STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

Honorable J. Derham Cole, Circuit Court Judge

ORIGINAL

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SC Court of Appeals

IN THE MATTER OF THE CARE AND TREATMENT OF DONALD HULON,

APPELLANT.

APPELLATE CASE NO. 2018-001844

RECORD ON APPEAL

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	)	4th Judicial Circuit
County of Marlboro	)	Case No. 2016-CP-34-00243
	)	
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In the Matter of the	)	
Care and Treatment of	)	
Donald Hulon,	)	
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	)	Transcript of Record
	)	
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September 25-26, 2018
Bennettsville, South Carolina

B E F O R E:

The Honorable J. Derham Cole, Judge; and a jury

A P P E A R A N C E S:

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Attorney for the Plaintiff

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Krystal J. Smith
Circuit Court Reporter

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COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

SEPTEMBER 25, 2018

(WHEREUPON, the proceedings began at 12:36 p.m.)

THE COURT: Ladies and gentlemen, thank you for your patience and understanding. I've got some matters that I'll need to address before we can actually begin with jury selection in the first case, and I know it's getting lunch time or for some of you it might be past lunchtime.

So we're going to break for lunch. I'll ask you to come back at 2:30 -- at 2:30 this afternoon and then we'll select a jury in the first case. Okay?

So you're excused for lunch. Please come back here to the courtroom at 2:30 this afternoon. All right.

(WHEREUPON, the jury panel exited the courtroom at 12:36 p.m.)

(WHEREUPON, there was a pause in the proceedings, after which the proceedings resumed as follows.)

THE COURT: All right. Are y'all ready to address the pretrial motions?

MR. BOGLE: Yes, Your Honor. Thank you.

THE COURT: All right. The first one?

MR. BOGLE: For the record, Your Honor, the case before you is In the Matter of -- we need to -- we need to get him out here. Right? Your guy?

MR. FALK: We can waive his presence at the pretrial motions. I think they took him to lunch.

MR. BOGLE: Okay.

THE COURT: Okay.

MR. BOGLE: The case is In the Matter of the Care and Treatment of Donald Hulon, Case Number 2016-CP-34-243. For the record, my name is Jim Bogle. I represent the State in the Attorney General's Office.

Your Honor, the State's first motion in limine has to do with location. Prohibit any reference to where he's going to get sex offender treatment as being in a prison. I don't want that he's being punished or committed for life or words to that effect.

What we have to prove is two things: has he been convicted of a sexually violent crime and does he have a personality disorder or mental abnormality that makes him likely to reoffend where he can't control it, and that's it. Anything else about the location where he's going to be is not relevant. It would distract the jury. It would prejudice the State. This is basically a medical issue.

I know in our chambers conferences Mr. Falk indicated he would no longer refer to the place as death row, and that's where it used to be. But any testimony about it being at or behind the wire, at a prison, death row, that sort of thing is not relevant and is not something we have to prove. It could distract the jury.

Now, for your information, the contract provider who

does all the sexual treatment now is called Correct Care. They've had these guys for about a year and a half. They are building a free -- they have built a freestanding facility with a fence around it on the Broad River property, but not behind the wire with the prisoners. Brand-new facility. Capacity is something like 280 people. Move-in date is October 23. So --

THE COURT: Well, I'm not concerned about all that. I'll -- I'm going to hear from Mr. Falk, but I mean the statute provides that if he is to be committed, it shall be in a secure facility for long-term control, care, and treatment under the supervision of the South Carolina Department of Mental Health.

And so that's -- that's what it is. It is what it is. The actual place I don't think is relevant to the jury's consideration, but I'll hear Mr. Falk on it.

MR. FALK: Your Honor, Mr. Bogle spoke a little. I have never called it the old death row. So I mean I've never -- and I agree. All I want the jury is to be able to appreciate the fact that this is not just outpatient treatment someplace, nor is he going to a mental hospital. He's going to a secure facility.

THE COURT: Well, I'm reading from my charge when I state what I've stated and that is the State is seeking to have the respondent civilly committed in a secure facility

for long-term control, care, and treatment under the supervision of the South Carolina Department of Mental Health.

And I think that's what the statute provides for in the event he's found to be a sexually violent predator and so that's what it is. Where it is is of no important significance or relevance to the jury's determination as to whether or not he should be civilly committed.

MR. FALK: I agree.

THE COURT: So apparently, we're all in agreement on that.

Okay. What's the next one?

MR. BOGLE: The second motion, Your Honor, from the State has to do with treatment and, again, I've outlined what we have to prove. So any questions of the witness, any speculation about the type of treatment they might receive is not something I have to prove. It might confuse the jury. It might prejudice the jury. They might not know what's going on.

And in any event, treatment is something which we don't know what type of treatment he would get until he got there. It's speculative at best. And Dr. Gehle, who, of course, is the certified expert who will be testifying for the State -- her job is to evaluate the guy as ordered by the Court. See if he's got the convictions, if he's got the mental

abnormality or the personality disorder, and can he control it, not to determine treatment. That is not her job.

And so to ask her about treatment would be putting her into something she doesn't do and also would be speculative. Since he hasn't gone in yet, who knows what the treatment would be? It's not done by her.

So we think allowing questions -- now, certainly, there's a dispute between outpatient treatment and inpatient treatment. I'll be glad to go there because we're arguing that his condition is such that he needs to be confined for treatment. No problem there. But as far as going into the details of the type of treatment he would get, I would think that would be out of bounds.

THE COURT: All right. Mr. Falk?

MR. FALK: Obviously, I think the State has got to prove that he needs to go in treatment and there should be some discussion as to what that treatment may entail. And again, my concern is whether or not this --

THE COURT: Well, let me ask you -- I'm not trying to interrupt or cut you off, but I'm going to let you say what you need to say. But I think what Mr. Bogle is telling me and what I gathered from what he said was he does not object to you questioning the psychiatrist or psychologist about whether or not there is sex offender treatment outside of a secure facility. In other words, you can receive treatment

in an outpatient setting, as well as an inpatient setting, and you can question her about the appropriateness of either or both.

I think his objection is that she can't detail what treatment he specifically will receive because she's not the person who makes that determination, and nobody has made it because he's not yet been evaluated.

Does that resolve your issue or not?

MR. FALK: I think I should -- to the extent that Dr. Gehle would know is whether or not the treatment -- in order for the treatment to be effective, just the treatment, it has -- are they doing something different in the facility that they can't do on an outpatient basis? If the treatment that they would get in the facility -- just talking about treatment, is the treatment basically the same? Is it going to be talk therapy? Group therapy? Are they going to do more or is it some other type of medical treatment that can only be provided in a secure facility?

THE COURT: Okay. In other words, you're just asking if the treatment that is ordinarily available can be done inpatient and outpatient or is it solely something that has to be done in a secure facility?

MR. FALK: Yes, Your Honor.

THE COURT: Is that fair enough, Mr. Bogle? Do you object to that?

MR. BOGLE: Well, the question is not -- again, we're getting into the type of treatment. Okay? And I'm -- certainly, Dr. Burk has outpatient treatment down in Summerville that might be different than what they do at the confined facility.

The question is is he so dangerous he needs to be locked up for treatment. That's the bottom line. I don't mind going there, but as far as speculating the type of treatment, like how many group therapy sessions per month or how many per week or how many polygraph exams and things like that, that's --

THE COURT: Well, here's what I see.

MR. BOGLE: -- the thing.

THE COURT: Here's the way I see it. If -- if the expert is familiar with the treatment that is provided where a person is committed for long-term control, care, and treatment, then while -- I don't think it's relevant for her to discuss what is the treatment. I think she can give an opinion as to whether or not that same treatment is available in both an inpatient and an outpatient setting. Is that fair enough?

MR. BOGLE: If she knows.

MR. FALK: She knows.

THE COURT: Well, certainly, if she doesn't know, she can't testify to it.

MR. FALK: That's all I want to do.

THE COURT: Okay. Well, I think we -- I think we're in agreement on that one too. Okay.

MR. BOGLE: Thank you.

MR. FALK: Is that all?

MR. BOGLE: That's mine.

MR. FALK: Your Honor, I've got a couple.

THE COURT: Okay.

MR. FALK: I'm anticipating in the opening statement or somewhere along the line that the State is going to talk about the legislative history of the Act, and the legislative history of the Act talks about -- uses terms of somebody having a mental abnormality, somebody that's -- extremely dangerous group of sexually violent predators.

THE COURT: Well, let me -- let me find that. Are you going into the legislative intent and history or -- I mean is that necessary?

MR. BOGLE: Sometimes -- the two bracketed paragraphs on the first page of the Act where the General Assembly says why they passed this law, sometimes I read those to the jury. If I don't read them, I'll paraphrase them and just tell them why we have this law, what this law is intended to do.

THE COURT: Well, I don't think that's relevant. Do you?

MR. BOGLE: Well, I'm trying to tell -- educate -- I'm

trying to educate the jury, like things they hear from a car wreck or a medical malpractice, as to what kind of case it is.

THE COURT: Well, you can tell them that the General Assembly has passed a law for the purpose of addressing persons that they deem to be sexually violent predators under a definition is provided for -- provided for by statute, but --

MR. BOGLE: Okay. I'll stay away from that part.

THE COURT: I mean -- but that's not -- in other words, the expert doesn't have to find that the respondent was mentally abnormal and extremely dangerous.

MR. BOGLE: Okay. I'll -- I'll paraphrase and not read.

THE COURT: Well, what are you going to -- how are you going to paraphrase?

MR. BOGLE: Just that the General Assembly passed this law in 1998, that there's a group of people out there that have sexually violent convictions and have a mental condition that is such that they cannot control it and need to be --

THE COURT: You can certainly --

MR. BOGLE: -- confined.

THE COURT: You can certainly -- you can certainly tell them that the legislature passed a law to address the issue as the statute defines it, a sexually violent predator.

MR. BOGLE: Right. That's what I'll do then.

THE COURT: A person convicted of a sexually violent offense --

MR. BOGLE: Uh-huh.

THE COURT: -- and is found to have some mental condition that affords them a propensity to commit sexually violent acts.

MR. BOGLE: I'll do it by the statute.

THE COURT: Because that's what the jury has to find. Anyway, so the --

MR. BOGLE: Exactly.

THE COURT: The legislative findings will be excluded.

MR. BOGLE: Okay.

THE COURT: But you can go into the actual definition of sexual violent predator.

MR. BOGLE: Before we go further, our appellate people tell me to put on the record we object to any motions not served upon us within 10 days, before 10 days in advance. I got these Friday afternoon.

THE COURT: And if you're not prepared to respond to them, then I'll address it. If you are, then I'll just act like you didn't object. How about that?

MR. BOGLE: We're ready to go.

THE COURT: Okay.

MR. FALK: This is more than the 15th trial I've had with Mr. Bogle. Basically, it's the same piece of paper.

THE COURT: Oh, he's well prepared. I'm satisfied of that.

MR. FALK: But I will say he made a -- and I -- and we talked in chambers again about whether or not he can talk about that he's entitled to an annual review.

THE COURT: And he says he does not intend to go into that and doesn't wish to. Is that fair, Mr. Bogle?

MR. BOGLE: That's correct, Your Honor.

THE COURT: Okay.

MR. BOGLE: I'm not going into that.

MR. FALK: All right. Now, this came up when I'm reviewing Dr. Gehle's report.

And I don't know what her testimony is going to be, but I have to assume that she can testify to anything that's in her report. And there was several times during conversations that she had with him where he made racially insensitive remarks about not liking blacks and stuff like that.

If Dr. Gehle is going to say that that type of racial comment is necessary in order to form her opinions, then I guess I'm stuck, but if that -- if the racial comments are not part of her opinion, then I think it's highly prejudicial.

THE COURT: All right. Mr. Bogle, is that type of information provided by the respondent -- is that something that the expert relied upon in deciding whether or not he fit

the definition of a sexually violent predator?

MR. BOGLE: In this particular thing, most of the cases -- in fact, every case I've tried in front of you, they've diagnosed a mental abnormality like pedophilic disorder or something like that. The statute says mental abnormality or personality disorder.

In this case, the diagnosis is two types of personality disorders. The first one is antisocial personality disorder and the other one is narcissistic personality disorder.

Now, part of the narcissistic personality disorder in lay words from my -- the way I read this thing is this guy thinks he's the world, he runs everything, and everybody is subservient to him. Okay? He's just such a -- such a neat guy and so stuck on himself.

So now if it's necessary for her in developing that diagnosis in explaining to the jury how she got there to state some comments that he made that might be deemed racially offensive or something like that, then she's got to do it because that's the basis for her diagnosis.

And, Dr. Gehle, you and I talked about that briefly beforehand. Some of the statements that he gives are against African-Americans, against Native Americans. Are these things that are necessary for your diagnosis?

THE WITNESS: Well, it was considered as part of the diagnosis. For example, I mean he talked about how he was

very racist against African-Americans and yet an African-American family stopped on the side of the road and picked him up, gave him a place to live, and stuff like that. That was evidence of how he's treated specially by people, which is part of narcissistic personality disorder.

MR. BOGLE: So some stuff may come in like that.

THE COURT: All right. Well, let me ask you this, Mr. Bogle. Are you going to have the expert testify that he has a narcissistic personality disorder?

MR. BOGLE: Correct.

THE COURT: And she can obviously define what that disorder is and what it means.

MR. BOGLE: Uh-huh.

THE COURT: And that in her professional opinion he suffers from that disorder.

MR. BOGLE: That's correct.

THE COURT: Is that not sufficient enough unless Mr. Falk opens that door? In other words, if he questions her diagnosis and her opinion, then, obviously, she gets to go into anything and everything that she considered that professionals ordinarily consider in arriving at a diagnosis.

MR. BOGLE: Well --

THE COURT: But I don't see that -- I mean, obviously, it's -- it can be highly prejudicial and might be more prejudicial than probative, depending --

MR. BOGLE: In any --

THE COURT: -- on if it hampers you in establishing his condition.

MR. BOGLE: Yeah. When I'm examining experts in these cases, I get them to say what the diagnosis is and then I say what are the criteria for that diagnosis, what do you have to find.

THE COURT: All right.

MR. BOGLE: And then I'll say, okay, what did this guy do that meets those criteria? Be it pedophilia, be it antisocial, be it narcissistic.

THE COURT: Well, is it -- would it be fair enough for the State if you just said did you find that the respondent in this case met all of those conditions based upon your investigation, interviews, and whatever else considered, and leave it at that?

And then if Mr. Falk questions her diagnosis or contests the diagnosis or believes it to be inadequate or unfair or whatever in this particular case, then that opens the door in my view and then she can testify to anything and everything that she relied upon.

MR. BOGLE: Well, I just think in the way expert witnesses work -- and I like to do this on the direct examination, not playing catch-up after cross -- is explain what the diagnosis is, what the criteria are, what things you

have to do to qualify this, you know, what it is he did.

And this is a fairly minor part of the things that make up his narcissistic personality. That's not the whole thing. It's just one part of it.

THE COURT: Well, I understand that, but it might be something that -- that if it's a minor part, it might be something that distracts and confuses the jury and, therefore, the -- the probative value would be substantially outweighed by the danger of unfair prejudice. That's what I'm trying to avoid.

MR. BOGLE: It's his words. I can't -- you know, I understand what you're saying, but it's his words.

THE COURT: Oh, I understand that, and that may very well become relevant. But my point, I guess, is what I'm saying is that it seems to me that it's not always necessary for an expert who is giving an opinion to detail every single fact that she discovered during her evaluation that led to her ultimate opinion unless her opinion is being contested or questioned or saying she didn't have sufficient information.

She then -- once the -- once the opinion is being contested or questioned or controverted, then I think it opens the door for her to say anything and everything to make a full picture of what she had --

MR. BOGLE: All right.

THE COURT: -- so that people aren't -- the jury is not

under the impression that she doesn't have enough information to make her diagnosis.

MR. BOGLE: Well, let's try it that way, Judge.

THE COURT: Let's do that.

MR. FALK: Okay.

THE COURT: Okay.

MR. FALK: If I could just -- on the record, I don't want to have my hands tied as to what I can ask her regarding her diagnosis. When I look at the DSM-V, I don't see any diagnostic criteria for narcissistic personality disorder that talks about racism.

I think there's plenty that she could talk about that -- you know, that she doesn't have to get into this point. And I think she did say it was a minor point, and I think your concern under 402 and 403 -- you know, she's not basing her opinion on this racism, but it could be a pretty explosive thing in this courtroom with this jury.

THE COURT: Oh, I agree.

MR. FALK: And I can't -- I mean I still have to be aggressive without having to worry about setting off a timebomb or something that I don't think would be fair.

THE COURT: Well, all I can say is, you know, I'm trying to limit it on direct to provide the jury with the information they need. I cannot, as you know, limit you on your cross-examination as to the basis of her opinion. You

have every right to go into it, question it, object to it, criticize it, whatever you want to, but often when you do that, it opens a door for the witness then to go into anything and everything that she considered that professionals do consider in arriving at that diagnosis.

So I'm just saying I'm trying to -- I'm trying to cajole the prosecutor --

MR. FALK: I appreciate that.

THE COURT: -- excuse me -- Mr. Bogle not to introduce inflammatory information. Obviously, it might be relevant to the expert's opinion. I'm just trying to limit it as best that we can. However, that doesn't mean that it gets avoided when you go to cross-examine her about the -- about the accuracy or soundness of her opinion.

MR. FALK: Yes.

THE COURT: Because then she gets to say anything and everything. That's all I'm saying.

MR. FALK: Okay.

THE COURT: So I think Mr. Bogle is in agreement now that he will not go into those particular aspects of the narcissistic personality disorder as it relates to the racism because right now it wouldn't be necessary, but if you -- on your cross-examination, it might give rise to it.

Is that -- did I state that fairly?

MR. BOGLE: Let's see how it goes. All right. We'll do

-- we'll try that.

THE COURT: Okay. That's good.

MR. FALK: Now, here's a big thing.

THE COURT: And let me say this, Mr. Falk. If you get to a point where you've got something you want to ask her and you are afraid it's going to open some door, we can always send the jury out and talk about it.

MR. FALK: Thank you.

THE COURT: So we'll handle it that way.

MR. FALK: This case is unusual in that I believe that there was a rather notorious case here in Marlboro County about 2003 -- 2004. Those charges were nolle prossed against my client.

I believe that under the South Carolina case law, as well as your responsibility or your role as the gatekeeper as to what the expert can testify to about the facts, the charges that were nolle prossed, I think that experts -- she's not the one to determine whether it's legally relevant.

She is an expert in the field of psychology and she knows what is relevant for her evaluations, but still there is a line of information that can become more prejudicial than probative. And I think that's one we talk about in nolle prossed cases because it's going to let the jury assume that -- because I believe that psychologists, when they're doing their evaluations, they assume that all nolle prossed

charges did, in fact, occur, and I'm not sure that that's a fair assumption.

And so I would not want them to be able to talk about charges that were nolle prossed. He's got plenty of convictions here that they could talk about all day, but not the charges that were nolle prossed.

Now, he had a charge sworn. I believe it's, like, solicitation with a minor. I think her initials were identified as [Minor 1]. And he somehow played a role in other gentlemen in the McColl community having sex with this minor.

And there's a lot of discussion in Dr. Gehle's reports about the acts that these third parties did with this minor, and I think that that information is not relevant to whether or not he's a sexually violent predator when some other person did it. And certainly, graphic details of what that other person did certainly would be inflammatory and prejudicial to my client.

You know, he could have maybe facilitated -- you know, if she has to say that he was charged with facilitating this conduct, maybe that's okay. I would still object.

And with this case, it's interesting to note that there were eight co-defendants in the case who all were -- all were accused of criminal sexual conduct with a minor. So one would assume if this case -- if this -- if these charges were something that the local Solicitor's Office thought were

serious, they wouldn't have nolle prossed the charges against all but two of the gentlemen.

Two of the gentlemen, of these third parties that I'm talking about, they pled to time-served sentences for assault and battery of a high and aggravated nature. The other six all got nolle prossed charges. And I think the fact that the Solicitor's Office nolle prossed the charges maybe should draw some question about whether or not [Minor 1]'s statements should be believed.

So I don't think that we should go into --

THE COURT: Well, we can speculate on all of that, but I don't think you can attach too much significance unless the prosecutor gives you the reason as to why a case is nolle prossed. That happens all the time. It happens pursuant to a plea agreement. You know, charges are dropped that the solicitor feels like are absolutely provable, but they drop them just to work out an agreement. So --

MR. FALK: But on these other eight -- these other six gentlemen, those charges were nolle prossed.

THE COURT: Oh, I understand.

MR. FALK: And no plea agreements.

THE COURT: Well -- but he wasn't -- but those were -- those were offenses that he was not charged with. Somebody else was charged with it.

MR. FALK: That's right. But I think part of them, the

State might talk about those -- those offenses.

THE COURT: Okay. Well, let me hear from Mr. Bogle as to it.

MR. BOGLE: Thank you, Your Honor.

Basically, as I said earlier, the diagnosis is the personality disorder of antisocial personality disorder. In order to develop that disorder, you have to look at a person's entire criminal history, the sexually violent crimes as well as nonsexual crimes as well.

The Courts of Appeals in this state have been uniform in allowing the underlying details of criminal history. The Ettel case, spelled E-t-t-e-l, from 2008, concerned an admission of prior offenses, as well as prior nonsexual convictions and some of the offenses that did not result in a conviction. That was all necessary to prove the State's case of whether or not he had the ability to control his behavior in the future.

THE COURT: Let me --

MR. BOGLE: In the Corley case --

THE COURT: Let me ask you this.

MR. BOGLE: Yeah.

THE COURT: How were -- how were those events established? And here's my -- here's my concern.

If you have a case where you have a conviction, then obviously it's a conviction and any professional can use that

to develop an opinion because the person has been convicted of it as a matter of fact and law. If you have a case that's nolle prossed by the prosecutor, in other words they dismissed the case, that leaves you with speculation as to whether or not the person did or did not commit that particular offense.

Now, I recognize -- I think I'm correct -- that if you have a case that was dismissed or nolle prossed by the prosecutor but, in fact, the expert has talked to the witnesses or talked to the person who purported to be the victim and the expert finds the reporting and the information credible, then obviously that's information that the expert is going to use in developing his or her opinion as to any mental condition on the part of the respondent that's relevant to this case.

So I don't know what the circumstances are, but Mr. Falk is addressing cases made against other people besides Mr. Hulon --

MR. BOGLE: Right.

THE COURT: -- that were dismissed.

MR. BOGLE: I was hitting the first part first. The first part regarding the crimes that Mr. Hulon --

THE COURT: So I interrupted too early? Is that what -- is that what you're getting at?

MR. BOGLE: Maybe I just -- I'll start at the back part

and work my way forward.

Mr. Hulon's sexually violent convictions and the crimes he's been charged with that aren't sexual, all those are relevant and the doctor can testify about what happened to them. She can even go into nolle prossed or dismissed charges for sexual and nonsexual that didn't result in convictions.

In the memo of law we submitted to the Court, the Ettel case stands exactly for that proposition, as does the Corley case, because what the Court said was past criminal history is directly relevant in establishing Section 44-48-30, which is the definition of what a sexually violent predator is.

In addition, this came up in the White case in 2007, and the Court observed there that while a conviction could occur without the commission of an offense, that an offense could occur without necessarily resulting in a conviction. As such, both convictions and offenses not resulting in convictions can be considered under this law under the term's usual and customary meaning.

Now, what I'm getting at is --

THE COURT: Well, I'm not questioning that.

