?

10 A Yes, I have.

11 Q About how many times have you been recognized in
12 that capacity?

13 A Probably a little bit more than 100 times.

14 Q Dr. Wadman, how did you become involved with
15 this particular case?

16 A When --- when somebody is coming up for release,
17 they've been convicted of a sex offense, they go
18 before a ---

19 MR. SWERLING: Your Honor, I object. As far as
20 the procedure as to how we got here.

21 THE COURT: Overruled. Go ahead.

22 THE WITNESS: Do you want me to continue?

23 THE COURT: Yes.

24 THE WITNESS: Okay. Anyway, it goes through a
25 process. There's several levels of screening.

Direct of Wadman by Flores

53

1 There's what's called a multidisciplinary committee
2 that people are on, a judge ---

3 MR. SWERLING: Your Honor, just again, I object
4 to any of these committees or any kind of these
5 findings. I think it usurps the jury's function and
6 prejudices the ---

7 THE COURT: I understand, but she has got to
8 give some background on how this case arose to allow
9 her to do it. Go ahead.

10 BY MR. FLORES:

11 Q Please continue.

12 A Anyway, there's a few steps it goes through, and
13 then at each step, they decide, a group decides, does
14 he meet the qualifications, and they'll go from one
15 step to another. Then there is what's called a
16 probable cause hearing before a judge.

17 At that hearing, if the judge finds probable
18 cause that the person meets the criteria as a
19 sexually violent predator, the Court will appoint an
20 examiner. I am the court-appointed examiner in this
21 case. The court appointed me.

22 So I don't work for the Attorney General's
23 Office, and I don't work for Mr. Swerling. I
24 essentially answer to the Court. I am charged with
25 doing a fair and impartial evaluation of the

1 Respondent and coming to some type of conclusion.

2 Q Dr. Wadman, what type of evaluation did you do
3 in this case?

4 A Well, this is a forensic evaluation. We call it
5 a precommitment evaluation for the sexual predator
6 program. In this type of evaluation, there is fairly
7 much of a national standard for this.

8 You know, we receive a packet of information. In
9 that what we do is we review their legal records. We
10 review any medical records, hospital records. We
11 review their rap sheet, their past crimes.

12 We review their corrections history and how they
13 behaved while they were in prison, look at all of
14 that. We look at any treatment they may have had.
15 We do a lot of assessments, paper-and-pen assessments.
16 We actually do a face-to-face evaluation, which I did
17 with Mr. Fetner back in May, and just look at all of
18 the --- any type of documentation that comes with it.

19 Q Doctor, for purposes on the record, would you
20 please identify who you're referring to as Mr. Fetner?

21 A Mr. Fetner is seated with Mr. Swerling.

22 MR. FLORES: Your Honor, we would just ask that
23 the record reflect that Dr. Wadman identified
24 Mr. Fetner.

25 THE COURT: All right. The record so reflects

Direct of Wadman by Flores

55

1 the witness identified the defendant.

2 BY MR. FLORES:

3 Q Doctor, you have just described your typical
4 protocol for conducting these evaluations. Could you
5 specifically address what type of information you
6 received to aid you in conducting this type of
7 evaluation?

8 A Yes. In this particular case, I did receive the
9 incident reports related to his offenses. I received
10 witness statements and his own statements to the
11 police at the time of the crimes.

12 I looked at, again, the South Carolina
13 Department of Corrections records on how he behaved
14 in prison and what happened there, just letters from
15 his attorney that had been written back at that time,
16 just --- is there anything else you --- typical legal
17 documents.

18 Q Doctor, is this the type of information that is
19 typically and reasonably relied upon by other experts
20 in your field of forensic psychiatry?

21 A Yes.

22 Q At the time that you conducted your interview
23 and evaluation of Mr. Fetner, was there any
24 information you could not obtain?

25 A At the time I --- at the time I actually did the

1 evaluation, I was waiting for some records from his
2 previous employer. He had told me that he had been
3 disciplined on one occasion, and I did not have those,
4 but I did receive those before this trial.

5 Q Did you consider and rely on the information you
6 had just listed for the jury a moment ago and upon
7 your interview with Mr. Fetner in rendering an
8 opinion in this matter?

9 A Yes, I did.

10 Q Doctor, why do you rely on information regarding
11 Mr. Fetner's criminal history in reaching your
12 opinion in this matter?

13 A Well, the --- in terms of sexual offenses and
14 really, any type of violent behavior, the past is the
15 best predictor of the future, and so it's very
16 important to look at what somebody has done over time
17 to see if there is a pattern that's been established.

18 Also, we rely on past behavior to do a variety
19 of assessments in which we try to arrive at some risk
20 level to see how risky they are as far as committing
21 another sex offense once they're released.

22 Q Dr. Wadman, based on your interview with
23 Mr. Fetner and your review of his file, at the time
24 of your interview, had he been convicted of a
25 sexually violent offense?

Direct of Wadman by Flores

57

1 A Yes.

2 Q And of what was he convicted when you conducted
3 your evaluation?

4 A He had been convicted of several --- he had been
5 convicted of one sexually violent offense, and he had
6 been arrested for others.

7 But in a plea --- he had negotiated a plea
8 bargain, and he actually pleaded guilty to one count
9 of lewd act on a minor and three counts of kidnapping.
10 One of the kidnapping convictions was related to the
11 lewd act, and two of them were related to other
12 children.

13 MR. FLORES: If I may approach the witness, Your
14 Honor?

15 THE COURT: Yes.

16 BY MR. FLORES:

17 Q Doctor, I'm going to hand you what's been marked
18 State's Exhibit 1 and State's Exhibit 3. Would you
19 please identify what State's Exhibit 1 is for the
20 record?

21 A Okay. State's Exhibit 1 is the indictment for
22 the lewd act upon a child under 16, and that's the
23 indictment again. This is a description of the act.

24 This involved a seven-year-old girl, and along
25 with that is the --- is an indictment for kidnapping

1 involving in the same seven-year-old girl.

2 Q Now, on the top of each of those exhibits is a
3 sentencing sheet. Could you identify the date on
4 which Mr. Fetner pled guilty to those two offenses?

5 A Just one minute here. It's a little rough here.
6 It's hard to --- I can't really read that. It looks
7 like --- you know, I can't read it. I --- I know
8 that --- let me look here.

9 He pled guilty. He was sentenced on July 25th,
10 2000, but I'm sorry, I can't see if that's the date
11 here.

12 Q Okay. What is the date of offense for that
13 particular set of acts?

14 A Okay. This offense occurred on November 13th,
15 1998.

16 Q All right. And based on your --- you mentioned
17 incident reports. You mentioned your interviews with
18 Mr. Fetner and other documents you obtained. What
19 were the facts underlying that particular offense
20 date?

21 A Okay. This particular one --- this is something
22 that happened on or around November 13th, 1998. He
23 was arrested about six days later, but what happened
24 in this one, according to the records and by talking
25 also to Mr. Fetner, he had lured a seven-year-old

Direct of Wadman by Flores

59

1 girl away from the toy aisle and into the men's
2 restroom at a Target store on Decker Boulevard after
3 befriending her and offering her some ice cream.

4 Then once inside the restroom, he took her to a
5 back stall. He latched the door. He pulled down her
6 pants and underwear, and he began touching her on her
7 buttocks.

8 A store employee came in and interrupted the act,
9 and he pulled up the victims pants and underwear and,
10 you know, shhh'd her, put his finger to his mouth,
11 told her to be quiet.

12 The employee that walked in heard the victim
13 tell Mr. Fetner that she wasn't supposed to be in the
14 men's restroom. He looked at him, and by the time
15 the employee had zipped up his pants from going to
16 the bathroom ---

17 MR. SWERLING: Judge, I think she is entitled to
18 go into what the --- what the charges are, but not
19 all the hearsay of what's involved about what people
20 said and what they did.

21 THE COURT: I'm not sure what she is reading
22 from. Is that the indictment or the incident?

23 MR. FLORES: I believe Dr. Wadman has said this
24 information was in the incident reports and the
25 information she obtained from Mr. Fetner during her

1 personal interview with him regarding these events.

2 THE COURT: If that's what she said.

3 BY MR. FLORES:

4 Q Is that what you testified to?

5 A That's --- that's what I ---

6 Q --- Dr. Wadman ---

7 A Believe I ---

8 THE COURT: Overruled.

9 THE WITNESS: Okay.

10 I --- when I spoke to him, specifically after I
11 had read the incident reports, he told --- this is
12 what he told me. He said he that was looking for ---
13 at fishing equipment, and then he thought about
14 looking at the toy aisle for a potential victim, for
15 a little girl.

16 He has told me that he is sexually interested in
17 little girls ages, I believe six to ten, and he said
18 that he saw her on the Barbie aisle and in his words
19 "lured her away".

20 He said he told her he had to go to the bathroom,
21 and he took her into the men's restroom. He said she
22 tripped on the threshold of the door, and he grabbed
23 her to keep her from falling.

24 He said he took her into a stall at the rear of
25 the bathroom and latched it shut. "I pulled her

Direct of Wadman by Flores

61

1 jeans down and pulled her panties out and placed my
2 hand on her buttocks. One or more male employees
3 walked into the bathroom," and he got scared and
4 pulled her pants up quickly and she started to cry.

5 He said the victim told him, "My mother told me
6 not to talk to strangers," and the man looked at him
7 funny. He said he exited the bathroom with the girl.
8 She walked back to the toy section crying, and he
9 quickly left the store and went home.

10 Mr. Fetner told police at the time that this ---

11 MR. SWERLING: Objection again, Your Honor. I
12 have to object to the hearsay.

13 THE COURT: All right. Don't say what somebody
14 else --- say what he said to you.

15 THE WITNESS: Okay.

16 THE COURT: Not what somebody else said to you.

17 THE WITNESS: That's --- in that particular
18 situation, that's what happened.

19 BY MR. FLORES:

20 Q With regard to these incidents you --- I'm sorry,
21 let me continue. You have already testified that he
22 had pled guilty to other acts ---

23 A Yes.

24 Q --- at the time? I'm going to --- if I may
25 approach, Your Honor.

1 Your Honor, we would ask that Exhibits 1 and 3
2 be admitted into evidence at this time.

3 THE COURT: Any objection?

4 MR. SWERLING: Well, I have objections to the
5 documents coming in. The documents testify about
6 what's on the documents and what the --- what he was
7 sentenced to and when he was sentenced, and that's, I
8 think, some ---

9 THE COURT: Are they certified documents?

10 MR. FLORES: They are over certified documents,
11 Your Honor.

12 THE COURT: Overruled. Court records?

13 MR. FLORES: Yes, from the Clerk of Court's
14 office.

15 THE COURT: Overruled.

16 MR. FLORES: May I approach?

17 THE COURT: Go ahead.

18 (WHEREUPON, State's Exhibits Nos. 1, 3 were
19 admitted into evidence.)

20 BY MR. FLORES:

21 Q Doctor, I'm going to hand you State's Exhibit 4
22 for identification purposes. Would you please
23 identify what that indictment is?

24 A Yes. This is an indictment from Lexington
25 County for a kidnapping charge against Mr. Fetner and

Direct of Wadman by Flores

63

1 a sentencing sheet also, and this pertained to a
2 seven-year-old female child.

3 It says in that that he lured her and cornered
4 her into leaving a store with him against her will.
5 In this, he was, I believe, sentenced to 15 years.

6 It said that he must register with DSS central
7 registry of child abuse and neglect and be placed on
8 the sex offender registry. He must receive
9 counseling and treatment for sexual problems while
10 incarcerated.

11 Q What is the date of offense listed on that
12 particular sentencing sheet?

13 A This one occurred August 22nd, 1998, about three
14 months before the other one.

15 Q All right. Based on your review of the incident
16 reports and the records you received, as well as your
17 discussions with Mr. Fetner, what happened during
18 this particular offense?

19 A Okay. This was the ---

20 MR. SWERLING: I'd like to limit it just to the
21 discussions she had with Mr. Fetner when he was there,
22 not some police report.

23 THE COURT: All right. That's fair.

24 THE WITNESS: Okay.

25 THE COURT: What you learned from Mr. Fetner.

1 THE WITNESS: Okay.

2 THE COURT: Or what records you based your
3 opinion on.

4 THE WITNESS: Okay. Mr. Fetner was at a
5 Wal-Mart store on Garners Ferry Road on September 9th,
6 1998, and he said that he had gone to the Wal-Mart
7 store to look at sporting goods equipment, and
8 shortly after entering the store, he said he decided
9 to go to the toy aisles to look for a potential
10 victim or victims.

11 He said he was looking for a female victim
12 between the ages of six and ten. He saw two young
13 girls on the Barbie doll aisle and heard their father
14 tell them to stay put while the father looked in
15 another department.

16 He said he asked the oldest girl, who appeared
17 to be seven or eight years old, to "read tags to me",
18 in other words, look at the price tags and tell him
19 how much things were.

20 After a brief time, he told her to come with him
21 because her father was at the front of the store with
22 his shopping cart and was ready to leave.

23 He said he held her hand and walked with her
24 toward the patio area where he had parked his truck
25 outside. He said he intended to drive the little

Direct of Wadman by Flores

65

1 girl to a secluded place and make her perform oral
2 sex on him or any type of sexual act, and he said his
3 plan was to take her behind an abandoned building or
4 take her to a motel room.

5 He said the little girl saw her father at the
6 cash register and said, "There is my father." He
7 said he let go of her hand and told her to go back to
8 her sister and turned and left.

9 He told me he was excited but ashamed and
10 remorseful at the thought of having sex with the girl.
11 He said, "It was something I tried but failed."

12 He said he thought about the possible
13 consequences of what he had done after the fact, and
14 he worried about what would happen if the father were
15 to call the police.

16 He said he told himself it would never happen
17 again. That was in September.

18 MR. FLORES: At this time, we'd offer State's
19 Exhibit 4 into evidence, a certified copy of the
20 Lexington County charge.

21 MR. SWERLING: Same objection.

22 THE COURT: Overruled.

23 (WHEREUPON, State's Exhibit No. 4 was admitted
24 into evidence.)

25 BY MR. FLORES:

1 Q Doctor --- may I approach, Your Honor?

2 I'm going to hand you what's been marked State's
3 Exhibit Number 2 for identification purposes. Please
4 describe what State's Exhibit 2 is.

5 A I'm sorry. I made a mistake. I said that that
6 had happened in September. That had happened in
7 August, the thing I just described. This happened in
8 September.

9 Okay. This happened September 7th, 1998. This
10 would have been approximately two --- two weeks after
11 the other incident.

12 This is a kidnapping indictment and a sentencing
13 sheet for kidnapping. This one occurred in Richland
14 County.

15 Q Did Mr. Fetner discuss this particular incident
16 with you?

17 A Yes, he did.

18 Q And what happened in this event?

19 A Okay. The September one --- let me just make
20 sure here.

21 (Pause)

22 Okay. Can I explain something?

23 Q Please.

24 A Because I think I --- okay. This September one
25 is the one that I just described. This one is the

Direct of Wadman by Flores

67

1 August one.

2 Q All right.

3 MR. SWERLING: Which one?

4 THE WITNESS: Okay. I misstated. I ---

5 BY MR. FLORES:

6 Q So the events you were just describing ---

7 A Yes.

8 Q --- actually took place in September. ---

9 A In September.

10 Q --- as a result of this ---

11 A Yes.

12 Q --- sentencing sheet. What took place in August?

13 A Okay. Okay. This is August 22nd, 1998. On
14 August 22nd, 1998, Mr. Fetner was in a Wal-Mart store
15 in West Columbia, and he spotted a child.

16 He said he spotted a child sitting on the
17 children's aisle reading a book, and he says, "I
18 decided to approach her to see if I could get her to
19 come to my truck to perform oral sex on me or
20 possibly drive away to secluded location."

21 He said he would possibly drop her off behind
22 the department store or take her to a local police
23 station where she could get help.

24 He said he heard her say she was at the store
25 with her aunt. He told her that he knew her aunt,

1 and her aunt had told him it would be okay for her to
2 go with him to get some ice cream.

3 He said he lured her out of the store to the
4 patio department, and together they stepped off the
5 sidewalk into the parking area.

6 He said she looked up at him at that point and
7 asked him if he knew what her aunt looked like, and
8 he said that he just looked at her and didn't say
9 anything and she dropped his hand and said, "No. I
10 don't want any" and ran away.

11 Q At this time, we'd offer State's Exhibit 2 into
12 evidence, a certified copy of his conviction.

13 MR. SWERLING: Same objection.

14 THE COURT: Overruled.

15 (WHEREUPON, State's Exhibit No. 2 was admitted
16 into evidence.)

17 BY MR. FLORES:

18 Q I'm sorry, Your Honor. Thank you.

19 Based on your evaluations of Mr. Fetner, did he
20 describe any other acts of this similar character to
21 you?

22 MR. SWERLING: I would object to any other acts,
23 Your Honor, under 404(b) and 404, not the subject of
24 any conviction.

25 THE COURT: Sustained.

1 BY MR. FLORES:

2 Q Doctor, was all this information that you just
3 described, these acts to which Mr. Fetner described
4 what he did, were these all part of the basis of your
5 opinion in this case?

6 A Yes, they were.

7 Q Doctor, what are risk factors?

8 A Risk factors are --- they're identified factors
9 that we look at when we're trying to see how risky
10 someone's behavior is.

11 So just as an analogy, if you were to go to a
12 life insurance agent and say, "Oh, I want a million
13 dollar life insurance policy." You know, they don't
14 just say, "Oh sure. Sure thing. You know, let's
15 just sign you up."

16 They pull out their little sheet and they start
17 saying, "Well, let me just ask you a few questions.
18 Okay. Do you have a family history of cancer? Yes.
19 Do you smoke? Yes. Do you drink? Yes. You know,
20 have you ever had cancer? Yes."

21 You know, the more yeses that you put on there,
22 the more likely they are not to give you a life
23 insurance policy because you're too risky, okay.

24 They have all these studies that they do to
25 calculate people's risk. No, because they don't want

1 to lose money, okay.

2 So in sex offender research and evaluation, we
3 also have different risk assessments that we use. We
4 know that certain factors are correlated with an
5 increased risk to sexually reoffend. So we do these
6 types of assessments.

7 I did one on Mr. Fetner. I will say that of
8 probably the five highest risk factors for reoffense,
9 he has four of them. We --- I did what is called a
10 Static 99R. It's one of the --- probably one of the
11 most validated risk surveys that we have.

12 On that instrument, he scored a four, which
13 doesn't mean anything in and of itself, I know to you
14 guys, but it's in the moderate high risk category,
15 okay, moderate high. Then what the assessors tell us,
16 what they say is, "We want you to take that score,
17 and we want you to give us an opinion as to whether
18 this is an underestimate of his risk, a fair estimate,
19 or an overestimate."

20 So I --- when I did all of that and looked at
21 all of his risk scores, I believe that it's actually
22 an underestimate.

23 Even though somebody who scores a four on the
24 static --- now, remember, the only people that are
25 scored on this are sex offenders. So what we're

1 doing is we're comparing sex offenders against each
2 other, okay.

3 So everyone who scored on this is already a sex
4 offender. So we're looking at out of all the sex
5 offenders, where does he rank in there?

6 He would probably rank in the top --- he ---
7 about 80 percent. So only about 20 percent of sex
8 offenders will probably have a higher score than him
9 or be riskier than he would be.

10 The reason that I said it's an underestimate of
11 its risk is because what happened in Mr. Fetner's
12 case --- there's several things about him: One, he
13 never did get treatment while he was incarcerated.

14 He's been incarcerated for 13 years, like his
15 attorney said. He's never had treatment for sex
16 offenses for, you know, for a sexual offender.

17 When I interviewed him, he has a lot of what are
18 called cognitive distortions that are typical of
19 pedophiles.

20 In other words, you know, a lot of times when
21 men are sexually attracted to children, they have all
22 these sort of justifications and rationalizations
23 that they use to explain and sort of defend and
24 justify what they did.

25 You know, in one sentence, they'll say, "Oh, I'm

1 so sorry. You know, I promise myself it will never
2 happen again," and then in the next sentence, you
3 know, he's trying to explain, "You know, I didn't
4 actually ever take her out of the store, and I didn't
5 actually kidnap her because she never, you know, got
6 in my truck with me."

7 He went through a lot of explanation for what
8 was sexually exciting about the whole thing, which
9 included the parents being terrified. That was part
10 of the sexual excitement of the thought of the
11 parents left behind crying and calling the police and
12 while they're looking for the child, he's off taking
13 the child and sexually assaulting the child. So he
14 had a whole sort of fantasy built around these acts
15 that he was trying to do.

16 Now, fortunately for everybody, Mr. Fetner
17 wasn't successful in actually getting the child out
18 to his vehicle and leaving with her.

19 The fact --- the reason that his risk is, I
20 believe, underestimated on these assessments, these
21 acts occurred in broad daylight.

22 They occurred in stores, public places that were
23 video --- had video surveillance, which is how they
24 caught him, because he worked for an agency, and when
25 the people came and looked at the video surveillance,

Direct of Wadman by Flores

73

1 they said, "Oh, I recognize him. I know who that
2 is."