MR. BOGLE: It's going to that. Now, as far as [redacted] and the men, it's my understanding that what the respondent did, in addition to his sexual misconduct with [redacted] he basically -- for lack of a better word in this courtroom, I'll say what we

said back in chambers. He pimped her out to a bunch of guys. The guys ages ranged from the low 30s to the upper 60s, all age range guys having sex with this young girl.

And as part of his antisocial personality, a total disregard for the laws and customs of people, Dr. Gehle had to look into that and find out what happened, and she will testify as to the underlying details of these crimes. Now, she's not going to go into great detail, but just to say this is what he did. He arranged for sex with a 35-year-old man. Now, the underlying details of what that man did to her, that's not really what we're going into.

THE COURT: Okay.

MR. BOGLE: But the fact he arranged for it --

THE COURT: Well, I think that resolves the issue.

MR. BOGLE: -- is what we're looking at.

THE COURT: Well, let me see if that resolves it.

MR. BOGLE: And as far as -- okay. So that's kind of --

THE COURT: Does that resolve your issue, Mr. Falk?

MR. FALK: One moment, Your Honor. If you -- if we get to the part that --

MR. BOGLE: But bear in mind he also -- the respondent told the SLED agents -- he wrote letters to the SLED agents and told the SLED agents what he'd done.

THE COURT: Well, why don't you understand? See, that's what I'm -- that's what I'm saying is important. I mean I

realize -- I realize an expert might consider material that -- you know, hearsay is when somebody just filed a report. She might look at an incident report, and an expert might consider that to be relevant material that they considered in arriving at their evaluation.

However, there are some occasions where that information might be considered by an expert, but it becomes highly prejudicial if it's not actually proven or established. In other words, an expert might look at an incident report or a statement by a victim and think that's important in arriving at an assessment, but the person might have gone to trial and been found not guilty.

Well, it certainly wouldn't be fair --

MR. BOGLE: Right.

THE COURT: -- for that information to come in before this jury if the person was tried and found not guilty. So --

MR. BOGLE: I understand that, but if he said it, that's a different matter.

THE COURT: Absolutely.

MR. BOGLE: That's a whole different matter.

THE COURT: I agree with that.

MR. BOGLE: The things he said are fair game.

THE COURT: I understand that. I agree with you. If the information she's relying upon are statements from the

respondent, then clearly it's relevant, so long as it's relevant to her diagnosis.

MR. FALK: Well, then if we get to that point, his statements at some points were probably graphic as to what these third parties did, and we would ask that the Court not go there.

THE COURT: Well, I don't think that's important.

MR. FALK: Okay.

THE COURT: I think Mr. Bogle has already said, and I'll let him respond to it, but I think Mr. Bogle has already said that what he wants to -- the information that will be presented is what Mr. Hulon did and what he knew was happening, not what actually happened that he was not privy to.

MR. BOGLE: He watched it.

THE COURT: Well, if he watched it, then he knows. I mean that's -- and if he reported it, that's his information. So I mean if that's part of her diagnosis, that's certainly relevant.

MR. FALK: So the --

THE COURT: I mean if a person encourages a crime to be committed and watches as someone else commits a crime, obviously that would be important in establishing what a person's mental state is, I think.

MR. BOGLE: (Sneezes.) Excuse me.

MR. FALK: I understand your ruling. My point would be I think that that information would be more prejudicial than probative in determining the facts in this case.

THE COURT: Okay. Well, as I say, I am concerned about offenses that are nolle prossed and the fact that an expert just considers, like, allegations in an indictment that has been dismissed. I have issues with that and I've excluded those before.

However, if the information that's contained in an indictment that has been dismissed has been admitted or reported by the person who is alleged to have committed it, then it doesn't matter whether there's an indictment or conviction or not. It's -- it's an offense, whether or not the person has been charged with it or not. It still goes -- it's still relevant to their mental condition, it would seem to me.

And what I'm understanding from Mr. Bogle is that that's information that Mr. Hulon himself provided. Is that what I'm understanding, Mr. Bogle?

MR. BOGLE: In some of these cases, that's correct.

THE COURT: Okay.

MR. BOGLE: Again, she's going to talk about his criminal history, not just the sex offenses, because she's got to show the broad definition of antisocial.

THE COURT: I know that. I know criminal history is

obviously important.

MR. BOGLE: And it'll include these.

THE COURT: But criminal history also includes people getting arrested and being found not guilty, but it's not something that's relevant.

MR. BOGLE: Well, some of the charges -- and the Courts have said we can go into this -- may include charges that did not result in convictions.

THE COURT: But that's okay too.

MR. BOGLE: That's okay too.

THE COURT: So long as there's a basis for it is what I'm saying.

MR. BOGLE: Right.

THE COURT: Not just an indictment allegation.

MR. BOGLE: All right. Thank you.

MR. FALK: Your Honor, I believe that some of the more explicit details were provided by the juvenile victim identified as Minor 1 as part of a forensic interview, and it will be my position that unless my client admitted that, yeah, I saw that happen and that is, in fact, what happened, that that was not his statement. That if the source of these specific details are from the victim's forensic interview and not statements made by him, then I believe that they fall into the other basket of being more prejudicial than probative.

THE COURT: Well, maybe so, but clearly an expert is going to rely upon information by a purported victim where it's relative to a sex offense.

MR. FALK: Exactly, but -- but now this is a victim saying that this other guy did this to me.

THE COURT: Right.

MR. FALK: And --

THE COURT: I understand, and that's not what -- and I'm not sure Mr. Bogle is trying to go there. I think what he said was he's trying to introduce and the expert is using information about what Mr. Hulon knew was going on. In other words, the purpose of him connecting these people up was for what purpose, not necessarily what actually occurred behind closed doors.

MR. FALK: So to --

THE COURT: Unless he was present and observed it and reported it.

MR. FALK: Exactly. And so --

THE COURT: But isn't that what you're talking about, Mr. Bogle? You're not trying to go into all these details?

MR. BOGLE: That's correct.

THE COURT: Okay. I think we are -- I think we're in agreement again, but, you know, if something comes up, y'all still, of course, have to object.

MR. FALK: Yes, Your Honor.

THE COURT: All right. What's the next one?

MR. FALK: And, Your Honor, his prison record.

THE COURT: Well, let me ask you this about -- you may -- you may have -- I may have stopped you from doing this, but all nonsexual misdemeanor convictions, tell me what you're trying to exclude there.

MR. FALK: Well, I mean at some point, stuff that is in a period that is so old, I don't know how it's relevant because the State is obligated to prove that today he's a sexually violent predator, not that he had a criminal record in the past.

And I can appreciate that, you know, it's going to lead to this antisocial personality disorder, but I would think at some point there are -- there are convictions that are too old to be relevant or to be more probative than prejudicial.

THE COURT: Well, that may be true, but again, we're talking about an expert's opinion and if that information is information that experts routinely rely upon in arriving at a diagnosis or an opinion, then obviously it's relevant.

MR. BOGLE: Thank you, Your Honor.

THE COURT: All right. And the last one?

MR. FALK: I think the answer is going to be same, back to the same argument regarding prison offenses, and my point there is people living in these -- you can get written up in prison for standing in the wrong line or, you know, not

getting up for a count or something like that.

And I think that it certainly creates a prejudicial or negative impression in the jurors' minds, and my point would be that if my client is convicted of assaultive offenses or sexual offenses while in prison, I think he's responsible for those, but whether or not he's got a cigarette while he was in prison or whether or not he's got an extra magazine or was, you know, disrespectful to one of the prison guards, I think that that is not relevant to whether or not he's a sexually violent predator, but could still be more prejudicial than probative.

THE COURT: Well, it might be relevant to whatever diagnosis or disorder that the expert testifies that he has, but obviously that's why you get to examine her on it. Are you really saying he's a sex offender because he had an extra cigarette?

So I mean you can make your point with the jury on those types of things, if they were included in her assessment in arriving at her opinion, but as I say, I don't think I can exclude them if that is the type of information that an expert relies upon routinely in arriving at a particular assessment, evaluation or an opinion. I mean that's -- it is what it is.

MR. BOGLE: Thank you, Your Honor.

MR. FALK: I can appreciate that that's your position.

I do think you have the authority as the gatekeeper to keep out that evidence as more prejudicial than probative, regardless of whether or not the expert relied upon it.

THE COURT: I don't disagree with you on that, but the problem is this -- because some things are just extremely prejudicial and I understand. We discussed that at the outset, but there are other things -- I mean I -- you know, if an expert in a particular field considers a variety of information and the totality of that information is what causes her to come to her conclusion, if I'm going to start picking it apart and taking everything out, pretty soon the only thing that's left is one reason why she came to the conclusion, and that's not fair because that is not the reason she came to a conclusion.

MR. FALK: Yeah.

THE COURT: It was a -- it was an accumulation of characteristics of Mr. Hulon that caused her to arrive at her opinion and, obviously, you get to cross-examine her on those points and try to point out how is that relevant, how is that important, that's trivial, that's insignificant, you're just ganging up on him in some way. I mean I think you get to make your point to the jury.

But it's very difficult for me as you say as the gatekeeper to -- just because something is prejudicial, you know, if the witness -- if the expert considers ten factors

and they are reasonably relied upon by experts in the field in arriving at an assessment, if I find nine of them are too prejudicial, that leaves her with only one factor she considered in arriving at an opinion, and that would be misleading to the jury because that's not the situation.

MR. FALK: Yes, Your Honor.

THE COURT: So if it gets to be extremely prejudicial, like we discussed, then, you know, I might try to at least limit it or tailor it in a fashion that the probative value is not substantially outweighed by the prejudicial effect. But clearly, the expert has got to have an opportunity to testify as to the basis of an opinion.

Now, my preference is is that they provide an opinion and they testify as to what they considered in generic form so you avoid a lot of the highly prejudicial information. But again, as I say, that door is opened for all of that information to come in if you in your cross-examination of her in trying to challenge her -- the validity of her opinion goes into different factors, then obviously she gets to explain that.

And that's -- that's the -- obviously, that's one of the hazards of cross-examination is that people get to tell everything that's in their head when you ask them why they did something.

MR. FALK: Yes, Your Honor.

THE COURT: And so they'll tell you and sometimes you don't want to know in that detail.

MR. BOGLE: Judge, with your permission, I'm going to take a -- this Sharpie that the court reporter gave me and block out the child's name from the text portion of the indictment.

THE COURT: All right.

MR. BOGLE: It's a certified copy. I don't like to color on a certified copy, but we talked about that back in chambers.

THE COURT: I know. Without objection, Mr. Falk?

MR. FALK: No objection.

THE COURT: Okay.

MR. BOGLE: Can we go ahead and agree for now that these four -- let's see. There's one -- two -- four different sexually violent convictions. Can we go ahead and agree they'll come in so I can have them marked and everything?

MR. FALK: Of course.

THE COURT: They're certified copies?

MR. BOGLE: Yes, Your Honor.

THE COURT: Okay.

MR. BOGLE: From the clerk's office downstairs.

THE COURT: You can mark them.

All right. What other pretrial matters do we have?

MR. BOGLE: Nothing from us, Your Honor.

MR. FALK: Your ruling was the same regarding disciplinary charges in prison? They'll be allowed; is that correct?

THE COURT: Yes, sir.

MR. FALK: That's all I have. Thank you, Your Honor.

THE COURT: Okay. All right. The court is in recess until 2:30.

MR. BOGLE: Thank you, Your Honor.

MR. FALK: Thank you, Your Honor.

THE COURT: Okay.

(WHEREUPON, there was a break in the proceedings from 1:22 p.m. until 2:34 p.m., after which the proceedings resumed as follows.)

THE COURT: Good afternoon, ladies and gentlemen of the jury panel. We are ready to begin with the jury selection in the first case that's going to require some of your participation.

The title of the case is In the Matter of the Care and Treatment of Donald Hulon. This action has been brought by the State of South Carolina through the Attorney General's Office pursuant to Section 44-48-10 of the South Carolina Code of Laws, which is known as the Sexually Violent Predator Act.

In this action, the State is seeking to have the respondent, Mr. Hulon, civilly committed in a secure facility

for long-term control, care, and treatment under the supervision of the South Carolina Department of Mental Health.

The State alleges that the respondent is a sexually violent predator as defined in South Carolina Code Section 44-48-30, and they allege that he suffers from a mental condition, abnormality or disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

Now, although the respondent has previously been convicted of an offense classified as a sexually violent offense and he has satisfied the sentence imposed for that conviction, this is not a criminal proceeding wherein the State is seeking incarceration as a punishment for any criminal offense, but rather it is a civil proceeding wherein the State is seeking an involuntary commitment under the supervision of the Department of Mental Health for care, control, and treatment until such time as the respondent's mental abnormality or personality disorder has so changed that he is safe to be released from commitment.

The respondent denies that he is a sexually violent predator as defined by state law. He denies that he suffers from any mental condition that makes him likely to engage in acts of sexual violence in the future.

And because the parties do not agree as to the facts, a

jury is needed to make that determination as to whether or not the respondent is a sexually violent predator as defined by state law based upon the jury's consideration of the evidence that will be presented during the course of the trial and the law that is applicable, as the Court will provide.

Now, as I've stated, the respondent is Donald Hulon, and this action is being brought predator pursuant to the Sexually Violent Predator Act. It is brought by the Attorney General's Office.

Presenting the case on behalf of the petitioner, that is the State or the attorney general, is James Bogle, who is a senior assistant attorney general for the South Carolina Attorney -- South Carolina Attorney General. Mr. Bogle.

The respondent in this matter, as I've stated, is Donald Hulon.

Mr. Hulon, if you'll please stand and face the jury panel.

And Mr. Hulon is being represented by James Falk, his lawyer. He will be assisting him during the course of this trial.

Now, there are some questions that I'm going to be asking you. The purpose of the questions is to determine whether or not there's some reason why any particular juror in this panel should not be selected to serve in this

particular case. In other words, you have some reason why you believe that you could not be fair and impartial if you were selected as a juror to serve in this particular case.

And so as these questions are asked, should you need to respond to them, I simply would ask that you please stand and I'll address those matters with you individually in the event that becomes necessary.

Now, as I've told you, there are going to be some persons who will testify to present evidence in the case. Everybody that I'm going to identify will not necessarily testify during the course of the trial, but I don't know whether they'll testify or not; so I'm going to identify anybody and everybody that I'm aware of that might come to court and be called to provide information. As I say, the fact that I call the name doesn't mean they will testify, but nevertheless, I still need to find out if you have any connection with these folks, anybody involved in the case.

So when somebody is identified, I need to find out if you have any connection, whether that connection be by blood or by marriage, whether it be from working at the same employer or location, whether it be that you attend church with that person, whether it be that you did attend or do attend school with that person, whether you socialize with that person, whether that person lives in your neighborhood or you -- your community, or whether you have any connection

whatsoever or knowledge of this particular person, as well as any members of their respective families, should you have a connection with a family member of somebody that will be introduced.

Now, I've introduced Mr. Bogle, who is a lawyer, an assistant attorney general in the Attorney General's Office. So I need to find out not only do you know him or some member of his family, but do you know anybody else who is employed in the Attorney General's Office? If so, I'll need you to stand and provide me with that information.

Mr. Falk is the lawyer representing Mr. Hulon. So I need to know if you know Mr. Falk or anybody connected with him, and I need to know whether or not you know Donald Hulon, the respondent in this case, or whether you have any connection with any member of his family.

I also need to know whether you have any knowledge of any of the following persons who might be called to testify and those persons include: William Joseph Hopkins, Bridget Ward, [redacted], David Coleman, James McLaurin, Roger Chavis, Teddy Poe, Charles Johnson, Ralph Knight, Sr., Charles Hunt, Robert Harper, Jr., Judy Hulon Hunt, and Marie Gehle, who is a psychologist or psychiatrist.

Does any juror know anybody who has just been identified? If so, if you do, please stand.

(WHEREUPON, several people stood.)

THE COURT: And tell me what your names are and who it is that you happen to know. And I'll start to my right and I'll work to my left, and I'll go row by row until I reach the back.

So I'll start with you, ma'am. If you'll give me your name and your juror number, please.

JUROR NUMBER 38: Heather Clark, 38.

THE COURT: 38?

JUROR NUMBER 38: Yes, sir.

THE COURT: And who is it that you know?

JUROR NUMBER 38: Mr. Hulon.

THE COURT: All right. And is there anything about your knowledge of Mr. Hulon that would in any way affect or impair your ability to be fair and impartial in this case?

JUROR NUMBER 38: Uh-huh.

THE COURT: All right. Juror 38 will be excused, but don't leave yet. Just have a seat.

All right. I'll go next with you, sir. Your name and number?

JUROR NUMBER 216: Jermaine Williams, 216.

THE COURT: All right. Who is it you know?

JUROR NUMBER 216: I know Mr. Hulon.

THE COURT: All right. And is there anything about your connection or knowledge of the defendant that would in any way interfere with your ability to be fair and impartial if

you were selected as a juror in this case?

JUROR NUMBER 216: No, sir.

THE COURT: All right. Thank you. Be seated.

Yes, ma'am?

JUROR NUMBER 84: Cynthia Graham, 84, and I know Mr. Hulon.

THE COURT: And is there anything about your connection or knowledge of Mr. Hulon that would in any way interfere with your ability to be fair and impartial if you were selected as a juror in this case?

JUROR NUMBER 84: No, sir.

THE COURT: Ma'am?

JUROR NUMBER 84: No, sir.

THE COURT: Okay. Thank you. Be seated.

Yes, ma'am?

JUROR NUMBER 33: 33, Brenda Campbell. I know Mr. Hulon.

THE COURT: All right. And is there anything about your knowledge or connection with Mr. Hulon that would in any way interfere with your ability to be fair and impartial if you were selected as a juror in this case?

JUROR NUMBER 33: No, sir.

THE COURT: All right. Thank you. You may be seated.

Yes, ma'am?

JUROR NUMBER 60: Juror 60.

THE COURT: Six zero?

JUROR NUMBER 60: Six zero. And I know Donald Hulon and about eight of the others.

THE COURT: Okay. And is there anything about your connection or knowledge of those folks that would in any way interfere with your ability to be fair and impartial in this case?

JUROR NUMBER 60: Yes.

THE COURT: Did you say yes?

JUROR NUMBER 60: Yes.

THE COURT: All right. Thank you.

We'll excuse Juror Number 60 from service in the case.

All right. The next row. You, sir?

JUROR NUMBER 204: David Walton, 204. I know David Coleman and I know Donald Hulon.

THE COURT: And is there anything about your connection with those individuals that would in any way interfere with your ability to be fair and impartial if you were selected as a juror in this case?

JUROR NUMBER 204: Yes, Your Honor.

THE COURT: All right. We'll excuse Juror 204 from service in the case. Just have a seat, please.

All right. Next row. Well, who's on the next row? The gentleman in the middle? Are you on the same row with the other folks?

JUROR NUMBER 168: We're beside each other.

THE COURT: You're all on the same row? Okay. I'll start with you.

JUROR NUMBER 168: 168. I know Robert Hopkins, Jr. We went to school together. I know several of the other witnesses as well.

THE COURT: All right. And your name was what?

JUROR NUMBER 168: Dwayne Powers.

THE COURT: All right. Is there anything about your connection with those folks that would in any way interfere with your ability to be fair and impartial in this case?

JUROR NUMBER 168: No, sir.

THE COURT: All right. Thank you. Be seated.

Yes, sir?

JUROR NUMBER 101: 101, Cutler Hood. I know Mr. Hulon.

THE COURT: And is there anything about your connection or knowledge of Mr. Hulon that would in any way interfere with your ability to be fair and impartial in the case?

JUROR NUMBER 101: No, sir.

THE COURT: All right. Thank you. Be seated.

All right. The next row. Are you on the same row? Okay.

JUROR NUMBER 23: Number 23, Amanda Britt.

THE COURT: 23?

JUROR NUMBER 23: Uh-huh.

THE COURT: All right.

JUROR NUMBER 23: Minor 1 and Minor 2 are my nieces.

THE COURT: All right. And is there anything about that fact that would interfere with your ability to be fair in this case?

JUROR NUMBER 23: I believe so.

THE COURT: All right. Juror 23 will be excused.

Next?

JUROR NUMBER 179: Stephen Ray. Stephen Ray, 179. I know most of the names you called also.

THE COURT: All right. And would those connections have any bearing upon your decision?

JUROR NUMBER 179: No, sir.

THE COURT: You could be fair and impartial?

JUROR NUMBER 179: Yes, sir.

THE COURT: All right. Thank you. Be seated.

All right. Now, I'm going to ask a question of you and it's going to relate to you or an immediate family member, and immediate family -- and immediate family member is defined as a parent, spouse, child or sibling. A parent, spouse, child, or sibling.

I need to find out if you or any members of your immediate family, as well as any close personal friend, has ever been charged with, accused of or convicted of any type

of criminal offense that involved allegations of sexual misconduct. I need to know if you or a family member or close friend has ever been charged with, accused of or convicted of any crime that involved allegations of sexual abuse or sexual misconduct. If so, please stand.

(WHEREUPON, one person stood.)

THE COURT: All right. Now, I've got one juror. Your number was what, ma'am? 60?

JUROR NUMBER 60: 60.

THE COURT: All right. You've already been excused in this case; so you don't need to answer any further questions. Okay?

Yes, ma'am?

JUROR NUMBER 223: I don't know my juror number. Kimberly Wilson.

THE COURT: Kimberly Wilson?

JUROR NUMBER 223: I forgot the number.

MR. BOGLE: 223.

THE COURT: 223. All right. And you or a family member has been charged with, accused of or convicted of a crime involving allegations of sex abuse?

JUROR NUMBER 223: A family member.

THE COURT: All right. Just have a seat. I'm not going to ask you about the details at this moment in front of the audience anyway. That's 223.

Anybody else?

(WHEREUPON, one person stood.)

THE COURT: Yes, ma'am?

JUROR NUMBER 12: 12, Sharon Bethea.

THE COURT: 12?

JUROR NUMBER 12: Yes.

THE COURT: Okay. Thank you, ma'am. You can have a seat. I'm going to talk to y'all privately.

Anybody else?

(WHEREUPON, there was no response.)

THE COURT: Have you or any members of your immediate family, as I described it, or any close personal friend ever been the victim of any type of criminal offense that involved sexual abuse or sexual misconduct, whether the allegations were reported or unreported, whether a person was charged or wasn't charged? I need to know if you or some family member or close personal friend has ever been the victim of any type of criminal sexual conduct. If so, please stand.

(WHEREUPON, one person stood.)

THE COURT: All right. Your name and number, please, ma'am?

JUROR NUMBER 63: Frances Edge, 63.

THE COURT: 63? All right. Just have a seat, please.

Anybody else?

(WHEREUPON, there was no response.)

THE COURT: All right. Has any member of the jury panel ever been involved in any type of prison ministry, prison outreach program, or any other program involving contact with incarcerated persons? If so, please stand.

(WHEREUPON, there was no response.)

A JUROR: Could you repeat that, sir.

THE COURT: Yes. Has any member of the jury panel ever been involved in any type of prison ministry, prison outreach program, or any other program involving contact with incarcerated persons, inmates in a care facility, state correctional facility or any other type of incarcerative [sic] program?

(WHEREUPON, two people stood.)

THE COURT: All right. And your name and number again?

JUROR NUMBER 84: 84, Cynthia Graham.

THE COURT: And was it you or --

JUROR NUMBER 84: Evans Prison.

THE COURT: Ma'am?

JUROR NUMBER 84: I worked there.

THE COURT: Okay. And would that have any bearing on your decision in this case?

JUROR NUMBER 84: No, sir.

THE COURT: Thank you. Be seated.

Yes, sir?

JUROR NUMBER 101: I also worked at Evans when Mr. Hulon

was incarcerated.

THE COURT: All right. And give me your number again, please?

JUROR NUMBER 101: 101, Cutler Hood.

THE COURT: Would that have any bearing on your decision?

JUROR NUMBER 101: No, sir.

THE COURT: Sir?

JUROR NUMBER 101: No, sir.

THE COURT: Okay. Thank you. Be seated.

Has any member of the jury panel or any member of your immediate family ever been the subject of any type of civil commitment proceeding or been voluntarily or involuntarily civilly committed to any type of mental health facility or institution? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: Has any member of the jury panel ever worked for any social services agency or do you have a family member who is or has been employed as such? If so, please stand.

(WHEREUPON, one person stood.)

THE COURT: Your number again?

JUROR NUMBER 168: 168.

THE COURT: Was it you or a family member?

JUROR NUMBER 168: Church member.

THE COURT: Sir?

JUROR NUMBER 168: One of our church members.

THE COURT: Okay. What agency?

JUROR NUMBER 168: Social Services.

THE COURT: But it's not -- it wasn't you or a family member?

JUROR NUMBER 168: No, sir.

THE COURT: Okay. Thank you. Be seated.

Yes, ma'am?

JUROR NUMBER 157: 157. I didn't work there, but I interned at DSS.

THE COURT: You didn't work there, but what?

JUROR NUMBER 157: I interned at DSS.

THE COURT: Okay. Thank you, ma'am. You may be seated.

MR. BOGLE: What was her number?

THE COURT: 157.

All right. What about ever worked with a Guardian ad litem program?

(WHEREUPON, there was no response.)

THE COURT: What about ever worked with a foster care program?

(WHEREUPON, there was no response.)

MR. BOGLE: A hand went up.

THE COURT: Okay. If you -- if you need to respond, please stand because I can't tell who is responding if I don't have you stand up.

(WHEREUPON, one person stood.)

THE COURT: Thank you, ma'am. All right. Your name and number?

JUROR NUMBER 193: Virginia Stevenson, 193.

THE COURT: All right. And how does that question relate to you?

JUROR NUMBER 193: I worked with the Guardian ad litem program a while back.

THE COURT: All right. And your number was? Your number?

JUROR NUMBER 193: 193.

THE COURT: 193. Thank you, ma'am.

All right. Anyone else? Did I miss somebody? Foster care program?

(WHEREUPON, there was no response.)

THE COURT: Has anyone ever worked with any agency or governmental department that investigates or counsels victims of rape or sexual assault? If so, please stand.

(WHEREUPON, one person stood.)

THE COURT: All right. And you are 101?

JUROR NUMBER 168: 168.

THE COURT: Excuse me, 168. I knew I was going to get in trouble if I tried to memorize it.

All right. Was it you or a family member?

JUROR NUMBER 168: A friend.

THE COURT: A friend?

JUROR NUMBER 168: Yes, sir.

THE COURT: And what -- what agency or department did they work with?

JUROR NUMBER 168: Scotland County DSS.

THE COURT: Okay. Thank you, sir.

Has any member of the jury panel or any member of your immediate family ever been employed as any type of law enforcement officer, working for any type of law enforcement agency? Have you or a family member ever been employed as any type of law enforcement officer? If so, please stand.

That includes sheriff's departments, city, town, municipal law enforcement agencies, the Solicitor's Office, State Law Enforcement Division, correctional facilities, jail facilities, Probation and Parole, FBI, CIA, Interpol, any type of law enforcement agency.

(WHEREUPON, many people stood.)

THE COURT: Okay. Now, I'm going to start with -- over here.

And, ma'am, I think you've been excused, have you not?

JUROR NUMBER 38: Number 38. My husband used to work for Evans.

THE COURT: All right. And you've been excused already I think, haven't you?

THE CLERK: She has.

THE COURT: Yes.

JUROR NUMBER 216: Jermaine Williams, 216. I had a cousin who was a law enforcement officer.

THE COURT: All right. Thank you. Be seated.

Yes, ma'am?

JUROR NUMBER 84: 84, Cynthia Graham, and I used to work at Evans.

THE COURT: Thank you, ma'am.

Next row.

JUROR NUMBER 56: My brother-in-law is retired.

THE COURT: I need your name and number, please.

JUROR NUMBER 56: Oh, Paulene Deitz and Number 56.

THE COURT: All right.

JUROR NUMBER 56: My brother-in-law is a retired CHP officer.

MR. BOGLE: What's her number again?

THE COURT: 56.

JUROR NUMBER 56: California Highway Patrol.

THE COURT: All right. They had a movie about that -- I mean a TV show. All right. Thank you, ma'am.

JUROR NUMBER 12: Number 12, Sharon Bethea. My daughter worked as a counselor for prisoners.

THE COURT: Okay. Thank you, ma'am.

Next row?

JUROR NUMBER 61: Evangeline Easterling. My husband

used to be a deputy sheriff years ago.

THE COURT: All right.

JUROR NUMBER 61: And my daughter works for Evans.

THE COURT: All right. And your number is what? Your number? Juror number?

JUROR NUMBER 61: 67.

THE CLERK: It's 61.

THE COURT: 67?

THE CLERK: 61.

THE COURT: I can't hear you.

JUROR NUMBER 61: It's 61?

THE CLERK: It's 61.

THE COURT: 61. Okay. Let's try to remember it.

All right. Next?

JUROR NUMBER 183: 183. My mother works at the Solicitor's Office.

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

Next row?

JUROR NUMBER 190: Tammy Spears, 190. My brother-in-law works at Evans.

THE COURT: All right. Next?

JUROR NUMBER 160: 160, Vanessa Pearson. My brother retired from Evans.

THE COURT: Thank you, ma'am.

Next row?

JUROR NUMBER 163: Mary Peterkin, 163. My brother retired from different prisons in Columbia, South Carolina.

THE COURT: All right. Thank you.

JUROR NUMBER 193: 193, Virginia Stevenson. My son worked for Angola State Penitentiary in Louisiana. He also worked here at Evans, and he also worked at Waynesboro Prison in Upper Waynesboro.

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

JUROR NUMBER 62: 62, Melvin Easterling. My wife worked at Evans.

THE COURT: All right. Thank you. Be seated.

JUROR NUMBER 98: Mike Hill, 98. My daughter was a Marlboro County sheriff's deputy.

THE COURT: Thank you. Be seated.

JUROR NUMBER 101: 101, Cutler Hood. I used to be employed at Evans.

THE COURT: Thank you.

JUROR NUMBER 58: Keyona Douglas. I can't remember my number, but I've got an uncle who is in law enforcement.

THE COURT: You don't know your number?

JUROR NUMBER 58: I know it's 50 --

MR. BOGLE: 58.

THE COURT: 58? Is that right?

THE CLERK: Yeah, 58.

THE COURT: Okay. 58 is your number. All right. Thank

you. Be seated.

All right. As I had mentioned earlier, during the course of the trial, there will be evidence presented showing that Mr. Hulon has previously been convicted of at least one offense classified as a sexually violent offense under the law of this state.

That is one of the elements that the State has to establish before a person can be proven to be a sexually violent predator, but there's more than one element that has to be established. They also have to prove that he suffers from some type of mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

So there are two elements, but there will be evidence to establish that he has previously been convicted of such a crime. The evidence will also show that he has received a sentence for that and he has satisfied that sentence. So that's not the issue here today.

But my question to the jury is would the fact that the defendant has been convicted of a sexually violent offense prevent you from being able to be fair and impartial in your determination as to whether or not under the law he should be declared to be a sexually violent predator?

Do you understand that question? Did that make sense?

I just need to find out if the fact that he's been convicted is going to prevent a juror from being able to be fair and impartial in the determination as to whether or not he should be declared to be a sexually violent predator because there is more than one element necessary to be established before a person can be declared to be a sexually violent predator.

So does anyone believe that you could not be fair and impartial in this case and make that determination because you know that he has already been convicted of a sexually violent offense? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: Does any juror know of any reason whatsoever why you believe you could not be fair and impartial if you were called upon to serve as a juror in this particular case? If so, please stand.

(WHEREUPON, there was no response.)

THE COURT: All right. Now, I've got three jurors who responded to questions about having themselves or an immediate family member being charged, accused or convicted of a sex offense. I also had one juror who indicated she or a family member had been the victim of a criminal sexual offense. And so I'm going to talk with those three jurors privately in order to determine what that was and whether or not it would affect your ability to be fair and impartial.

So I'm going to ask the balance of the jurors if you'll just be patient with me. Give me that opportunity -- it won't take long -- to talk with those three jurors, and then we'll come back to proceed with jury selection in the case. Okay?

So please be patient. Do not discuss the case in any fashion among yourselves.

All right. Let me ask the bailiff to get me Jurors 223, 12, and 63.

Does anybody else need to respond to that question? You or a family member having been the victim or been accused of having committed a sexual offense?

JUROR NUMBER 31: Juror 31.

THE COURT: 31? All right. Let me ask you to come down. And what's your situation? Was it a victim or an accused?

JUROR NUMBER 31: Both.

THE COURT: Both? Okay. And your number, again, was what?

JUROR NUMBER 31: 31.

THE COURT: 31. Anybody else?

(WHEREUPON, there was no response.)

THE COURT: All right. Madam Court Reporter? Madam Court Reporter?

(WHEREUPON, a bench conference was held with the court

reporter off the record, after which the proceedings resumed as follows.)

THE COURT: What I need is to pull one at a time and come back in chambers with the court reporter and I'll talk with them individually. All the others can just have a seat over here to the right and then I'll talk to them individually.

(WHEREUPON, the Court, attorneys, and court reporter exited the courtroom to chambers, where the proceedings resumed in chambers as follows.)

(WHEREUPON, Juror Number 223 entered chambers.)

THE COURT: All right. We're in chambers with Juror 223. Your name again was what?

JUROR NUMBER 223: Kimberly Wilson.

THE COURT: All right. And you indicated that you or a family member had been charged, accused or convicted of such a crime?

JUROR NUMBER 223: Uh-huh.

THE COURT: Okay. And who was that?

JUROR NUMBER 223: My birth father, but, like, I call him my uncle.

THE COURT: Okay.

JUROR NUMBER 223: Yeah.

THE COURT: So anyways your biological father?

JUROR NUMBER 223: Yeah, my biological father. Yeah.

THE COURT: And he was accused -- convicted of what?

JUROR NUMBER 223: I can't remember. It was, like -- it was a long, long time ago. I was, like, 7 years old. I'm 30 now.

THE COURT: Okay.

JUROR NUMBER 223: I just know he --

THE COURT: But you know he was convicted of a crime or accused of one?

JUROR NUMBER 223: He's on the sex offender list. So I don't know what --

THE COURT: All right. And who was the victim of that, if you know?

JUROR NUMBER 223: Um --

THE COURT: Or do you know?

JUROR NUMBER 223: From -- from what I remember, it was a stepdaughter of his.

THE COURT: It was a relative?

JUROR NUMBER 223: Uh-huh.

THE COURT: But it was not you?

JUROR NUMBER 223: No, not me.

THE COURT: All right. And she -- so she was biologically related to you or not?

JUROR NUMBER 223: No.

THE COURT: She was not?

JUROR NUMBER 223: She was --

THE COURT: She was his wife's child?

JUROR NUMBER 223: Yeah, his wife's child. Yeah.

THE COURT: Or his girlfriend's child or whatever?

JUROR NUMBER 223: Yeah.

THE COURT: Okay. All right. Well, would that fact or that experience that a family member has had -- would that in any way affect your judgment in this case?

JUROR NUMBER 223: So I don't even remember it.

THE COURT: Right.

JUROR NUMBER 223: Yeah.

THE COURT: So you can be fair and impartial?

JUROR NUMBER 223: Yeah.

THE COURT: Notwithstanding that fact?

JUROR NUMBER 223: Uh-huh.

THE COURT: Okay. Good. Thank you. You can go back and have a seat where you were.

Can you show her back to her seat in the audience?

THE DEPUTY: And bring another one?

THE COURT: And bring the next one, yeah.

(WHEREUPON, Juror Number 223 exited chambers and Juror Number 12 entered chambers.)

THE DEPUTY: Number 12.

THE COURT: Number 12? Okay. And tell me what your name again was, please?

JUROR NUMBER 12: Sharon Bethea.

THE COURT: Sharon Bethea?

JUROR NUMBER 12: Bethea.

THE COURT: All right. And how does that question relate to you? You said you or a family member --

JUROR NUMBER 12: Yeah.

THE COURT: -- had been accused or convicted?

JUROR NUMBER 12: Yeah. My brother.

THE COURT: Your brother?

JUROR NUMBER 12: Yes.

THE COURT: And was he accused or was he convicted of something?

JUROR NUMBER 12: He was --

THE COURT: He went to court and was found guilty?

JUROR NUMBER 12: Yes.

THE COURT: All right. And do you know what he was convicted of?

JUROR NUMBER 12: I guess -- no, he lives in Greenville. So I really -- I guess sexual.

THE COURT: But it was a sex offense?

JUROR NUMBER 12: Uh-huh.

THE COURT: And did he go to jail or not?

JUROR NUMBER 12: Yes.

THE COURT: He did? And who was the victim of that offense?

JUROR NUMBER 12: She was a 16-year-old, but she -- you

know, she admitted to her parents that it was actually her fault.

THE COURT: She admitted to her parents what?

JUROR NUMBER 12: That it was actually her coming on to him.

THE COURT: It was consensual?

JUROR NUMBER 12: Yes.

THE COURT: But she was too young to consent. Is that what it was?

JUROR NUMBER 12: Yes.

THE COURT: And did he plead guilty to it?

JUROR NUMBER 12: I didn't know.

THE COURT: Okay. You don't know how it happened, but you know he was found guilty? Do you know if he went to jail or not?

JUROR NUMBER 12: He's still in. He's still in.

THE COURT: He's still in jail? Okay. Is there anything about that fact or your knowledge of that situation that would affect your judgment in this case?

JUROR NUMBER 12: I don't think so.

THE COURT: So you could be fair and impartial notwithstanding that fact?

JUROR NUMBER 12: Yeah, I can be fair.

THE COURT: Okay. Good. Thank you. All right. You can have a seat back where you were.

JUROR NUMBER 12: Okay.

THE COURT: Or back in the audience.

JUROR NUMBER 12: Okay.

THE COURT: Thank you.

(WHEREUPON, Juror Number 12 exited chambers and Juror Number 31 entered chambers.)

THE DEPUTY: Number 31.

THE COURT: Number 31? Okay. Hey. Tell me what your name is, please?

JUROR NUMBER 31: Kaytlin Burgess.

THE COURT: Kaytlin Burgess?

JUROR NUMBER 31: Yes, sir.

THE COURT: All right. And you said that you or a family member -- you've had a situation where someone was accused or convicted and also someone who was a victim. Is that true?

JUROR NUMBER 31: Yes, sir.

THE COURT: All right. Tell me about each of those.

JUROR NUMBER 31: It was my grandfather, and it was me and my sister.

THE COURT: All right. Your grandfather was accused?

JUROR NUMBER 31: Yes, sir.

THE COURT: And you and your sister were the victims?

JUROR NUMBER 31: Yes, sir.

THE COURT: And did he go to court?

JUROR NUMBER 31: No.

THE COURT: He did not?

JUROR NUMBER 31: Huh-uh.

THE COURT: So it was not reported to law enforcement?

JUROR NUMBER 31: Correct.

THE COURT: But you were a victim of an event, a sexual --

JUROR NUMBER 31: Yes, sir.

THE COURT: -- misconduct event?

JUROR NUMBER 31: Yes, sir.

THE COURT: As well as your sister?

JUROR NUMBER 31: Yes, sir.

THE COURT: Is there anything about that experience that you've had that would affect your judgment in this particular case?

JUROR NUMBER 31: I don't think so. It was a long time ago.

THE COURT: Okay. And could you be fair and impartial to Mr. Hulon, notwithstanding the fact that you've had that experience?

JUROR NUMBER 31: Yes, sir.

THE COURT: Okay. Thank you, ma'am.

JUROR NUMBER 31: All right. Thank you.

THE COURT: You can have a seat back where you were, back in the audience.

JUROR NUMBER 31: Thank you.

THE COURT: Thank you.

(WHEREUPON, Juror Number 31 exited chambers and Juror Number 63 entered chambers.)

THE DEPUTY: 63, Judge.

THE COURT: 63? Okay. Tell me again what your name is, please?

JUROR NUMBER 63: Frances Edge.

THE COURT: Frances Edge?

JUROR NUMBER 63: Yes, sir.

THE COURT: All right. And tell me how that question relates to you.

JUROR NUMBER 63: It was myself. When I was, like, 14, a guy tried to rape me, but it -- we filed paperwork, but his uncle was on the Sheriff's Department so it never really went anywhere. And then so, like, years went by and he actually hung himself. So, you know, it's kind of over and done with now, but --

THE COURT: All right. So you were 14?

JUROR NUMBER 63: Yeah, I was 14.

THE COURT: And this person committed a sexual crime against you?

JUROR NUMBER 63: Yeah.

THE COURT: And --

JUROR NUMBER 63: Well, he tried, but my dad's best

friend caught it and kind of, like, stopped everything.

THE COURT: Okay. So it was not completed?

JUROR NUMBER 63: No. It wasn't completed.

THE COURT: And then he later committed suicide?

JUROR NUMBER 63: Yeah.

THE COURT: All right. Is there anything about that experience that you've had that would have any bearing upon your decision in this case?

JUROR NUMBER 63: No.

THE COURT: And could you put that experience aside and not allow it to influence your judgment?

JUROR NUMBER 63: I could.

THE COURT: And you could be fair and impartial, notwithstanding that experience?

JUROR NUMBER 63: Yeah.

THE COURT: Okay. Thank you, ma'am.

MR. FALK: Your Honor, could I ask one question?

THE COURT: Sure.

MR. FALK: How old was the -- how old was the accused?

JUROR NUMBER 63: He was 17.

MR. FALK: Okay. Thank you.

THE COURT: All right. Thank you.

JUROR NUMBER 63: Thank you.

THE COURT: Just have a seat back in the audience where you were before.

(WHEREUPON, Juror Number 63 exited chambers.)

THE COURT: Yes?

THE DEPUTY: It is complete.

THE COURT: That's it, yeah. Thank you.

All right. Anything y'all want to address with that?

MR. BOGLE: Yeah. Give me a second, Judge.

Okay. Juror Number 60 admitted she knew the respondent and eight of those men that were on that list. She said she could not be fair and was struck. That's Juror Number 60.

THE COURT: That's right.

MR. BOGLE: My concern is -- and I move to strike for cause Juror Number 168 who says he knew the -- knows all the men, but still said he could be fair.

THE COURT: All right.

MR. BOGLE: I'm not sure if he knows those men and the other person that said they couldn't be fair. I'm troubled. He says he can only -- he says he can be fair. That's Juror Number 168.

THE COURT: You're troubled that somebody says they can be fair and somebody says they can't?

MR. BOGLE: I don't think they're being honest. If they know all those guys and know what those men did to that little girl, I'm wondering if they can really be fair.

And the other juror that meets that definition, Juror Number 175, he knew the men, but yet said he could be fair.

THE COURT: Okay.

MR. BOGLE: So those two jurors I'd like to excuse for cause.

THE COURT: All right. Mr. Falk?

MR. FALK: They are not on my list to excuse for cause. Can we bring them back and ask them how they know them or the extent of --

THE COURT: I think we know how they know them, don't we? We can bring them back if you'd like. All right. Give me their names.

MR. BOGLE: I don't -- well --

MR. FALK: Well, I mean I would have -- if we're just talking about those two -- Jim, it was 175?

MR. BOGLE: I'm sorry. It was --

THE COURT: I don't have my list in here. It's out there.

MR. BOGLE: 168.

MR. FALK: Okay.

MR. BOGLE: And 175.

MR. FALK: Yeah.

THE COURT: I'll be happy to bring them back here and just ask them how they know the individuals that were named. It might be they just don't know about the offenses themselves, but they know them.

MR. FALK: I don't have my other sheet. Maybe they just

know them from the town.

THE COURT: Do you want to get your --

MR. FALK: Yeah.

THE COURT: -- your jury list?

MR. FALK: Yeah. I'm sorry.

THE COURT: That's all right.

(WHEREUPON, there was a pause in the chambers discussion, after which the chambers discussion resumed as follows.)

MR. FALK: I can start off by saying I've got no problem with striking 168. I would agree to that without having him come back.

THE COURT: What's wrong with 175? He wants to do both of them. They said the same thing.

MR. FALK: Okay. Just I don't have notes on him. So --

THE COURT: Oh. Well, it's the same boat. I mean they said the same thing. That he knew all the guys. Isn't that right?

MR. BOGLE: That's basically it.

MR. FALK: I know, but this -- my guy knows 168.

MR. BOGLE: Yeah. That was the difference.

THE COURT: Well, let's be fair.

MR. BOGLE: Once he knows your guy --

THE COURT: Can't we just be fair and strike them both?

MR. FALK: Yeah. Okay, yeah. Yeah.

THE COURT: All right.

MR. BOGLE: Strike them both?

THE COURT: All right. 168 and -- well, that's what you're asking, wasn't it?

MR. BOGLE: That's right.

THE COURT: All right. 168 and 175.

MR. FALK: Yeah, okay.

THE COURT: All right. They are both -- we agree that they are to be stricken for cause.

MR. BOGLE: 168 and 175.

THE COURT: All right. Any others y'all want to address?

MR. FALK: I want to address 31.

THE COURT: 31? That's the young lady with the grandfather?

MR. FALK: I mean I have concerns. I mean this was kind of a -- this guy had that sort of role in this family with the two girls. She was about that same age it sounds like at the time. I mean I don't have as much concern with 63. That's the 14- and the 17-year-old. I have concerns about whether or not she could be fair when she really has to start listening to the facts.

THE COURT: Well, you know, y'all have to understand my position about that is -- you know, I mean when I ask jurors specific questions and they tell me they can do something, I

really have to accept that they can. Otherwise, I have to just make my own judgment somebody is lying to me, and I'm not willing to do that.

Just like lawyers have different opinions and lawyers tell me different things, that doesn't mean one is lying. You know what I'm saying?

So, you know, sometimes, of course, people have different interpretations of things, but when a juror tells me, I mean especially privately back here, she's saying she can be fair notwithstanding that experience, I mean I can't just say you can't be fair. And if y'all want to agree, I'm happy to agree to strike anybody that y'all agree to strike for cause or for whatever other reason, but I can't strike her for cause if she tells me she can be fair.

MR. FALK: Okay.

MR. BOGLE: Thank you, Your Honor.

THE COURT: All right. Any others?

MR. BOGLE: None from the State.

THE COURT: All right. Now, there is the -- there is the issue of -- I think it's Mr. Williams. He's the one that said he had the pardon and they don't have --

MR. BOGLE: Judge --

THE COURT: They don't have any record downstairs. So I don't know what that situation is. I think we've got to take him off, unless y'all agree.

MR. BOGLE: Number 216, Jermaine Williams?

THE COURT: Yeah.

MR. BOGLE: Seeking a pardon?

THE COURT: Right. Unless y'all want to agree to keep him, but I mean he -- you know, I mean I'm -- I'm convinced that he thinks he got a pardon.

MR. BOGLE: Yeah.