3 Had that not happened, you know, like he --- he
4 told the police at the time, which...

5 MR. SWERLING: Object.

6 THE WITNESS: Object, okay.

7 I think that --- I think when taken into ---
8 looking at it in its entirety and everything that
9 Mr. Fetner told me, he didn't want to do these things.
10 That's what he told me.

11 "I swore I would never do it again. I would
12 never do it again."

13 In one case, it was less than two weeks before
14 he did it again. You know, in another case, he made
15 it two months without doing it again, and they caught
16 him.

17 He went to prison, and he's been in prison 13
18 years. And he hasn't been around little girls, and
19 he hadn't done it again, but there's no little girls
20 in prison. So that's why I think he's a high risk to
21 reoffend.

22 Q Doctor, was there any other information --- I'm
23 sorry, strike that, please.

24 Doctor, based on your examination of Mr. Fetner,
25 review of his records and all of these factors that

1 you just discussed with the jury, did you render an
2 opinion to a reasonable degree of medical certainty
3 as to whether Mr. Fetner had a mental abnormality or
4 personality disorder?

5 A Yes. I do believe, based on all of the
6 information that I reviewed in talking to him, that
7 he has something called pedophilia.

8 Pedophilia is a --- it's a recurrent intense
9 sexually arousing fantasy, sexual urges or behaviors,
10 okay. So it could be fantasies, urges or behaviors,
11 and he had all three.

12 What he told me was that he had sexual fantasies
13 about little girls, and he had a certain type of
14 little girl; that they were little girls between six
15 and ten, white girls, slender girls, little girls who
16 would go along with it. You know, they weren't real
17 feisty. They were quieter.

18 So he had this fantasy of this type of child
19 since his late teens or early 20s. His first offense
20 occurred when he was 29, so for about a ten-year
21 period he was having these fantasies on and off.

22 He had urges to do it. He told me about his
23 urges, and then finally, after all that time, he
24 actually broke that barrier and actually did the
25 behavior. That's --- that's the dangerous part,

1 because there are a lot of people who have pedophilia.
2 They are sexually attracted to children, but they
3 never act on it.

4 You know, they can't --- people can't help their
5 thoughts, but they can help what they do with them.
6 So one of the things that we do in treatment is to
7 teach people how to manage their impulses, how not to
8 act on the thoughts they have, how to change their
9 thoughts.

10 Q Is pedophilia a curable condition?

11 A No, it's not. It's not. It's like alcoholism.
12 Alcoholism is not curable. I mean, we all know
13 people who are alcoholics, have alcohol dependence.

14 Some of them get a grip on it, and they never
15 drink again. But they're always an alcoholic. In
16 other words, they can always go back to it, so they
17 have to work a program, work a lifetime program of
18 sobriety.

19 Just like someone who is addicted to cocaine.
20 You know, they may never use cocaine again after they
21 get control of it, but they will always be
22 susceptible to going back to it.

23 Pedophilia is the same way. You know, we don't
24 know what causes pedophilia. You know, people with
25 pedophilia, it's not that they're evil. It's that

1 their mind, their brain, is telling them that they're
2 sexually attracted to children.

3 Our goal with treating pedophilia is for them
4 never to act on it, never to act on it, but it's not
5 curable.

6 Q Is it a lifelong condition, Doctor?

7 A Yes, it is.

8 Q Doctor, at this time, do you have an opinion to
9 a reasonable degree of medical certainty as to
10 whether Mr. Fetner's pedophilia affects his emotional
11 or volitional capacity so that he is predisposed to
12 commit future sexually violent offenses?

13 A Yes, I do.

14 Q And what is that opinion, Doctor?

15 A I believe that without intensive treatment, and
16 without intensive treatment in a secure facility,
17 that he is predisposed to committing, you know,
18 future acts of sexual violence against children if he
19 is released.

20 Maybe not in the first year, maybe not in the
21 second year, but I believe that he's predisposed to
22 doing that, that he's likely to do that.

23 Q Doctor, do you have an opinion to a reasonable
24 degree of medical certainty as to whether Mr. Fetner
25 has the propensity to be dangerous and to commit

1 future sexually violent offenses?

2 A Yes, I do.

3 Q And what opinion is that, Doctor?

4 A I believe that he is.

5 Q Do you have an opinion to a reasonable degree of
6 medical certainty as to whether Mr. Fetner's
7 propensity to commit future sexually violent offenses
8 is to such a degree that it poses a menace to the
9 health and safety of others?

10 A Yes, I do.

11 Q What is that opinion, Doctor?

12 A I believe that it poses a menace to little girls
13 in the community.

14 Q Do you have opinion to a reasonable degree of
15 medical certainty as to whether Mr. Fetner has
16 serious difficulty in controlling his behavior and
17 his propensities to be dangerous?

18 A Yes, I do. I --- I think that he has a history
19 of that. You know, he definitely is someone who
20 tried hard not to act on his impulses. He didn't
21 want to act on his impulses. He swore up and down he
22 would never do it again, and he kept doing it until
23 he was apprehended.

24 Q Doctor, do you have an opinion to a reasonable
25 degree of medical certainty whether Mr. Fetner's

1 pedophilia makes him likely to engage in acts of
2 sexual violence if he is not confined to a secure
3 facility for long-term control, care, and treatment?

4 A Yes. I do believe that he needs to be in a
5 secure facility for long-term care, control and
6 treatment.

7 Q Doctor, do you have an opinion to a reasonable
8 degree of medical certainty as to whether Mr. Fetner
9 meets the legal criteria to be found to be a sexually
10 violent predator at this time?

11 A Yes, I do. He has both the mental abnormality,
12 which is pedophilia and the likelihood of reoffending.

13 Q And that is at this time today?

14 A Today, yes, today.

15 Q If the jury finds Mr. Fetner to be a sexually
16 violent predator, would he be offered treatment for
17 his pedophilia?

18 A Yes. Currently, the treatment program is housed
19 within the Department of Corrections within the fence
20 at Broad River Road.

21 The corrections department gave the Department
22 of Mental Health space in there to have a treatment
23 program. It's a residential program. They actually
24 stay there. The treatment takes place on those
25 grounds for people who --- not graduate but advance

Direct of Wadman by Flores

79

1 in the program. They're offered treatment off the
2 grounds, as sort of a step-down attempt.

3 We also have --- were, say Mr. Fetner become
4 medically ill, he also have a medical unit at a
5 secure facility outside the Department of Corrections,
6 sort of a prison-based hospital.

7 Q And should Mr. Fetner be committed here today,
8 would Mr. Fetner have the right to petition the Court
9 for ---

10 MR. SWERLING: Objection, Your Honor, as to what
11 we can do in the future.

12 Can we approach?

13 THE COURT: Yes.

14 (WHEREUPON, there was a bench conference.)

15 THE COURT: Go ahead.

16 BY MR. FLORES:

17 Q Doctor, before we close this portion of the
18 examination, did you consider whether outpatient
19 treatment was an adequate mechanism for Mr. Fetner in
20 considering your evaluation of him?

21 A I did in one sense. I mean, I'm not --- I'm not
22 charged with actually considering whether he should
23 go for inpatient for outpatient.

24 What the Court asked me to do is to say does he
25 meet the criteria, is he a sexually violent predator,

1 and does he need to be in a facility for long-term
2 care, control, and treatment. My opinion is that yes,
3 he does.

4 Now, sometimes when people are in this situation,
5 they may have a period of probation. Mr. Fetner
6 wasn't sentenced to any type of probationary period.
7 He was given 15 years with no requirement for
8 probation.

9 I do understand that for sex offenders ---
10 there's been some recent changes in the law. I'm not
11 a lawyer, so I'm not going to talk about the exact
12 requirements because I don't know what they are.

13 I do know that there is some type of community
14 supervision, and in that, it's my understanding,
15 although I'm not sure, that there are some kind of
16 provisions for some treatment.

17 But my opinion, and based on what Mr. Fetner did
18 back in 1998, and the difficulty that he had when he
19 was in the community --- and he's been away from
20 little girls all that time --- he tried --- I believe
21 that he tried as hard as he could not to do this, and
22 he couldn't stop himself.

23 He was ordered as part of his sentencing to have
24 treatment for sexual problems while he was confined,
25 and he didn't receive treatment. There were reasons

Cross of Wadman by Swerling

81

1 for that, but he did not receive any treatment.

2 I really believe that given all of the facts of
3 the case, you know, all the facts surrounding the
4 incidents and everything that he told me about what
5 was going on in his mind, that he's at serious risk
6 of sexually reoffending if he is released to the
7 community without the treatment he needs.

8 MR. FLORES: Thank you, Doctor. Will you answer
9 any question that is Mr. Swerling may have for you.

10 MR. SWERLING: Judge, could we approach one
11 second?

12 (WHEREUPON, a bench conference was held in the
13 presence, but not within the hearing of the
14 jury.)

15 THE COURT: You may proceed.

16 CROSS-EXAMINATION:

17 BY MR. SWERLING:

18 Q Good afternoon, Doctor. How are you?

19 A I'm fine.

20 Q Okay. I want to follow up on a few points that
21 you were making, but I want to start, actually, where
22 you left off.

23 A Okay.

24 Q You made a point of the fact that --- Mr. Flores
25 asked you if you had considered outpatient treatment.

Cross of Wadman by Swerling

82

1 You said --- I think you said you kind of qualified
2 it that you considered it, but he wasn't placed on
3 any kind of probation.

4 A No. That wasn't exactly --- that wasn't exactly
5 what I meant.

6 Q Okay.

7 A I'm sorry if that was the impression you got.

8 When I do the evaluation, what the Court asked
9 me to answer is one --- is this --- does he have a
10 mental abnormality or personality disorder that makes
11 him likely to commit future acts of sexual violence,
12 and the answer is yes.

13 Okay. Then it says, "Does he need long-term ---
14 because of that mental abnormality, does he need
15 long-term care, control and treatment?" My answer to
16 that is yes, I do.

17 So I'm not asked to consider whether he needs
18 outpatient treatment. I'm asked to consider those
19 two things: Is he likely to commit future acts of
20 sexual violence? Yes. Because of that, does he need
21 long-term care, control and treatment? My answer to
22 that is yes.

23 Q Well, I do understand that.

24 A Uh-huh.

25 Q With all due respect, but the Attorney General

Cross of Wadman by Swerling

83

1 asked you the question about did you consider
2 outpatient treatment.

3 A Uh-huh.

4 Q So I'd like to follow up on that.

5 A Okay.

6 Q I guess you didn't?

7 A Pardon me?

8 Q I guess you did not consider outpatient, whether
9 he could get this treatment on an outpatient basis?

10 A No. Because I don't think that he --- because
11 of --- because of the seriousness, because what I
12 believe the severity of his illness, I believe that
13 he needs to be in a secure environment for long-term
14 care, control and treatment.

15 Q Okay.

16 A Not --- not --- and that doesn't have anything
17 to do with being out in the community in an
18 outpatient environment.

19 Q Well, you've made several qualifications about
20 it, but he asked you that question and you said ---
21 you did say you considered it in some way, but then
22 you made a point about the fact that he was not going
23 to be on probation. So I --- what was that point?
24 What were you trying to make there about probation?

25 A I can ---

1 Q In other words ---

2 A I don't really know, Swerling. I don't know
3 what point I was making. I think I was just
4 acknowledging that's not going to be on probation..

5 I was trying to say that --- as you said before
6 that there is a community supervision. I don't know
7 anything about that.

8 You know, so it's --- for me, it's not an either
9 or situation. For me, the Court said, "Answer these
10 two questions." That's what I had to answer.

11 Q And I do understand, but again, Mr. Flores was
12 the one that asked you the question about it. So I'm
13 just trying to understand, so he could get outpatient
14 treatment?

15 A If he --- there's several ways to get outpatient
16 treatment. One, if he acknowledged that he is ---
17 you know, has pedophilia and needs sexual therapy.

18 He told me that he doesn't think that he has
19 pedophilia, and he doesn't --- he thinks he's cured.
20 He thinks that he's not going to reoffend. He thinks
21 that is all a thing of his past, and he's going to
22 get out and everything is fine now because he doesn't
23 think about that anymore.

24 Q Well, maybe it is.

25 A There is no cure for pedophilia.

Cross of Wadman by Swerling

85

1 Q Well, I know but did you give him --- did you
2 give him any consideration for the fact that he's
3 been in 13 years, and he's had an awful lot of time
4 to think about it and the fact that you have no
5 conduct in his --- in the last 13 years, or thoughts
6 even, that would indicate he still thinks like he did
7 13 years ago?

8 A Well, I can't read his mind, so I don't know
9 what his thoughts are.

10 Q But aren't you doing that?

11 A No.

12 Q Isn't that what you're doing?

13 A No. I'm trying to make a calculated risk. I do
14 a calculated risk assessment just based on all the
15 information we have. You know, I can't --- can I
16 look in a glass ball and say is he absolutely going
17 to? No. You know, but I have to make, you know, the
18 best --- I have to give the best opinion I can.

19 Q It's a guess.

20 A It's --- it's more than a guess. It's --- you
21 know, based on the risk assessments, based on
22 everything that we know about sex offenders, based on
23 who we know sexually reoffends and who usually
24 doesn't. You know, but there --- it's not a
25 100 percent, you're right.

1 Q And we're not --- I mean, you know, the fact
2 that someone has risk factors does not indicate that
3 they're going to reoffend.

4 A No. It just --- what it does is it speaks to
5 their likelihood of reoffending.

6 Q Okay. Because I mean, you understand, for
7 example, I mean, I'm --- I smoke cigars. I'm a
8 little bit overweight. I have some history of heart
9 problems in my family. I have an angioplasty myself.
10 I have a risk of having a heart attack, correct?

11 A Yes.

12 Q Okay. But that doesn't mean I'm going to have a
13 heart attack.

14 A No.

15 Q And someone who has indications, genetic issues
16 with regards to cancer or certain other indicators
17 about cancer, they may have risk factors. That
18 doesn't mean they're going to get cancer.

19 A That's correct, but if they have had cancer
20 three times before, or if you had three heart attacks
21 previously, I wouldn't want to put money on the fact
22 that you weren't going to have another heart attack.

23 So what we're looking at is, you know, he has
24 acted on these urges at least three times that he's
25 been charged for. So, you know, that's very

Cross of Wadman by Swerling

88

1 A It ---

2 Q Let me ask you. My understanding is they get
3 about an hour-and-a-half of counseling a week; is
4 that correct?

5 A No, not necessarily. What happens is it's a
6 treatment program that it has different components.
7 It has an activity therapy component. It has a work
8 program where they have to work. It has actual one
9 on one with their counselor, and it has group therapy,
10 too.

11 Now, a lot of times what the guys will say,
12 "Well, I'm only in my group an hour-and-a-half a
13 week," but that's only a small part of their
14 treatment.

15 Q Well, I --- so the answer to my question is they
16 actually have about an hour-and-a-half of therapy a
17 week.

18 A The ones who are confined to the Edisto Program
19 who are not working the program have --- probably
20 about an hour-and-a-half. The ones who are working
21 the program and advancing, they go to an offsite
22 program two days a week.

23 Q Okay. Well, you agree that an hour-and-a-half
24 of therapy on that --- keeping someone in prison and
25 giving him an hour-and-a-half therapy a week is

1 significant. Had you had three heart attacks and
2 you're standing there, you know, I'd be very
3 concerned about you.

4 Q Well, but the fact is that there is still no
5 assurance that is going to happen?

6 A Not 100 percent assurance, you're right.

7 Q And we're not talking about some insurance
8 physical, some physical for the insurance company
9 where they're making a risk assessment. We're
10 talking about whether or not someone must stay in
11 what is essentially prison, isn't it?

12 A Well, it's housed in the prison. It has
13 different rules, different privileges.

14 Q But it is a prison.

15 A It's within the prison.

16 Q Okay. He can't go out.

17 A No.

18 Q He can't leave?

19 A No.

20 Q He's guarded.

21 A Yes.

22 Q Tell the jury now, because I haven't left the
23 issue of this outpatient treatment yet.

24 A Okay.

25 Q What kind of treatment do they get in there?

Cross of Wadman by Swerling

89

1 certainly inadequate, would you agree with that?

2 A I would --- I would say that more would be
3 better.

4 Q More would be better. If the State wanted to
5 unleash some funds, that would be better, correct?

6 A The State has difficulty with funds right now,
7 yeah.

8 Q Okay. So we can keep something past the time
9 they serve their sentence and --- for the sole
10 purpose of an hour-and-a-half of therapy a week?

11 A No. It's more than that, though, Mr. Swerling.

12 Q I'm talking about therapy.

13 A Okay. Actual group time, it's about an
14 hour-and-a-half at that one program, but it's not for
15 everybody because the ones who are in another part of
16 the program get more. They get two days a week.

17 Q Two days a week. Two full days?

18 A They probably arrive there, I want to say at
19 around 9:30, and leave at about three. They have
20 lunch there.

21 Q But that's not therapy?

22 A They're in --- they're in the group in the
23 morning and afternoon.

24 Q All right. But if sitting down with someone
25 while you, as a psychiatrist or a therapist or

1 psychologist, they get about an hour-and-a-half of
2 that?

3 A Probably on an average for the ones that are
4 confined to the program in the prison.

5 Q Well, that's what we're talking about, isn't it?

6 A Well, no. Because, like I said, when they begin
7 working the program and begin making progress,
8 they're allowed to go to the offsite program, so
9 that --- that is more.

10 Q And how much more?

11 A Well, the two days a week.

12 Q Two days a week.

13 A Uh-huh.

14 Q But that's --- we're not talking about being in
15 counseling two days a week?

16 A Well, not one-on-one counseling, but group ---
17 group therapy.

18 Q Well, let me ask you, go back to the outpatient
19 which you talked about briefly there about whether
20 you considered it or not. Someone on an outpatient
21 basis who went to a clinic whose sole purpose is
22 counseling them and treating them for sexual
23 offenders can spend a lot more time than that if they
24 chose to.

25 A Yeah. I mean, certainly, if they had money to

Cross of Wadman by Swerling

91

1 pay for more counseling, they could, but when they're
2 not in counseling, then they're on the street. So
3 what we're asked to consider is does this person need
4 the type of treatment facility where they're also
5 receiving control.

6 In other words, they can't be out on the street.
7 They can't go in Wal-Mart. They can't go in Target.
8 You know, they don't have time to go out and target
9 little girls in between their therapy sessions.

10 I'm not trying to be flippant. I'm just saying
11 that, you know, there's a lot of different sex ---
12 there's a lot of sex offenders out there, but, you
13 know, I was asked to determine whether he is a
14 Sexually Violent Predator and is likely to commit
15 future acts of sexual violence.

16 So I --- you know, I think he's very likely to
17 do that. I think that he needs the type of treatment
18 that is done in a secure facility.

19 Q Based on conduct 13 years old?

20 A Yes.

21 Q Thirteen years ago.

22 A Yes.

23 Q Now, you said something about --- you said
24 something about community supervision. You really
25 don't know anything about it.

1 A Well, I don't know the details on it.

2 Q All right.

3 A I know the two years' of community supervision.

4 I know that some wear ankle monitors, and I don't
5 know for how long. I don't know if all of them are
6 required to wear ankle monitors. I don't ---

7 Q If I told you they have to have --- they have to
8 have sexual therapy counseling, and they have to have
9 GPS monitoring not less than six months. That would
10 be significant, wouldn't it?

11 A But I don't --- I --- I respect the fact that
12 you told me that, but I don't know that to be true.

13 Q Okay. But that would be significant if that was
14 the case, wouldn't it?

15 A Anything that will help somebody get control of
16 something like pedophilia is good ---

17 Q So the answer to my question is yes, that would
18 be significant.

19 A --- for somebody who is appropriate to be in the
20 community to have sex offender therapy.

21 Q Now, but that is purpose of community
22 supervision, that they are --- they have to wear a
23 monitor, and they do have to get counseling. That's
24 just one part of community supervision. If they ---
25 if they violate it, they go back to jail.

Cross of Wadman by Swerling

93

1 A I don't know the details in that, Mr. Swerling.

2 Q Okay. But that would be significant in your
3 assessment, would it not?

4 A I wasn't asked to --- I wasn't asked to look at
5 community --- at whether community supervision would
6 be appropriate for him.

7 For Mr. Fetner, I was asked to say does he have
8 a mental abnormality that makes him likely to commit
9 future acts of sexual violence, and is it to such a
10 degree that I think he needs to be in a secure
11 environment for treatment.

12 Q Right. Well, let's look at that second part
13 about whether or not he needs to be in that secure
14 facility.

15 A Yeah.

16 Q There are other options.

17 A There are other treatment options available for
18 sex offenders.

19 Q Correct.

20 A But, you know, I think that when you --- when
21 one looks at the facts of his case and what he told
22 me about was going on in his mind and how he tried so
23 hard not go into Target and Wal-Mart and try to
24 abduct these little girls and drive them away in his
25 truck and sexually assault them, and yet, he kept

1 doing it over and over again.

2 I don't think that it's fair to him. I don't
3 think it's fair to the community to put him out, back
4 out in the community, without the type of treatment
5 that we want to give him.

6 Q Well, I mean, again, you're talking about
7 predictors on --- based on 13-year-old information,
8 correct?

9 A And his statements to me, you know, back in May.

10 Q Okay. Well, let me ask you about those
11 statements. I don't mean to jump around, but
12 Mr. Fetner did not have to talk to you, did he?

13 A No, he didn't.

14 Q All right. When you talked to him, you told him
15 that what he told you was not going to be
16 confidential.

17 A Right.

18 Q And that he needed to --- it would be good if he
19 was open and above board with you and told you how he
20 felt.

21 A Uh-huh.

22 Q Is that correct?

23 A Yes.

24 Q And as a result of that conversation, I mean,
25 Mr. Fetner did tell you how he felt back in 1998,

Cross of Wadman by Swerling

95

1 didn't he?

2 A Yes.

3 Q He was completely open about the things that he
4 felt back in 1998.

5 A Yes.

6 Q Okay. And you discussed all three of those
7 events, and what you conveyed to the jury was based
8 on what he told you about those events; is that
9 correct?

10 A Yes. And there were other --- there were other
11 things that he told me, other events.

12 Q Right.

13 A Uh-huh.

14 Q But he told you about these events. He
15 described to you what he did and what he was feeling
16 at the time.

17 A Yes.

18 Q Okay. And that's what you were asking him was
19 what were you feeling at that time.

20 A Yes.

21 Q Okay.

22 A To describe what was happening at that time.

23 Q Now, if he wanted to conceal that from you, if
24 he was trying to put one over on you, I mean, he did
25 not have to answer those questions in the way that he

1 did.

2 A No, he didn't.

3 Q Okay. And what he tried to do was give you an
4 honest assessment of how he felt at that time so you
5 could make an assessment, as well?

6 A I don't know what his motive for telling me the
7 things that he told me. I can't read his mind, but I
8 agree with you that Mr. Fetner was open with me. I
9 mean, he did talk to me, and a lot of people that I
10 evaluate don't.

11 Q Okay. My point is he could have concealed that
12 information from you.

13 A Yes.

14 Q I mean, he could have told you anything he
15 wanted to about what his feelings were at that time,
16 and really, there would be no way for you to evaluate
17 that, correct?

18 A Right. I do ---

19 Q Okay.

20 A --- except based on the record.

21 Q So what he's doing, he's being punished by you
22 because he was candid with you and told you how he
23 felt in 1998?

24 A No, he's not. This isn't punishment.

25 Q What is it? It's staying in prison.

Cross of Wadman by Swerling

97

1 A This is treatment. This is keeping him safe,
2 keeping children safe, keeping everybody safe and
3 trying to do the right thing, trying to do what the
4 law is designed to do.

5 Now, I don't --- I didn't just base my opinion
6 on how he told me that he felt 13 years ago. I also
7 based it on how he told me that he feels today, and,
8 you know, what he says --- you know, I was asking him,
9 "Well, you know, who are you sexually attracted to
10 now?"

11 Because he doesn't have a history of really ---
12 he's never been married. He has no children. He's
13 really never been in a long-term relationship.

14 You know, he dated a girl at work for about
15 eight months. He lived with his parents the whole
16 time and never introduced this girl to his parents,
17 so he has never really had a --- what you would call
18 a normal healthy relationship with a female.

19 When I asked him, "Well, who are you attracted
20 to now?" He says, "Adult women, 18 to 25." You know,
21 he's 42. So I feel like he's moved it up, you know,
22 to...

23 Q Well, there's nothing --- I mean, there's
24 nothing illegal ---

25 A No.

1 Q --- about an 18 to 25 ---

2 A No.

3 Q --- year-old girl, is there? Isn't that a
4 normal fantasy for an adult male?

5 A Yes, it is.

6 Q I mean, so why are you bringing out the fact
7 that that's abnormal?

8 A I'm saying that he has never had a normal
9 healthy relationship with a female..

10 Q He's had relationships with females.

11 A Not ---

12 Q Adult females. He told you about them.

13 A Not --- not a healthy long-term relationship.

14 Q Long-term.

15 A Which is what we look at.

16 Q Okay.

17 A It's one of the risk factors.

18 Q Not everybody has a long-term relationship.

19 A That's correct.

20 Q Not every male has a long-term relationship, not
21 every female has a long-term relationship, isn't that
22 true?

23 A That's true.

24 Q What he told you when you asked him about how he
25 felt in 1998, he told you how he felt in 1998, okay.

Cross of Wadman by Swerling

99

1 He didn't hold back from you.

2 A That's correct.

3 Q Okay. He wanted to be candid with you and tell
4 you everything he felt, and you told him that was
5 important for him to do that. He didn't try to
6 distort the facts at all, did he?

7 A I don't believe that he did.

8 Q No, he didn't. You know he didn't. But --- and
9 so when you ask him now what is he attracted to, he's
10 not attracted to young children anymore. Isn't that
11 true?

12 A No ---

13 Q That's what he told you.

14 A That's --- that's what he told me, but I don't
15 know that to be true. There is no cure for
16 pedophilia, and people who are attracted, sexually
17 attracted to children, it's a lifelong --- it's a
18 lifelong condition. He needs treatment, and he
19 hadn't had treatment.

20 Q So you accept what he told you in 1998 about how
21 he felt, but you won't accept what he told you in
22 2011 that he has a healthy attitude toward 18 to
23 25-year-old women.

24 A I don't believe that, no.

25 Q You don't believe it?

1 A No, I don't.

2 Q Based on what, that you don't believe he has a
3 healthy attitude towards 18 to 25 ---

4 A There's no ---

5 Q --- year old --- what is there in --- what is
6 there in this record that you can say that he is not
7 telling you the truth about how he feels now?

8 A The fact that he ---

9 Q I'm talking about now.

10 A I know. The fact that there is no cure for
11 pedophilia.

12 Q That's not what I asked you.

13 MR. FLORES: Objection, Your Honor. Let her
14 answer the question.

15 THE COURT: Let her answer the question,
16 Mr. Swerling.

17 MR. SWERLING: Yes, sir.

18 THE WITNESS: Okay.

19 THE COURT: Go ahead and answer the first
20 question.

21 THE WITNESS: Okay.

22 THE COURT: Go ahead.

23 THE WITNESS: What was the first question?

24 BY MR. SWERLING:

25 Q How can you say that this individual is not

Cross of Wadman by Swerling

101

1 telling you the truth now in 2011, after 13 years in
2 prison, that he does not have an attraction only to
3 18 to 25-year-old women?

4 A Because the past is the best predictor of the
5 future. There is no cure for pedophilia. He spent
6 from his late teens until he went to prison sexually
7 attracted to little girls.

8 He has a --- he had a specific type of little
9 girl he was attracted to. He had urges and fantasies
10 towards little girls.

11 He acted on his behavior. He acted on his
12 behavior over and over, even when he didn't want to.
13 That doesn't just go away, so he's been in protective
14 custody for 13 years in the South Carolina Department
15 of Corrections with no access to little girls, no
16 naked pictures of little girls, no, you know --- and
17 so he hasn't really had the opportunity to be --- you
18 know, have sex with little girls, be sexually
19 attracted to little girls. So I don't really know
20 what's going on in his mind.

21 Q Well, would you accept --- I mean, if a guy
22 tells you that he's attracted to 18 to 25-year-old
23 women, you would not give him the benefit of the
24 doubt that's what he's telling you is the truth when
25 he's been telling you the truth about everything else?

1 A I don't think that he told me the truth about no
2 longer being attracted to children.

3 Q All right. Let me jump back a little bit now.
4 We were talking about that probation. Just, I want
5 to talk about this community supervision. When
6 someone is released on a sexual offense ---

7 A Uh-huh.

8 Q --- okay, they have to register ---

9 A Yes.

10 Q Do they not? Okay. So their whereabouts is
11 known to law enforcement the rest of their lives,
12 correct?

13 A If they register, you know, on time. A lot of
14 them will flee, but I have no doubt that Mr. Fetner
15 would register. I mean, he was been a compliant
16 person in prison, you know, to his credit.

17 So, yes. He would have to register, and he
18 would have to register his address and different
19 counties have different, you know, rules about where
20 they can live, not near a school, not near a
21 playground, not near a park.

22 I --- you know, I don't know about --- he would
23 probably live at home. I don't know if his home
24 meets that criteria or not.

25 Q I mean, there are all sorts of restrictions on

Cross of Wadman by Swerling

103

1 someone who is a sexual offender that has to register.

2 A Yes.

3 Q As far as being in close proximity, within
4 1,000 feet, of people under the age of 18 at schools,
5 daycare centers, playgrounds, arcades, public
6 swimming pools, beaches, shopping malls, theaters or
7 festivals unless approved in advance.

8 He won't possess any sexually stimulating
9 material. He agrees to go to any kind of counseling.
10 This is also part of community supervision, too.

11 A Uh-huh.

12 Q Correct?

13 A I don't know the --- like I said, I don't know
14 the ---

15 Q But there are many, many restrictions placed on
16 someone who is released in the community.

17 A Uh-huh.

18 Q Is that correct?

19 A Yes, there are.

20 Q All right. I want to get back to your
21 evaluation in a little bit. When you reviewed the
22 documents you had to review, Mr. Fétner, according to
23 the NCIC record had no prior infractions against the
24 law, isn't that true?

25 A That's true.

1 Q Okay. His misconduct, his criminal conduct, is
2 based upon what happened in 1998 during a --- that
3 period of time; isn't that correct?

4 A Yes. He had no priors, uh-huh.

5 Q Okay. And, you know that while he was in the
6 Department of Corrections that he was in protective
7 custody because he was a witness in a murder case
8 that someone had told him something, one of the --- a
9 defendant in a murder case.

10 The State used him as a witness in the case, and
11 as a result of that, he was placed in protective
12 custody for his own benefit.

13 A Yes, uh-huh.

14 Q Isn't that true?

15 A Yes, that's true.

16 Q And you saw the letter from Knox McMahon who was
17 the Assistant Solicitor at that time. I believe you
18 have this letter dated January 4th, 2001, where Knox
19 McMahon lays out what Mr. Fetner did for the State in
20 that case.

21 It says, "During October 2000, inmate Fetner
22 testified in Richland County General Sessions Court
23 on behalf of the State in its case against Lino
24 Delacruz.

25 "This was a case involving the murder of an

Cross of Wadman by Swerling

105

1 eight-year-old child. Although he was not allowed to
2 testify before the jury," for whatever reason, "he
3 was available and willing to do so."

4 Solicitor McMahon at that time thought that
5 Mr. Fetner should go into protective custody. He had
6 discussed it with his lawyer, and also this was a
7 letter to the Department of Corrections; is that
8 correct?

9 A Yes.

10 Q And there was also another letter written where
11 he had been assaulted. One of the reasons they
12 wanted to put him into protective custody is he had
13 been assaulted at another institution; is that
14 correct?

15 A I'd have to find that letter. I don't recall
16 that.

17 Q I believe it's the letter dated November 1st,
18 2000, from Mr. McMahon to the Department of
19 Corrections.

20 A Yeah. It's my understanding that he has been
21 assaulted at Kershaw Correctional Institution.

22 Q Okay. So because he helped the State in a very
23 bad murder case, he needed to be segregated from the
24 general inmate population for his own protection;
25 isn't that correct?

1 A Well, he --- I believe that he wanted to be
2 segregated.

3 Q Well, if you testified ---

4 A Placed in protective custody.

5 Q --- against someone in a murder case, that would
6 be the smart thing to do, especially if you've been
7 assaulted.

8 A Yeah. I mean, he requested, and I think his
9 attorney requested that he be placed --- the
10 Assistant Solicitor requested that he be placed into
11 protective custody.

12 Q And because of his concern about his safety for
13 himself and his family?

14 A Yes.

15 Q Okay. So Mr. Fetner was in the Department of
16 Corrections for almost 13 years or since 2000 ---

17 A Uh-huh.

18 Q --- I believe since he pled guilty. He was in
19 that protective custody.

20 A Yes.

21 Q And you're aware of the fact that when you are
22 in protective custody, you are not eligible to
23 participate in any mental health programs, isn't that
24 true?

25 A No, that's not true. He wasn't eligible to

Cross of Wadman by Swerling

107

1 participate in the residential sexual offenders group,
2 but you know, when people are in protective custody,
3 they're actually seen by a --- by a social worker
4 once a month for, you know, a check to see how
5 they're doing.

6 They do --- if they're depressed or anxious or
7 need medication or anything, they are eligible for
8 all of those services. They can ---

9 Q It's the health check up, but the mental health
10 counseling that he did not get at the Department of
11 Corrections is not available to him because he's in
12 statewide protective custody.

13 A No, even people in statewide protective custody
14 can have mental health counseling.

15 Q You sure about that?

16 A Yes, I'm sure about that.

17 Q Okay. You'd stake your opinion on that?

18 A My opinion --- my opinion is ---

19 Q No, I'm just asking. You're saying that you ---
20 he could have had mental health counseling or sexual
21 abuse counseling?

22 A No, no, no. I said mental health counseling. I
23 didn't say ---

24 Q Well, what we're talking about ---

25 A Yeah, okay.

1 Q --- here is sexual abuse counseling, which is
2 what you made a point of ---

3 A Yeah.

4 Q --- that he was supposed to get. He didn't get
5 any.

6 A No. What I'm saying is that he --- every inmate
7 is eligible for mental health counseling and
8 medication, every single inmate, even those in
9 protective custody.

10 Now, as far as being in a --- in a --- what they
11 call the sex offender residential treatment program,
12 that's an actual residential program that's housed at
13 Broad River. So he would not have been eligible for
14 that.

15 Q The sexual treatment?

16 A The intensive --- I think they call it the
17 intensive sexual offender treatment program, so
18 residential.

19 Q On six or seven occasions when you told the jury
20 that while he was in prison, he didn't get any sexual
21 offender treatment, the real reason why he didn't get
22 any sexual offender treatment is because he was in
23 statewide protective custody.

24 A That would have precluded him from getting
25 treatment.

Cross of Wadman by Swerling

109

1 Q Okay.

2 A But, you know, I can't say, though, that's ---
3 how he not been in protective custody that he would
4 have had it either, because they had to sign up for
5 it. It's a voluntary --- they don't just put them
6 into it.

7 Q Not in his case, he was ordered to have it.

8 A He was ordered to have it, but I --- even the
9 people I have evaluated who have been ordered to have
10 sex offender treatment have not participated in it
11 even when they were in the general population.

12 Q Yes, ma'am, so you've ---

13 A So I don't know his reason. I mean, I can't
14 speculate as to what he would have done had he not
15 been in protective custody, but I agree with you that
16 because he was in protective custody, it was not
17 available to him.

18 Q Okay. So, again, back to my point, each time
19 you told the jury he did not get the sexual offender
20 counseling, in fact, he could not get it since he was
21 in statewide protective custody.

22 A That's true.

23 Q That would have been the fair thing to add to
24 that.

25 A Well, that's true that he didn't, but my point

1 was --- was not to try to mislead the jury. My point
2 was that he was ordered to have sex offender therapy,
3 and he didn't --- he has not, to this date, received
4 therapy, and he needs treatment. So I mean, I wasn't
5 trying to ---

6 Q It's a Hobson's choice, isn't it?

7 A Pardon me?

8 Q It's a Hobson's choice, isn't it? If he gets
9 out of protective custody, he could be injured or
10 killed by the person or from friends of the person he
11 testified against, or if he stays in protective
12 custody, he can't get the sexual abuse, the sexual
13 offender counseling.

14 A Yes. He was between a rock and a hard place.

15 Q Let me ask you about something. We talked about
16 those exhibits over there. You agree that Mr. Fetner
17 has been in prison for 13 years, do you not?

18 A No. Since his arrest in November of '98, he was
19 in the jail. Then I think he transferred to the
20 Department of Corrections in 2000.

21 Q And he has completed his sentence.

22 A Yes, he has.

23 Q Okay. Would you look right over here. Let's
24 see. I'm sorry. Right there.

25 A Uh-huh.

Cross of Wadman by Swerling

111

1 Q What's checked there on the sentencing sheet.

2 A It says negotiated sentence.

3 Q That means that the State of South Carolina and
4 his counsel, who happened to be me at that time ---

5 A Uh-huh.

6 Q --- agreed to a 15-year sentence; that they
7 thought, the State thought, that was an appropriate
8 sentence in this case. Doesn't it say that?

9 A Well, it says it was negotiated, and I don't ---
10 I'm not an attorney. So I don't know how you
11 negotiate those type of sentences.

12 Q Well, negotiated means it came to an agreement.

13 A Yeah. You came to some type --- he served ---
14 he got a 15-year sentence.

15 Q Right, and it was negotiated between the State
16 and the defense, his lawyer.

17 A Okay.

18 Q Okay. If the State had wanted something more
19 than that, they could have asked for that, couldn't
20 they? They didn't have to negotiate a sentence.

21 A Again, I really can't answer legal questions
22 like that ---

23 Q Okay.

24 A --- without an attorney.

25 Q Let me ask you about --- he talked to you about

1 his educational background, the fact that he went and
2 graduated high school. He went to Christian schools
3 when he was young.

4 A Uh-huh.

5 Q He talked about his parents, his mom who is over
6 there ---

7 A Uh-huh.

8 Q --- on the third row on the right ---

9 A Uh-huh.

10 Q The fact that he lost his dad while he was
11 incarcerated.

12 A Yes, uh-huh.

13 Q He talked about all of those issues, correct?

14 A Yes.

15 Q Now, you made an assessment back on page nine of
16 your report that one of the risk factors, I guess,
17 or --- let me just --- let me just check on that.

18 Hold on one second.

19 (Pause)

20 You were talking about the fact that he --- part
21 of your assessment was he didn't hold a steady job.

22 A Uh-huh.

23 Q Now, let me ask you this: From 1994 to 1998, he
24 worked at SLED as a --- cleaning up or was someone
25 who --- was a maintenance person at SLED.

Cross of Wadman by Swerling

113

1 A Uh-huh, yeah.

2 Q Four years. That's not a steady job?

3 A No. What I --- what I was saying was that after
4 he --- he described himself, too, as an underachiever,
5 and he told me that he couldn't really figure out why
6 he wasn't motivated.

7 He's a smart guy. He's intelligent. I mean, I
8 know he has, at least, probably a little
9 above-average intelligence, so he's smart guy.

10 He actually --- after he got out of high school,
11 he said he sat home for three months, and then from
12 then on for the next six years, he had ten --- ten
13 jobs. They were all part-time minimum wage jobs.

14 Q Is there anything wrong that?

15 A For somebody like Mr. Fetner, yes. It actually
16 says that something is going on that he is not
17 achieving up to his potential.

18 And so, you know, the fact --- he would work two
19 months at one job and then quit without having
20 another job, and that's significant, you know,
21 because it shows a lack of responsibility. He would
22 get another job and work two months and quit. I
23 think he got fired one time. He ---

24 Q How about the fact that he maintained --- up
25 until the time of his arrest from 1994 to 1998, he

1 was working steadily at SLED as a --- it was some ---

2 A Janitor, as a janitor.

3 Q Is there something wrong with that?

4 A No. There is nothing wrong with being a janitor.

5 There is nothing wrong with being a janitor.

6 Q Isn't it significant that a person held a job
7 for four years?

8 A He did have a little glitch there right at the
9 beginning.

10 Q I didn't ask you that.

11 A Okay.

12 Q I asked you isn't it significant that he held a
13 job for four years.

14 A It is, uh-huh.

15 Q Now, you found that he had no history of
16 antisocial behavior as a juvenile, correct?

17 A No crimes committed as a juvenile, no fire
18 setting, no cruelty to animals, you know, no
19 vandalism.

20 Q No history of alcohol or drug abuse?

21 A No.

22 Q No history of treatment or hospitalization,
23 psychiatric treatment or hospitalizations?

24 A No psychiatric treatment or hospitalizations.

25 Q Now, when he talked to you about --- when he

Cross of Wadman by Swerling

115

1 talked to you about the November 13th incident at the
2 Target store on Decker Boulevard, he told you what he
3 did. He described in detail what he did, and he
4 described in detail why he did it and, what he was
5 going to do.

6 A Yes.

7 Q Okay. And on August 22nd at the Wal-Mart in
8 West Columbia --- neither --- that was --- first of
9 all, that was not a successful --- nothing happened.
10 He didn't --- nothing happened...

11 I think --- well, something did happen. He
12 touched a young lady on the buttocks, but there was
13 no sexual assault on that; is that correct?

14 A Which one are you talking about?

15 Q That was the September --- I'm sorry, the
16 November 13th one.

17 A Yes, something did happen.

18 Q Yeah, that was the only time he touched anybody.

19 A No. I mean touched them on their ---

20 Q Yes, ma'am.

21 A --- sexually.

22 Q Yeah, touched them sexually.

23 A Yeah.

24 Q Okay.. But on the September 9th incident at
25 Wal-Mart on Garners Ferry Road, he did not --- and he

1 did tell you what he was thinking, what he did at
2 that time and what he was thinking at that time.