THE COURT: But maybe he -- then he said something about maybe the guy dropped the ball or something, but anyway, the clerk has no record of it. So --

MR. BOGLE: I think you ought to err on the side of caution.

MR. FALK: Well --

THE COURT: Exactly right.

MR. FALK: I mean if he's not competent to serve as a juror and you find that out later, then this whole thing falls apart.

MR. BOGLE: Yeah.

MR. FALK: It's not like something else. I mean --

THE COURT: No. I agree.

MR. FALK: Yeah. So I think you have to.

THE COURT: Yeah. All right. Williams. So that's why I'm bringing it up.

MR. BOGLE: You can research it and in 30 days put him on another panel, but for right now --

THE COURT: I agree. All right. Williams is off.

MR. BOGLE: Jermaine Williams, 216, is off?

THE COURT: Yeah.

MR. BOGLE: Okay.

MR. FALK: I don't want to try this one again. One time will be enough.

THE COURT: Why not? All right. Anything else for me to address outside of the panel's presence?

MR. BOGLE: I don't believe so.

MR. FALK: A lot of people worked at Evans.

THE COURT: Yeah.

MR. BOGLE: Big employer up here.

THE COURT: Apparently so.

MR. BOGLE: Isn't there a federal pen right across the border in North Carolina?

THE COURT: I'm not sure, but I wouldn't be surprised.

MR. BOGLE: The court reporter would know.

THE COURT: I'd forgotten Evans was right out here.

MR. BOGLE: Yes.

THE COURT: That's a funny thing. Evans is -- I mean there's a sign -- there's a sign that says welcome to Bennettsville and it's right on the -- by the fence of the correctional facility. So I don't know if I'd want to do that or not. I think I'd put it at least past it.

MR. BOGLE: Yeah.

THE COURT: Past the prison.

MR. BOGLE: But they're a big employer up here.

THE COURT: Oh, I'm certain they are. Well, you know, that's the thing about like here and Williamsburg County and Lee County. Listen, Spartanburg, Greenville, Charleston, Columbia, they don't want a prison.

MR. BOGLE: No.

THE COURT: But Williamsburg, Marlboro, Chesterfield, Dillon. Yeah. I mean they're tickled to death to have a prison because that's a place you can employ people. Of course, after it gets there, I don't know if they change their mind about it or not.

MR. BOGLE: I think there's a federal prison out in the middle of nowhere on the way to Georgetown.

THE COURT: Oh, no. It's Williamsburg.

MR. BOGLE: Williamsburg?

THE COURT: It spikes off to the left.

MR. BOGLE: Out of nowhere and there it is, right there.

MR. FALK: Jim, do you have notes on 116?

MR. BOGLE: 116? 116?

MR. FALK: Yeah.

MR. BOGLE: I've got her as not being here.

MR. FALK: Maybe I got that name -- number down wrong.

MR. BOGLE: Dominique Kelly?

MR. FALK: Because it was another one that said he knew

Harper and the others and could be fair.

MR. BOGLE: It wasn't 116. 116 I've got as not even being here.

THE COURT: Oh, that's probably -- is it 168? 101?

MR. FALK: No. 101 I have Hulon -- I think he knows him because he worked at the prison.

THE COURT: All right.

MR. FALK: Okay. I have that number down wrong. That must be --

THE COURT REPORTER: It was 260.

MR. FALK: No.

MR. BOGLE: 101 knows Hulon, worked at the prison. Yeah, that's 101 who is --

MR. FALK: This guy is -- I have this guy written down between 204 and 101. Who do you have written down there?

THE COURT REPORTER: Oh, wait. 204? I can tell you. 204?

MR. FALK: Yeah. When we were going through and they were --

MR. BOGLE: 204 got struck.

THE COURT REPORTER: I don't even have a 204 on that list.

MR. BOGLE: 204 got struck.

MR. FALK: I know he was struck.

THE COURT REPORTER: Oh, you're talking about that knows

somebody.

MR. FALK: Who is the next person you have on your notes?

THE COURT REPORTER: 168.

MR. FALK: That's where it is. Okay. I'm with y'all. I'm sorry.

MR. BOGLE: 168, Dwayne Powers, was struck just now. Okay?

MR. FALK: Yeah. Okay.

THE COURT: All right. We're good?

MR. FALK: Thank you.

(WHEREUPON, the chambers conference ended and everyone returned to the courtroom at 3:23 p.m., after which the proceedings resumed as follows.)

THE COURT: All right. Are there any other additional questions to be asked by the petitioner?

MR. BOGLE: No, Your Honor.

THE COURT: The respondent?

MR. FALK: No, Your Honor.

THE COURT: All right. Prepare the list, please, ma'am.

Now, the way a jury is selected in a civil case, the computer will draw a list randomly from the panel and there will be 24 names on the list. The first 20 will be the group from which the twelve will be selected. So each side gets to strike four names off that list. That leaves twelve. Those

will be the twelve primary jurors. From the other four, each side gets to -- well, it'll be six. Each side gets to strike one. That way, we'll have two alternates.

And so anyway, as your name appears on the list, say 1 through 20, when they strike the list, they'll be striking 1 through 20 as the name appears on the list. It won't be your actual juror number unless, you know, by happenstance Juror Number 275 -- or, well, let's say Juror Number 18 was put in the 18th slot. That would be quite unusual, but if that happens, I'll let you know so you can buy lottery tickets later on today.

But I tell you that so if you think you hear your name and you get stricken, you won't be, you know, upset by the fact that you got stricken or you won't be overly joyed by the fact you don't have to serve. So that's the reason you won't actually know.

But those who are selected will know and you'll be having a seat in the jury box to my left and your right. Excuse me. My right and your left.

(WHEREUPON, there was a pause in the proceedings while the jury list was attempted to be drawn, after which the proceedings resumed as follows.)

THE COURT: Okay. We're having computer errors. We're trying to resolve that. So bear with us. We didn't use to have this when we put names in capsules and drew them out of

a drum, but sometimes the computer goes haywire.

(WHEREUPON, there was a pause in the proceedings, after which the proceedings resumed as follows.)

THE COURT: Ladies and gentlemen, we're having to select a jury the old-fashioned way because the computer is not working. So it will take a few minutes to prepare the drum that we have to turn. So if y'all want to take a break, step outside, stretch, use the rest rooms, whatever you'd like to do, but please be back -- be back in the courtroom in -- by ten after four -- ten after four, 20 minutes.

(WHEREUPON, there was a break in the proceedings from 3:54 p.m. until 4:22 p.m., after which the proceedings resumed as follows.)

THE COURT: Gentlemen, are y'all ready?

MR. BOGLE: Yes, Your Honor. Just about.

MR. FALK: Yes, Your Honor.

THE COURT: All right. Beginning with the plaintiff -- excuse me -- petitioner.

MR. BOGLE: The State would strike -- the petitioner would strike Number 7.

THE COURT: The petitioner strikes 7. Respondent?

MR. FALK: Respondent strikes 6.

THE COURT: Respondent strikes 6. Petitioner?

MR. BOGLE: Petitioner strikes 10.

THE COURT: Petitioner strikes 10. Respondent?

MR. FALK: Strikes 8.

THE COURT: Respondent strikes 8. Petitioner?

MR. BOGLE: Petitioner strikes 14.

THE COURT: Petitioner strikes 14. Respondent?

MR. FALK: 19.

THE COURT: Respondent strikes 19. Petitioner?

MR. BOGLE: The petitioner strikes 11.

THE COURT: Petitioner strikes 11. Respondent?

MR. FALK: Strikes 1.

THE COURT: Respondent strikes 1.

Now, for the first alternate, petitioner?

MR. BOGLE: Strikes 2.

THE COURT: Petitioner strikes 2. Respondent?

MR. FALK: Strikes 1.

THE COURT: Respondent strikes 1. Second alternate?

MR. BOGLE: Strikes 3.

THE COURT: Petitioner strikes 3. Respondent?

MR. FALK: Strikes 2.

THE COURT: Strikes 2. All right. The clerk will confirm the strikes.

THE CLERK: The plaintiff's strikes are 7, 10, 11, and 14. On alternate 1, the first alternate strike is Number 2 and on the second alternate, strike is Number 3.

MR. BOGLE: That's correct.

THE COURT: Correct.

THE CLERK: Respondent is Number 1, 6, 8, and 19. On alternate -- the first alternate, the strike is Number 1. Second alternate, the strike is Number 2.

MR. FALK: That's correct.

THE CLERK: Okay.

THE COURT: Call them.

THE CLERK: You want me to call them?

THE COURT: Yes, ma'am.

THE CLERK: As I call your name, please come forward. Bring any belongings you have, your pocketbook or jacket or anything, and Mr. Brown here will help everybody get seated in the jury box.

Number 105, Jacy Hopkins.

73, Rondell Ford.

53, Courtney Davis.

18, Sharonica Boston.

14, Christopher Blackman.

22, Mary Bright.

62, Melvin Easterling.

160, Vanessa Pearson.

66, Lawrence Ellerbe.

56, Pauline Deitz.

132, Jaquille McClain.

57, Karen Douglas.

Alternate number one will be Suzanne Jennings. Juror

Number 112, Suzanne Jennings.

And alternate number two is Juror 33, Brenda Campbell.

THE COURT: All right. I'll ask those who have been selected to please go to the jury room with the bailiff, and I'll bring you back in just a few minutes.

(WHEREUPON, the jury exited the courtroom at 4:31 p.m.)

THE COURT: Are there any matters that need to be addressed regarding jury selection by the petitioner?

MR. BOGLE: No, Your Honor. Thank you.

THE COURT: The respondent?

MR. FALK: No, Your Honor.

THE COURT: All right. Those not selected, you're excused for the day.

They need to call back when? Tomorrow?

THE CLERK: After six tonight.

THE COURT: Call back after six o'clock tonight to receive further reporting information. Call back after six tonight to receive that information.

Have a good afternoon. Thank you for your participation.

(WHEREUPON, the jury panel was released and exited the courtroom at 4:32 p.m.)

THE COURT: All right. Bring the jury back, please, ma'am. Hello?

THE CLERK: Ms. Anna? Ms. Anna?

THE COURT: Bring the jury back, please.

(WHEREUPON, the jury entered the courtroom at 4:34 p.m.)

THE COURT: Ladies and gentlemen, thank you for your patience. We will start with the trial first thing in the morning beginning at 9:30.

Let me caution you that now that you've been selected, you're not permitted to talk about the case in any fashion whatsoever with any person whatsoever. You're also not to conduct any research or do your own investigation in any fashion whatsoever as it relates to any issue in this particular case.

You have to base your decision upon what you see and hear during the trial of the case, and you can't be influenced by any outside or extraneous information. That would be in violation of your oath as a juror. So no discussions. No research. No investigation.

Do have a good evening. Please report to your jury room at 9:30 in the morning -- 9:30 in the morning. You may be excused. Thank you.

(WHEREUPON, the jury exited the courtroom at 4:36 p.m.)

THE COURT: All right. Any matters to address before we recess for the evening?

MR. BOGLE: No, Your Honor. Not from the State.

MR. FALK: No, Your Honor.

THE COURT: All right. The Court is in recess until

9:30 in the morning.

MR. BOGLE: Thank you.

(WHEREUPON, the proceedings adjourned for the day at 4:40 p.m.)

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(WHEREUPON, the proceedings resumed at 9:43 a.m.)

THE COURT: All right. Any matters to address before the jury is brought in?

MR. BOGLE: Not from the State, Your Honor.

MR. FALK: No, Your Honor.

THE COURT: Okay. Bring them in and ask Juror 160, Ms. Pearson, to take the foreperson's seat.

THE BAILIFF: Who?

THE CLERK: Ms. Pearson.

THE BAILIFF: Pearson?

(WHEREUPON, the foreperson entered the courtroom with the bailiff.)

THE COURT: No. I need to have all 14 jurors. I just -- I just want Ms. Pearson to be the foreperson.

Are you Ms. Pearson?

THE FOREPERSON: Yes.

THE COURT: Yes. You're going to be the foreperson, but I need all the jurors.

MS. BAILIFF: Oh, I thought you just wanted her.

THE COURT: Oh, no, ma'am. I need all 14. We're going

to all let -- let them all participate.

(WHEREUPON, the jury entered the courtroom at 9:47 a.m.)

THE COURT: Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: We are ready to begin with the trial for which you have been selected. That is In the Care -- In the Matter of the Care and Treatment of Donald Hulon.

Ms. Pearson, I'm going to ask you to serve as the foreperson of the jury and, as the foreperson, you're going to have three specific duties that none of the other jurors will have.

First of all, you'll be asked to serve as the spokesperson for the jury, and that just means if something arises during the course of the trial, you or one of your fellow jurors has some difficulty, problem or question, you're going to be the person to let me know that, either directly, if you're in the courtroom, or through the bailiff, if you're outside of the courtroom.

Secondly, you're going to be called upon to preside over jury deliberations when that time comes. That, of course, won't be until the end of the trial after all of the evidence has been received and I have instructed you on the law that's applicable in the case. But when the time does come for jury deliberations, you will preside over that process in the jury room simply to ensure that those deliberations are carried

out in some orderly fashion.

And thirdly, you'll actually write the verdict or the decision of the jury. You'll do that on a verdict form that I'll provide you at the trial's conclusion on which you will indicate the jury's unanimous decision.

Now, the foreperson has those specific duties that I have just indicated, but that doesn't mean that she's any more important than any of you other jurors and she's not going to get paid any more than you other jurors get paid, but someone has to be delegated those responsibilities that I have just indicated, and I have delegated those to Ms. Pearson in appointing her as the foreperson of the jury.

But all of you jurors are equally important so far as the ultimate decision in this case is concerned because the verdict has to be unanimous. All twelve of you must be in agreement.

Now, Ms. Jennings and Ms. Campbell, each of you have been selected as alternate jurors. The function of an alternate juror is to take the place of one of the original twelve jurors if during the trial one of these twelve cannot continue to serve for some reason.

And if one is unable to continue to serve, then one or both of you will be called upon to take that juror or those jurors' places. In that event, you become the twelfth juror. In that event, you participate throughout the trial,

including the jury deliberations at the trial's conclusion.

If, however, at the end of the trial after the evidence has been received and I have instructed you on the law, if the original twelve are able to participate in that deliberation process, then that would conclude the service of an alternate and that's because the decision of a jury is that of twelve. No more than twelve are permitted to engage in that deliberation process.

But it is important that each of you pay just as careful attention, as we ask of all the jurors in the case, because it does occur from time to time for one reason or another one of these twelve may be unable to continue. In that event, one or both of you would be called upon to become the twelfth.

So we do appreciate your participation as alternate jurors, just as we appreciate the participation of each of you jurors who have been selected for the purpose of deciding the verdict in this particular case.

You may swear the panel.

THE CLERK: Ladies and gentlemen, if you'll all stand and raise your right hand, please.

(WHEREUPON, the jurors complied.)

THE CLERK: Do you solemnly swear or affirm that you will well and truly try the issues in this case and a true verdict render according to the evidence and the law? Say I

do.

THE JURORS: I do.

THE CLERK: You may be seated.

THE COURT: Ladies and gentlemen, as you know, the State has brought this action pursuant to Section 44-48-10 of the South Carolina Code of Laws. That's referred to as the Sexually Violent Predator Act.

In this action, the State is seeking to have the respondent, Mr. Hulon, civilly committed in a secure facility for long-term control, care, and treatment under the supervision of the South Carolina Department of Mental Health.

The State alleges that the respondent, Mr. Hulon, is a sexually violent predator as defined in Section 44-48-30 of the South Carolina Code of Laws, and that he suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

Now, although the respondent has previously been convicted of an offense classified as a sexually violent offense under the law of this state and he has satisfied the sentence imposed for that conviction, this is not a criminal proceeding wherein the State is seeking incarceration as punishment for any criminal offense, but rather it is a civil

proceeding wherein the State is seeking an involuntary commitment under the supervision of the Department of Mental Health for care, control, and treatment until such time as the respondent's mental abnormality or personality disorder, should he suffer from one, has so changed that he is safe to be released from commitment.

The respondent denies that he is a sexually violent predator as defined by state law, and he denies that he suffers from any mental condition that makes him likely to engage in acts of sexual violence in the future.

And that, of course, is why you have been selected. There's an issue as to the facts of the matter and the jury is selected for the purpose of determining the facts based upon the evidence presented.

And then once the jury determines those facts, the jury applies the law that the Court will provide at the trial's conclusion and then you will determine whether or not the State has proven that the respondent has been convicted of a sexually violent offense and that he suffers from such a mental condition as I have described.

Now, Section 44-48-30 of the South Carolina Code of Laws defines what a sexually violent predator is and that's what you are to be guided by, but a sexually violent predator is defined as a person who, number one, has been convicted of a sexually violent offense and, number two, suffers from a

mental abnormality or a personality disorder that makes that person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

Because the State has made the allegation against the respondent, the burden of proof is, therefore, on the State to prove to each of you beyond a reasonable doubt that the respondent is a sexually violent predator. If the State fails in that burden of proof, then the respondent is entitled to be released from confinement, as he has served any sentence imposed as a result of any conviction for any crime that was designated and classified as a sexually violent offense under the law.

Now, the way the trial will proceed is that in a moment the lawyers are going to address you in what we call opening statements. Please understand that the lawyers' statements are not to be considered by you as any evidence upon which you will base your decision, and that's because the lawyers aren't witnesses to anything and they don't know anything about this case of their own personal knowledge or perception like witnesses will be testifying to when they take the witness stand and testify under oath in your presence.

But you should listen to what the lawyers have to say because those statements do serve a purpose. The opening statements serve to provide you with a basic understanding of

what this case is about from both the perspective of the petitioner, that is the State, and the respondent, that is Mr. Hulon, so that you will have some context in which to place the evidence that we will be receiving shortly thereafter.

After the evidence has been received, the lawyers will again have an opportunity to address you in what we call closing arguments or closing statements. Again, those statements are not to be considered by you as evidence, but it does afford the lawyers an opportunity to discuss with you the evidence that you have seen and heard during the trial and through that discussion each will have an opportunity to try to persuade you or to convince you that the evidence in the case does or does not support a particular decision, depending upon the perspective of the lawyer in arguing the case before you.

And it's in between the opening and the closing statements accomplished by the lawyers that we actually receive the evidence upon which you will base your determination of fact and then, ultimately, your decision.

The State, as I have stated, has the burden of proof. They have brought the accusation. They have to establish those allegations to your satisfaction beyond a reasonable doubt. So the State will go forward first in its presentation of evidence. Once the State has concluded, the

defendant has an opportunity or the respondent has an opportunity to call witnesses and to present evidence.

And once all of that evidence has been received, you'll hear the final summations of the lawyers and then I will instruct you fully on the law as it relates to the law applicable to this particular type of action, and then you'll be asked to go back there and begin with your deliberations.

And through that process, you're going to be called upon through the exercise of good judgment and common sense, conscientiously applied to the testimony and evidence in this case, to evaluate the evidence, to determine the credibility and the believability of witness testimony. Your goal is to determine the facts of the matter and, once you determine the facts of the matter, you'll then apply the law that I'll provide you and you will determine whether or not the State has met its burden of proof in establishing that the respondent is a sexually violent predator under the law.

And if the State has met that burden of proof, then they would be entitled to a finding that the respondent is a sexually violent predator. And if the State has failed in that burden of proof, then the respondent would be entitled to a finding that he is not a sexually violent predator.

Now, it's important that you pay careful attention throughout the course of the trial. I'm not certain how many witnesses will be called and you're not always certain what

witness is going to provide the most material and pertinent information, but you've got to give every witness the same degree of attention as they testify because when you go back to deliberate, you're going to have to decide what the facts are based upon the evidence presented, if you can, and in order for you to be in a proper position to do that, you've got to give every witness the same degree of attention as they testify.

Now, that doesn't mean that you've got to give every witness's testimony the same degree of weight because in your determination of the facts, it's your prerogative to decide the credibility and the believability of each witness that testifies.

And so you can accept everything that a witness testified to. You may reject everything that a witness testified to. You may accept some portion of a witness's testimony and reject some other portion of that same witness's testimony.

But in order for you to be in a proper position to evaluate a witness's testimony, you've got to pay attention while they testify so that you can evaluate that witness's testimony in light of not just that witness's own testimony, but in light of all of the testimony and all of the evidence received during the course of the trial.

It's also important that you keep an open mind

throughout the course of the trial, and that just means that you are not to begin making up your minds or formulating your opinions as to what you think the ultimate decision in this case ought to be until all of the evidence has been received, until I have instructed you on the law, and until you've been asked to begin with your deliberations in the case. That is the process that has been designed over the last 240-some odd years to ensure that you can arrive at a fair and just decision in the case.

So I do want to thank you in advance for your participation, as well as for your careful attention. I would ask that you please give the lawyers your attention now as they give you their opening statements.

Mr. Bogle?

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

THE COURT: Yes, sir.

MR. BOGLE: Mr. Falk.

OPENING STATEMENT ON BEHALF OF THE STATE

MR. BOGLE: The judge introduced me the other day. My name is Jim Bogle. I live in Columbia and work in the Attorney General's Office.

People sometimes ask why it's our office doing these cases as opposed to, say, your solicitor or your county attorney, somebody here. And the reason is when the General

Assembly passed this law 20 years ago, they put the job with our office. There's two of us. Christopher Morrow and I have the state divided up. I've got the Fourth Circuit and that's why I'm here as opposed to somebody else.

Now, let me give you an idea what happened and what this is about. When you got your notice for jury duty, you probably told your family and friends, hey, I got pulled for jury duty. I might have to serve on a jury, and they said, well, is it criminal court or civil court, and you said, well, I don't know. I'll find out when I get there. And maybe last night you told them it was civil court and you're thinking, okay, I'm going to hear a case involving an auto wreck or maybe a property dispute or a contract case or a medical malpractice or something like that.

Well, not the case. The Sexually Violent Predator Law is the case we're proceeding under today, and these cases by law are heard in civil court just like this, but I'll talk about the burden of proof in a second and explain why it's a little bit different.

What the General Assembly did -- they passed this law about 20 years ago, 1998 I think is when it got passed, and the point was -- the concern was there's people out there who commit crimes that are classified as sexually violent and the question is do they have some kind of mental condition that makes them likely to do the same types of crimes now that

they get out of prison and can they control that mental condition. If they cannot, then they've got to be confined in a secure place for what they call long-term control, care, and sex offender treatment until such time as it's safe to be at large.

Now, Mr. Hulon is a person that the State believes fits that definition. So at a previous hearing, the Court in this county appointed Dr. Marie Gehle. She is sitting right over there. She's with the Department of Mental Health. They appointed her. The Court appointed her to conduct an evaluation of Mr. Hulon, and here's what she's looking for.

Number one, has he been convicted of a sexually violent crime, a crime classified as sexually violent? There are 16 of them, different crimes.

When you go back to the jury room, you'll have with you copies of the sentencing sheets and the indictments for four different crimes he's been convicted of that are classified as sexually violent. Two of them are called lewd act on a child. One of those involved a boy and one a girl. Two of them are criminal sexual conduct with a child, and it was two minor girls, two young girls involved in those. So you'll have those back in the jury room with you.

So the first thing is has he been convicted of the right kind of crime? He has.

The second question is does he have some kind of mental

disorder? In other words, a mental abnormality or a personality disorder that he cannot control that makes him likely to commit these types of crimes again once he finishes prison?

Now, you have to understand he's done all his prison time. We're done with all that. He served his prison time. Under this law, you have to be confined until we have this trial. So since he got out of prison, he's been sitting in the county jail and now we have the trial today to find out whether or not he should be committed to a secure place for treatment or let go. That is your job.