3 A Yeah. On September 9th, he actually took the
4 girl by the hand and walked with her towards the
5 patio area.

6 Q Yes, and he told you that.

7 A Yeah, and he was ---

8 Q He admitted ---

9 A --- going to take her out ---

10 Q And he told you why.

11 A --- and have sex with her.

12 Q He told you why.

13 A Yes.

14 Q Now, and we all understand he didn't have to
15 tell you that.

16 A Well, it was already in the police reports,
17 Mr. Swerling. I was reading ---

18 Q But he didn't have --- my question is ---

19 A But ---

20 Q --- he did not have to tell you that.

21 A He didn't have to tell me what he had told the
22 police that I had in front of me.

23 Q He also ---

24 A So when I said to him, "Mr. Fetner, now, you
25 know, the incident report says the police said this

Cross of Wadman by Swerling

117

1 and that, and you told the police this, would you
2 like to tell me what happened." Then he pretty much
3 tells me the same story that he told the police back
4 in ---

5 Q But he could have been in denial about that.

6 A He could have been.

7 Q He could have told you a whole concocted story
8 about all three of those incidents.

9 A He could have.

10 Q But he chose not to.

11 A Right.

12 Q Okay. And he also talked to you about the
13 August 22nd one, again, which neither one at
14 September 9th, at the Wal-Mart on Garners Ferry, the
15 Wal-Mart in West Columbia on August 22nd, neither of
16 those were successful other than getting the child
17 from one part of the store out on the patio and the
18 child ran, right?

19 A The one on August 22nd, what was significant
20 about that is he actually got her into the parking
21 lot.

22 Q Okay. Got her out to the parking lot.

23 A Yeah.

24 Q And she ran?

25 A Yeah, and she ran.

1 Q So let me ask you this: You had mentioned ---
2 you said something about that he fantasized --- or
3 part of his excitement was a fantasy about the
4 parents.

5 A Uh-huh.

6 Q Where is that in your report?

7 A It's ---

8 Q Maybe I missed it.

9 A It's on page --- it's on page eight at the top,
10 the first paragraph.

11 Q Hold on one second, if you can.

12 (Pause)

13 Isn't, actually, what he said there that the
14 fact that the parents would call the police scared
15 him, but there was excitement, too, not in the parent
16 themselves?

17 A No. When he went on to --- when we actually
18 went on and talked about it, part of the sexual ---
19 part of the whole sexual excitement, part of his sort
20 of --- what he gets out of this is getting one over,
21 getting one over on the adult, getting one over on
22 the person in charge.

23 Q Could you show me somewhere in your report where
24 you made that statement.

25 A That's what he was describing to me.

Cross of Wadman by Swerling

119

1 Q No. I said can you show me somewhere in your
2 ten-page report where you ever made that statement.

3 A No. I didn't put that in there.

4 Q Can you show me somewhere in this ten-page
5 report where he said part of the thrill was getting a
6 parent upset and excited?

7 A Right here. He said it caused him excitement to
8 think about the parent.

9 Q That they would call the police.

10 A No.

11 Q Read the whole sentence that you read there.

12 A No. That's what you're interpreting it, but
13 what he told me is that part of the excitement is
14 that the parent would be distraught, and he would be
15 getting away with it.

16 He would be snatching the child, getting the
17 child out to the car, driving off with it, the
18 thought of driving the child off to have sex with the
19 parents left behind crying and frantically ---

20 Q Where does it say that?

21 THE COURT: Let her finish. Let her finish.

22 MR. SWERLING: Sorry.

23 THE COURT: Please.

24 Go ahead, Doctor.

25 THE WITNESS: I mean, I don't --- I don't --- I

1 don't say everything that the person said to me, but
2 this is what we talked about.

3 BY MR. SWERLING:

4 Q In this --- what you have written here is he
5 said he thought about the parent left behind who
6 would be distraught and crying and possibly calling
7 the police. "In a way, it scared me, but there was
8 excitement, too."

9 A Exactly.

10 Q The calling the police.

11 A The excitement over the parent being distraught.
12 We were talking --- I was talking to him specifically
13 about what --- what was he thinking --- how was he
14 feeling about the parent who would probably be
15 distraught being behind, and he was telling me about
16 how he would feel. It's not all here. You know, I
17 don't put everything in the report that somebody
18 tells me.

19 Q Don't you think that's significant? I mean, you
20 testified about it; that part of his excitement was
21 getting the parents distraught and upset and crying,
22 but that's not in your report.

23 A I think it says that there.

24 Q Well....

25 A I know you're reading it differently, but to me,

Cross of Wadman by Swerling

121

1 that's what he was talking about, and that's what I'm
2 saying there. I know you're interpreting it
3 differently than I meant it.

4 Q Excuse me. Doesn't he say, "The fact is they
5 possibly called the police in a way scared me, but
6 that is excitement, too"? Isn't that what he's
7 saying?

8 A Do you see the dot, dot, dot there?

9 Q Yeah, I see it.

10 A Meaning I'm breaking up the thoughts, meaning
11 we're jumping from one thought to another.

12 Q Okay. All right. We've already gone through
13 this thing that you discount what he said about being
14 attracted to 18 to 25-year-old females, so I'm not
15 going to go through that. He did tell you that he
16 hasn't had any fantasies since he became a born-again
17 Christian. He told you that, right?

18 A Uh-huh.

19 Q You can't accept that either?

20 A I don't believe that.

21 Q Okay. You just don't believe it, so what we
22 have --- it's a question of what you believe and you
23 don't believe.

24 A No.

25 Q Not just the risk assessment, but what

1 Dr. Wadman believes or doesn't believe.

2 A No. I --- it's not --- it's not what I believe
3 as a person. It's what, as a professional, my
4 experience has been.

5 Q All right.

6 A And, you know, I mean, I think that while I'm
7 glad that he has that in his life, and I'm glad that
8 he says that he's a born-again Christian and that
9 brings him comfort, I mean, I think that, you know,
10 recent history is rife with born-again Christians who
11 have had huge ---

12 Q Is there something wrong that?

13 A No. Who have had huge sexual failings, and so,
14 you know, there are two different things. One is
15 something that is important to him, being a
16 born-again Christian. That's wonderful. I'm glad.

17 It has --- it can have little to do with
18 someone's sexual urges, fantasies and behavior. You
19 know, I mean, we've all seen that.

20 Q All right. So you choose to believe, again,
21 what he told you about the way he felt in 1998, but
22 not in 2011.

23 A I choose to believe his history.

24 Q Okay. No interest in pornography, nothing to
25 indicate that he did ever have any interest in

Cross of Wadman by Swerling

123

1 pornography or child pornography?

2 A He denied a history. He denied a history.

3 Q You have no indication that he did?

4 A I have no indication that he did.

5 Q And he denied paraphilias, correct? You have no
6 indication that he had any paraphilias?

7 A There are --- there are so many different
8 paraphilias.

9 Q Or just for the jury's edification, what
10 paraphilias?

11 A They're --- they're basically sexual preferences
12 or sexual urges that people can have outside of
13 pedophilia. Some of the paraphilias would be like
14 fetishes, more paraphilia, you know, being attracted
15 to goats or being attracted to shoes or, you know,
16 nylons. You know, that's a fetishism, or getting off
17 to sadistic sex or --- so there are different types
18 of paraphilias.

19 Q Okay.

20 A Everyone, you know, has different interests.

21 Q And you had no indication he had any of those?

22 A No.

23 Q Okay. You talked to us about this, what is it
24 static 10 or something like that?

25 A The Static 99 revised.

1 Q That's close. That's where you --- it's
2 something used to assess risk of detected sexual
3 recidivism; is that correct?

4 A It's a --- it's used to --- it's designed to
5 predict sexual and violent recidivism in adult male
6 sex offenders. So not the --- just --- not your
7 everyday male, but men who have been convicted of sex
8 offenses.

9 Q Okay. Well, part of the risk factors are --- or
10 some of the risk factors are the presence of prior
11 sexual offenses not including index offenses. He
12 didn't have any of those, did he?

13 A Well, we --- he had what's called an index
14 cluster. So what that is when he gets caught for one,
15 then all of the other ones come to light. That's
16 what happened to him.

17 So he didn't --- he had no prior arrests or
18 convictions for sex offenses, because he was caught
19 for all of them at one time.

20 Q But, again, he does not satisfy that one
21 criteria, correct?

22 A No, he doesn't.

23 Q All right. He also didn't satisfy the criteria
24 of committing a concurrent nonsexual offense. That's
25 a risk factor, too, that you assess?

Cross of Wadman by Swerling

125

1 A Let me pull his sheet here a second, index
2 nonsexual violence?

3 Q Uh-huh. Doesn't one of the risk factors are he
4 has committed a concurrent nonsexual offense?

5 A Yeah, he gets kidnapping is considered a violent,
6 nonsexual violent offense.

7 Q But in this case, it was connected to a sexual
8 offense?

9 A They want to know on his index offense, on his
10 index offense, was there nonsexual violence. So the
11 kidnapping is part of the --- it counts as a one,
12 uh-huh.

13 Q It counts as a what?

14 A Well, you know, a score. You give him one point
15 for that.

16 Q One of the risk factors is a history of
17 nonsexual violence. Did you ---

18 A Where are you now?

19 Q Well, that's one of the factors you have there.

20 A Prior nonsexual violence, any convictions?

21 Q No?

22 A No.

23 Q Having a history of nonsexual violence. That's
24 one of the risk factors ---

25 A Right.

1 Q --- you have in that paragraph.

2 A Yeah. So somebody who does, say, does a lot of
3 criminal acts is real antisocial, and there's been a
4 lot of fights.

5 Q You don't see that in Mr. Fetner?

6 A None of that.

7 Q Four for more previous sentencing dates. You
8 didn't have that, did you?

9 A No.

10 Q Having male victims. He didn't have that, did
11 he?

12 A No, he didn't have male victims.

13 Q Those are risk factors, aren't they?

14 A They are.

15 Q And having a history of noncontact sex offenses.
16 He didn't have that either?

17 A No.

18 Q Okay. So you scored him as some kind of thing
19 about a four or something like that?

20 A Uh-huh.

21 Q And it came out to a moderate to high risk
22 category?

23 A Yes.

24 Q But then you --- you made an assessment that
25 that under represents his risk?

Cross of Wadman by Swerling

127

1 A Right.

2 Q And you considered --- I guess you were
3 considering some external factors that might
4 influence the risk?

5 A What --- there are other risk factors besides
6 the one static that were not included in this and it
7 ---

8 Q I'm just going through the ones in your report.

9 A Yeah, yeah. So when I look at other risk
10 factors that he has, I think that this underestimates
11 his risk, but he's actually a higher risk than a
12 moderate high. I think he's in the higher risk
13 category.

14 One of those is particularly the young age of
15 the victims. You know, when you have little girls
16 that are six and seven years old, that is a lot more
17 risky than, say, somebody who is 13, 14 years old who
18 ---

19 Q But he wouldn't be a pedophilia over 13.

20 A Exactly.

21 Q So pedophilia is under 13.

22 A And then the other thing would be sort of the
23 repetitive nature of his acts. Even though he didn't
24 have previous convictions or charges, he had been
25 repetitively doing this leading up to this, and he

1 was --- he had an accidental apprehension.

2 You know, it wasn't like he actually got caught
3 in the act. The only reason he got caught was
4 because he was working as a janitor for SLED, and the
5 SLED agents recognized him on the surveillance tape.

6 Q But he got caught.

7 A He got caught, but ---

8 Q And when he got caught, he admitted to the other
9 two offenses, didn't he?

10 A It's much more risky ---

11 Q Didn't he?

12 A Yes. It's much more risky when somebody --- you
13 know, compared to somebody who is molesting a child
14 at home or the little neighborhood girl comes over
15 having to spend the night and they molest her, that
16 compared to going out in broad daylight to a Target
17 or a Wal-Mart with surveillance cameras going with
18 the parent on the next aisle or three aisles over
19 trying to get the child out of the store with them
20 with store security there, it's like comparing apples
21 and oranges.

22 It's so --- what he did was so dangerous.

23 Q We know that. He got sentenced to 15 years.

24 A That's right; that's right. And I don't think,
25 Mr. Swerling --- you know, what the Court asked me to

Cross of Wadman by Swerling

129

1 do is they want to know is it likely to happen again,
2 and my opinion is yes, he's very likely to do it
3 again.

4 Q Oh, I understand what your opinion is, ma'am. I
5 do. I mean, I appreciate that. Of course, you
6 pointed out again that one of the factors is that he
7 didn't get any sex offender treatment, but we already
8 know why he didn't get any sex offender treatment.

9 Let me ask you. You testified about something
10 about cognitive distortions he used to minimize the
11 seriousness of his actions. When he described these
12 three events to you, there was no minimization. You
13 said you believed him.

14 A Oh, no. He did --- he said that --- what he said
15 to me, and one of the things I put in the report on
16 page eight, he said at the end, "You know, well, I
17 didn't really use any physical force to make the
18 child come with me."

19 In other words, he was --- you know, at the time
20 he told me that he was really upset that he got ---
21 that he had to plead guilty to kidnapping, because he
22 was trying to explain to me, "I didn't kidnap them.
23 They were willingly coming with me."

24 Q Where is that in your report?

25 A It was in our interview.

1 Q Where is it in your interview?

2 A He said, "I really didn't use any physical force
3 to make the child come with me."

4 Q He didn't, did he?

5 A He had them by the hand.

6 Q He had them by the hand.

7 A Uh-huh.

8 Q He was holding their hand.

9 A Yeah.

10 Q There was no physical force.

11 A He physically forced the little girl into the
12 bathroom and pulled down her pants and touched her.

13 Q He took the girl into the bathroom.

14 A Right, physically.

15 Q He took the girl in the bathroom.

16 A Yes.

17 Q Right. There is no physical force involved in
18 this case.

19 A He is an adult, and she is six years old. And
20 he physically took her into the bathroom.

21 Q I'm asking you where in here do you say that he
22 said he used physical force?

23 A He doesn't have to say he used physical force,
24 Mr. Swerling. He used physical force to take that
25 little six-year-old girl into the bathroom.

Cross of Wadman by Swerling

131

1 Q And which he admitted that he took her in the
2 bathroom ---

3 A That's right.

4 Q --- and took her in the stall. We know that.

5 A Yeah. But what I'm saying about his cognitive
6 distortions --- this is pretty typical of people who
7 are untreated, pedophiles who are untreated.

8 It's --- they try to explain. They try to
9 minimize what they've done, so basically, what he is
10 saying at the end is, "Well, you know, I really
11 didn't use any physical force to make the child come
12 with me. You know, the child just came with me."

13 So it's almost like well, that somehow makes it
14 okay. There were other things that he said, you know,
15 of that nature that led me to believe that he really
16 doesn't understand or doesn't appreciate.

17 If somebody doesn't appreciate the seriousness
18 of what they did and the fact that it could happen
19 again, you know, in his mind, it will absolutely not
20 happen again. There is no chance that this could
21 happen again.

22 That is very dangerous. It's like the alcoholic
23 or the coke addict who says, "No chance. I will
24 never take another drink. There is nothing in the
25 world that will ever make me take another drink.

1 There is nothing in the world that's ever going to
2 make me smoke crack again." That's very dangerous.
3 They're on their way, they're on their way down.

4 Q So alcoholics and drug addicts can never be drug
5 free or alcohol free?

6 A They can be, but the ones who are drug free and
7 alcohol free, it's because they say every day, you
8 know, every day they work a --- they work a program.

9 Q And Dr. Wadman, I'm looking at your report, and
10 what I see here are three different descriptions you
11 gave. Is Mr. Fetner completely telling you what he
12 was thinking about and why he was taking those girls
13 to where he was taking them?

14 He never, ever tried to minimize that in any of
15 the conversations you had with him about what he was
16 thinking and what he intended to do.

17 A Well, no, not --- that's not entirely correct,
18 because Mr. Fetner admitted to me what was already in
19 the police reports, what he had already told police.

20 Now, when we got beyond that, and I started
21 asking him, "Well, what were you planning on doing
22 once you got her out to the truck, and like where
23 were you going to take this child?"

24 He says, "Well, I probably would take her to a
25 motel or something or behind an abandoned building."

Cross of Wadman by Swerling

133

1 "Well, then --- then what would happen?"

2 It was like he --- you know, that's when it ---
3 that's when it started getting fuzzy. He really ---
4 Mr. Fetner is a very smart man, okay. He is an
5 intelligent man.

6 Q I mean, I hate to disagree with you a little bit,
7 but you --- you put in your report that he was the
8 one that told you what he was going to do with the
9 young lady on November 13th, and what he did do.

10 On September 9th, he told you, according to your
11 report, that he intended to drive the little girl to
12 a secluded place and make her perform oral sex on him
13 or any type of sexual act.

14 He would take her to an abandoned building. He
15 said he saw the little girl's father. "There is my
16 father," and he let go and she went.

17 On the August 22nd one, he told you that he was
18 going to lure one of them into the woods and have sex
19 with her. Couldn't be any more candid than that, can
20 he?

21 A He had also told the police that. That was in
22 the police incident reports.

23 Q Let me ask you about --- I've just got a couple
24 more questions. What's a PPG?

25 A A PPG is something called a penile

1 plethysmography, and what a PPG does, it --- it's
2 something that we use to measure on men, sexual
3 interest.

4 So it's a gauge that basically measures blood
5 flow to their penis. So a lot of times when we're
6 trying to find out what somebody might be sexually
7 attracted to --- mostly what we use it for is
8 treatment progress.

9 We'll do it at the beginning of treatment and
10 see what they respond to and at the end of treatment,
11 but what will happen is they'll put this gauge around.
12 Then they put their arms, and they measure
13 respiratory rates, you know, how fast they're
14 breathing.

15 A lot of times --- you know, it measures about
16 five different things, and then they start showing
17 them pictures. They hear audio images of like men
18 having sex with little boys, little girls, adult
19 women, teenage girls, teenage boys, you know, some
20 coercive scenes, some, you know, voluntary sex, some
21 violent sex. It kind of tries to measure what
22 they're getting sexually aroused to.

23 Now, half the time, you know, there are ways to
24 beat the test. There are medications that can
25 interfere with, you know, proper testing of it.

Cross of Wadman by Swerling

135

1 There are different ways that can render such a
2 test invalid. Is that what you wanted to know?

3 Q Yeah. And I guess what it is, is a man gets
4 strapped up, and they show him all these images and
5 then they measure his arousal ---

6 A Uh-huh.

7 Q --- to the particular type of images; is that
8 correct?

9 A Yes.

10 Q And it is used --- when you have a favorable
11 result on it, it's used as part of your opinion, is
12 it not?

13 A Well...

14 Q Is it or not?

15 A Now, wait.

16 Q Just answer my question, and then you can
17 explain.

18 A Okay. I --- I used the PPG in this one, too. I
19 reported the results of the PPG.

20 Q I understand.

21 A It's part of the evaluation. It's not always
22 part of the evaluation, and I don't always get one.
23 In this case, I did get one.

24 Q Okay. And if it had shown significant arousal,
25 you would use that as part of your opinion, would you

1 not?

2 A It would have been significant to me if he had
3 shown really significant arousal to children, to
4 female children, and not to anything else.

5 That, from the literature, they say that is
6 probably the single biggest risk factor for reoffense
7 is if somebody who has a history of pedophilia shows
8 strong sexual arousal on a PPG to children, but they
9 don't show arousal to, you know, normal adults or any
10 other category.

11 Q Okay. Well, he showed no arousal to children.

12 A To anything. He showed no arousal to anything.

13 Q Well, let me break it up a little bit. He
14 showed no arousal to children.

15 A That's correct.

16 Q And then he showed no arousal to any of the
17 adult females either.

18 A Right.

19 Q So as a result of that, you determined that the
20 test was inconclusive.

21 A No. I didn't --- I didn't do the test.

22 Q Or whoever did the test.

23 A The people who are trained in that do the test.

24 Q Well, you wrote down that it was inconclusive.

25 A Uh-huh. I wrote --- let me see. Let me make

Cross of Wadman by Swerling

137

1 sure of what I wrote here.

2 (Pause)

3 Page nine at the top. Oh yeah. Okay, okay. It
4 says, "The reliability and validity of this
5 procedure, a clinical assessment has not been well
6 established and clinical experience suggests that
7 subjects can simulate response by manipulating
8 mental images.

9 "The PPG results can be influenced by medical
10 conditions, medication, recent ejaculation,
11 inattentiveness, anxiety, fatigue, and other
12 conditions."

13 Mr. Fetner did not demonstrate significant
14 arousal to any of the test stimuli when administered
15 the PPG. And I put --- and this was my statement,
16 "not even to adult females, which would have been in
17 the normal range for Mr. Fetner, given that he has
18 described himself as a heterosexual attracted to
19 adult females."

20 Q One of the possibilities is he just does not
21 have an interest at all any more, in any --- whether
22 children or adult females?

23 A And that can happen to men in prison. You know,
24 you know, sex drive can lie dormant and then, you
25 know, come back when there is opportunity.

1 Given that there's really not a lot of
2 opportunity for sex in prison, and there's not a lot
3 of privacy, you know, I --- it just means that it was
4 inconclusive.

5 Q Well, what I wanted you to tell the jury is that
6 there was no arousal to any children.

7 A No, there was ---

8 Q Isn't that correct?

9 A There was no arousal to any children on the PPG.

10 Q And you have no, no evidence, to indicate that
11 he had tried to manipulate the test.

12 A I have no evidence that he had tried to
13 manipulate the test.

14 Q Just actually in closing, I just --- I guess
15 every one's going to be happy with that.

16 Let me ask you something, low risk people can
17 reoffend?

18 A Yes.

19 Q True?

20 A Yes.

21 Q People who you determine are a low risk can
22 reoffend?

23 A Yes.

24 Q And vice versa, high-risk people may not
25 reoffend?

Cross of Wadman by Swerling

139

1 A Yes, that's true.

2 Q So there really is no way to know. The only way
3 --- all you can do is you just really are kind of
4 doing some kind of risk assessment. You don't know
5 what that person is ultimately going to do or not do.

6 A No. You can't --- no one can say with
7 100 percent certainty who will reoffend and who won't.

8 MR. SWERLING: I think that's all I have.

9 THE COURT: Any redirect?

10 MR. FLORES: No, Your Honor.

11 THE COURT: All right. Thank you very much.

12 THE WITNESS: Thank you.

13 THE COURT: You may come down.

14 MR. FLORES: Your Honor, Dr. Wadman is here on
15 subpoena. We would ask by Mr. Swerling that she be
16 allowed to leave.

17 MR. SWERLING: I have no objection.

18 THE COURT: All right. Ladies and gentlemen,
19 that will conclude the testimony for today. I'm
20 going to ask you to be back in the jury room.

21 Now, don't go back downstairs to the jury
22 assembly room. Please come back up to the second
23 floor jury room, and the bailiffs are going to show
24 you how to get back here, if they haven't already
25 done so, and be present in the jury room at

1 nine o'clock, at which time we will continue the case.

2 Again, I'm going to ask you not to discuss the
3 case with anyone else over the evening hours. I hope
4 you'll honor my earlier instructions, and I would ask
5 you --- and I might ask you in the morning, now, if
6 somebody decided to do some --- any kind of internet
7 research or anything like that. It would be counter
8 productive, and it just gets you in a whole lot of
9 trouble. That's about all I can say.

10 So just have a pleasant evening. Clear your
11 minds. We'll see you at nine o'clock in the morning,
12 and we will conclude this case tomorrow.

13 Thank you very much. Have a pleasant evening.

14 (WHEREUPON, the jury left open court at
15 approximately 5:29 p.m.)

16 THE COURT: We'll stand at ease until in the
17 morning. I plan to charge in the morning. The State
18 has submitted a proposed charge, and you may want to
19 look at that over the evening hours, Mr. Swerling.

20 MR. SWERLING: Your Honor, I have and I've got
21 just one or two comments on it.

22 THE COURT: Okay. Well, let's do that first
23 thing.

24 MR. SWERLING: Okay. And I have one reasonable
25 doubt charge that I'm going to submit.

1 THE COURT: All right.

2 MR. SWERLING: I have that.

3 THE COURT: Have you looked at the verdict form,
4 proposed verdict form?

5 MR. SWERLING: Yes, sir.

6 THE COURT: It's straightforward.

7 MR. SWERLING: It looks like it's pretty
8 straightforward.

9 THE COURT: All right. Nine o'clock. Thank you
10 very much.

11 MR. FLORES: Thank you, Your Honor.

12 THE COURT: We'll stand at ease.

13 (WHEREUPON, There was an overnight recess).

14 THE COURT: Does the State have any further
15 witnesses?

16 MR. FLORES: No, Your Honor. At this time the
17 State would rest.

18 THE COURT: Any motions?

19 MR. SWERLING: Judge, can we wait until he gets
20 here?

21 THE COURT: All right. That's fine.

22 (Pause.)

23 Not here, not transported. They have gone to
24 get him, but I can tell you that's....

25 (Pause)

1 THE COURT: Any motions?

2 MR. SWERLING: Judge, since the State is going
3 to rest, the motion we would make amounts to a motion
4 for a directed verdict on the issue as to whether or
5 not the State has proved the elements required in
6 this case.

7 Of course, there is no question that as a matter
8 of law, they, number one, have proven that he was
9 convicted of a sexually violent offense, but we
10 submit to you there is insufficient evidence that the
11 State proved that he suffered from a mental
12 abnormality or personality disorder that makes him
13 likely to engage in acts of sexual violence if not
14 confined in a secure facility for long-term care,
15 control and treatment. We'd ask the Court for a
16 directed verdict based on that.

17 THE COURT: It's not my province to invade the
18 jury's consideration. Whether it's been proved
19 beyond a reasonable doubt or not, I don't know.
20 That's up to the jury.

21 But my standard has to be if there is any
22 evidence from which the matter could be sent to the
23 jury and the jury could find the defendant to be a
24 sexually violent predator, I must respectfully deny
25 your motion. Thank you very much.

1 Anything of a housekeeping nature before we
2 bring the jury?

3 MR. SWERLING: No, sir.

4 THE COURT: You spoke about a stipulation.

5 MR. SWERLING: Well, we do have a stipulation.

6 We'll --- I'll publish it to the jury ---

7 THE COURT: All right.

8 MR. SWERLING: --- or I can do that as the first
9 part of my case.

10 THE COURT: I just want to tell the jury what
11 the stipulation is.

12 MR. SWERLING: I'll do that first. I've shown
13 it to Mr. Flores, and we have a stipulation.

14 THE COURT: All right.

15 MR. FLORES: That's correct.

16 THE COURT: Bring the jury, please.

17 (WHEREUPON, the jury came into open court at
18 approximately 9:59 a.m.)

19 THE BAILIFF: Your Honor, the jury is seated.

20 THE COURT: Thank you very much.

21 Good morning, ladies and gentlemen. I want to
22 apologize for the delay. Sometimes some things are
23 unavoidable, but we're now ready to continue with the
24 trial.

25 Mr. Flores?

1 MR. FLORES: Yes, Your Honor. At this time, the
2 State would rest.

3 THE COURT: All right. All right. Ladies and
4 gentlemen, that means the State has no more evidence
5 to present to you.

6 The defendant will now have the opportunity ---
7 the respondent, I beg your Pardon, will have the
8 opportunity to present a defense, but need not do so.

9 It's my understanding that the State and the
10 defendant have reached what's known as a stipulation.
11 That is merely an agreement between the parties as to
12 a certain fact or facts, more than one could be, and
13 Mr. Swerling is going to publish those to you as a
14 part of his case. I believe he intends to do so at
15 this time; is that correct?

16 MR. SWERLING: Yes, sir. Thank you, Your Honor.

17 THE COURT: You may proceed.

18 MR. SWERLING: Good morning, ladies and
19 gentlemen.

20 THE JURORS: Good morning. How are you?

21 MR. SWERLING: The State and Mr. Fetner
22 stipulate that Andrea Thompson, if called as a
23 witness, would testify that she is employed by the
24 Department of Corrections and is familiar with
25 Mr. Fetner's case; two, that Mr. Fetner entered

1 statewide protective custody in 2001 and remained
2 there until August of 2011 when he was released to
3 the Richland County jail; three, that Mr. Fetner had
4 no infractions while he was at the Department of
5 Corrections; four, that Mr. Fetner did not request
6 mental health counseling; number five, that because
7 of his protective custody status, he could not
8 participate in sexual offender counseling due to his
9 segregation because of his protective custody status,
10 segregation being from the other inmates at the
11 Department of Corrections. That would be the
12 stipulation.

13 THE COURT: Who is she?

14 MR. SWERLING: She is with the Department of
15 Corrections.

16 THE COURT: Just ---

17 MR. SWERLING: Andrea Thompson.

18 THE COURT: For the jury.

19 MR. SWERLING: Andrea Thompson.

20 THE COURT: She works...

21 MR. SWERLING: Yeah, she works at the department.
22 She is employed by the Department of Corrections and
23 is familiar with Mr. Fetner's case.

24 THE COURT: Okay. Call ---

25 MR. FLORES: Your Honor, we would ask that the

1 stipulation be made a part of the Court's Exhibit.

2 THE COURT: Any objection?

3 MR. SWERLING: No, as a Court Exhibit.

4 THE COURT: All right.

5 (WHEREUPON, Court's Exhibit 1 was marked for
6 identification.)

7 MR. SWERLING: And Your Honor, in conjunction
8 with that stipulation, we have admitted Defendant's
9 Exhibit No. 1 and 2, which are letters from Solicitor
10 Knox McMahon to the Department of Corrections
11 concerning Mr. Fetner's protective custody status.

12 THE COURT: Any objection?

13 (WHEREUPON, Respondent's Exhibits 1 and 2 were
14 marked for identification and entered into
15 evidence.)

16 MR. FLORES: No objection, Your Honor.

17 THE COURT: All right. Call your next witness.

18 MR. SWERLING: Katherine Moore.

19 KATHERINE MOORE,
20 after being duly sworn, testified as follows:

21 THE CLERK: State your name for the record.

22 THE WITNESS: Katherine Moore.

23 DIRECT EXAMINATION:

24 BY MR. SWERLING:

25 Q Good morning, Ms. Moore.

1 applies to this case and the final arguments of the
2 attorneys.

3 Before we start that, I need to take up one
4 matter with the attorneys that will just take a few
5 minutes. So I'm going to ask you to go to the jury
6 room.

7 We'll call you back in just a few minutes.
8 Don't discuss the case yet. You're going to have
9 plenty of opportunity to discuss it shortly. Thank
10 you very much. Please retire to the jury room.

11 (WHEREUPON, the jury left open court at
12 approximately 10:16 a.m.)

13 THE COURT: Any motions?

14 MR. FLORES: Nothing from the State, Your Honor.

15 MR. SWERLING: Judge, we would just like to
16 renew the motion we made at the conclusion of the
17 Petitioner's case and repeat it here in as if ---
18 restate what was said and repeat it here in the
19 courtroom.

20 THE COURT: All right. I respectfully deny your
21 motion. I don't see that anything has changed since
22 the time of my last ruling.

23 Now, with regard to jury instructions, any --- I
24 have the State's --- I have a simpler form. It's not
25 quite as comprehensive as the State's proposed jury

1 charges, but the language of them is similar.

2 They're just --- there's just a little more
3 expansiveness in the State's proposed jury charge. I
4 don't see any problem with the State's jury charges,
5 but I'll hear from you, Mr. Swerling, if you have
6 objections to the State's jury charge.

7 MR. SWERLING: Judge, there are a couple. On
8 page two of their proposed instructions ---

9 THE COURT: Yes.

10 MR. SWERLING: --- it says on the bottom of the
11 page, "Under South Carolina law, the respondent will
12 have the right to petition the Court annually for a
13 review of his case to determine if respondent is safe
14 to be at large and unlikely to commit acts of sexual
15 violence." I object to that language.

16 THE COURT: Why? I mean, that's the statute.
17 That's what the statute says.

18 MR. SWERLING: Well, I understand, Your Honor,
19 but that's --- that is something that --- that's a
20 procedural issue that the --- he is allowed to take
21 advantage of it, and it's required that he be
22 annually reviewed. That's not something for the jury
23 to be told that he's going to have some right to have
24 annual review, because it takes the responsibility
25 off of them.

1 They can simply just say, "Well, we can let him
2 go in as a sexually violent predator for that kind of
3 treatment, and he'll be reviewed again next year."

4 I submit they need make a determination at the
5 present time as to whether or not he should be
6 committed.

7 THE COURT: And why shouldn't they have all of
8 the facts? That is a fact.

9 MR. SWERLING: Well, the only analogy I can
10 think of is when --- I haven't tried one in a while,
11 but on the insanity cases, I don't believe the jury
12 is told --- unless it's changed --- that someone is
13 going to come up for review on their insanity
14 determination and the procedures within the
15 Department of Corrections about their insanity review.

16 So I mean, it's the same kind of thing. It
17 really gets into procedural issues more than issues
18 for the jury to consider, and it does lessen their
19 burden by simply saying we can just defer it to
20 another day.

21 THE COURT: How about it, Mr. Flores?

22 MR. FLORES: Well, Your Honor, as you said, this
23 is part of the statute. While Mr. Swerling may say
24 that it is procedural, I think to give the jury the
25 full outline of how this act works, they would

1 necessarily need to know how the release procedure
2 also works.

3 MR. SWERLING: But I can't think of any other
4 situation where ---

5 THE COURT: I can't either, but it --- I know
6 I've instructed it before. I've never had this issue
7 raised. Maybe logically I agree with you that the
8 jury should decide based on the facts presented in
9 front of them today.

10 MR. SWERLING: Judge ---

11 THE COURT: It's hard to get around the fact
12 that the statute says what it says.

13 MR. SWERLING: Well, judge ---

14 THE COURT: And I think that --- let me just say
15 this.

16 MR. SWERLING: Right, I understand.

17 THE COURT: I think the language used by the
18 State has minimized the effect, if any, of what
19 you're objecting to. I mean, it's only a one
20 sentence, of course, if I instruct it, you'll be able
21 to argue it.

22 MR. SWERLING: Of course. But, again, I submit
23 it's a procedure issue. It's a right given to him.
24 It's not a consideration for the jury. It's a right
25 given to him that he has to be reviewed annually, and

1 he can petition.

2 The other thing is --- I mean, for example, we
3 would not tell --- on parole eligible offenses, we
4 wouldn't tell the jury how the parole process works
5 and how often someone comes up for parole and how
6 they can get reviewed.

7 I don't see any difference in --- it's getting
8 into the punishment aspects of it and the procedural
9 aspects of it beyond whether --- beyond their
10 determination that's supposed to be made under the
11 statute that he's a sexually violent predator and
12 should have to be housed in a secure environment.

13 THE COURT: All right. What's your next one?

14 MR. SWERLING: On page six, my objection to this
15 on the weight of the evidence is on the second
16 paragraph, I'm not --- just not familiar with that
17 kind of charge or ---

18 THE COURT: Where are we?

19 MR. SWERLING: The bottom of page six.

20 "Weighing the evidence is entirely a mental process.
21 Evidence weighs with you when it convinces you of its
22 truth regardless of where it came from. I don't know
23 what that means, evidence weighs with you, just the
24 last paragraph.

25 THE COURT: I see it.

1 MR. SWERLING: It's just confusing.

2 (Pause)

3 THE COURT: I don't know if that's necessary. I
4 grant your motion. Take that whole paragraph out.

5 MR. SWERLING: Page seven, about --- if I should,
6 and this is in the middle of the first paragraph ---
7 if I should make ---

8 THE COURT: I'm sorry, what page?

9 MR. SWERLING: Page seven.

10 THE COURT: I'm trying do two things at once.

11 MR. SWERLING: Sorry.

12 THE COURT: Go ahead.

13 MR. SWERLING: "If I should make an error in the
14 law as I instruct it to you, there is another time
15 and another place and another court in which that
16 error can be considered and, if necessary,
17 corrected."

18 I object to that language in any charge, that
19 there is ---

20 THE COURT: You've heard ---

21 MR. SWERLING: Appellate review.

22 THE COURT: You've heard me give it before.

23 MR. SWERLING: Well, I've heard several judges
24 give it. I'm just saying that I object to it,
25 because I think, it takes again, lessens the burden

1 on the State, I mean, on the jury. I mean, they just
2 can decide, "Well, somebody is going to correct
3 this."

4 THE COURT: Go ahead. I'm --- I'm going to let
5 Mr. Flores reply.

6 MR. FLORES: Yes, Your Honor. I think that
7 language is --- does not lessen the burden on the
8 State. This speaks specifically to the law as given.
9 You are giving the law through this charge.

10 If you made a mistake in the law, the jury knows
11 that they did nothing wrong when determining the
12 facts. They are completely responsible for the facts.
13 This just tells them that if there is a mistake at
14 law that I have made in the course of this trial,
15 then that is --- that will be corrected. It does
16 nothing to lessen the burden on the State in this
17 case.

18 THE COURT: Well, I think it's superfluous. I
19 agree with you. I know what it says.

20 (Pause)

21 All right. I'll remove that sentence. Anything
22 further?

23 MR. SWERLING: Just the last thing, Judge, is on
24 page eight about the reasonable doubt charge. I
25 object to this language, and object all the time to

1 this language, where it says --- it's based --- it's
2 going down to the last couple of sentences, "What is
3 required is that based on your consideration of the
4 evidence, you are firmly convinced that the
5 respondent is a sexually violent predator, then you
6 must return a verdict for the State." I think in
7 there should be inserted "if you are firmly convinced
8 beyond a reasonable doubt".

9 Then the second sentence, which is on the top of
10 page nine, I object to the language, "if on the other
11 hand, you think there is a real possibility that he
12 is not a sexually violent predator," having ---
13 searching for a real possibility lessens the standard
14 that the State has to prove the case beyond a
15 reasonable doubt, because what the jury is being told
16 is well, if you feel like there is a real possibility,
17 then you have got to give him the benefit of the
18 doubt.

19 The standard is whether they are convinced
20 beyond a reasonable doubt, so I think this real
21 possibility language is burden shifting and shifts
22 their burden. I object to it now. I always object
23 to it. Maybe someday somebody will listen.

24 THE COURT: Mr. Flores?

25 MR. FLORES: Your Honor, I think the --- again,

1 I disagree that this lessens the burden. I'll be
2 frank with you, I obtained this particular charge
3 from a charge given by Judge Hyman. I think it ---

4 THE COURT: By judge who?

5 MR. FLORES: Judge Hyman out of Conway, out of
6 Horry County. I think it's ---

7 THE COURT: Why didn't you quote me?

8 MR. FLORES: I did not have a charge yet from
9 you, sir, or else I would have done so.

10 THE COURT: It's the same charge.

11 MR. FLORES: Then I believe that is adequate and
12 meets the provisions of the law.

13 THE COURT: All right. Mr. Flores, what about
14 the paragraph on page six, weighing the evidence?
15 Again, that's --- I think it's superfluous.

16 MR. FLORES: The State would have no objection
17 to that being stricken from the charge.

18 THE COURT: All right. Mr. Swerling, I'm going
19 to grant your motion with regard to the annual review,
20 petition for annual review.

21 Anything further?

22 MR. SWERLING: No. Could we approach on one
23 other matter?

24 THE COURT: Sure.

25 (Whereupon, there was a bench conference.)

1 MR. SWERLING: Your Honor, I have explained to
2 Mr. Fetner about his right to testify, if he should
3 so desire, and we've discussed the pros and cons of
4 his testifying on his behalf.

5 It's my understanding Mr. Fetner does not wish
6 to testify in this proceeding; is that correct?

7 MR. FETNER: Yes; that's correct, Mr. Swerling.

8 THE COURT: It's on the record. Thank you very
9 much.

10 All right. All right. How long do you think?
11 I've got to make a decision whether to order lunch
12 for this jury.

13 MR. SWERLING: Mine looks like under 30 minutes.

14 MR. FLORES: My closing will be under 30 minutes
15 for sure, maybe closer to 20.

16 THE COURT: Let's go ahead and order lunch, give
17 them some menus. All right. We'll stand at ease a
18 few minutes until the clerk gets the jury's lunch
19 orders. Then we will proceed shortly afterwards.

20 (WHEREUPON, a short break was taken.)

21 State opens and closes?

22 MR. FLORES: Yes, the State opens. Mr. Swerling
23 will have the response. If there is anything after
24 that, I will go but...

25 THE COURT: That's fine. The jury is ready.

Closing by Flores

168

1 MR. SWERLING: Okay.

2 THE COURT: Mr. Flores, you understand since I
3 ruled that the annual review language is out, you
4 cannot argue it?

5 MR. FLORES: Yes, Your Honor. I had not
6 intended to argue that but thank you.

7 (WHEREUPON, the jury came into open court at
8 approximately 10:42 a.m.)

9 THE BAILIFF: Your Honor, the jury is seated.

10 THE COURT: Thank you very much. All right.
11 Mr. Flores, you may conclude with your final remarks.

12 CLOSING STATEMENT:

13 MR. FLORES: Thank you, Your Honor. May it
14 please the Court, Mr. Swerling, Mr. Fetner.

15 Good morning, ladies and gentlemen.

16 THE JURORS: Good morning.

17 MR. FLORES: When I came before you yesterday
18 afternoon, when we started this trial, I said this
19 case was about protection of the citizens of Richland
20 County and the State of South Carolina.

21 What we are asking you to do in this case is to
22 determine whether or not Mr. Fetner is a sexually
23 violent predator as defined by the law.

24 As I said before, I may get the law wrong.
25 Listen to what the judge has to say. He's the expert

1 on the law. He knows what the law is and what it
2 means.

3 My understanding was this: A sexually violent
4 predator is two things --- it requires the State to
5 prove two things beyond a reasonable doubt: First,
6 that Mr. Fetner has been convicted of a sexually
7 violent offense.

8 You will have the sentencing sheets and the
9 indictment for a lewd act on a minor. That is a
10 sexually violent offense, so we have met that part of
11 the definition.

12 The second question, or the second requirement,
13 is: does Mr. Fetner have a mental abnormality or
14 personality disorder that would make it more likely
15 for him to reoffend?

16 The State would submit that Dr. Wadman has, one,
17 diagnosed him with a relevant mental abnormality,
18 pedophilia; and two, as a result of her exhaustive
19 evaluation, which included a document review, which
20 included evaluation of Mr. --- a sit-down interview
21 with Mr. Fetner, as well as diagnostic tests that she
22 ran, had run and had interpreted, based on all of
23 that, as well as her history of conducting these
24 evaluations and her experience in doing this
25 particular type of evaluations, she says, "I believe

Closing by Flores

170

1 Mr. Fetner is likely to commit these offenses."

2 Why is that?

3 Pedophilia, as Dr. Wadman testified to, is a
4 lifelong illness. It's not something that --- like
5 the common cold is picked up one day, suffered
6 through for a couple of days and then is left until
7 the next cold is picked up.