Now, normally in civil court, if this was an auto wreck case or something like that, you might be asked to decide whether or not the case is true by what they call a preponderance of the evidence. Think of 51 percent.

Well, when the General Assembly passed this law 20 years ago, since the effect of your decision might take away his liberty, they placed a higher burden on the State. We have to prove our case to you beyond a reasonable doubt.

In other words, after hearing all of the evidence, if you're firmly convinced that Mr. Hulon meets the definition of a sexually violent predator, you'll -- you'll give a verdict for the State and he'll be committed. If not, you'll find we don't meet that burden as to the crimes or the mental abnormality or the personality disorder Dr. Gehle is going to

talk about, then you'll find in favor of Mr. Hulon and he'll be let go.

But the burden of proof is beyond a reasonable doubt and the judge will explain to you later exactly what that burden means. So listen to his instructions. He'll tell you what beyond a reasonable doubt means, what you have to find.

Also, in most cases, witnesses can only testify about things they sense with their senses, things they see, things they hear, things that they felt or touched or something like that. Like I heard the gun go off. I saw the man grab the knife. I saw the light turn red. I saw the car speed by. Things like that. They can't give opinions.

Now, there's a difference though. If a person has the training and expertise in a certain scientific area, they can be classified as an expert witness by the judge and be allowed to give an opinion.

And in this case, we have Dr. Gehle over there. She works for the Department of Mental Health. Her job is to evaluate people under this law, and she's done a bunch of them. We will ask the judge to classify her as an expert witness so she can give her opinion to you as to whether or not he fits these criteria and whether or not he should be committed.

Now, because this case involves her making a diagnosis of him, she's got to explain to you how she met that

diagnosis, what the criteria are and what things he did to meet that diagnosis. So because of that, it may be necessary for her to go into some of the underlying details of these crimes.

And this may be bad stuff to hear. I'll just let you know in advance it may not be the kinds of things you want to hear, but it may be necessary for her to explain to you her diagnosis to go into some of the underlying details of what Mr. Hulon did involving these children.

So that's the kind of case it is. Again, like the judge said, keep an open mind, listen to everything and then when you're done, go back in that room and work on a verdict.

And we appreciate very much your service, both to the State and to Marlboro County. Thank you.

Your Honor.

THE COURT: Mr. Falk.

MR. FALK: Did you call me? Oh. I'm sorry.

THE COURT: You're up.

MR. FALK: I misunderstood.

THE COURT: I was talking to the clerk. I'm sorry.

MR. FALK: May it please the Court. Mr. Bogle.

OPENING STATEMENT ON BEHALF OF THE RESPONDENT

MR. FALK: Ladies and gentlemen of the jury, my name is Jim Falk. And just so you've got an idea how I got here, I think I told you at the beginning that I practice in

Charleston, but I also have a -- I also have a contract with the State of South Carolina's Department of Indigent Defense, and so that's why Mr. Hulon is not here with a public defender. I'm kind of like a public defender. I have a contract and I do these sexually violent predator cases. So that's how I got here and drove up from Charleston.

Now, there's no question that this is a difficult case, and it's a difficult case because you're going to hear stuff and you're going to hear stuff that's bad, and it's going to be difficult for you because you're going to have to keep in mind that your job here today is not to punish Mr. Hulon for stuff that he's done in the past.

Your job here today is to decide whether or not you think he has a mental disease or a personality defect and that because of this mental disease or personality defect, it's likely that he's going to commit a crime of sexual violence if he's released.

Now, that's kind of a big statement. I've got to unpack a couple of things from there.

First of all, you have to be sure that it's likely to happen. I mean anything can happen, but you have to be convinced that something is likely to happen and you also have to be convinced that he's not going to commit another crime if he's released but he's going to commit a crime of sexual violence if he's released. So that's why it's going

to depend on the mental diagnosis.

Now, there's no question that you're going to hear bad facts, and I kind of think the State likes you to hear a lot of bad facts so they can sort of get you thinking about all the stuff he's done in the past and maybe get you thinking that maybe he hasn't been punished enough and we really need to put this guy away. He didn't get a strong enough punishment, but again, that's not your job. We're not punishing here today. We're to determine whether or not you think he's got a mental disease and whether or not you think basically whether it's safe for him to be put back in the community.

There's no question my client has got a long criminal record. I'm not going to come up here and tell you that he's a saint. I mean he's -- he's done a lot of stuff for a long time and a lot of stupid stuff, a lot of breaking and enterings and that kind of thing, but his long -- his long criminal record doesn't necessarily include a long criminal record of sexual offenses. He's got a long criminal record of breaking and entering and theft-type charges, but he's not necessarily got a long record for sexual offenses.

Now, I don't know. You know, you get these cases and sometimes you just can't sort of control what else is happening in the world. If some of y'all read the news today or heard the news today, you know that Bill Cosby got

sentenced today and the Court said that he's a sexually violent predator, but there's one thing that I think is important for y'all to keep in mind, why the difference between my client and the Cosby case, if any of y'all were following it.

My client has already been in prison for about 15 years. He's already done his criminal time. Bill Cosby hasn't done any time yet. This is still -- they determined he's a sexual predator and they gave him a criminal sentence at the same time. My client has already done time for his crimes.

And also, one other thing to keep in mind is that he pled guilty to these charges. So there was a plea deal and, you know, you might not think that the sentence was fair, but you have to keep in mind that y'all's solicitor, the Solicitor's Office for Marlboro County, thought the deal was fair. So the 17-year sentence he got -- they were satisfied with it. My client pled guilty to it.

Now, I expect that the judge is going to give you an instruction on the law at the end. Whatever he says the law is is what you need to follow, but I think kind of paraphrasing it, he's going to explain to you that opinions -- that experts are allowed to give their opinion as to facts. Now, I also expect that the judge is going to say though that other than that, you don't treat the testimony of an expert any different than you would any other witness.

Just because they have expertise -- they have expertise and they're allowed to give their opinion, but you don't have to follow that opinion. You may decide that that opinion doesn't make sense to you. You weigh the testimony of the expert as though you would any other -- any other testimony. You can disregard all of it or you can completely follow it, but you don't have to.

And I think that's important because you have to remember the issue today is whether or not he has a mental disease and whether or not there's a risk that he's going to reoffend, but it's your job to make a determination. If -- if you're just going to rely on the State's expert, this whole proceeding would be different. The expert would go and evaluate him, she'd say yes, and make him go in.

But that's not what we want to do here. The State wants you all to make a decision, wants you all to decide does that opinion makes sense, and I think that maybe you're going to find that there are some areas where maybe that opinion doesn't make sense to you because I think you're going to find that she is not going to express an opinion that my client is a pedophile.

I would expect that she's not going to express an opinion that my client is some type of rapist, you know, somebody who enjoys having nonconsensual sex with other women. Those are more typical kind of diagnoses that you

would expect to hear in a case of a sexually violent predator. I don't think those are what the diagnosis that she's going to say.

Then you have to decide, well, is there some kind of relationship between her diagnosis and his risk to reoffend, and I want you also to think about risk to reoffend. My client is 66 years old. His wild days are long behind him, and now it relates to whether he's a risk to reoffend.

Now, your decision today is going to have significant consequences. This is going to be a quick trial. We're going to get done today I would expect.

But your decision today is going to have consequences because it's going to mean where my client is going to go from here on out because if he gets convicted here today, he's not going to some kind of mental hospital. He's going to a secure facility for treatment, and that is a significant difference there. So I mean he's going to stay in that treatment facility until the treatment facility says that he's ready to leave. That's what you have to keep in mind.

So this isn't some kind of -- well, we'll give him a couple more years or something like that. He stays there until the treatment facility says he can leave. That's what the South Carolina law is.

So knowing that this is a serious case, I hope y'all will give some serious consideration. Pay attention to the

witnesses. Question what you hear, if it makes sense to you or if it doesn't make sense to you, but it's really y'all's decision today. It's not the State's expert's decision today. Thank you for your attention.

THE COURT: Mr. Bogle.

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

THE COURT: Yes, sir.

MR. BOGLE: The State would call Dr. Marie Gehle, please.

THE CLERK: Do you solemnly swear or affirm that the testimony you shall give the Court and the jury in this case shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: You can't speak into the microphone because it's not there. So speak up.

THE WITNESS: Okay. Thank you.

DR. MARIE GEHLE, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOGLE:

Q: Good morning, Dr. Gehle.

A: Good morning.

Q: Okay, let's see. Do we have a microphone here or not?

A: There's no microphone.

Q: Okay. Can you hear me good?

A: Excuse me?

Q: If you can talk loud enough where I can hear you, we're good.

THE COURT: Y'all excuse me just a minute. Now, I don't know. I'm not from here so I don't have the slightest idea of why we don't have any microphones, but we don't apparently. So -- but if at any time -- it obviously is extremely important that every juror hear every bit of testimony.

So if at any time for whatever reason you don't hear a question or you don't hear the answer, you raise your hand and we'll be certain that everybody gets to hear everything because you have to decide the facts and you can't do that without hearing all of the testimony. So let me know if you miss anything. Okay?

Mr. Bogle.

MR. BOGLE: Thank you, Your Honor.

BY MR. BOGLE:

Q: All right. Just for the record, would you please state your full name?

A: My name is Marie Gehle, and it's spelled G-e-h-l-e.

Q: And, Dr. Gehle, what is your occupation right now?

A: I'm a clinical psychologist and a psychologist at the

Department of Mental Health. I'm also an assistant professor at the medical school at the University of South Carolina and the Medical College of Georgia.

Q: Okay. The Medical College of Georgia would be in August, Georgia?

A: That's correct.

Q: And USC is the medical school in Columbia; is that right?

A: That's correct.

Q: Okay. How long have you worked in your capacity with the Department of Mental Health?

A: Almost nine years.

Q: And what advanced degrees do you possess?

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

Q: And in what states are you licensed to practice psychology?

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

Q: Now, basically, what is the study of psychology?

A: Psychology is just the scientific study of the mind and behavior. And what I do is clinical psychology, which is applying that science to problems with mental illness, psychiatric problems, abnormal behavior, and we focus in

assessment and treatment of those problems.

Q: Now, Doctor, sometimes in these cases I've heard the phrase forensic psychology. If I'm talking about forensic psychology and using the word forensic with the word psychology, what do we mean?

A: It's applying clinical psychology to questions that the law might have. So we do things like competency to stand trial evaluations, decide if somebody -- or give an opinion to the Court if somebody is not guilty by reason of insanity when they commit a crime. We also do risk assessments for the Court, and we do sexually violent predator evaluations.

Q: Okay.

A: In -- in addition to a lot of other types of evaluations.

Q: So have you had any additional specialized training within the field of forensic psychology beyond your doctorate degree?

A: Yes. I completed a post-doctoral fellowship in forensic psychology, which emphasized forensic evaluations. I did a lot of supervision with people who do these evaluations. I've attended numerous workshops, seminars, conferences about diagnosing people with mental abnormalities and doing sexually violent predator evaluations and sex offender risk assessments. I've also given seminars on those topics, and I've read books and articles and just tons of stuff like that

in this area of research.

Q: Now, let's talk about your job with the Department of Mental Health and cases under the Sexually Violent Predator Law. Have you been called upon before today to do evaluations under that law?

A: Yes.

Q: And about how many people have you evaluated under that law for all different -- all the -- all the different reasons?

A: About 250.

Q: Okay. Now, this is what I call a pre-commitment case. The jury has got to decide whether or not to commit Mr. Hulon. About how many pre-commitment cases have you been ordered by the Court to evaluate a guy on before?

A: I've done about -- it's about 160 or so. It's right around there.

Q: Okay.

A: Some I'm still writing the reports on; so it'll be a little bit higher, but it's --

Q: Okay.

A: I know that I've completed at least 160 evaluations.

Q: And have you been classified or recognized by the circuit courts in South Carolina as an expert witness in the field of sexually violent predator cases?

A: Yes.

Q: About how many times?

A: I think today is my 110th time.

MR. BOGLE: Your Honor, at this time, I'd like to ask the Court if you would recognize Dr. Marie Gehle as an expert witness in the field of forensic psychology for this case.

THE COURT: Any objection?

MR. FALK: No objection.

THE COURT: Any questions?

MR. FALK: No, Your Honor.

THE COURT: She is so qualified.

MR. BOGLE: Thank you, Your Honor.

BY MR. BOGLE:

Q: Now, Dr. Gehle, let's talk about Mr. Hulon. How did you get involved in Mr. Hulon's case?

A: I was appointed by the Marlboro County Court of General Sessions to do the evaluation of him.

Q: Okay. In the Court -- the Court of Common Pleas?

A: Yes.

Q: Civil court?

A: Yes, I'm sorry.

Q: Okay.

A: Court of Common Pleas.

Q: And what type of evaluation were you appointed to do?

A: I was asked to do a pre-commitment evaluation under the Sexually Violent Predator Act.

Q: And by doing a pre-commitment evaluation, what does the Court ask? What does the Court order you to find out? What are you trying to find out about Mr. Hulon?

A: They're asking me to give an opinion as to whether he suffers from a mental abnormality or a personality disorder that makes him likely to engage in acts of sexual violence if he is not confined for long-term control, care, and treatment.

Q: Okay. Could you please tell the jury what your protocol is, your step-by-step method for doing these types of evaluations?

A: Yes. Well, first off, I get a packet of information when I get an order to do an evaluation. So I get a packet of information that I review. I'll request additional information that might be missing, things like police reports or warrants, indictments, things like that.

I interviewed Mr. Hulon at the Department of Mental Health. I had him complete a psychological personality assessment. I scored that personality assessment and scored an actuarial risk assessment.

Then I took all of that information and I summarized the findings into a 57-page report which included my opinions as to whether he had a mental abnormality or personality disorder and whether he was likely to do the -- to commit acts of sexual violence in the future.

Q: Now, you mentioned that as part of this process you interviewed Mr. Hulon in person?

A: Yes.

Q: All right. And just for the record, is the person you interviewed present in the courtroom today?

A: Yes.

Q: Would you identify him just for the record?

A: Yes. He's over there in the checked shirt.

MR. BOGLE: Let the record reflect she's identified Mr. Hulon.

THE COURT: It shall.

MR. BOGLE: Thank you.

BY MR. BOGLE:

Q: Now, Dr. Gehle, when you interviewed him, did you explain the purpose of the evaluation to him?

A: Yes.

Q: Did he sign any consent forms to agree to be evaluated?

A: Yes, he did.

Q: Okay. Now, you mentioned a minute ago information. What type of information do you have in hand as far as documentary information about Mr. Hulon when you do these evaluations?

A: Well, I receive a petition that's filed, which is filed by the Attorney General's Office. That's filed in the courts. I get his criminal history, incident reports, like

police reports.

Q: Okay.

A: I got a SLED investigation report, summaries of interviews by Mr. Hulon, victim statements, and evaluations of the victims.

Victims -- several victims went -- were -- underwent, like, a forensic evaluation. So they were interviewed to determine what happened and then they also underwent medical evaluations. I looked at all the witness statements and then the court documents, which included warrants, indictments, and sentence sheets.

In this case, I also looked at copies of letters that Mr. Hulon wrote to the victim, to her mother, to law enforcement officers, and to members of the community.

I looked at his Department of Corrections records, records from the Department of Probation, Pardon, and Parole Services, and training certificates and things like that that Mr. Hulon provided to me.

Q: Now, is this the type of information that is typically and reasonably relied upon by other experts in your field?

A: Yes.

Q: And did you consider and rely upon this information, together with the interview of Mr. Hulon and whatever scoring or testing you did of him, in rendering an opinion about whether or not he should be committed?

A: Yes.
Q: Can you explain to the jury how a person's past sexual offense behavior relates to future sexual offense behavior?
A: Well, a person's past sexual behavior is the best indicator of their future sexual behavior because what a person is sexually aroused by tends to stay -- tends to be stable over time. So people don't just switch things up midlife. You don't just suddenly become attracted to children or things like that. They're usually consistent over time.
Q: Okay. Now, on page -- it's in the early part of your report around pages 10 or 11. You looked at some early age misconduct or conduct disorder by him. Why is it important to look at things that he did when he was fairly young?
A: Well, it's important to look over the course of his whole life to see, you know, what kinds of stuff he was doing when he was a kid. That can be very important when I'm looking at what a personality disorder he might have.

And one personality disorder in particular is called antisocial personality disorder. That requires that there be some evidence of a conduct disorder prior -- prior to age 15. So I always look at that with everybody I evaluate. I look at what kind of behavior they had as a kid.
Q: Okay. Okay. And in part -- as part of this early age behavior, did you -- and also when you talk about his early

life behavior, his trips to California and things like that, did you find that he tended to brag to you about things?

A: Yes. He did a lot of bragging.

Q: Okay. Examples would be what?

A: Well, he told me that he was best friends with Milton Berle when he was in -- he said he was around 22 or I figured out he was around 22 by just the dates that he told me that he hung around him. And Milton Berle at that time -- you know, he's an actor. I don't know -- I didn't know much about him, but I don't know if you guys do. But he was 46 years older than Mr. Hulon. So I'm not sure if that's true or not, but he made sure that he told me about that.

He said he lived in Beverly Hills, had a really nice life, spent time socializing with Warren Beatty, Olivia Newton-John. He said he was friends with Michael Caine, who is another actor, and his wife, Kathy. So I had to look into some of this stuff, and I found out, like, Michael Caine has never been married to a woman named Kathy. He's been married to a woman named Shakira. I think that's his only wife.

He told me one time he ejaculated seven times when he was having sex with a wife of his. He bragged a lot about his sexual prowess. He said that he and his wife frequently swapped sexual partners with ten other couples. He said that his friends frequently asked him to have sex with their wives. He said that women often wanted to see his penis and

they asked to see his penis; so he would show them his penis.

I also noticed things about him bragging to other people in police reports and stuff like that where he just thought that he was the only one who could get a victim to disclose what would happen and that he could -- she would lie unless he was face-to-face with her and then she wouldn't lie and things like that. There was a lot of bragging.

Q: Okay. Now, you mentioned a minute ago as part of your evaluation you're trying to find out if he's got a mental abnormal -- excuse me -- a mental abnormality or a personality disorder or both; right?

A: That's correct.

Q: Okay. Now, in this case -- in this particular case, what did you diagnose -- we'll go into more detail later, but right now, what did you diagnose Mr. Hulon with?

A: I diagnosed him with antisocial personality disorder and with narcissistic personality disorder.

Q: What are the criteria for someone to be diagnosed with antisocial personality disorder?

A: I'm going to refer to this book just so I can be very accurate.

Q: That book is the *Diagnostic and Statistical Manual, Edition V*?

A: Yes.

Q: And that's the one that lists all the mental illnesses

and personality -- and disorders that people have?

A: Yes.

Q: And it sets forth the criteria that all psychologists and psychiatrists have to follow; is that right?

A: Yes.

Q: Okay.

A: So --

Q: Very briefly though, what are the criteria for antisocial personality disorder?

A: It's a pervasive pattern of disregard for the violation of the rights of others occurring since age 15 as indicated by three or more of the following.

So it's a failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest.

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

Number three, impulsivity or failure to plan ahead.

Four is irritability and aggressiveness as indicated by repeated physical fights or assaults.

Number five is reckless disregard for safety of self and others.

Six is consistent irresponsibility as indicated by repeated failure to sustain consistent work behavior or honor

financial obligations.

Number seven is lack of remorse as indicated by being indifferent to or rationalizing having hurt, mistreated or stolen from others.

You can diagnose this when somebody is 18. You can't diagnose it in somebody under age 18. There has to be evidence of conduct disorder with an onset before age 15 years old and this -- these problems are not occurring during the course of schizophrenia or bipolar disorder.

Q: Okay. And you mentioned as part of what you're looking for includes things that you could be arrested for?

A: Yes.

Q: Okay. So -- and you found conduct prior to age 15; is that correct?

A: Yes.

Q: Okay. Now, so as I understand what you said then, you had to look at his entire criminal history; is that right?

A: That's correct.

Q: Okay. Does that include charges that might've been dismissed or nolle prossed by the Solicitor's Office?

A: Yes.

Q: Okay. And charges where he was convicted or found guilty in some way, shape or form?

A: Yes.

Q: Either by pleading guilty or by a jury; right?

A: Yes.

Q: Why is it necessary? I think you just told us, but why is it necessary to look at charges that might have been dismissed or nolle prossed or done away with? Why are those important?

A: Well, it's necessary to look at the timeline kind of of his whole life. Times that he was involved with the criminal justice system, what types of charges he had, how much time he spent in prison versus how much time he spent in the community, how much time elapsed between criminal charges, how much time he spent in prison overall, how much time elapsed from the time he was released from prison until he -- his next arrest. It's important to just look at that whole timeline.

But also, it's very important for me to have knowledge of this stuff because I asked him about everything that I saw in his criminal history. I asked him about it in the interview so that I could get his perspective on things and look at whether he has that criminal thinking, how he justifies his behavior, whether he takes responsibility, whether he denies committing offenses, things like that. It helps me assess his attitudes.

Q: Okay. Now, I think in your report where you talked about his personal life, you found that he dropped out of school around the eighth grade or so?

A: Yes.

Q: And later in prison got his GED?

A: I believe so, yes.

Q: So at the time that he was supposedly out in Hollywood hanging out with all these stars, he was a guy with an eighth-grade education?

A: Yes.

Q: Okay. Now, let's go back to the present though.

You talked about the criteria for antisocial personality disorder and what you have to look at. Now, as far as looking at these crimes, these convictions, these charges that didn't result in convictions, and things like that, is this something done by other experts in your field when you're diagnosing this type of personality disorder?

A: It's something that -- that's done when we do these cases overall.

Q: Okay.

A: But it's -- it's important when we're diagnosing personality disorders --

Q: Is this something --

A: -- to see the lifelong patterns.

Q: Okay. I apologize. Is this something then that you rely upon as part of the basis of your opinion?

A: Yes.

Q: Okay. Now, now going back to his criminal history, we

have a burglary in 19 -- what? -- '71?

A: Yes. Let me catch up here.

Q: Yeah. I'm starting on about page 20 of your report.

A: Yeah. He -- he was convicted of burglary, housebreaking, and he received two years in prison.

Q: Okay. And that was in about '71 or so?

A: Yep.

Q: And then after that, what was the next one?

A: In 1973, he was convicted of assault and battery of a high and aggravated nature, and he served a two-year sentence.

Q: That involved shooting somebody?

A: Yes, it did.

Q: Okay. What was the one after that?

A: His next charges were for vehicle theft, larceny, and assault and battery with intent to kill. That was in 1977, and he was convicted of larceny and given three years of incarceration, suspended to one year of incarceration and three years of probation.

Q: Okay. And the next one after that?

A: That would be in 1980. He was arrested on a fugitive warrant, apparently for a burglary that happened here and he was arrested in Florida.

Q: In Florida? Okay.

A: Yes.

Q: And in 1981, we have an assault on a female in North Carolina?

A: Yes.

Q: Okay. And then he escaped --

A: Yes.

Q: -- prison?

A: He escaped from that charge.

Q: And we have the conviction for escape in 1981 --

A: That --

Q: -- on page 22?

A: Yes, that's correct.

Q: A marijuana charge in North Carolina in 1981?

A: Yes.

Q: A housebreaking and grand larceny in 1983 that was dismissed?

A: Yes.

Q: Okay. So it's important to look at things even if they got dismissed because you're -- under that diagnosis, you're looking for crimes that he could've been charged with; is that correct?