8 Pedophilia, as she said, is similar to
9 alcoholism, a condition that can be treated, a
10 condition that many people suffer from, some can
11 control, some cannot.

12 Based on Mr. Fetner's offenses from 13 years ago
13 is evidence at that time he could not control his
14 sexual urges, which he suffers from pedophilia.

15 Now, it is true that Mr. Fetner pled guilty on
16 one day in July of 2000, got credit for jail time and
17 served out his sentence, but let's look at those
18 particular offenses. Was it one offense that
19 happened at one point in time? No.

20 If we look at these sentencing sheets and
21 indictments that you will have in the jury room, you
22 will see that in August of 1998, Mr. Fetner kidnapped
23 a young girl.

24 He took her out of a store, a store that many of
25 us might frequent, after going in asking her to look

1 at price tags for him and pulled her, touched her,
2 maybe he would say not violently, grabbed her hand,
3 escorted her out of the store, in order to have sex
4 with her or have some kind of sexual relation with
5 her, one occasion, August of '98.

6 After that incident where he did not get caught,
7 he promised himself, "I will not do this again. I
8 will not do this again."

9 September of '98, he does it again, kidnaps
10 another girl, takes her to the parking lot. You can
11 see his truck which he will get in with this girl and
12 he will have some kind of sexual relationship, but
13 she runs away.

14 Again, he says to himself, "I will not do this.
15 I cannot do this, not. I cannot do this offense
16 again. I will not do it." November of 1998, what
17 does he do?

18 Again, takes a young lady to the bathroom of
19 Target, takes her into the bathroom, removes her
20 pants and underwear, proceeds to touch her, luckily,
21 luckily, someone walked into that bathroom,
22 interrupted the process. He got away.

23 Based on his past experiences, he probably said,
24 "I won't do this again," but he's already done it
25 three times over a short period of time, August,

Closing by Flores

172

1 September, November, each time promising he would not
2 do it again, lack of control.

3 Dr. Wadman testified that's one of the best
4 indicators of whether or not someone is likely to
5 recommit an offense.

6 What is the pattern that they follow before?
7 What is their past criminal history? An individual
8 who does it one time, well, there's no pattern.
9 Perhaps it's a call for help, saying maybe I will get
10 caught, like a suicide victim. Maybe I will ---
11 somebody will come and save me and I will be able to
12 get treatment, be able to get mental health
13 counseling to help me with my problems.

14 This was not a one-time offense, August,
15 September, November, and he got away. The only
16 reason he got caught, from the surveillance, was
17 because he happened to be an employee of the
18 Department of Public Safety, and he worked where
19 agents who knew him said, "Hey, that guy looks like
20 the custodial assistant who works down the street or
21 works down the hallway."

22 Now, Mr. Swerling tried to --- I'm sorry. I
23 lost that thought.

24 Dr. Wadman was appointed by the Court and asked
25 to answer one question: In your professional opinion,

1 do you believe that Mr. Fetner is a sexually violent
2 predator? Does he have a mental illness? Is he
3 likely to reoffend? That was the question she was
4 asked to investigate.

5 She pulled her reports. She pulled defenses.
6 She ran the tests. She was asked, does this
7 individual, does Mr. Fetner, need to be in this
8 program, this program, this particular program where
9 he will be, as Mr. Swerling has pointed out, behind
10 bars in prison because the statute requires it be in
11 a secure facility.

12 When our legislators passed this act, it has to
13 be --- they said it has to be in a secure facility.
14 They can't be able to come in and out of this
15 facility, so whether or not it was at Broad River
16 Road, an independent hospital somewhere else, it's
17 completely run by the Department of Mental Health,
18 and it would have bars and gates and barbed wire for
19 them not to get out because they need to complete the
20 treatment that they have for these --- they need to
21 complete the treatment for their mental illness.

22 Now, Mr. Swerling has pointed out that
23 Mr. Fetner has been on protective custody since he
24 got --- well, shortly after arriving at the
25 Department of Corrections. That is true.

1 We don't dispute at all that Mr. Fetner has been
2 in protective custody. In fact, Dr. Wadman does not
3 dispute that; he has been in protective custody. As
4 a professional, she says, "Even if he had been on
5 protective custody, I have to look at what kind of
6 treatment has he received? Has he received any
7 treatment? Has he received any mental health
8 counseling?"

9 If you recall, when she testified at the time of
10 his arrest, he said that, she said --- and he
11 indicated to her --- that he needed help at that time,
12 13 years ago.

13 Yet, in 13 years, as the stipulation that we
14 entered into in this case, no mental health treatment
15 was ever requested, not even counseling.

16 We could concede that protective custody is very
17 secure. Mr. Fetner did a good thing. He was going
18 to testify against the murderer of an eight-year-old
19 child. He did a good thing.

20 But even while he was in that protective custody,
21 he didn't seek some kind of help. You never, again,
22 hear, based on the records, that he needed help.

23 In fact, when he was interviewed by Dr. Wadman,
24 all indications seem to say, "I don't have this
25 anymore. It's gone away. I'm fine. I care about

1 white women, ages 18 to 26," but it's not that simple.

2 An illness like this, as Dr. Wadman said, is
3 lifelong. He has received no treatment at all, no
4 protective measures to help him combat those urges,
5 those fantasies.

6 So, in essence, he's in that same position that
7 he was in back in 1998 when he committed these
8 offenses. He's in that position saying, "I will not
9 do that again."

10 What happened three times after he said, "That
11 will not happen. I will not do that again?"

12 The lack of treatment, while a Hobson's choice,
13 is unacceptable in this kind of case. A cry for help
14 and some indication of wanting to get that treatment
15 perhaps would cause him not to be a sexually violent
16 predator.

17 I would submit to you that that lack of
18 treatment is a critical portion of why he needs to be
19 in this particular treatment program.

20 Mr. Swerling has done a good job of telling you
21 what he would --- what Mr. Fetner would face as to
22 community supervision and monitoring.

23 I would submit to you a few things. This
24 community supervision is not --- was not ordered
25 because he committed a sexually violent offense.

1 Community supervision was ordered as a result of
2 his kidnapping charges. Kidnapping by itself, in
3 this context, while he wanted to do sexual things,
4 was not a sexually violent offense as defined by
5 statute.

6 Let's talk about, for a moment, those acts of
7 kidnapping. You heard Dr. Wadman say when Mr. Fetner
8 said, "Well, they came with me willingly. They were
9 not violent. They were not violent at all. I didn't
10 drag them kicking and screaming with me."

11 I would submit to you this: A person who takes
12 a young child, seven, eight, nine, and is an
13 authority figure, an adult, who may offer them
14 something or tell them their mommy is in trouble and
15 they may go with them willingly does violence to that
16 child.

17 He might not drag them. He might not leave a
18 handprint. He might not leave a scratch, but the
19 mental damage that an individual does when they
20 convince a child, an innocent child who trusts adults
21 to go with them in a store, that is violence, because
22 they are scarred for life from that situation.

23 So while he may say, "Oh, it's not violent at
24 all," I submit to you it is. It is the most violent
25 thing that you can do to a child, in a public place

1 where there's supposed to be protection from the
2 community.

3 Now, getting back to the community supervision
4 and the monitoring, Dr. Wadman was not asked in her
5 evaluation to say, "Is this adequate?"

6 In fact, she doesn't know much about community
7 supervision, as you heard from the stand. She has a
8 basic understanding, but that's not what she does.
9 She is an evaluator. She was asked should Mr. Fetner
10 be in this program.

11 But she said this: She testified it may not
12 happen in a year. It may not happen in two years,
13 but it's going to happen again.

14 She looked at his entire life. She did an
15 entire profile of his interactions with his parents,
16 his work history, and she said he's an intelligent
17 man and he's a dangerous man. It is my opinion to a
18 reasonable degree of what my professional degrees and
19 certifications require, he is likely to do this again,
20 but you will have to weigh that.

21 Her testimony alone is not sufficient. You
22 can't --- you know, we don't ask you to just accept
23 it because she said it. Look at what she relied upon.
24 Look at what she said.. Look at what she looked for.

25 Now, there was something that was brought up as

Closing by Flores

178

1 well that she looked at, a penile plethysmograph.
2 She described it as something they used, mainly in
3 therapy, to indicate whether or not someone continues
4 to be aroused by children or is not anymore. It's a
5 worthwhile tool that evaluators in this particular
6 field utilize.

7 Now, Mr. Swerling asked her about that from her
8 report. She said well, it was inconclusive,
9 inconclusive.. So it did not factor into her opinion
10 one way or the other..

11 He didn't have any sexual arousal to anything,
12 which she said was not uncommon. There was no
13 evidence that he tried to fool the penile
14 plethysmograph, but she was honest about it. "It
15 didn't help me one way or the other, but it was
16 something I did, part of my protocol."

17 The question today is not whether or not
18 community supervision is adequate. The question is
19 not is electronic monitoring adequate.

20 The question is, is Mr. Fetner a sexually
21 violent predator, as defined by statute? Has he
22 committed the offense? Yes. Does he suffer from a
23 mental abnormality? Yes. Does that mental
24 abnormality cause him to be more likely to be a
25 sexually --- to commit a sexually violent offense?

1 I would submit, yes; that is for you to decide.
2 Does Mr. Fetner have adequate control of his
3 pedophilia such that he is safe to be in the
4 community?

5 I want to thank you today. I know that you will
6 go back to the jury room in just a short time,
7 deliberate the facts of this case. The case is not
8 an easy one. They never are.

9 But what you do today, whether or not you find
10 him to be a sexually violent predator or you find him
11 not to be a sexually violent predator, it's important
12 to all of us, all of us, myself, Mr. Swerling,
13 Mr. Fetner, everyone in this courtroom.

14 Thank you for your jury service that you're here
15 for today. Thank you.

16 Judge.

17 THE COURT: Mr. Swerling.

18 CLOSING STATEMENT:

19 MR. SWERLING: May it please the Court,
20 Mr. Flores.

21 Good morning again.

22 THE JURORS: Good morning.

23 MR. SWERLING: Let me move this out of the way.

24 Folks, this was a relatively short trial. You
25 had one main witness yesterday, a short witness today,

Closing by Swerling

180

1 and one of the other witnesses that could not be here,
2 we entered into a stipulation so we wouldn't have to
3 delay the case as to what she would have testified to.

4 We completely disagree with the State as to
5 whether or not Mr. Fetner meets the definition of a
6 sexually violent predator, whether he's predisposed
7 or likely to reoffend if he is released; that he
8 cannot control his conduct, which are the things that
9 the State is indicating to you they believe justifies
10 finding him a sexually violent predator. We just
11 disagree with that. We completely disagree with that.

12 We submit to you that Mr. Fetner is no more
13 likely to reoffend or no more likely to not be able
14 to control his behavior than the thousands of people
15 that are released every year, or every few years,
16 from the Department of Corrections, because there are
17 programs in place that protect the public from the
18 people who get out and who have been sexual offenders.

19 Now, what I'd like to do --- I wanted --- the
20 State always goes into the details of these
21 particular offenses under the --- under the umbrella,
22 you know, that they --- this is part of the diagnosis
23 that the doctor is going to make.

24 Well, what it really is doing is to scare you
25 that we have an evil person sitting on ---

Closing by Swerling

181

1 (Screaming from the hallway.)

2 An evil person sitting ---

3 THE COURT: Hold on.

4 Mr. Swerling.

5 MR. SWERLING: Yes.

6 THE COURT: Hold on.

7 That will stop in just a minute. There are
8 other courtrooms going on. Things happen.

9 MR. SWERLING: Okay.

10 (Pause)

11 THE COURT: You're fine. The jury was
12 distracted.

13 MR. SWERLING: Oh, that's fine. Thank you. I
14 appreciate it.

15 They want you to relive and recreate what
16 happened 13 years ago. They get you upset, get you
17 excited, and instead of making a sound judgment on
18 whether or not he is a sexually violent predator and
19 has to remain in a secure facility, they want you to
20 think about what he did 13 years ago and the awful
21 things that he did.

22 Well, ladies and gentlemen, no one is standing
23 up here, no one --- this person never would in any
24 way ever minimize what happened 13 years ago, no way.

25 They were despicable acts. Mr. Fetner was

1 caught, and he entered a plea to guilty to the three
2 counts of kidnapping and one count of lewd act on a
3 minor child.

4 He accepted responsibility for what he had done.
5 He did not fight those charges. He did not say he
6 was not guilty of those charges.

7 In 2000, in the year 2000, he appeared in front
8 of a judge and accepted responsibility for what he
9 did. Accepting responsibility, acknowledging
10 responsibility, is the first step in the road to
11 recovery.

12 Now, what's significant about that is that again,
13 these events were despicable, they were horrible. No
14 child should have to being subjected to any of that,
15 but what we do is we have a system in place where the
16 prosecutor and the defense lawyer, they try to
17 negotiate cases.

18 If they're successful in negotiating, then they
19 present that in a negotiate plea before the court.
20 If they can't get together in what is an appropriate
21 sentence in a case, then there may be a trial, or it
22 may be a plea in front of a judge and just leave it
23 up to the discretion of a judge.

24 But in this particular case, knowing all the
25 facts, taking everything into consideration as you

1 have pointed out on the indictments, this was a
2 negotiated sentence.

3 In other words, the State and the defendant
4 agreed to present to the Court, and the Court imposed
5 a 15-year sentence of which Mr. Fetner would have to
6 serve 85 percent. So that's what we have, okay.

7 Now he goes in to the Department of Corrections,
8 and he's going to start serving a 15-year sentence.
9 85 percent of that is approximately 13 years, which
10 is what they have to serve.

11 While he's in --- while he's in jail, he
12 overhears a conversation from Mr. Delacruz. He is
13 contacted by the State while he's in jail, and he
14 tells the State, "Yes, I did hear that conversation.
15 I will be a witness for the State."

16 Now, this is an individual who made a mistake,
17 no question about it, did a terrible thing, but was
18 prepared to testify for the State to help convict a
19 murderer who murdered an eight-year-old child. And
20 he was prepared to testify in that case.

21 Now, is this a bad person? Is this an evil
22 person? He is a person who did wrong. He is a
23 person who did acts that are despicable, but he also
24 has in him that desire to do the right thing and to
25 go ahead and testify in that case.

1 And at the risk of his own life, he testified in
2 that case --- or was prepared to testify in that case.
3 He testified outside the jury's presence. I don't
4 know why it was not in front of the jury, but in
5 response to that, the solicitor sent a letter to the
6 Department of Corrections about putting him in
7 protective custody.

8 Now, not everybody gets put into protective
9 custody. You're put in protective custody when there
10 is a real threat of harm to you. You're segregated
11 from the rest of the prison population.

12 There's a special unit where they have
13 protective custody individuals for one reason or
14 another. Mr. Fetner's situation was because he had
15 cooperated with the State.

16 He has remained in protective custody since the
17 time he reported in 2001 until the day he was
18 released to the Richland County jail in August
19 of 2011, ten years on protective custody.

20 Now, the State wants to --- they suggest, "Well,
21 he could have had mental health counseling." That's
22 not what was required, and if he had mental health
23 counseling, then the State would argue, "He didn't
24 have sex offender counsel."

25 What the issue was here, and the issue for the

1 court that sentenced him, is that he should have sex
2 offender counseling, not mental health counseling.

3 So it's kind of trying to cloud that together
4 for you, make it sort of, you know, really trying to
5 figure out what is it, that he didn't have mental
6 health counseling, but he was required to have sex
7 offender counseling. That's what the issue is in
8 this case.

9 Well, he could have had mental health counseling,
10 which would not satisfy the judge's order and
11 certainly wouldn't have satisfied the State, because
12 they would still be here.

13 What he did not have was sex offender counseling
14 or treatment and why? Because he's not allowed to.

15 When you're on statewide protective custody,
16 you're segregated from the rest of the prison
17 population, and you cannot participate in a program
18 such as sex offender treatment or counseling.

19 Now, the State would have had Mr. Fetner, and
20 Dr. Wadman would have had Mr. Fetner, take the chance
21 that he could go back into the prison population and
22 be safe so that he could get the sex offender
23 counseling. That was the choice they believe, or I
24 guess they're suggesting he should have made, but
25 Mr. Fetner was extremely concerned about his own

1 safety and welfare.

2 Did he have any basis for it? Yes. He was beat
3 up when he first entered the prison. That was the
4 thing that prompted, also, him going into statewide
5 protective custody.

6 I mean, while you were in there, you cannot get
7 this treatment that the State is taking about, not
8 mental health but sex offender counseling.

9 While he is in prison, while he's in jail for 13
10 years, ladies and gentlemen, 13 years, there's not
11 one infraction. He is a model prisoner, no
12 disciplinaries, no problems, didn't give anybody any
13 difficulties at the Department of Corrections at all.

14 If he had, you would have heard about it. As a
15 matter of fact, Ms. Thompson said in her stipulation
16 that he had none. Dr. Wadman said he had none.

17 Also, what's significant is that in that 13
18 years, the State could not present to you one
19 incident, one statement, one comment, one piece of a
20 letter or one --- because they searched the letters,
21 a picture or a conversation he may have had with
22 anybody which would indicate that he was still
23 thinking of hurting and harming little girls, 13
24 years.

25 I submit to you had any of that existed, had

1 they found any of that, you would have heard about it.
2 The fact that you have not heard about it, I would
3 suggest to you means that in that 13 years, there was
4 no data. There was no indication. There was nothing
5 that they had, that the Department of Corrections had,
6 which would indicate Mr. Fetner was still
7 entertaining those thoughts.

8 So we have 13 years later we jump forward. The
9 State, the defense, the Court all believed that a
10 15-year sentence was the appropriate sentence in the
11 case, but after 13 years, which is the 85 percent,
12 the State comes forward again and says, "Okay. No,
13 no, we want you to stay with us longer. We want to
14 hold you past your sentence. We want to keep you in
15 a secure facility past your sentence so that you
16 should get sex offender counseling."

17 Did Mr. Fetner serve the time? Did he pay his
18 debt? According to the plea, the time that he served
19 was the debt that he paid to society.

20 By your finding in favor of the defendant in
21 this case, you're not condoning the conduct he did 13
22 years ago in anyway.

23 What you're saying is there is no evidence
24 beyond a reasonable doubt that he has to be held in a
25 secure facility after his sentence has been served;

1 that there are mechanisms in place, which the State
2 does not want to talk about, that can control those
3 individuals who come out of prison sex offender
4 counseling.

5 So Dr. Wadman, the whole --- the State's whole
6 case revolves on Dr. Wadman. But again, Dr. Wadman
7 has no data to support her assessment in the 13 years
8 that he was in prison.

9 Now, I'm going to get into it in a little more
10 detail, but I'll just trying to get some broad
11 strokes here.

12 During the testimony yesterday, it was not me
13 who brought out the fact that did she consider
14 outside counseling. The State brought that up.

15 And Dr. Wadman initially said, "Well, I somewhat
16 considered it, but he was not on probation." Do you
17 remember those words? She said it. She said it,
18 "But he was not on probation as part of the
19 sentence," and then she quickly moved away from it
20 and said, "Well, my job was to determine whether he
21 was a sexually violent predator."

22 Well, the first area that I tried to cover when
23 I got up there was, "Well, let's see. One of the
24 reasons why you're not considering outside counseling
25 was because he's not on probation, because there's no

1 way to supervise."

2 Then she started backing off saying, "Well,
3 really, I'm determining whether he needs to be in a
4 secure facility."

5 Ladies and gentlemen, what she was saying, I
6 submit to you, what she was saying was this: I
7 considered outside counseling, but he's not on
8 probation. So he can't be supervised about that
9 outside counseling.

10 But, ladies and gentlemen, there is a program,
11 the community supervision. Even though he is not on
12 probation, he is under community supervision, which
13 is the same thing. It's tantamount to that. It's
14 actually --- it's very, very strict program.

15 By that time, though, I think Dr. Wadman had
16 realized that she had let something slip out there
17 about this probation and did not want to get back
18 into it and concede that the person could get
19 outpatient treatment under the community supervision
20 program.

21 The program that is available to an individual,
22 if he is found to be a sexually violent predator and
23 has to go back to prison, is a program that --- for
24 some period of time, which was never really defined,
25 he's gets an hour-and-a-half of therapy a week, an

Closing by Swerling

190

1 hour-and-a-half of therapy. That's what the
2 Department of Corrections, the Department of Mental
3 Health considers sex offender counseling or treatment,
4 an hour-and-a-half, until some period, magical period
5 of time when he starts getting other programs that he
6 may spend a couple of days.

7 But the rest of the time, what is it? He's
8 locked down. The rest of the time he's in prison,
9 for all essential purposes. The rest of the time,
10 he's serving an extended sentence and not getting
11 treatment.

12 Whereas, if you get into the program that we
13 talked about, the community supervision program,
14 that's not the case.