A: Yeah. I'm looking at, like, what kind of behavior does he engage in, like, that could become --

Q: Okay.

A: He could get detected for. I don't look at things that got dismissed as that they happened, but I know that the

legal intervention happened. He was charged.

Q: Uh-huh.

A: He might've been put in jail. He might not have been convicted; so it's weighted differently, but it's still important to look at, you know, how he was in and out, in and out of jail and in and out of trouble.

Q: Okay. And then we have a 1983 where he enters SCDC, the Department of Corrections, for a housebreaking and larceny?

A: Yes, for five years.

Q: And then an escape the same year and then he's charged -- in 1992, he was charged with receiving stolen goods?

MR. FALK: Objection, Your Honor, as to relevance.

THE COURT: Let me see y'all just a minute.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury off the record, after which the proceedings resumed as follows.)

THE COURT: I'll overrule the objection.

BY MR. BOGLE:

Q: So I think we were up to page -- 1983 around page 23 of your report where he enters the Department of Corrections for a housebreaking and a grand larceny charge?

A: Yes. He entered then to the prison on two consecutive terms of five years, so that would be a total of 10 years of incarceration in 1983.

Q: And there was an escape from SCDC after that?

A: Yes. About six months after -- or five months or so after he was put in SCDC, he escaped the facility in Dillon County.

Q: Okay.

A: And he was -- he was picked up, I think, just a couple days later.

Q: And then in 1992, we have a receiving stolen goods charge?

A: Yes. That's correct.

Q: And then in 1994 convicted of a gun charge?

A: Yes.

Q: And then after that, we have a 1994 conviction for grand larceny?

A: Yes.

Q: Okay. And then on page 24, you reference a peeping Tom charge in 1994?

A: Yes.

Q: Okay. I guess by definition is a peeping Tom charge sexual in nature usually?

A: A peeping Tom is a sexual offense, yes.

Q: Okay.

A: It's not a sexually violent offense, but it's a sexual offense.

Q: So of the 16 or so crimes listed in this law that are called sexually violent, peeping Tom is not one of them, is

it?

A: That's correct.

Q: Okay. But it's sexual?

A: It's sexual, yes.

Q: Okay. And is that of concern to you? Looking over this criminal history as it progressed, suddenly we have something sexual?

A: Yes. It's -- it's important because it's considered when I score an actuarial risk assessment to determine if he's going to commit acts of sexual violence, and this is a sex offense for the purposes of scoring that. So it's really relevant there.

Q: Okay. And we go to 1995, a marijuana conviction?

A: Yes.

Q: And on page 25, his probation being revoked. When a guy's probation gets revoked, is that of significance in these types of evaluations?

A: Yes.

Q: Why is that?

A: Well, violating the terms of probation and community supervision and things like that, that is a risk factor for committing future sexual offenses. So it's really important to see how somebody acts when they know they're under supervision. When there's a big incentive, something big hanging over their head, they know that they'll be sent back

to prison or they're likely to be sent back to prison if -- if they mess up.

Q: Okay.

A: So it's -- it's a big deal. It's just a violation of the rules.

Q: Okay. Then we have -- on page 25, you reference a 1997 grand larceny in Marlboro County?

A: Yes.

Q: Okay. Now we go to 1997, a charge of CSC in the first degree and a guilty plea to lewd act?

A: Yes.

Q: Okay. I'd like to show you what's been marked as State's Exhibit Number 1.

MR. BOGLE: May I approach, Your Honor?

THE COURT: You may.

BY MR. BOGLE:

Q: This is a certified copy from the Clerk of Court's Office here of Indictment Number 98-GS-34-139, a sentencing sheet and indictment for lewd act on a minor where he was convicted of that. Is that a set a documents you've seen as part of your investigation of this case?

A: I've seen copies of this, yes.

Q: Okay. We've got the sentencing sheet and the indictment?

A: Yes.

Q: What was the original charge on the indictment?
A: It was criminal sexual conduct with a minor in the second degree.
Q: Okay.
A: What we call CSC.
Q: Okay. And what was he convicted of? Lewd act?
A: He was convicted of lewd act upon a minor.
Q: And what was the date of that conviction in the lower right-hand corner?
A: The date of the conviction is February 16th, 2000.
Q: Here in Marlboro County?
A: Yes.
Q: Okay. And the sentence he got for that?
A: He received 10 years of incarceration and five years of probation.
Q: Okay. Was it 10 years --
A: So the balance -- the balance was suspended.
Q: So suspended to five years' probation?
A: Yes. Sorry. He was -- he was sentenced to 10 years of incarceration and they suspended that for five years of probation.
Q: Okay.
MR. BOGLE: So we would move at this time --
BY MR. BOGLE:
Q: Now, is lewd act on a minor, the charge he was convicted

of here -- is this one of the sexually violent crimes listed in the statute?

A: Yes, it is.

MR. BOGLE: Your Honor, at this time, we would move to introduce into evidence State's Exhibit 1.

MR. FALK: No objection.

THE COURT: It's admitted.

(WHEREUPON, State's Exhibit Number 1, indictment and sentencing sheet from 2/16/2000, was admitted into evidence.)

BY MR. BOGLE:

Q: Now, Doctor, is it necessary -- now, when I'm talking about these crimes he's been convicted of, like I said a moment ago, I asked you if you'd seen it before and are these the types of documents you look at in these types of evaluations?

A: Yes.

Q: Okay. And are they part of the basis -- are they the types of documents typically reviewed by experts in your field?

A: Yes.

Q: And are they the types of documents that are part of the basis for your opinion?

A: Yes.

Q: Is it also necessary to explain the underlying facts

that led to that conviction? In other words, what happened involving that child?

A: Yes.

Q: Okay. Would you please explain to the jury briefly what the underlying facts were involving that led up to this conviction for lewd act? It happened I think in 1997, convicted in 2000. What happened there?

A: Yes. So this was a 14-year-old girl who was forced to have sexual intercourse with Mr. Hulon in a shed in McColl. He threatened to hurt her if she did not comply with what he wanted.

Q: And her initials are --

A: And I believe that she was his niece.

Q: And her initials are Minor 3?

A: Yes.

Q: She was his niece? That was the connection?

A: Yes.

Q: Okay. Did he say anything to you or the police that you found -- any comments about her that you found significant about this crime?

A: He said that he was falsely blamed for the offense because the girl, Minor 3 actually had sex with his son and that he got blamed. He said that he didn't have sex with her, but that -- well, he said he never put his hands on her, but then he did tell me I pinched her titty a couple times and he said

-- but, hell, my brother did that all the time. So he admitted that he, I guess, fondled her in some manner.

Q: Okay.

A: Although he was convicted of more than that.

Q: But this crime here, this lewd act on a minor, that was a guilty plea; correct?

A: That's correct.

Q: Okay. Did he make a comment about men, how men are supposed to be perceived in these types of relations? Look on page 26 of your report.

A: Yeah. Well, when he was telling me this story, he said that -- that back then, women didn't have many rights and that men were a dominant force and nobody cared really what happened to women, and he said that the election of Donald Trump sort of changed his perspective on that because he wondered why he didn't get charged with sexual assault and people in the past just wanted to keep these things quiet and didn't want to report it and even if it was a -- if you were a victim of sexual assault, it would make your family look bad.

So he indicated that he didn't -- he didn't believe that to be the case anymore. That this was a cultural tendency that was not good or helpful or it was wrong.

Q: But according to this sentencing sheet and this indictment, this crime happened back in 1997?

A: That's correct.

Q: Okay. So that's, like, 21 years ago?

A: Yes.

Q: Okay. Now, the next thing after this, we have a receiving stolen goods where he enters the Department of Corrections. That's on page 26 of your report?

A: Yes. That was in 1998.

Q: Then in 2001, a breach of trust crime?

A: That's correct.

Q: 2002, an arrest for larceny?

A: Yes.

Q: Now, then we begin -- on page 27 of your report, we begin an investigation involving two girls, one known as Minor 1, her initials, and the other as Minor 2?

A: Yes.

Q: Could you tell the Court -- let me first approach you and I'm going to show you what's been pre-marked as Exhibit Number 2. It's the sentencing sheet and the indictment, Number 03-GS-34-72, State versus Donald Hulon, a sentencing -- a conviction for criminal sexual conduct with a minor in the first degree. Is this a document, this sentencing sheet and this indictment, these certified copies here, that you've seen copies of?

A: Yes.

Q: Okay.

A: I've seen copies of those, yes.

Q: And that involved a victim?

A: [Minor 2].

Q: That is [Minor 2]?

A: Yes.

Q: Okay. She would have -- so for it to be criminal sexual conduct in the first degree, she had to be under 11 or about 11; right?

A: She had to be under age 11, yes.

Q: Okay. Now, what's been pre-marked Exhibit Number 3 is another sentencing sheet and an indictment, Number 2003-GS-34-73, for criminal sexual conduct with a minor in the second degree. Have you seen these documents?

A: Yes.

Q: Okay. And this is another little girl between 11 and 14 for it to be second degree; correct?

A: That's correct.

Q: And what initials would this girl be?

A: [Minor 1].

Q: [Minor 1]? [Minor 2] and [Minor 1]?

A: Yes.

Q: Okay.

A: They're sisters. I just used their initials to maintain their privacy.

Q: Okay. And both these convictions happened here in

Marlboro County?

A: Yes.

Q: And the date of the convictions would be down at the lower left-hand -- right-hand corner?

A: October 13th, 2004.

Q: And how much time did he get for these?

A: For the criminal sexual conduct with a minor in the first degree, he received 17 years. For the criminal sexual conduct with a minor in the second degree, he received 17 years.

Q: Okay. And these are both Marlboro County?

A: That's correct.

Q: And these are the kind of records you look in the course of this evaluation?

A: Yes.

Q: And did you rely upon these convictions, along with the other stuff we've talked about, in forming your opinion about Mr. Hulon?

A: Yes.

Q: Okay.

MR. BOGLE: We'd move to introduce Exhibits Numbers 2 and 3 into the record, Your Honor.

MR. FALK: No objection.

THE COURT: They're admitted.

(WHEREUPON, State's Exhibit Number 2, indictment and

sentencing sheet from 10/13/04, and State's Exhibit Number 3, indictment and sentencing sheet from 10/13/04, were admitted into evidence.)

BY MR. BOGLE:

Q: Now, you looked at the documents -- excuse me. You looked at the underlying documents relating to these cases. What is the significant stuff, the underlying facts that you found about these two girls? This is -- this is Minor 1 and Minor 2. What did you find significant about what was going on here between Mr. Hulon and these girls or between Mr. Hulon and other people with these girls?

A: Okay. Well, this -- this was an incredibly complicated case. There were a lot of people involved. So I'm going to hope that I can hit all the highlights, but Minor 1 was the primary victim and she was 12 years old. Mr. Hulon had sex with her, forced her to perform oral sex on him, and then he also had arranged for her to have sex with other adult men.

But at the beginning of this he -- he repeatedly told her that he needed to touch her body and that he wanted to touch her body in order to get her body to develop. So he said things like, you know, your breasts won't grow until you let me touch them and then no boys will like you until your breasts grow or, you know, your buttocks won't spread until you let me touch them and then the boys will like you when that happens, but before then, they won't.

So he repeatedly told her things like that. He asked if he could fondle her breasts, rub his penis on her genitals, have anal sex, have vaginal sex, asked her to perform oral sex on him. He asked her and her sister to perform oral sex on him simultaneously and then he forced that to happen. He masturbated and ejaculated in front of both girls.

He cursed at Minor 1 and berated her, called her names, things like that when she was unwilling to do what he wanted sexually. He told her that if she ever told anyone, that people would hate her and that people would look down on her.

When she was 12 at one point, he -- he forced her to have sex with him and then he reportedly forced her to have sex with three different teenage boys to cover up the fact that he'd had sex with her. So the reasoning was I won't get caught. We can explain it that you've had sex with teenage boys if anything happens and a doctor discovers that, you know, there's evidence that you've had sex, you know, and she's 12. So he was thinking we can blame it on these teenage boys and I won't get in trouble. So have sex with these guys.

Q: This is all happening about 2002; is that right?

A: Yes.

Q: And if he was born in 1951, he's going to be about 50 years old?

A: Yes.

Q: Okay. More or less?
A: And she was 12, yes.
Q: Okay. Go ahead. Go ahead then. What else?
A: He did a lot of emotional manipulation of her. I mean he tried to treat her well at times. So it vacillated from berating her, calling her names, treating her that she was ungrateful to buying her things, treating the family nice, doing things like that, which are really classic grooming signs of somebody.
Q: When you say grooming, what does grooming mean in the context of this type of action by a man 50 years old and a girl who is 12 or 13?
A: Well, grooming is how you create trust and opportunity with the family and with the victim and how you kind of create the environment where a person will do what you've asked. So oftentimes, you know, you'll be extra nice to somebody, buy them things, like, make them like you, make them feel like they can trust you, and then move on to the next phase of --
Q: Okay.
A: -- sexual abuse.
Q: Go ahead.
A: When -- when there was a fear that [redacted], who was 10 years old -- a 10-year-old girl and she is [redacted]'s sister. There was a worry that she might know what was going on between them,

between Minor 1 and Mr. Hulon. And so he pulled her into the sexual abuse. He forced her to perform oral sex on him simultaneously with her sister. He touched her breasts, buttocks, vagina, masturbated and ejaculated in front of her, and showed her a picture of a woman performing oral sex on him.

Q: Now, after he was -- now, in some cases, we have him writing letters to SLED agents or to police officers about this -- about these -- about this conduct?

A: After he was charged.

Q: After he was charged? Okay.

A: Yes.

Q: Now, what about involvement with other men and Minor 1 and how that connected with Mr. Hulon and how the authorities found out about this?

A: Well, at a certain point in the abuse, Mr. Hulon arranged for Minor 1 to have sex with about eight different men in the community. Those are the ones that he reported. It was about eight different men.

Q: And the age of these men are anywhere from 30 to 70 basically?

A: Twenty to 73.

Q: Okay. Okay. These are men in the community?

A: These are men in the community.

Q: Okay.

A: Friends of his who he ran into and he would say to them, like, hey, I have this 12-year-old girl who I can get to do anything I want. Do you want to have sex with her? You know, things like that.

Q: Okay. Would he watch it --

A: Yeah.

Q: -- when they did it?

A: He would arrange -- in the majority of the cases, he would arrange for the men to come to his tent. He was living in a tent in the backyard of a friend's house. He would arrange for the men to come to the tent and he would arrange for Minor 1 to be there and to have sex with the men while he stood watch or while he watched the sex.

Q: Did a lot of his disclosure of this type of conduct between these other men, these men that he set up, did that all come out after he'd been convicted or after he'd been arrested?

A: Yes. While he was in jail, he was writing letters to law enforcement and, at one point in the investigation, the investigation got to be so big and there were so many people involved that they invited SLED to come help. SLED is the South -- South Carolina Law Enforcement Division. So it's a state-wide agency.

He was writing letters to the SLED agent and to the chief of police asking for them to sit down with him so that

he could tell the full story because initially [redacted] didn't -- didn't disclose that she'd had sex with all these other men. She didn't disclose that at first.

So he was asking -- like, I'll tell you everything. Like, nobody knows it but me. I'll tell you. And he didn't -- he wrote letters indicating that he didn't think that these people really wanted to find out the truth because they hadn't come sat down to talk to him, but after he was convicted, after he pled guilty, they did sit down and talk with him. The SLED agent and I believe a police officer was there.

Q: So after he pled guilty of the crimes I've already handed up to you, he then has this big talk. Now, let me stop you for a second and go back a little bit and ask you about something else?

A: Yes.

Q: One of the -- you mentioned two diagnoses you came up with on this guy?

A: Yes.

Q: Mr. Hulon. One was antisocial personality disorder. The other was narcissistic personality disorder. What is the meaning of narcissistic personality disorder? What do you have to have to have that?

A: So narcissistic personality disorder is a pattern of grandiosity, a need for admiration, and a lack of empathy.

Q: Okay. And what are you seeing him do? We already have the bragging about his Hollywood exploits and things like that. What are you seeing as far as further evidence of him being so narcissistic, thinking the world of himself, and the other conduct you're seeing happen?

You've already talked about the Hollywood things, about his bragging about his sexual prowess and that sort of thing, but now in the context of this conduct with Minor 1 and these other men, what are you seeing as evidence of this narcissistic personality?

A: Well, that bragging is evidence of grandiosity and the need for admiration.

Q: Uh-huh.

A: With his offenses, that really is also playing to his need for admiration, exaggerating his achievements, even when his achievements were criminal in nature. So he just did a lot of bragging, even though it was very detrimental to him. It didn't make him look good, but it's his need to be admired, even if that's for being a good criminal.

He wants to have a lot of power and he wants to display that I got all these people to do this stuff, even though they knew she was 12 years old. So that's part of that power and admiration, grandiosity. I'm special. I can get anybody to do anything I want.

Q: Okay. So in the context of him disclosing all this

stuff about all these other men, that he got them to come have sexual activity with [Minor 1], he's disclosing all this to the police after he's been convicted and that's part of the grandiosity or bragging about his abilities?

A: Yes.

Q: Okay. Please continue.

A: It was also -- it was that and also it was a lot of attention for him, which is something that he really likes.

Q: Okay.

A: It makes him look very popular. He gets attention. It plays right into it.

Q: Now, you talked to him about these crimes against [Minor 1] and [Minor 2]. What's he telling you about these?

A: With [Minor 1] -- well, he denied everything with [Minor 2].

Q: Okay. Even though he pled guilty?

A: Even though he pled guilty, yes.

Q: Okay.

A: With [Minor 1], he said she was a whore. I mean that was the word that he used. He said it wasn't great to call a 12-year-old a whore, but what else could she be if she was having sex with all these men.

Q: Now, there never was any indication in your report or the other stuff that you -- the stuff in your report about [Minor 1] charging money for this?

A: No.

Q: It was all set up by Mr. Hulon; right?

A: Yeah. I don't believe that there was money exchanged. There was one account where there was money exchanged around the time that the guy went into the tent to have sex with [redacted], but it was because there was a plan to breed their dogs and that guy paid Mr. Hulon to breed the dog.

Q: Okay.

A: It was $50, but it was my understanding that this wasn't like prostitution. It wasn't that. He actually told SLED agents that -- that the reason that he had sex with [redacted] was because he was mad at her mom.

He was mad at her mom because he had been living in a shed on their property. He was friendly with the family. He didn't think that [redacted] and [redacted]'s parents were good parents. He thought that they depended on him too much, but what he said really it was was that her parents had ruined their credit at the video store.

I know you're pretty young, so we used to rent videos at video stores and we don't do that anymore, but you'd go there if you were -- you'd rent them for a day or two and if you were late, you'd get fees and those fees could rack up pretty good.

So when -- when they were renting -- when her parents were renting videos at the video store, they were failing to return the videos on time. They had a lot of fees and they

ruined their account. They couldn't rent videos under their account anymore.

And so he allowed them to use his account, but they engaged in the same type of things. Didn't return the videos on time, failed to pay the fees, and they ruined his credit at the video store. He said that was the reason that he began having sex with [redacted].

Q: Because his credit with the video store had been ruined?

A: Yes.

Q: Okay. And that led to him having a sexual relationship with a 12-year-old girl and getting all the other men involved?

A: Well, he said that that was actually for a different reason.

Q: Okay.

A: Apparently, they -- he had kind of a falling out with [redacted]'s parents, with her mom in particular.

Q: Uh-huh.

A: And she kicked him out of the shed. He moved into a tent in a house across the street, in the back yard of that house, and when -- when that happened, I don't know exactly what happened, but she filed a restraining order against him and he said that that was the reason that he arranged for [redacted] to have sex with these men in the neighborhood. It was retaliation. It was in order to get back at her.

Q: Okay. And we're talking six or seven men and you said the ages were from the 30s to the 70s?

A: It was about -- yeah. About eight engaging in sexual acts, yeah.

Q: Okay. Now, we have the convictions which I've already put in evidence right here regarding [redacted] and [redacted]. These were guilty pleas; is that correct?

A: That's correct.

Q: Okay. Now, I'd like to show you Exhibit Number 4, which was pre-marked as Exhibit Number 4, Indictment 2004-GS-34-1158, an indictment and a sentencing sheet for lewd act on a minor. Is this a document you would've seen in the course of your investigation? That's a certified copy. Did you look at copies of that?

A: Yeah. I looked at copies of this, yes.

Q: Okay. And is that the type of thing you look at in these types of cases?

A: Yes.

Q: And is it things like this you rely upon in making your decision or your recommendation or an opinion about Mr. Hulon?

A: Yes.

Q: Okay.

MR. BOGLE: Now, I'd move to introduce this conviction for lewd act in Marlboro County, October 13th, 2004.

BY MR. BOGLE:

Q: Is that the sentencing date?

A: That's correct.

MR. BOGLE: I'd move to introduce State's Number 4 into evidence, Your Honor.

MR. FALK: No objection.

THE COURT: It's admitted.

(WHEREUPON, State's Exhibit Number 4, indictment and sentencing sheet from 10/13/04, was admitted into evidence.)

BY MR. BOGLE:

Q: Now, before we go into that case, let me ask you this.

Is there any -- is there any other information you feel significant about the [redacted] and [redacted] interactions, things that he said to you about these girls? You've already explained his so-called justification, bad credit at the video store and a restraining order from the mother and things like that. Anything else about these two girls that you feel significant that this jury should know about his conduct with them?

A: Yes. There's a couple things.

There was a guy that lived next -- or the guy who lived across the street from [redacted] and [redacted]. He allowed Mr. Hulon to live in his backyard in a tent, and Mr. Hulon believed that that guy had witnessed [redacted] coming to his tent and may be suspicious that he was having sex with her or something along

those lines.

So he arranged for Minor 1 to go into this guy's house and undress and they forced that guy to fondle her. Minor 1 told him if you don't touch me, then I'm going to just tell my mom that you did. So he did it, but he felt coerced to do it. That was so this guy couldn't say anything that he knew because now he was implicated in it.

Another big part of the story was that Mr. Hulon knew that Minor 1 had a crush on a man. It was a man who actually had a daughter around her age. So I think he was in his late 30s or so. And she thought that this guy was nice to her and he said kind things to her. So she -- she had a crush on him and she had once said that she would do anything for this man.

So Mr. Hulon arranged for another man to write letters to Minor 1 and pretend to be the guy that she had the crush on. That guy didn't know anything about it, but in those letters, Minor 1 was told to have sex with all these men in order to prepare for the sexual relationship she was going to have with the guy that she had the crush on.

So he told -- he told her in those letters that -- that Mr. Hulon dictated, you know, have sex like this, get freaky, do things like that because then our relationship is going to be better in the future. And he also -- he also told her to, like, report back what you do. I want to hear about it.

Things like that. So he had those letters delivered to [Minor 1] and --

Q: So Mr. Hulon is dictating the letters?

A: Yes.

Q: For this other guy to write?

A: Yes.

Q: That are supposedly from another guy?

A: Yes.

Q: Who knows nothing about them?

A: Very complicated.

Q: And [Minor 1] just likes him a lot. She thinks he's a nice guy?

A: Yes.

Q: Okay.

A: Mr. Hulon also took about ten Polaroids is what he reported of [Minor 1] having sex with a man, and he showed it to some people.

Q: Would he watch a lot of these sexual encounters?

A: Yes.

Q: When the men came over that he solicited to have sex with [Minor 1], he'd watch it?

A: Yes.

Q: And told the police about it, again, after his convictions?

A: Yes.

Q: What's your take on that, Doctor? You've investigated a lot of these cases. You're looking at this guy. You're interviewing him. You're looking at it. He's already been convicted. He's looking at 17 years or so and yet he's going to come forward and tell about all these sexual experiences he arranged for these men to have with this 12-year-old girl. What's going on here?

A: I mean I took it to be his narcissism. I mean to make sure that he thought that he was the most important thing, most important person in this investigation. He -- he wrote letters to all kinds of people saying that he was the only one who could get [Minor 1] to tell the truth and that he was the only one who had the full story and if they really wanted all the information, they had to come through him.

He told -- he wrote letters to [Minor 1]'s mom and said she's not telling you everything and the only way she will ever tell you anything is if I'm face-to-face with her. If -- she knows to not talk about it at all until I'm -- I allow her to do so.

So I think part of that is just grandiosity, his specialness, his narcissism playing out. And then it's also his personality disorder, just with his antisocial personality disorder, having -- having really embedded criminal thinking and not really getting that the things that he's saying, the reasoning that he has for these offenses,

like, is very appalling to the average person.

To him, this stuff makes complete sense. It was completely justified. This is what [redacted]'s mom deserved. He said that [redacted] wasn't even very harmed by this stuff. She had good grades and she had a good life and that she offered to be his first piece of ass when he got out of prison. Those were the words that he used. So he continues to justify that what I did wasn't a big deal, really no harm came from it, and it's okay.

Q: And are these things consistent with your diagnosis of narcissistic personality? It's all about me type of diagnosis?

A: And antisocial personality.

Q: And antisocial?

A: Yes.

Q: Now, in a lot of these cases that we've done before involving minor children, you also look -- and you did. Did you also look here for the existence of a mental abnormality? We've talked about personality disorders, narcissistic disorders. We got to those. Do you also look for a mental abnormality in a case like this?

A: Yes.

Q: Okay. For example, because the age of these girls was fairly young, did you look to see whether or not he fit the criteria to be a pedophile?

A: Yes.

Q: Okay. And were you able to find that?

A: Well, I reviewed that. So a pedophile is somebody who is sexually attracted to prepubescent children. So that's a child who doesn't have any breast development, no pubic hair development. It's a child that is usually under age 12. So anytime I have a victim who is under age 12 or 13, I'm looking to see if they're a pedophile.

Q: The kind that has to last for at least six months; right?

A: Yes. Yes.

Q: Okay.

A: A pattern of that behavior, that arousal for at least six months.

Q: Okay.

A: In this case, there were medical examinations of [redacted] and of [redacted]. And although [redacted] was 12, she was sexually developed and she was sexually developed at a stage four, which is -- one is no sexual development and then stage five is adult-level sexual development. She was at a stage four. So she had breasts and pubic hair.

Q: Okay. It's true that these -- it's a fact in your work you've discovered a lot of young girls develop quicker than they used to, say 20 or 30 years ago?

A: Yes, that's true.

Q: Right?
A: Yes.
Q: And that happened here?
A: Yes.
Q: Okay.
A: And [minor] also -- she was at a sexual development stage three. So she was also -- she had -- she was in the throes of puberty.
Q: Okay.
A: But she had breast development and likely pubic hair development.
Q: So that ruled out pedophilia?
A: That's correct.
Q: Okay. So we didn't have a mental abnormality like pedophilic disorder. Instead we've got personality disorders, two of them; is that right?
A: Yes.
Q: Okay. Now, you talked about his future plans, what he plans to do to not reoffend?
A: Yes.
Q: Okay. What were the --
A: And I don't want to forget the one offense that we haven't talked about yet.
Q: Oh, I'm sorry. I'm sorry.
A: Yes.

Q: I was about to hand it up to you. Okay.

A: Yeah.

Q: You've got it in front of you. Let's talk about --

A: I don't think I have it. I think you took it. I don't see it.

Q: I did. I did. Number 4. It's been introduced into evidence. Let's talk about this.

A: Okay.

Q: What's the crime he was convicted of? I apologize for not --

A: So he was convicted of lewd act upon a minor.

Q: Okay. And the original charge on the indictment -- was it the same thing or something different?

A: It was committing or attempting a lewd act upon a minor, and this was by a direct indictment, I believe.

Q: Okay. So when was he sentenced on that case?

A: October 13th, 2004.

Q: Same date as the other two?

A: Yes.

Q: All right.

A: I think he was originally charged with criminal sexual conduct --

Q: Okay.

A: -- in that case.

Q: Who was the -- what was the -- was the victim in that

case a boy or girl?

A: A boy.

Q: How old?

A: Thirteen.

Q: Okay. And what type of underlying details about his conduct with that little boy did you find significant in reaching your evaluation about Mr. Hulon?

A: Well, this boy reported that -- that Mr. Hulon offered to give him a bicycle. Mr. Hulon fixed bicycles and gave them to kids in the community, but he said he would give him the bike if he had sex with him. And then the boy reported that he had sex twice with Mr. Hulon against his will. He was forced to do so. And he was convicted of a lewd act in relation to that.

Q: Now again, this little boy is about -- what? Fourteen?

A: Yeah.

Q: Okay.

A: Around there, 14, 13.

Q: So again, we haven't got pedophilic disorder because he's not prepubescent; is that right?

A: Correct.

Q: Okay. But it's consistent with the antisocial personality because it's another violation of the law?

A: It's a violation of the law. It's a violation of the -- the rights of others. It's -- it's part of sort of an

indiscriminate offending which is part of a personality disorder.

Q: Yeah. Because so far, it's --

A: I can get what I want.

Q: So far it's been girls and now it's a boy?

A: Yes.

Q: That he's offending against. What do you -- do you find that significant that suddenly he's -- he's versus girls and now it's a boy? Having a male victim?

A: To me, it makes sense in relation to his personality disorder. When I talked to him about his sexual history, he -- he described being very hypersexual. He said that he would -- had over a thousand sexual partners. He said that he frequently had sex with four women a day. He swapped partners. He often had sex with two or three women a day. He had seven orgasms in one day with his wife. Stuff like that.

This is part of hypersexual. It doesn't really matter who the target is. I get what I want. I'm entitled to it and I'm going to take it and it doesn't really matter if it's a male or female. That's how I took it.

Q: What was the connection between this little boy and Mr. Hulon? Just the bicycle connection? Fixing the bicycles?

A: It was a boy in the neighborhood.

Q: Okay. Was he related to him in any way, shape or form?

A: Not that I know of.

Q: Okay. Is there anything else you have then about this sexual offense or the other ones you've talked about that you haven't yet covered that you think the jury needs to know or have we covered everything?

A: I think that we've covered most everything.

Q: Let me have Number 4.

Now, let's talk about -- did you talk about him -- about his future plans and how he might try to avoid sex offending in the future?

A: Yes.

Q: Look around page -- and what are his future plans? What does he think is going to happen? I'm looking -- there's some stuff on page 18 of your report. What are his future plans and how is he going to avoid sexual offending in the future?

A: Well, he didn't have very solid plans, I would say. He said that he just planned to live in McColl, live out in the country, raise chickens, raise hogs, go fishing. He said that he had a friend who would allow him to live in a mobile home for low rent and that he had a family member who was looking at getting a million dollar -- millions of dollars in a lawsuit in a settlement and he believed that he would benefit from that lawsuit.

He said that he had no sexual needs but that he might

get a wife so that she could cook and clean, but she had to be a wife that would fish. He didn't quite say wife. I think he said a lady and then he said that he would be on community supervision for a period of time.

Q: Okay. Did he express any interest in getting sex offender treatment if he gets -- if he's out there in the community?

A: No.

Q: In the course of your investigation, do you look at whether or not a person has had disciplinary infractions or disciplinary problems while they were in prison?

A: I do.

Q: Okay. And looking ahead at page 47 of your report, did Mr. Hulon have a prison disciplinary history?

A: Yes.

Q: Okay. Was it significant? Now, why is that important? When you're doing these types of evaluations, why is it important to look at a person's disciplinary infractions when they get in trouble while they are in prison? Why is that important?

A: I just want to see, like, how are they acting when they're in a very secure, monitored environment. Can they follow the rules when there's a lot of structure? Because some people who have trouble following rules on the outside will do well in prison because it's very structured and

regimented. So I wanted to see did he have problems like that and did he have any problems with his sexual behavior.

Q: Did you find any disciplinary problems he had in prison significant in developing your report?

MR. FALK: Your Honor, could I reserve my earlier objection?

THE COURT: You may.

BY MR. BOGLE:

Q: What did you find significant about his prison disciplinary history in developing your report and your recommendation about Mr. Hulon?

A: Well, he didn't have any sexual offenses in prison, no disciplinary infractions for sexual behavior, and his -- his disciplinary history wasn't that significant to me.

Q: Okay. There were about 22 of them though?

A: Yes.

Q: Weren't there?

A: Yes.

Q: Things like being out of place, not following orders?

A: Yes.

Q: Okay. Now, was there some testing you did? Specifically, I'm talking about something in your report called the MMPI Version 2?

A: Yes.

Q: Okay. What is that?

A: That's the Minnesota Multiphasic Personality Inventory. It's a true or false test that Mr. Hulon took. It has about -- like, more than 450 true and false questions, and it looks at how they answer questions and then what sorts of problems they endorse.

Q: Okay. Is this something that is commonly used by experts in your field?

A: Yes. Personality inventories are.

Q: Okay. And it's something you use sometimes, not all the time? It just depends on the case; is that correct?

A: That's correct.

Q: In this case, you felt it appropriate to administer this test involving Mr. Hulon?

A: Yes.

Q: Why was that?

A: Well, I -- I was really sensing that he had these personality issues in the interview, and I just wanted confirmation to see if that was -- if it was consistent with what the test said.

Q: Okay.

A: If he was going to continue to report those problems. So --

Q: And what were the results of this test that you interpreted as it affects your opinion?

A: It showed responses were very consistent with

narcissistic and antisocial personality characteristics. So he answered the test questions in the way that people with those disorders answer the test questions.

Q: Okay.

A: It was very consistent with those two things.

Q: All right. Now, do you also look to see whether or not a person enrolled in sex offender treatment that's offered at the Department of Corrections?

A: Yes, I do. I look to see if they've been through that treatment program there.

Q: Because you have -- part of the documents you said you looked at at the beginning includes his prison records; is that right?

A: That's correct.

Q: So did Mr. Hulon have any or take part in any sex offender treatment at the Department of Corrections during his many years there?

A: No.

Q: Okay. Is that important?

A: Well, it's better if they do take it because people who complete a sex offender treatment program typically have lower recidivism rates. It can be good for them to do that and they can learn something.

But it -- the fact that he doesn't doesn't necessarily count against him because not everybody gets the opportunity

to take it in the prison. They don't have enough space for everybody who needs it.

Q: But it's something he could've tried for and apparently, for whatever reason, he did not take it?

A: Yes. He told me that -- that the woman who runs the sex offender treatment program in the prison told him that he refused to take it, but that she couldn't show him evidence of that.

Q: Okay. And in looking for sex offender treatment in prison, is this also something done by experts in your field?

A: Yes.

Q: And is this something -- another data point, if you will, that you rely upon in developing an opinion about a guy like Mr. Hulon?

A: Yes.

Q: Okay. Now, we've talked about the diagnosis already. We've talked about the abnormalities you're looking for and the criteria. And again, it's antisocial personality disorder and narcissistic personality disorder? Is that the two?

A: Yes.

Q: Okay. Now, what about risk assessment? The law says we've got to prove to this jury that a person is likely to commit another sexual crime. What do you use? What tool do you use in assessing risk? Now, you look at the record and

you have all that, but is there a specific actuarial tool that you use, a predictability tool that you use in assessing risk?

A: Yes. I use the Static 99-R.

Q: Okay. Now, there are static factors and there's something called dynamic factors; right?

A: That's correct.

Q: And you look for both; right?

A: Yes.

Q: What are static factors? By definition, what does that mean?

A: Static factors are things that you can usually determine from the records, readily available records like the criminal history, and they are things that typically do not change. So they are things like age and how many crimes they have committed and things like that.

Q: Okay. And you score them on something called the Static 99-R; is that right?

A: Yes.

Q: Okay. Is that something that's done by people in your field?

A: Yes. It's used in almost all sexually violent predator evaluations.

Q: Could you tell the jury -- give the jury an example what is the Static 99-R? You called it an actuarial assessment.

What do you mean by that? Give us an example we can relate to.

A: So I guess the primary actuarial kind of example would be insurance companies. There are data points that are associated with people who cost insurance companies lots of money and they'll charge you higher rates for that, but really how this was developed is they looked at a very large sample of sex offenders and they looked at variables that were related to recidivism.

So recidivism means that they went out and committed another sex offense. And they looked at what makes these two groups different, the ones that committed another sex offense versus the ones that didn't, and they found ten variables that differentiated the groups.

Q: Okay.

A: And then you -- you calculate. You look at each of those variables, each of those ten variables, and then you calculate a score and you take that score and then you look on an actuary table, which shows that people with this score, this percentage of people reoffended within five years, and that's why it's an actuarial because it has that table.

Q: Now, you talked about insurance companies a minute ago. For example, if I was concerned about having a heart attack and I went to my doctor --

A: Yes.

Q: -- and he asked me about if I have chest pains, what's my diet, my exercise, what's my family history, he's looking for all those things to see if I'm likely to have a heart attack; right?

A: Yes.

Q: Okay. And maybe my life insurance company might charge me a higher rate if I'm more likely to have one than not; is that right?

A: Yes.

Q: So is that kind of what this is on sex offenders?

A: It's similar, yes.

Q: Okay. It doesn't mean I'm going to have a heart attack. It just means I'm more likely to have than a person who doesn't have these factors; is that correct?

A: Well, it would actually mean that whatever your score was on the assessment --

Q: Uh-huh.

A: -- that a percentage of people with that same score had a heart attack.

Q: Right. Okay. And so the doctor knows what to do and my insurance company now knows whether or not to charge me a higher rate for life insurance; right?

A: Right.

Q: Going back to sex offenders and the Static 99-R, so this is based on a study of thousands of sex offenders from

different countries; right?

A: Yes.

Q: Okay. When you scored Mr. Hulon on the Static 99-R, was this part of the basis for your opinion about him?

A: Yes.

Q: What score did he get?

A: He had a score of 5.

Q: Okay. Now, what is a 5 as far as it relates to his risk? What does that indicate about his risk to reoffend based upon the studies and the science behind the Static 99-R and the score that you gave him?

A: So his score of 5 puts him in an above average risk category compared to other people, and people with a score of 5 -- 15 percent of them -- 15.2 percent went on to reoffend within five years. And also compared to just the average sex offender, he's 2.7 times more likely to commit another sex offense.

Q: Okay. Now, when you turn 60, do you lose points? The numbers -- you score a certain number of numbers on the Static 99; right?

A: Yes.

Q: And the lowest score you can get is a what?

A: And -3.

Q: And the highest score?

A: 12.

Q: Okay. When you turn 60, don't you lose three points?
A: You do.
Q: Okay. So if he was under 60, he'd have an 8 on that?
A: Well, it's a little bit more complicated than that, but -- so age is one of the variables and if you're between 18 and 34.9, you will get a 1. If you're between 35 and 39.9, you'll get a zero. If you're between 40 and 59.9, you'll get a -1, and when you're older than 60, you'll get a -3. So when he turned 60, he lost two points.
Q: Okay. So if you'd have been doing this evaluation back when he was just turned 60, he would have lost some points?
A: Yes.
Q: Okay. Now, in his opening argument, Mr. Falk made some reference -- and I may be remembering this wrong, but I think I remember him saying that because his client is an older guy, like in his mid-60s or something like that, that age makes him less likely to reoffend.

What's your response to that regarding the records you looked at, the diagnosis you've come up with? Is this a guy who's not likely to reoffend?
A: I believe that he is likely. I mean this -- this risk assessment considers his age, and a score of 5 is significant. Hardly anybody scores above, like, a 7 or an 8, and if you score, like, a 9, 10, 11 or 12, it's really not any worse than scoring an 8. A 5 is a significant score and

that gives him credit for his age.

Q: Okay.

A: But people over 60 still do offend. It's just a smaller percentage of them.

Q: Now, we talked about static factors just now. What's a dynamic risk factor?

A: A dynamic risk factor are personality characteristics, behavioral features for an offender that are related to increased likelihood of reoffending, and they are things that can be changeable through treatment typically.

Q: Does Mr. Hulon have any dynamic risk factors that you found in your investigation?

A: Yes. He has several.

Q: What would they be?

A: He has sexual preoccupation. He has a sexual preference for pubescent children. He has offensive supportive attitudes. He has emotional congruence with children. He has a lack of emotionally intimate relationships with adults. His lifestyle impulsiveness, poor problem-solving abilities, resistance to rules and supervision, grievance and hostility, and negative social influences.

Q: Now, you mentioned a minute ago that emotional congruence with children and lack of emotional relationships with adults; is that right?

A: Yes.

Q: He's been married before, hasn't he?

A: Yes.

Q: But this doesn't last long enough? And the lack of -- with adults is not lasting long enough?

A: Well, in -- when we look at dynamic risk factors, we look at the quality of the relationship. When I look at the actuarially risk assessment, I look at the duration of the relationship.

Q: Okay.

A: So that -- that factor is considered differently depending on which risk factor, like how I'm looking at it. So with this one, it's the nature and quality of his relationships. His relationships had a lot of infidelity. They had a lot of conflict and they just weren't real, like, solid, healthy relationships.

Q: Okay. Okay. And the emotional congruence with children -- does that relate to his offenses against these young children and the things he said to them to get them, like [redacted] and how he spoke to her?

A: It means that he sees relationships with children or minors, you know, just as satisfying as relationships with adults. Like, there's not a big difference. Most of us would -- you know, we can like kids and things like that, but apart from your own kids or grandkids, you might not be spending a lot of your time hanging out with kids.

Q: Okay.
A: But he was. He was hanging out with kids.
Q: Okay. Now, so in your opinion to a reasonable degree of psychological certainty, you have diagnosed Mr. Hulon with two personality disorders; is that correct?
A: That's correct.
Q: And just for the record once more, what are they?
A: Antisocial personality disorder and narcissistic personality disorder.
Q: And you also have an opinion, again to a reasonable degree of psychological certainty, do these two personality disorders we've talked about -- do they affect Mr. Hulon's emotional or volitional capacity so that he is predisposed to commit future sexually violent offenses?
A: Yes, they do.
Q: And when I say volitional capacity, what do I mean by that word?
A: That's -- that means that he has the capacity to make choices, that he's in charge of himself, instead of his impulses controlling him.
Q: Okay. And his in charge of himself is choosing wrong basically, making bad choices? The prediction is or the estimate is and your recommendation is that -- this prediction is he's predisposed to commit future sexually violent offenses; is that correct?

A: Yes. I think in terms of volition, I don't think he can help himself but to commit crimes and to commit sex offenses and to exploit people.

Q: Okay. Do you also have an opinion, again to a reasonable degree of psychological certainty, does Mr. Hulon have the propensity to be dangerous and to commit future sexually violent offenses?

A: Yes.

Q: Do you also have an opinion, again to a reasonable degree of psychological certainty, does Mr. Hulon's propensity to commit future sexually violent offenses -- is this of such a degree that it poses a menace to the health and safety of others?

A: Yes. I believe it does.

Q: Do you also have an opinion, again to a reasonable degree of psychological certainty, as to whether or not Mr. Hulon has serious difficulty in controlling his behavior and these propensities I just talked about -- these propensities to be dangerous?

A: Yes. I believe he does.

Q: Why is that?

A: Well, he offended after involvement with the law. He offended people who knew him and who could readily identify him, turn him in. He offended -- I mean he involved a lot of people in the offense behavior, which is just making it much

more difficult to keep it a secret, meaning he didn't really care about the consequences or the consequences involved didn't stop him from acting.

He offended in very blatant ways. He directed [Minor 1] to have sex in a park, on a trail, in her backyard, across the street from her mom's house in a tent that was observed from the, you know, back of the house from a neighbor. Things like that. So he -- he really just doesn't seem to have control of his behavior in this regard.

Q: Okay. Now, do you also have an opinion, again to a reasonable degree of psychological certainty, as to whether or not these disorders you've diagnosed him -- do they make Mr. Hulon likely to engage in acts of sexual violence if he is not confined in a secure facility for long-term control, care, and treatment?

A: Yes, I believe they do.

Q: Is outpatient treatment the road for this guy?

A: I don't believe so.

Q: Why not?

A: Well, he's violated supervision before. Before these offenses occurred, he was convicted of a sex offense and he was on probation for that sex offense. So I don't see that the consequences, the threat of prison or anything like that, the extra supervision will deter his behavior.

Q: Do you also have an opinion, again to a reasonable

degree of psychological certainty, does Mr. Hulon meet the legal criteria to be found by this jury to be a sexually violent predator?

A: It's my opinion that he does meet the criteria of a sexually violent predator.

Q: Is he facing -- do you know of your own knowledge or your research whether or not he's facing any probation or supervision if the jury decides to let him go?

A: He is currently on community supervision, even though he's been in the jail awaiting trial. That time starts as soon as he leaves the prison, regardless of whether he goes to a jail or whether he goes to -- you know, a -- you know, home, and he will be on community supervision, I believe, until April of 2019.

MR. BOGLE: Okay. Thank you, Doctor. Please answer any questions that counsel may have or the judge may have.

THE COURT: We're going to take a short break before we continue with the cross examination. So I'll ask the jury to please go to your jury room. Do not yet discuss the case. It has not been concluded. I'll bring you back after that break.

(WHEREUPON, the jury exited the courtroom at 11:35 a.m.)

THE COURT: The witness may step down, but you cannot discuss your testimony during the break.

THE WITNESS: Thank you.

THE COURT: We're going to be at ease for 15 minutes.

MR. BOGLE: Thank you, Your Honor.

(WHEREUPON, there was a break in the proceedings from 11:36 a.m. until 11:51 a.m., after which the proceedings resumed as follows.)

THE COURT: All right. Are we ready for the jury?

MR. BOGLE: Yes, Your Honor.

THE COURT: Bring them in, please, ma'am. All of them.

(WHEREUPON, the jury entered the courtroom at 11:55 a.m.)

THE COURT: All right. The direct examination has been completed. We'll continue with the cross-examination by Mr. Falk.

MR. FALK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. FALK:

Q: Dr. Gehle, if I'm sitting over here, will you be able to hear me?

A: If you speak loud enough, because the acoustics in here -- I'm having a little bit of trouble hearing stuff.

THE COURT: You can use that microphone now if you need to.

MR. FALK: That's fine. I just wanted to basically know.

THE WITNESS: I'll tell you if I can't hear you.

MR. FALK: I've got all this stuff here. It's just easier for me.

BY MR. FALK:

Q: Now, a hundred percent of your current practice is devoted to these types of evaluations?

A: That's correct.

Q: You don't have a private clinical practice, do you?

A: I do some private practice therapy outside of my work for the Department of Mental Health.

Q: Okay. And is it possible to be board-certified in the field of forensic psychology?

A: Yes, it is.

Q: Are you board-certified?

A: No, I'm not.

Q: Have you tried to be board-certified?

A: I went through -- partway through the process of board certification, but currently, I am not. I only do one type of evaluation and you need to have two types of evaluation to go through the oral examination process. And all of my work that I did prior to sexually violent predator evaluations is too old.

Q: I see.

A: Outdated. So at this time, I can't do it.

Q: Now, you had generated a 57-page report?

A: Yes.

Q: And as part of the process, did you talk to any of the victims?

A: No.

Q: Did you talk to any of the police officers involved in any of these cases?