15 Now, we brought you the evidence about the
16 community supervision program. Because he was
17 convicted of kidnapping, that is one of the crimes
18 that kicks in the community supervision.

19 You don't have to be on parole. You don't have
20 to be on probation. You are automatically under
21 community supervision when you are released from
22 prison because there are certain crimes that trigger
23 the community supervision.

24 The kidnapping is the crime that triggers the
25 supervision. The lewd act on a minor is a sexual

1 crime. Nobody is forgetting that. It's just that
2 the kidnapping charge is the one that triggers the
3 community supervision.

4 Under the community supervision, he is required
5 to wear a monitor so that the Probation Department
6 will know where he is at all times. He is required
7 to wear that at least a minimum of six months and up
8 to two years.

9 They will know where he is every moment. If he
10 is not where he is supposed to be, it triggers an
11 alarm, and there is an agent sent to his place where
12 he is right there, right at the corner of the street,
13 if that's where he is.

14 Under the community supervision program, he has
15 to go for sex offender counseling, and I submit to
16 you that if it's under community supervision, we're
17 not talking about an hour-and-a-half a week.

18 We're talking about intensive sexual offender
19 counseling where he will be under the supervision of
20 an agent, who is going to require that, who is going
21 to make sure that he gets that treatment. That can
22 last up to two years, as well.

23 Because he is a sexual offender, he has to
24 register as a sex offender, and he has to do that for
25 the rest of his life. I have no difficulty with that

1 law.

2 Because he is a sex offender, in addition to
3 registering, he comes under the conditions that are
4 in place for sex offenders.

5 He can't be with anyone under the age of 18
6 years of age unless there is other supervision
7 present and unless his agent says it's okay.

8 He cannot be 1,000 feet from any parks, schools,
9 malls, playgrounds, beaches, and a number of other
10 places where children frequent, people under the age
11 of 18 frequent. He can't live within 1,000 feet of
12 any of those places either. GPS monitoring makes
13 sure that's true, that that's carried out; he's
14 abiding by that.

15 He agrees that an agent can come to his house
16 without any announcement, without any warrant, and
17 search his phone, search his computer, search his
18 home, to make sure he's in compliance and not doing
19 anything he's supposed --- supposed not to do.

20 There are all of these restrictions in place,
21 and if he violates any of those restrictions, he goes
22 back to jail for a year every time he violates that.
23 He goes back to jail, he goes back to prison for a
24 year.

25 Now, folks, that is something hanging over

1 someone's head. There is no question that this
2 community supervision is not some candy kind of
3 program that you are just giving someone a gift, what
4 one would call in the law the Baby Ruth.

5 We call that with --- you know, they get a
6 benefit, and it's not really a difficult kind of
7 treatment or a program. We call it like a Baby Ruth.
8 It's just all the lawyers refer to it like that, but
9 that's not the situation here.

10 The situation here is that he's going to be
11 monitored. He's going to be followed. He's going to
12 have to get treatment, and if he violates it, he goes
13 back to prison.

14 So the difference here is, that he is a sexually
15 violent predator who has to be controlled in a --- in
16 a controlled environment, basically a prison
17 situation, or can he go into the community
18 supervision program and be adequately supervised and
19 made sure that he does not reoffend?

20 Now, Dr. Wadman used some risk assessment to
21 predict behavior. This is not a science. It's
22 basically someone's opinion that someone is going
23 reoffend. They can't control their behavior, that
24 they're predisposed to go ahead and do it again.

25 Dr. Wadman is saying, "No. We believe he fits

1 that criteria based upon, really, what happened 13
2 years ago."

3 Now, she did a risk assessment, and you heard
4 the criteria, the tables she used in some of these
5 factors that she used, and she found that he had a
6 moderate to high risk based upon her criteria, what
7 she found in that testing.

8 What I found interesting, and I suggest to you
9 is sort of interesting, is that she basically
10 questioned the validity of that test by stating that
11 I have the right to go ahead and see whether or not
12 the results underestimate or overstate or rightfully
13 state the risk assessment.

14 So Dr. Wadman, on her own, made a determination
15 that it underestimates, or understates, the risk
16 factors. So you have a test that you use that's
17 supposed to make this assessment, but then you get to
18 decide whether or not it understates, overstates or
19 fairly represents the situation.

20 I suggest to you that a test like that really is
21 worthless if the doctor then gets to determine
22 whether or not it accurately portrays the individual.

23 Now, she also conducted interviews of Mr. Fetner.
24 This is a little troubling. Mr. Fetner had no
25 obligation to participate in those interviews.

1 The interview, the evaluation, was ordered. He
2 sat down with the doctor, and the doctor told him,
3 "There is no confidentiality in anything you tell
4 me."

5 As a result of that, he made a measured decision
6 to go ahead and tell her everything, all the things
7 he was thinking about in 1998 when these terrible
8 events took place.

9 He told her what he did. He told her what he
10 was thinking. He didn't pull any punches. I mean,
11 his thought process at that time, he told the doctor,
12 was to go ahead and take these children and do
13 terrible things to them.

14 Now, if he was trying to minimize that or have
15 some kind of cognitive whatever it was called,
16 distortion, then why would he sit down and say what
17 he actually intended to do to these children if he
18 wasn't trying to be candid and honest with the doctor?

19 There is no cognitive distortions there. He was
20 telling you through her. He was telling the doctor
21 that he did terrible things, and he was telling them
22 not only what I did but what I was thinking.

23 Now, I find it interesting that she was willing
24 to believe that he told her the truth about what he
25 did and what he was feeling at that time, but jump

1 forward 13 years, and she is unwilling to accept from
2 someone she found already truthful that he only had
3 an interest in adult women; that he had no interest
4 anymore in children.

5 So, on the one hand, when it serves her, she
6 finds that he is telling the truth, but when it
7 contradicts what her findings are going to be or what
8 findings she comes to, she chooses not to believe
9 that.

10 Now, what does she say? I said we said
11 something about these cognitive distortions. Well,
12 let me tell you what the cognitive distortions were.

13 The two that she talked about was the common,
14 which I read into the record at that point, he said
15 he thought about the parent left behind would be
16 emotionally distraught and crying, possibly calling
17 the police. In a way it scared me, but there was
18 excitement, too.

19 Now, when you hear that statement or when you
20 read that statement, it wasn't about the parent being
21 distraught and crying that excited him. It was about
22 the fact, I suggest, that the parent would call the
23 police. That was exciting to him.

24 His comment that he did not use physical force,
25 now is there any doubt that he took the child's hand

1 on those occasions and led the child to the patio or
2 outside or into the bathroom? No.

3 But when he was asked, "Did you use physical
4 force? Did you grab the child? Did you carry the
5 child? Did you do anything to the child, other than
6 taking her hand."

7 In his mind, that's not physical force. He took
8 the hands, and he walked the child in. Now, anything
9 else that she testified to, I remind you, was not in
10 her notes. The other things that she came up with
11 were in her notes.

12 She does not put everything in her notes, she
13 said. She has a ten-page report, but some of the
14 things she told you just are not in the notes.

15 You decide whether or not that's credible, an
16 experienced evaluator putting in, not putting in,
17 serious information in her notes.

18 She also used a couple of the criteria for these
19 risk factors is the fact that he had no gainful
20 employment. Well, when he was young, he was in his
21 teen years, maybe even into his early 20s, he shifted
22 jobs back and forth, as many people do.

23 I did not know that made you a sex offender, but
24 when he was --- four years before he was apprehended,
25 he went to work for the Department of Public Safety

Closing by Swerling

198

1 and was working at SLED headquarters being the
2 custodian.

3 Well, that was not good enough for Dr. Wadman.
4 That's not achieving what he could achieve. She
5 believed he could do more than that.

6 Well, ladies and gentlemen, maybe that is all
7 that Mr. Fetner can do, and there is nothing wrong
8 with that as long as you do it well. And, apparently,
9 he did do it well, because he was there for four
10 years until he was arrested. That was one of her
11 criteria for the risk assessment.

12 The other one is he didn't have any long-term
13 relationships. Well, hey, I didn't know that made
14 you a sex offender either. Lots of people don't have
15 long-term relationships. They have relationships
16 that come and go. Sometimes you get into a long-term
17 relationship and sometimes you don't.

18 Sometimes that long-term relationship develops
19 into a marriage. Sometimes it doesn't, but that's
20 one of the risk assessments she used.

21 There's one other device she used, not for
22 therapy, as has been suggested, but to predict
23 behavior, and that's the penile plasma --- I can't
24 even pronounce it, PPG test.

25 This test was developed to measure an arousal to

1 certain types of photographs, certain types of images
2 to see what kinds of problem you may be having. What
3 is your sexual interest?

4 They show you this --- these series of
5 photographs, thousands of photographs, and then they
6 measure what your arousal is to these particular
7 types of photographs.

8 Now, what's important here, which seems to be
9 everybody is looking over here, is the fact that
10 there was no stimuli, no arousal at all to children.

11 Thirteen years after these events, there was no
12 arousal to children. He didn't have any arousal to
13 adult females either, but that doesn't make the test
14 inconclusive.

15 When you don't have any arousal to the children,
16 that's what's significant, because that's what we're
17 talking about here. She said there was no
18 information or evidence that he was manipulating the
19 test.

20 Ladies and gentlemen, if he had arousal to
21 children on that PPG test, you would have heard about
22 it. I guarantee you would have heard about it, and
23 that would have been the basis for them recommending
24 that he be treated as an SVP.

25 So kind of in summary, what do you have here?

Closing by Swerling

200

1 You have a kid who grew up in this area, went to high
2 school, Christian high schools, graduated high school,
3 had some problems settling down in a job, eventually
4 settled down at a job at SLED four years, had no
5 prior record, had never been in trouble before on
6 anything.

7 For a period of three months, he did horrible,
8 despicable acts, and he was caught and that's good.
9 He went to court, and he got a 15-year sentence, and
10 he served that sentence.

11 Now the State is trying to keep him in, hold him
12 back, keep him in that jail.

13 We --- this is all predicated on projections for
14 risk assessment, what she thinks is going to be the
15 situation in the future as to whether or not he's
16 going to reoffend, his predisposition. He can't
17 control his behavior. It's all based on data, really,
18 of 13 years ago.

19 Now, we talked a little bit yesterday, and she
20 mentioned the fact about alcoholism. Well, a person
21 is an alcoholic, as she is saying, you can't cure
22 that, but you can control it. The person can control
23 that behavior.

24 I would suggest to you that if a person, an
25 alcoholic, stays alcohol free for 13 years and does

1 not drink alcohol during that period of time, that
2 that person's risk of continuing or going back to
3 drinking gets less and less and less as the years go
4 on. That person ought to be given the benefit of the
5 doubt..

6 I also suggest to you in the example we used,
7 and she talked about risk assessment by insurance
8 companies, and the example we used about an
9 individual --- I think I described myself a little
10 bit --- about whether or not a person who has all the
11 characteristics or all the problems that would
12 indicate some heart disease, genetic problems in the
13 family, overweight, not exercising, smoking, that
14 that person is not necessarily going to have a heart
15 attack. It's a prediction, but it's not a guarantee.

16 High-risk people sometimes don't reoffend, and
17 low-risk people do reoffend. She suggested, "Well, I
18 would say if a person had three heart attacks, that's
19 a pretty good predictor that that person is going to
20 have a fourth heart attack." I agree with that, as
21 well.

22 If that person 13 years ago lost weight, started
23 exercising, stopped smoking, reduced stress, that
24 person's chance of having another heart attack 13
25 years later is minimized. It's lessened and his risk,

Closing by Swerling

202

1 or her risk, is much less than it was 13 years ago.

2 That's what you have here. You have an
3 individual from 13 years ago who committed despicable
4 acts, but there is no evidence that person is going
5 to go ahead and do that again, no evidence whatsoever
6 that you can rest on and feel comfortable about other
7 than a guess.

8 I submit to you the standard here is not whether
9 to guess. The standard here is has the State proven
10 to you beyond a reasonable doubt that he is someone
11 who needs to be confined in a secure facility. Is he
12 someone who is likely to reoffend?

13 Is he someone, because of his mental abnormality,
14 he cannot control his behavior? I submit to you they
15 have not proven that beyond a reasonable doubt.

16 I submit to you that there are programs in place
17 that will protect the public, and that is the
18 community supervision program which was designed for
19 this specific purpose.

20 We ask you for a verdict for the defense or the
21 respondent in this case, and we thank you and tell
22 you we appreciate your being here over the last two
23 days to decide this case.

24 Thank you.

25 THE COURT: Mr. Flores?

1 MR. FLORES: Nothing further from the State,
2 Your Honor.

3 JURY CHARGE:

4 THE COURT: All right. All right. Ladies and
5 gentlemen, that will conclude the final summations of
6 counsel. It's now my responsibility to talk to you
7 about the law of the State of South Carolina as it
8 applies to this case.

9 Now, as you know, the State has brought this
10 case under the Sexually Violent Predator Act. The
11 State seeks civil commitment of the respondent for
12 long term care, control and treatment in a secure
13 facility. This is not a criminal proceeding seeking
14 incarceration, but rather it's a proceeding seeking
15 civil commitment.

16 The State of South Carolina alleges or claims
17 that the respondent, William Bryan Fetner, is a
18 sexually violent predator under the law. The
19 respondent, Mr. Fetner, denies that he is a sexually
20 violent predator.

21 The burden of proof is, therefore, on the State
22 to prove by evidence sufficient to satisfy you beyond
23 a reasonable doubt that the respondent is a sexually
24 violent predator.

25 If the State is unable to meet that burden of

Jury Charge

204

1 proof as to one or more of the elements of this claim,
2 the respondent is entitled to a finding that he is
3 not a sexually violent predator.

4 I want to make sure that the jury understands
5 that Mr. Fetner is not accused of committing a crime
6 in this proceeding.

7 As you heard from the testimony, he did have
8 previous charges for which he was sentenced by the
9 Court. He has now completed his sentence for those
10 charges, and the State is now alleging that he is a
11 sexually violent predator.

12 The State has the burden of proof in this case
13 and must prove its case beyond a reasonable doubt.
14 If you find the State has not met its burden, the
15 respondent will be released.

16 If you find the State has met its burden of
17 proof and find the respondent is a sexually violent
18 predator, the respondent will not be released, but
19 will be committed to a secure treatment facility in
20 Columbia operated by the Department of Mental Health.

21 Under this constitution and the laws of the
22 State of South Carolina, you are the finders of facts
23 in this case. I may not intimate to you in any way
24 what I think about the State's claims in this case.

25 You are the judges of the credibility and the

1 believability of the witnesses who have testified.
2 In passing on that credibility, you may take into
3 consideration such things as what was the manner and
4 appearance of the witness who testified? Was he or
5 she straightforward, or was he or she hesitant in
6 answering?

7 How did the witness come to know the facts that
8 he or she testified to, or what was her or his
9 ability to know those facts?

10 Is there some reason a witness would want to
11 give testimony which would help or hurt one side or
12 the other? In other words, was the witness biased or
13 prejudiced, and was the testimony of a witness
14 strengthened or weakened by other testimony or
15 evidence.

16 You, the jury, may believe as much or as little
17 as each of these witness's testimony as you think
18 proper. You may believe the testimony of a single
19 witness against that of many witnesses or just the
20 opposite, and you may believe part of the testimony
21 of a witness and disbelieve the rest.

22 The fact that testimony is not controverted. In
23 other words, it's not opposed by one side or the
24 other, does not mean you must accept it as true and
25 undisputed. You still must gauge the credibility of

Jury Charge

206

1 the witnesses who have testified to determine the
2 believability or truth of the facts offered through
3 the testimony.

4 Keep in mind throughout this entire process that
5 you have but one objective, and that is to seek the
6 truth regardless of some source --- of the source or
7 from where it comes.

8 Now, you've heard the testimony of a witness who
9 has special knowledge, skill, or experience or
10 training in some particular field and who has given
11 an opinion as an expert as to matters in which she is
12 skilled.

13 In determining the weight to be given such an
14 opinion, you should consider the qualifications and
15 credibility of that expert and her reasons for giving
16 her opinion.

17 You're not bound by her opinions, but give them
18 the weight, if any, to which you deem them entitled.
19 You must consider expert testimony in the same manner
20 as you do any other testimony and give it such weight
21 as you believe it is entitled to when considered with
22 all the other evidence in the case. Such testimony
23 is given for the purpose of helping you and not for
24 the purpose of controlling your judgment.

25 Now, the same constitution and law that makes

1 you the finders of the fact and the evidence makes me
2 the judge of the law. You must accept and apply the
3 law as I charge you now and apply it to the evidence
4 as you find it and then reach a verdict.

5 For the purpose of this case today, you must
6 accept the law as I charge it. In that regard, I
7 tell you that neither you nor I should be concerned
8 about what we think the law ought to be, but only
9 concern yourselves with what I charge you the law is,
10 in fact.

11 In most civil cases tried in the Court of Common
12 Pleas, which is this court, the burden of proving the
13 claim is by the greater weight of the evidence or
14 what we call the preponderance of the evidence.

15 However, in this type of case under this statute,
16 the State's burden is greater than that. Here it
17 must be, as you've heard, beyond a reasonable doubt.

18 As I already stated to you, the State has the
19 burden of proof. That is the responsibility of proof.
20 In this State, according to the Sexually Violent
21 Predator Act, the State must prove its case to the
22 standard of proof beyond a reasonable doubt.

23 If the State fails to meet this high burden,
24 then you must find the Respondent is not a sexually
25 violent predator.

Jury Charge

208

1 What is a reasonable doubt in law? A reasonable
2 doubt is the kind of doubt that would cause a
3 reasonable person to hesitate to act. Let me repeat
4 that. A reasonable doubt is the kind of doubt that
5 would cause a reasonable person to hesitate before
6 acting.

7 Proof beyond a reasonable doubt is proof that
8 leaves you firmly convinced. There are few things in
9 this world that we know with absolutely certainty.

10 The law does not require that proof overcomes
11 every possible doubt. What is required, if based on
12 your consideration of the evidence, you are firmly
13 convinced that the Respondent is a sexually violent
14 predator, then you must return a verdict for the
15 State.

16 If, on the other hand, you think there is real
17 possibility that he's not a sexually violent predator,
18 you must give him the benefit of the doubt and find a
19 verdict for Mr. Fetner.

20 A reasonable doubt may arise from evidence that
21 is in the case or from the lack of evidence in the
22 case. It's up to you, ladies and gentlemen, to
23 determine whether or not a reasonable doubt exists in
24 this case.

25 Now, as you have heard, the elements the State

1 must prove beyond a reasonable doubt are that the
2 Respondent has been convicted of a sexually violent
3 offense.

4 I charge you that committing a lewd act on a
5 minor under 16 years of age is a sexually violent
6 offense, and second, that the Respondent suffers from
7 a mental abnormality or personality disorder that
8 makes him likely to engage in acts of sexual violence
9 if not confined in a secure facility for long-term
10 control, care and treatment...

11 Inherent in these two elements is that the State
12 must prove the requirement that a Respondent's mental
13 abnormality or personality disorder causes him
14 serious difficulty in controlling his behavior.

15 In other words, the State must prove to you
16 beyond a reasonable doubt that the individual that it
17 seeks to commit suffers from a mental illness which
18 he cannot sufficiently control without the structure
19 and care provided by a mental health facility
20 rendering him otherwise likely to commit a dangerous
21 act.

22 A mental abnormality means a mental condition
23 that affects a person's emotional or volitional
24 capacity that predisposes that person to commit
25 sexually violent offenses. This mental abnormality

Jury Charge

210

1 or personality disorder must cause the Respondent,
2 Mr. Fetner, serious difficulty in controlling his
3 behavior.

4 The definition of likely to engage in acts of
5 sexual violence means the person's propensity to
6 commit acts of sexual violence is of such a degree as
7 to pose a menace to the health and safety to others
8 so that he is a danger to others.

9 Again, I remind you this burden is on the State
10 to prove to your satisfaction beyond a reasonable
11 doubt that the Respondent has been convicted of a
12 sexually violent offense, as I instructed you, and
13 also suffers from a mental abnormality or personality
14 disorder that makes the Respondent, Mr. Fetner,
15 likely to engage in acts of sexual violence, if not
16 confined in a secure facility for long term care,
17 control and treatment.

18 If the State carries its burden of proof and
19 convinces you beyond a reasonable doubt as to each of
20 these two elements of the cause of action, it is
21 entitled to a finding that the Respondent is a
22 sexually violent predator.

23 If the State does not meet the burden of proof
24 as to one or both of these elements, the Respondent
25 is entitled to a finding that he is not a sexually

1 violent predator.

2 Now, ladies and gentlemen, the two possible
3 verdicts, obviously, which you must --- you may find
4 in this case, (A), that the Respondent is a sexually
5 violent predator; or (B), that the Respondent is not
6 a sexually violent predator.

7 All 12 of you must agree on this verdict. Your
8 verdict must be unanimous, in other words. Your
9 verdict cannot be based on sympathy or passion or
10 prejudice or emotion or any other consideration
11 that's not in evidence in this case.

12 Mr. Foreman, you will take with you to the jury
13 room the verdict form. Once the verdict --- once the
14 jury has reached a verdict, a unanimous verdict, I'll
15 ask you to fill in the blanks on the verdict form,
16 sign it, date it and knock on the jury room door to
17 let us know that you have completed your
18 deliberations.

19 Now, I'm going to ask --- I think we've
20 ordered --- I wonder where the clerk is.

21 We've ordered lunch for you, as you know. I
22 don't know what time it's due to be here, probably
23 around 12. That's my best guess, because I think we
24 got the order in on time.

25 I'm going to ask you to retire to the jury room

1 at this time. Do not begin your deliberations until
2 you have received all the evidence. In other words,
3 these documents that have been introduced during the
4 course of the trial and this verdict form.

5 Once you receive this verdict form and the
6 evidence, you may begin your deliberations. All
7 right. Thank you very much, ladies and gentlemen.
8 You may now retire to the jury room.

9 (WHEREUPON, the jury left open court at
10 approximately 11:43 a.m.)

11 THE COURT: Exceptions to the charge?

12 MR. FLORES: None from the State, Your Honor.

13 THE COURT: From the defense?

14 MR. SWERLING: Just, Your Honor, I renew the
15 objection we made as to the real possibility language
16 in the reasonable doubt charge, and we did submit a
17 charge. I put it on your desk.

18 THE COURT: You did. I saw it, and I reviewed
19 it. I respectfully will leave the charge is as the
20 law states, and I think it's fine.

21 Thank you very much counsel. All right. We'll
22 stand at ease until we hear from the jury.

23 Are there any 403s in here? I assume you want
24 me to sign it.

25 (Off the record.)

VERDICT

215

1 (There was a recess.)

2 THE COURT: Counsel, the bailiff indicates the
3 jury has reached a verdict. Are you ready to receive
4 the verdict?

5 MR. SWERLING: Yes, sir.

6 MR. FLORES: Yes, Your Honor.

7 THE COURT: All right.

8 (WHEREUPON, the jury returned to open court with
9 the verdict at 1:05 p.m.)

10 THE BAILIFF: Your Honor, the jury is seated.

11 VERDICT:

12 THE COURT: Mr. Foreman, has the jury reached a
13 verdict?

14 THE FOREMAN: Yes, sir.

15 THE COURT: Would you hand it to the bailiff,
16 please?

17 THE FOREMAN: Yes, sir.

18 THE COURT: All right. Madam clerk, will you
19 publish the verdict, please.

20 THE CLERK: Yes, Your Honor. The State of South
21 Carolina, County of Richland, in the Matter of the
22 Care and Treatment of William Bryan Fetner,
23 Respondent, has the State of South Carolina proven
24 beyond a reasonable doubt that William Bryan Fetner
25 is a sexually violent predator under the South

VERDICT

216

1 Carolina Sexually Violent Predator Act?

2 We, the jury, unanimously answer the question as
3 follows: Yes. William Bryan Fetner is a sexually
4 violent predator, signed by the foreperson, dated
5 8/23/2011.

6 Mr. Foreman, is this your verdict and the
7 verdict of the entire jury?

8 THE FOREMAN: Yes, it is.

9 THE COURT: All right. Any desire to poll the
10 jury?

11 MR. SWERLING: Yes, Your Honor, just for the
12 record.

13 THE COURT: All right. Poll the jury for the
14 record.

15 THE CLERK: Ladies and gentlemen of the jury
16 panel, I'm going to call each of your numbers out.
17 I'm going to ask you two questions. I need you to
18 answer each question.

19 Number 32, was this your verdict?

20 JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: Number 163, was this your verdict?

24 JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: Number 53, was this your verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Number 187, was this your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Number 266, was this your verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Number 18, was this your verdict?

15 JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes.

18 THE CLERK: Number 305, was this your verdict?

19 JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Number 249, was this your verdict?

23 JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR: Yes.

VERDICT

218

1 THE CLERK: Number 28, was this your verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: Number 184, was this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Number 263, was this your verdict?

10 JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 JUROR: Yes.

13 THE CLERK: Number 244, was this your verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: The jury has been polled, Your Honor.

18 THE COURT: All right. Thank you very much,
19 ladies and gentlemen.

20 Let me say that I know the attorneys have
21 thanked you, but I want to thank you on behalf of
22 myself, the staff of the courthouse here and really
23 for every --- the citizens of Richland County,
24 because these are difficult matters that need to be
25 decided in our community.

1. It's comforting to know that jurors are willing
2 to come and sit. I know it's not a voluntary service,
3 but they are willing to conscientiously come and sit
4 and decide these matters in our community. They must
5 be decided.

6 This, we think, is the finest judicial system in
7 the world, the way our founding fathers envisioned
8 this system to work. It's worked for 250 years, and
9 I don't think there is a better system anywhere in
10 any other system.

11 I'll tell you something that's maybe of interest
12 to you before I dismiss you. About a month ago, we
13 were visited here in Richland County by a group of
14 South Korean judges, members of the Supreme Court and
15 their trial court.

16 They were here to see how the jury system works
17 in the United States. They had never had a jury
18 system in South Korea until about three years ago.
19 Before that, cases were decided by a single judge, or
20 maybe even a panel of judges, but they never trusted
21 the citizens of their community, I guess, to turn
22 these decisions over to the people in a jury system
23 context.

24 It just makes you feel good to know that we've
25 had this system. It works for us. We're proud of it,

1 but it doesn't work without you. You're such an
2 important part, as I told you yesterday, an important
3 part of the system that your role was written into
4 the constitution of the United States some 250 years
5 ago.

6 It's a system that does us all proud, I think.
7 I want to thank you for your service. Now, I cannot
8 release you at this time because it's only Tuesday,
9 and we may have other cases for you to try.

10 So I'm going to ask you to return to the jury
11 assembly room for further instructions. There may be
12 other cases. There may not be. I'm just not sure
13 what's going on in some of the other courtrooms in
14 the courthouse here, but good luck to all of you.
15 Thank you very much for your time.

16 THE JURORS: Thank you.

17 (WHEREUPON, the jury left open court at
18 approximately is 1:11 p.m.)

19 THE COURT: Any motions?

20 MR. SWERLING: Judge, just a motion to set aside
21 the verdict, judgment notwithstanding the verdict
22 since it's a civil case and/or a motion for a new
23 trial based on the arguments that were made at the
24 conclusion of the plaintiff's case and at the
25 conclusion of our case.

1 THE COURT: All right. Well, I respectfully ---
2 I respect your motions. I do feel the jury was
3 certainly well within their authority to decide it
4 the way they did. They had a fair choice.

5 You put on a heck of a defense. I mean, I will
6 say that. You made a very strong argument for his
7 release. And, frankly, I think it could have gone
8 either way, but I do appreciate your service.

9 I must respectfully deny your motion. Good luck
10 to you, sir.

11 Good luck to you, Mr. Fetner.

12 You can instruct your client about his future
13 options to have this matter revisited at some time in
14 the future.

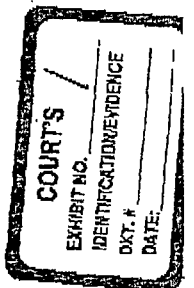
15 All right, counsel. This case is completed.
16 Court is adjourned.

17 MR. FLORES: Your Honor, if I may approach, I
18 have an Order of Commitment.

19 THE COURT: All right.
20
21
22
23
24
25

ANDREA Thompson
~~Katherine Meier~~ if called as a
 witness would testify that

1. She is employed by Doc and is
 familiar with William Feter's case
2. Feter entered ^{statewide} protective custody in
 2001 and remained there until August
 2011 when he was returned to the
 Richland County Jail
3. That Mr Feter had no interaction
 while in the Doc
4. That Mr. F did not request
 mental health counseling
5. That because of his P/E status



he could not participate in
sexual offender counseling due to
his segregation on P/C

11-24-78

Type and Amount: VERIED

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision:

DISPOSITION before

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CIT

100

predicate jury trial, bench trial, plea, not pros., etc.)

Disposition: _____

Sentence: _____

JURORS

REFINEMENTS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Names: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone-

Name: _____

Address: _____

Telefon: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

William Bryan Fether

AKA:

Race: WSex: M

DOB: _____

Age: 31

SSN: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 544442000 -GS- 40A/W#: DP00288Date of Offense: 11.13.98S.C. Code §: 16.15.140CDR Code #: 2141618

SENTENCE

☒ PLEA☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Level 2 act upon a child under 16 yrs of age
in violation of § 16.15.140 of the S.C. Code of Laws, bearing CDR Code # 2141618☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ The Defendant is to be given credit for 61 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard. ☐ Waived. ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine:\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$

TOTAL.....\$

Clerk of Court/Deputy Clerk [Signature]Court Reporter: J. Williams

White - Clerk

Green - Corrections

Candy - Probation

Pink - Defendant

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund,

Other: _____

PRESIDING JUDGE _____

Judge Code: 111Sentence Date: 11/17/98CERTIFIED TRUE CO
OF ORIGINAL FILED

C.C.C.P.S.C.S.

RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

DOCKET NO. 2000-GS-42-5444

The State of South Carolina
County of Richland

00

COURT OF GENERAL SESSIONS

JULY TERM 2000

ARREST WARRANT NUMBER

JP00288

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

THE STATE

vs.

WILLIAM B. FETNER

Indictment for

LEWD ACT UPON A CHILD

SC Code: 16-15-140
CDR Code: 2468
CLASS FELONY/D NV

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

William B. Fetner
Defendant

William B. Fetner
hereby appear in my own proper person and
plead guilty to the within indictment or to

*for lewd act upon
a child under the age
of 16*
William B. Fetner
Defendant

Witness: *Barbara A. Scott*
C.C.C. PLS. AND G.S.

7-25-00

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Shirley W. W. W.
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT
 LEWD ACT UPON A CHILD
 §16-15-140
 2468

At a Court of General Sessions, convened on the Grand Jurors of Richland
 County present upon their oath:

That William B. Fetner, being over the age of fourteen years (DOB 5-29-69), did in
 Richland County on or about November 13, 1998, willfully and lewdly commit or attempt
 a lewd and lascivious act upon or with the body of one), a
 child under the age of sixteen years, with the intent of arousing, appealing to, or
 gratifying the lusts or passions or sexual desires of the person or of the child.

Against the peace and dignity of the State, and contrary to the statute in such case
 made and provided.

Warren B. Giese, SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Jeannette W. B. B. B.
 C.C.C. REG.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

William Bryan Felner

AKA:

Race: WSex: MDOB: 31Age: 31

SSN: _____

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

99-GS-40-36903A/W#: F-447845Date of Offense: Sept. 7, 1998S.C. Code §: 16-3-910CDR Code #: 0101915

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Kidnappingin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

James A. Williams
SolicitorWilliam Bryan Felner
DefendantJames A. Williams
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 613 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCIDPPPS _____

Recipient: _____

*Fine:\$ _____

§ 14-1-206 - Assessments 100%.....\$ _____

§ 14-1-211 - Surcharge.....\$ _____

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$ _____

County (3%).....\$ _____

TOTAL.....\$ _____

Clerk of Court/Deputy Clerk Balena A. ScottCourt Reporter: J. Williams

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

CERTIFIED TRUE COPY

OF ORIGINAL FILED

PRESIDING JUDGE James A. WilliamsJudge Code: 111Sentence Date: 11/1/98

C.C.P. & S.S.

RICHLAND COUNTY

SOUTH CAROLINA

SCCA217 (1999)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

DOCKET NO. 99GS4036903

The State of South Carolina,

County of Richland

COURT OF GENERAL SESSIONS

May TERM 1999

THE STATE

vs.

William B. Fetner

Indictment for
KIDNAPPING
§16-3-910
95

WITNESSES

Inv. J.P. Smith RCSD

Don J. Phillips Smith

00

ARREST WARRANT NO. F947845

ACTION OF GRAND JURY

TRUE BILL

S. Elmore
Foreman of Grand Jury

VERDICT

Foreman of Jury

Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
James H. Wynn
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

William B. Fetner
is put in the ...
arrestment ...
MIRAGE

Balena A. Smith

7-25-00

7/25/00

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
 COUNTY OF Richland)

INDICTMENT FOR
 KIDNAPPING
 §16-3-910
 95

At a Court of General Sessions, convened on May 19, 1999,
 the Grand Jurors of Richland County present upon their oath:

That William B. Fether did in Richland County on or about the 7th day of
 September, 1998, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or
 carry away by any means whatsoever without authority of law.

Against the peace and dignity of the State, and contrary to the statute in such case made and
 provided.

Warren B. Fether
 SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
Jeanette W. McEneaney
 C.C. H.S.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE VS.

William Bryan Fetner

AKA:

Race: WSex: M

DOB:

Age: 31

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:99-GS-40-37046

A/W#:

F-779407

Date of Offense:

11-13-98

S.C. Code §:

16-3-910

CDR Code #:

0101915

SENTENCE

☒ PLEA☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Kidnappingin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 15 years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 613 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$§ 14-1-206 - Assessments 100% \$§ 14-1-211 - Surcharge \$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI) \$County (3%) \$TOTAL \$Clerk of Court/Deputy Clerk Barbara A. ScottCourt Reporter: J. Williams

White - Clerk

Green - Corrections

Candy - Probation

Pink - Detention

PTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender Fund.Other: CERTIFIED TRUE COPY
OF ORIGINAL FILEDPRESIDING JUDGE: [Signature]Judge Code: 111Sentence Date: 11/17/98

G.C.C.P.E.G.S.

RICHLAND COUNTY

SOUTH CAROLINA

SCCA217(1991)

WITNESSES

Inv. Maldonado, RCSD

Det. W. W. Baker

ON

DOCKET NO. 99CS4037046

The State of South Carolina,

County of Richland

COURT OF GENERAL SESSIONS

May TERM 1999

THE STATE

VS.

William B. FetnerARREST WARRANT NO. F779407

ACTION OF GRAND JURY

TRUE BILL

Det. Baker
Foreman of Grand Jury

VERDICT

Indictment for

KIDNAPPING

\$16-3-910

95

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
James W. W. W. W.
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA*William B. Fetner*
Is put to the test and arraigned and is
arrested at the County Jail as charged.
ATTEST*Balra A. Scott*
7-25-00*Det. Baker*
7/25/00

Foreman of Grand Jury

Date:

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Richland)

INDICTMENT FOR

KIDNAPPING
 §16-3-910
 95

At a Court of General Sessions, convened on May 19, 1999

the Grand Jurors of Richland County present upon their oath:

That William B. Fetner did in Richland County on or about the 13th day of November, 1998, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away by any means whatsoever without authority of law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Hines
 SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
Jeannette W. H. Hines
 C.C.C. & G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
KIDNAPPING
§16-3-910

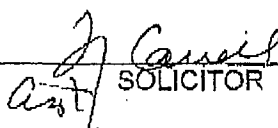
At a Court of General Sessions, convened in February 1999 the Grand Jurors of
LEXINGTON County present upon their oath:

KIDNAPPING

§16-3-910

That **WILLIAM BRYAN FETNER**, did in Lexington County, on or about August
22, 1998, wilfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry
away by any means whatsoever, without the authority of law, in
violation of Section 16 -3-910 of the South Carolina Code of Laws 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.


SOLICITOR

22 STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

DOB:

Age:

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

99 -GS- 32 - 603

A/W#: F607609

Date of Offense: 8-22-98

S.C. Code § : 16-3-910

CDR Code #: 0101915

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

J. Gaudin
Solicitor

William Bryan Setner
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 613 days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$

TOTAL.....\$

Clerk of Court/Deputy Clerk Babara A. Scott

Court Reporter: J. Williams

White - Clerk

Green - Corrections

Canary - Probation

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: MUST REGISTER WITH DSS

CENTRAL REGISTRY OF CHILD ABUSE & NEGLECT
AND PLACED ON SEX OFFENDER REGISTRY

MUST RECEIVE COUNSELING AND TREATMENT FOR SEXUAL PROBLEMS WHILE ON PROBATION
PRESIDING JUDGE AT THE COURT

Judge Code: 110

Sentence Date: 7/25/99

Tex. Co. C.O.P., N.S. & P.O.

Pink - Defendant

Shering, G.
WITNESSES

WCPD

Frazier

ARREST WARRANT NUMBER

F-607609

ACTION OF GRAND JURY

TRUE BILL

Joe Rhodes
Foreperson of Grand Jury

Date:

2-22-99

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 99-GS-32-

603

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

FEBRUARY TERM 1999

THE STATE

vs.

WILLIAM BRYAN FETNER

as charged

neg plea = 15 years

CDR# 95

Indictment for

KIDNAPPING

§16-3-910

DONALD V. MYERS, SOLICITOR

The State of South Carolina



W. Barney Giese
Solicitor

Jonathan S. Gause
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
Post Office Box 1887
1701 Main Street
Columbia, South Carolina 29202

Phone
(803) 748-4785

TDD (803) 748-4999

FAX (803) 748-4790

January 4, 2001

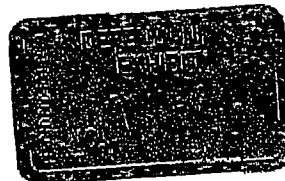
Nathaniel Hughes
Director of Classification
South Carolina Department of Corrections
Post Office Box 21787
Columbia, SC 29221

RE: Inmate William Bryan Fetter
White Male, Date of Birth: 5/29/69
Inmate Number: 00268284

Dear Mr. Hughes:

I am writing on behalf of the above referenced inmate presently housed in Kershaw Correctional Institution. During October 2000, inmate Fetter testified in Richland County General Sessions Court on behalf of the State in its case against Lino Delacruz. This was a case involving the murder of an eight-year-old child. Although inmate Fetter was not allowed to testify before the jury he was available and willing to do so. I have previously written a letter on behalf of inmate Fetter concerning this matter (a copy is attached and made a part hereof).

On Wednesday, January 3, 2001, I was contacted by inmate Fetter's attorney, Jan Striffling. He informs me that inmate Fetter is presently housed in protective custody at Kershaw Correctional Institute but may be moved in the near future. Inmate Fetter is very concerned about his safety as is his family and attorney. During his testimony in the Delacruz case it is my understanding that his image was broadcast by the media without being blocked out. Also he was a civilian employee of the Department of Public Safety and had certain custodial responsibilities at the SLED Lab. As a result of these fears and incidences it is my understanding that inmate Fetter would like to remain segregated from the general inmate population. Further, it is my understanding he would like to be in the protective custody unit at Perry Correctional Institute or Kirkland Correctional Institute. His attorney could give you more insight into this and may be reached at 799-9650.

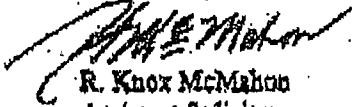


Nathaniel Hughes
Page Two
January 4, 2001

Please don't think that I am presuming to know your job. I don't. I consider you and your staff the experts at the classification and housing of inmates. I only bring this to your attention and ask that you consider these matters as part of your decision making process. If you have any questions, please do not hesitate to call.

Thank you for your attention to this matter.

Respectfully,


R. Knox McMahon
Assistant Solicitor
Fifth Judicial Circuit

RKM/tpb
Attachment (as stated)
Cc: Blake Taylor, Division Director
Jan Striffling, Esquire

The State of South Carolina



W. Barney Giese
Solicitor

Jonathan S. Gesser
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
Post Office Box 1997
1701 Main Street
Columbia, South Carolina 29202

Phone
(803) 748-4785

TDD (803) 748-4999

FAX (803) 748-4790

November 1, 2000

Blake Taylor, Division Director
Division of Inspections and Operational Review
South Carolina Department of Corrections
Post Office Box 21787
4444 Broad River Road
Columbia, SC 29221

RE: Inmate William Bryan Fetter
White Male, Date of Birth: 5/29/69
Inmate Number: 00268284

Dear Mr. Taylor:

This letter is to advise that the above-referenced individual was of assistance to the State of South Carolina in a very serious homicide case. He was willing to testify on behalf of the State although he was not required to do so because of some judicial ruling.

It is also my understanding that he has been assaulted at Kershaw Correctional Institution and would request a transfer to Kirkland Correctional Institution.

Please make this letter part of his permanent file. Thank you for your prompt attention to this matter.

Respectfully,

R. Knox McMahon
Assistant Solicitor
Fifth Judicial Circuit

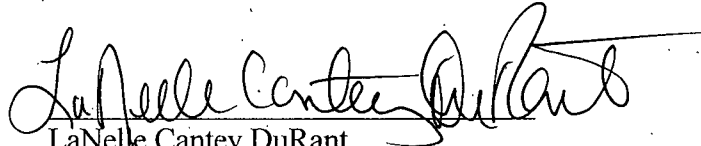
RKM/tpb



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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 16th, 2012


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

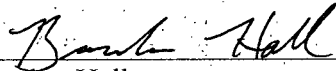
IN THE MATTER OF THE CARE AND
TREATMENT OF WILLIAM BRYAN FETNER,

APPELLANT

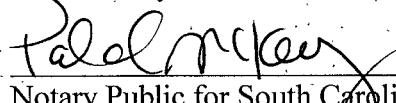
APPELLATE CASE NO. 2011-198707

CERTIFICATE OF SERVICE

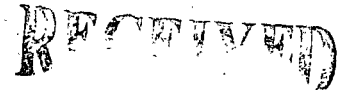
I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of November, 2012.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 16th day of November, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.





NOV 16 2012

SC Court of Appeals