A: No.

Q: Did you talk to any of the SLED agents?

A: No.

Q: How about the solicitors?

A: No.

Q: Well, because two of these -- his -- both his days in court on his criminal charges were resolved with a plea agreement, were they not?

A: I know that they were guilty pleas.

Q: Okay. And so you don't know whether or not the solicitors thought that was a fair deal or if they were satisfied with both results, do you?

A: I would have to infer that, but I don't know that directly from them, no.

Q: Okay. Is it important?

A: Is what important?

Q: I mean if we're thinking about whether or not he's been treated fairly and whether or not he's gotten adequate sentences for the crimes he's committed. Would that be important to know what the solicitors think?

A: I don't think so. I mean I assume that they get the sentences that they, you know, believe are fair, but I don't -- I don't think that they necessarily have the final say I mean. So it's -- it's not that important to me, no.

Q: Okay. Now, let me just go through -- in order to reach an opinion that he is a sexually violent predator, you have to make a determination that he's got a mental disease or personality defect; is that correct?

A: A mental abnormality or personality disorder.

Q: A mental abnormality. And you have to be confident that he poses a risk to reoffend; is that correct?

A: That he's likely to reoffend, yes.

Q: Okay. Now, does there also have to be some type of connection between the mental abnormality and the risk to reoffend?

A: The mental abnormality or personality disorder has to predispose them to commit acts of sexual violence.

Q: Okay. So there's got to be kind of a causal relationship there? You can't just have a mental abnormality, like schizophrenia, and then also be a risk to reoffend?

A: Schizophrenia could be related to the sexual offending. It would depend on that person.

Q: Okay.

A: So any disorder could be related to sexual offending.

Q: I see. I see. Now, you did not diagnose him as a pedophile; is that correct?

A: That's correct.

Q: And the reason for that was is that the girls, female victims, were not of an age to be preadolescent; is that correct?

A: Correct. Prepubescent.

Q: What does pubescent mean versus adolescent? Are those both scientific terms?

A: I mean maybe they're the same --

Q: Okay.

A: -- thing, but I think of it in terms of prepubescent. I don't know -- I mean adolescent we usually think of as teenagers.

Q: Okay.

A: So I just want to be clear. It's about sexual development.

Q: All right. Well, is adolescent a term that you all use as part of -- is it -- does that show up in any diagnostic criteria?

A: I don't know.

Q: Okay. I know that you had an opportunity to look at all of the police reports involving the underlying criminal acts here; is that correct?

A: I believe so.

Q: They were provided as part of the MDT package?

A: Well, I didn't look at police reports for all of the criminal -- all of his criminal history. I looked at them for the sex offenses.

Q: Okay. So the ones related to [redacted], you would've looked at; is that correct?

A: Yes.

MR. FALK: May I approach the witness?

THE COURT: Yes.

BY MR. FALK:

Q: Is that the type of documents that you'd look at? I mean that's a police report. That's an incident report?

A: It's a page of an incident report, yes.

Q: Okay. And the only reason why I'm showing it to you is it gives some physical descriptions of the victim, does it not?

A: A physical description of the victim?

Q: Well, some kind of -- yeah.

A: Well, what --

Q: Height and weight. Height and weight.

A: Yes, it does.

Q: Okay. And so that was the victim and what was her height and weight at the time?

A: She was 5'2", 125 pounds.

Q: Okay. So that's a -- that's a bigger girl for a 12-

year-old?

A: Well, 12-year-olds run the gamut I mean. So I don't know what --

Q: But somebody who is possibly --

A: I don't know what's normal for a 12-year-old, like what's, you know, statistically normal.

Q: But as you said -- as you said, your report talks about a Tanner scale?

A: Yes.

Q: And she is -- [redacted] was along the Tanner scale showing that she was developing sexually?

A: Yes. She was -- she was a Tanner -- Tanner stage 4.

Q: Okay. And that, again, would be consistent with somebody who had breasts and curves?

A: Yes.

Q: All right. Now, going back to pedophilia, tell me how pedophilia would cause somebody a risk to reoffend? If somebody was diagnosed with pedophilia, how does that affect their risk to reoffend?

A: Well, pedophilia is a paraphilic disorder that means the person is sexually aroused by engaging in sexual acts with a prepubescent child. So if the person acted on those -- acted on that arousal, they would be most likely committing a crime I mean.

Q: Okay. And, you know, so if somebody has pedophilia,

that's something that stays with them their whole life; is that correct?

A: That's the way that we think of it, yes.

Q: Okay. And that's not my client?

A: That's correct.

Q: Now, in the -- I've seen some of your other reports in other cases and there's something called hebephilia? Hebephilia?

A: I call that hebephilia, but I don't diagnose hebephilia.

Q: What is that?

A: Hebephilia is -- well, the reason why I don't diagnose it is because the definition of it is -- I'm not sure.

Q: What's your understanding?

A: People define it as different things. So you could typically consider it sexual arousal towards a pubescent person. Some people consider it being sexually attracted to people under age 15 or Tanner stages 2 and 3.

Q: Okay. Well, then if that's not -- I thought you had used that diagnosis in the past. I apologize. But you have used something called that's biastophilia; is that correct?

A: Yes, I do.

Q: And why don't you explain what that is?

A: That is sexual arousal towards coercive sexual acts with a nonconsenting person, like a rape.

Q: Okay. And obviously, sex with a 12-year-old would be

statutory rape as it's commonly understood; is that right?
A: It is illegal to have sex with a 12-year-old.
Q: And again, it's the assumption that the 12-year-old is not providing -- can't provide consent to your knowledge?
A: That's correct.
Q: Okay. But there is no evidence in his history that he is necessarily attracted to forcing himself on people?
A: There was some accounts in the records that he did force himself on people, but just doing that in and of itself doesn't mean that he has biastophilia. I look for markers in the incident. So things like he's using gratuitous violence, he's having sex with somebody who was -- forcing sex on somebody who was willing to go along with it, but upped the ante, used violence.
Q: Okay.
A: I look at how much fighting the victim did. Like, what were the conditions that this person was raping? Was the person complying and acquiescing? So basically, they were still, you know, not fighting. How much of a struggle there was. If you have somebody who is raping a woman who is screaming, crying, fighting, and all that kind of stuff, if that's the case, that could be evidence of biastophilia, like more clear evidence of that.
Q: So that type of violence that we're talking about there -- that's not what you're finding necessarily here as part of

your diagnosis of him?

A: There was some evidence of that, that he forced people to have sex against their will. They're telling him no, things like that, but there wasn't much of a record in regard to how the victims were responding. That doesn't mean that the victims were consenting. It's just there wasn't much evidence about how the victims responded, and I need to know how the victims responded in that moment, things like that, to decide was he aroused by that. Was it their nonconsent and the fact that he's coercing this -- is that what's arousing to him?

Q: And you would agree that not everybody who commits a sexually violent offense would meet the definition for a sexually violent predator; is that correct?

A: That's correct.

Q: So his conviction alone regarding Minor 1 would not necessarily -- that alone would not support your diagnosis that he's a sexually violent predator; is that correct?

A: Um --

Q: Let's just say had he had all his other criminal record -- let me back up. Let me ask the question the right way.

The fact that if he would've been in here today, that was his charge, that he had had a criminal sexual conduct with Minor 1, that would not necessarily mean that he's a sexually violent predator; is that correct?

A: That could qualify him for evaluation or for the screening process under the Sexually Violent Predator Act, but there are plenty of people who are not committed who have committed sexually violent offenses.

Q: Okay. Now, your -- one of your diagnoses is that he has antisocial personality disorder; is that correct?

A: Yes.

Q: Okay. And is it fair to say that that's kind of a summary of basically just leading a criminal lifestyle?

A: It's very highly associated with a criminal lifestyle, yes.

Q: Kind of living like an outlaw?

A: Excuse me?

Q: Maybe just living like an outlaw?

A: Perhaps. I mean there's criteria that we go through, but an outlaw could meet those criteria.

Q: If you were to evaluate -- say you had the time and the inclination to evaluate every person that's at Evans right now or at Lieber right now, how many of them do you think -- what percentage do you think would be -- would meet the diagnosis of antisocial personality disorder?

A: I have no idea.

Q: There are -- you're familiar with the case law in the -- in these sexually violent predator cases; is that correct?

A: Some case law, yes.

Q: And I mean you know the Crane v. -- Kansas v. Crane case?

A: Yes, I'm aware of it.

Q: And in that case, didn't they -- wasn't one of the witnesses suggesting that possibly 80 percent of the criminal population would possibly meet the diagnosis of antisocial personality disorder?

MR. BOGLE: Object to the relevance, Your Honor.

THE COURT: Sustained.

MR. BOGLE: Thank you.

THE WITNESS: Um --

THE COURT: You don't need to respond to it. He can rephrase it and perhaps get what you're looking for.

BY MR. FALK:

Q: Would you agree that a very high percentage of the population -- of the criminal population would meet the diagnosis of antisexual personal -- of antisocial personality disorder?

MR. BOGLE: Again, object to relevance, Judge.

THE COURT: Sustained.

BY MR. FALK:

Q: Does everybody with antisocial personality disorder -- are they sexually violent predators?

A: No.

Q: So having the diagnosis of antisocial personality

disorder alone would not make somebody a sexually violent predator; is that correct?

A: That's correct.

Q: Because a lot of what you were talking about during your testimony was that he had criminal thinking. He was thinking like a criminal?

A: Yes, he does.

Q: All right. And you also talked about -- and you also diagnosed him of having -- well, can you go back and explain sort of that predisposition; what you were saying that it's your testimony that he has antisocial personality disorder and because of that he's predisposed to commit crimes of sexual violence in the future; is that correct?

A: Yes. That, and the narcissistic personality disorder.

Q: If you did not diagnose him -- if you did not -- if you were unable to diagnose him -- provide a diagnosis that he suffered from narcissistic personality disorder, but you were able to diagnose him as being antisexual -- antisocial personality disorder -- sorry.

A: We call it APD for short.

Q: APD?

A: If that helps you.

Q: All right. Thank you. I'm used to that term. So ASPD we know means antisocial personality disorder. All right. So would he -- would you consider him a sexually violent

predator based solely on your ASPD diagnosis?

A: You're really asking me to speculate, and these are difficult decisions to make. I don't know if -- if it would just be solely that. Probably.

Q: Okay. All right. So then you were talking about his narcissistic personality disorder, and part of the sort of factual basis for that was this bragging he was doing; is that correct?

A: That was part of it, yes.

Q: Okay. Because I think you made much of his talks about living a lifestyle, living in Beverly Hills; is that correct?

A: Well, I brought that up.

Q: Yes.

A: That's -- that's something that he definitely talked to me about.

Q: And he talked you about having befriended Milton Berle; is that correct?

A: Yes.

Q: And he talked about having befriended Michael Caine?

A: Yes.

Q: Now -- and as I understand your testimony, the only basis that you think that is not true -- because certainly you didn't call Michael Caine to say if he knew this guy. You didn't Milton Berle. He's dead. Was that the fact that Michael Caine is married to Shakira Caine; is that correct?

And not Kathy?

A: Yes. Well, that was part of it. I don't know if he was telling me the truth or not, but that doesn't necessarily matter because it was the -- he brought this stuff up during the interview. It was consistent with the other things that he brought up. It was irrelevant to what we were talking about. It was just bragging during the interview. I didn't ask him if he had any famous friends. You know, he brought --

Q: No.

A: He --

Q: But you were asking about --

MR. BOGLE: Objection. Let her finish the answer.

BY MR. FALK:

Q: Finish your answer.

A: He brought that stuff up continuously on his own.

Q: You were asking questions about his personal history, were you're not?

A: Yes.

Q: And this interview lasted 11 hours?

A: A little over, yes.

Q: Okay. So that's a lot of time to talk about his personal history?

A: Yes.

Q: Okay. The other thing that I'm not sure I understand is

it seems like part of the problems you had with his bragging was somehow related to his communication with SLED and with the local police department about these other eight men.

A: I don't think that I had problems with his bragging. That was just what I observed from the records.

Q: Well, then I don't -- maybe I don't understand your testimony. How did that relate to his narcissistic personality disorder?

A: That's a characteristic of it. It's part of him being grandiose. It's him wanting a lot of attention, to be the center of attention, and to be seen as very special and powerful.

Q: But should he not have told anybody about this crime?

A: I believe he should. Absolutely.

Q: And it seems like from your description that he was telling local law enforcement, they were not getting involved, and he kept trying to get law enforcement to get involved; is that correct?

A: Yes.

Q: So is that just doing what he's supposed to be doing or is that trying to call the attention to himself?

A: I mean I think that it was a lot more than that. I mean you're making it simple and I wish it was just like that, but this was berating people, insulting people when they weren't responsive to him, those people in power.

Q: For not investigating this criminal sexual conduct by these eight men?

A: For not coming to see him. He had no idea if they were investigating or not.

Q: Okay. And how do you know that?

A: Well, because his letter said that they weren't investigating it, but I believe that they were investigating it.

Q: But you didn't read any police reports about those other eight offenses, did you?

A: Did I read the police reports about --

Q: I mean, you know, as far as the investigations about the other eight men. You didn't look into those investigations, did you?

A: I looked at a lot of documents related to those investigations.

Q: Do you know what the resolution was on any of them?

A: I don't.

Q: You had given him the MMPI?

A: Yes.

Q: And then you said that's a 450-question true/false test?

A: Yeah. It's a little bit more than that, yeah. I think it's 467 --

Q: Okay.

A: -- questions.

Q: But it is -- it is a true/false test?

A: It's a true/false test, yes.

Q: What was the score?

A: There is no score per se.

Q: Well, then how do you know what -- how do you know how to evaluate the results?

A: Well, it's a complicated process, but the -- the questions load onto different scales. They load onto validity scales, reliability scales, and then they load onto content scales. So it provides information about whether he appeared to read the questions, whether his answers were consistent, whether he was answering in the way that, like, would show that he was being honest or was he being overly defensive. So those are the validity scales and reliability scales. And --

Q: How long did it take him? If I just could interrupt, how long did it take him to complete the test?

A: I'll have to -- I'll have to dig for that answer, if you give me a minute, because I don't know off the top of my head. I'm not sure.

(WHEREUPON, there was a pause in the proceedings, after which the proceedings resumed as follows.)

BY MR. FALK:

Q: If you could estimate, I'm just --

A: Well, I needed to find that reference. It took him

about an hour and 45 minutes.

Q: Okay. Now, you were talking about validity scales and you were talking about content scales? And I apologize for interrupting.

A: Yes.

Q: But you were saying how you measure the test and then there's different scales?

A: Yes.

Q: Okay. So again, there's validity scales. What does that mean?

A: It's what I -- it's what I talked about. It's how he's responding. It looks at whether he tended to answers -- answer questions true, more true or more false, whether he was inconsistent in his responding, which could mean that he had a reading problem or could mean that he wasn't answering. He could've just been randomly responding, you know, filling in the bubbles and not reading the questions.

Q: Okay.

A: It looks at whether he was -- they call it the lie scale, whether he is being inconsistent, because they ask the questions in several different ways throughout the test to see how consistent you are across the test. Whether he was endorsing problems that most people endorse. Whether he was endorsing problems that are very rarely endorsed. We call that, like, a fake bad profile versus a fake good profile.

And it's things like that. It's very complicated. It's a very complicated test. I took a whole semester in graduate school to learn how to interpret that test.

Q: Well -- because in your report, you said that one of the scales -- he was not being overly virtuous?

A: That's correct.

Q: What does that mean?

A: That means he wasn't answering questions in a manner that made him look good and that made him look like -- you know, he wasn't presenting himself like I'm perfect and I don't have any flaws.

Q: Because when I first read that part of the report, I'm trying to understand how that's consistent with somebody who is narcissistic because I would think a narcissist would want to portray themselves as having no flaws.

A: I can see how you could come to that conclusion, but I don't think that that's necessarily how he -- his personality is because he has antisocial personality disorder and he has narcissistic personality disorder and together that is a different presentation. So usually a narcissist is -- you're right, they treat -- they're superior, they are -- they don't have flaws, but they're really insecure underneath. He doesn't necessarily present like that.

Q: Okay. And just because I'm not that familiar with this test, are there any kind of numeric values that it generates

on these scales?

A: Is there any what?

Q: Do the scales generate any type of numeric values?

A: This is what the scale results look like.

MR. FALK: May I approach, Your Honor.

THE COURT: Sure.

BY MR. FALK:

Q: And so what are you looking at there? Just the slope of the lines or where the high points are or what are you looking at?

A: So the scores are converted to T scores, which is a standardized score, and we're looking at T scores above 65. Those are significant, but also some of the lower scales are important on certain scales. It's -- there's books written about how to interpret this stuff. It's complicated.

Q: Well, could two people look at the same 460 answers and, depending on how they were trained, reach different results?

A: When we do this or when a psychologist looks at this, we don't look at the answers on an individual basis because those answers on the 400 and, I think, 67 questions -- they load onto different scales. So it's really -- I'm sorry. It's 567 questions, but it -- you're not looking at the individual answers. You're looking at the cluster of answers. You're looking at the scales, how the questions load onto that scale.

Q: Well, then that you don't know exactly. Can you give me -- like, what would one question be?

A: Do you like *Mechanics* magazine? That's the first question on the test.

Q: Okay. Now, one of the other tests that you gave was the Static 99-R?

A: Yes.

Q: Now, can you tell me if based on the Static 99-R if you can say absolutely what his risk to reoffend is?

A: I can give you an estimation of what his risk to reoffend is. It's called an absolute recidivism rate, but I cannot predict with a hundred percent certainty, like, if he's going to reoffend or not.

Q: Okay. Is it fair to say that you're looking at -- you said that you're looking at static variables; is that correct? Things that don't change?

A: On this assessment, yes.

Q: Okay. So the Static 99-R -- other than his age, the Static 99-R is really a snapshot of who he was 15 years ago?

A: No. It's -- it's who he is now. It's the history that he has up to now.

Q: What would be different in his history between now and then that would show up on the Static 99-R on your reporting? Let's take his last sentencing date, whenever that was, 2003, and when you gave that test. Did anything happen in his

life, other than his age, change how you would've scored that test?

A: No.

Q: So it is kind of who he was 17 years ago?

A: Well, the age is a big factor. So I still can't concede that.

Q: Well, I said other than the age.

A: Other than the age, then his score has not changed on the other items.

Q: Okay. The Static 99-R does not take into consideration any type of rehabilitation somebody could've gotten in prison, does it?

A: That's correct.

Q: Why is that?

A: Well, the research on treatment is mixed, but also this is looking at the presence or absence of factors, and that's it.

Q: Okay. So it sort of assumes that other than his age, the person who he was when he entered the Department of Corrections is the same person he is when he exited the Department of Corrections, other than the change in his age?

A: It doesn't assume that he's a person at all. These are just questions. I mean it's -- it's giving a risk estimate.

Q: Okay.

A: That's all it does. It doesn't say anything about

necessarily the -- you know, his personality characteristics.

Q: Okay. So things that he may have accomplished in prison have no factor in grading the Static 99-R; is that correct?

A: I would say yes.

Q: Okay. And it lumps together -- tell me this. Can somebody's health affect the risk to reoffend?

A: Yes.

Q: How does the Static 99-R address that?

A: It doesn't address that.

Q: How could somebody's health affect their ability to reoffend or the risk to reoffend?

A: Well, if they were paralyzed, they would be at a lower risk to reoffend. I've evaluated -- I recommended release on somebody who had very severe COPD. He had trouble breathing to the point that it interfered his -- with his ability to do lots of day-to-day activities, and he was older and he participated in treatment and it was my belief that that COPD decreased his chances to reoffend.

Q: But as far as this actuarial -- actuarial conclusion, I guess or whatever, you know, this actuarial comparison, you're comparing people with a particular number of all different ages; is that correct?

A: Yes.

Q: So if somebody has a 5, you are comparing the risk to reoffend on a 20-year-old who has a 5 and an 80-year-old who

has a 5; is that correct?
A: Yes.
Q: And you would also be comparing people who, again, may have decreasing physical health? They'd all be in that same pile?
A: Yes.
Q: Now, he got a point -- can you explain to the jury how the peeping Tom -- the conviction for peeping Tom affected know you scored his results?
A: He got a point for -- well, on question 5, which is prior sex offenses, it was considered in that way, and then he also got a noncontact sex offense for peeping Tom, which added another point.
Q: So the peeping Tom conviction resulted in a two-point increase?
A: No. It's not quite that simple.
Q: All right. But just tell me -- if you can, can you tell me what his score would be if he did not have a peeping Tom conviction?
A: I think that his score would be a 3.
Q: Okay. And how would that have affected his relative risk ratio? Didn't you say he's 2.7 times more likely to reoffend with his current number of 5?
A: Yes.
Q: And so if he had a 3, how likely would he be to

reoffend?

A: I don't have those statistics right in front of me, I don't believe, but let me look. I might have that.

Q: I probably do.

A: If you have it, I'll look at it.

MR. FALK: Your Honor, may I have a moment?

THE WITNESS: I left my scoring manual on my seat over there. If you brought me that, I could turn right to it.

MR. FALK: If I could approach?

THE WITNESS: Thank you.

BY MR. FALK:

Q: Yours is thicker than mine.

A: Thank you so much. So if he had a score of 3, he would be 1.39 times more likely to commit a sex offense compared to the average sex offender.

Q: And your current testimony was that he's 2.7 times more likely?

A: Yes, with a score of 5.

Q: So that would cut his risk in half? Can you say that?

A: I mean I --

Q: 2.7 divided by 2 is 1.35? Is that even the right way to look at it?

A: Not necessarily.

Q: Okay.

A: But his risk would be significantly lower.

Q: Okay. And why is -- why would peeping Tom be something that you would look at? Why is it included?

A: Because the -- the Static 99 manual has very specific scoring rules, and that offense is considered a sexual offense. It doesn't matter what the underlying behavior is necessarily because it's a sexual offense for the scoring rules, and I believe it's considered a sexual offense in South Carolina.

Q: It would be hard to understand how a sexual offense like criminal sexual conduct could ever be viewed as -- you know, what underlying facts could make that not a sex offense. Would you agree with that?

A: I guess so, yes.

Q: But peeping Tom -- what if -- what if the facts were that the person was peeping on his own wife?

A: Okay.

Q: Would that be a sexual offense?

A: It very well could be.

Q: Because did he explain to you the facts that led to that peeping Tom charge?

A: He explained, yes.

Q: And what did he tell you about it?

A: He said that his -- his wife -- I believe it was his wife. They would fight and she would go and move in next door to her parents' home and that he would go to the window

and watch her or talk to her through the window at night, but the identified victim was a man.

Q: The father of Theresa; is that correct?

A: I believe so, yes.

Q: Okay. Is that -- in your estimation, is that the same as some guy who -- did you see the movie *Animal House*?

A: It's been a very long time. So I don't know that I can recall.

Q: Well, there's a scene in *Animal House* where John Belushi has got a ladder and he's climbing up to the top of the girls' sorority house and he's looking in the windows and he's looking at the women changing clothes. That's a peeping Tom, isn't it?

A: Most likely, yes.

Q: I'm saying. So is it a difference if somebody is trying to communicate with their -- having marital disputes and trying to communicate with -- whether it's his wife or his common-law wife or partner at the time, versus somebody who is just invading the privacy of a stranger?

A: It could be, but it's really what the law enforcement officers and what the courts decide it is, and then I take that information from them. I didn't decide what to name the charge, what to charge him with, what to plead to. I didn't make those decisions. That charge is a sex offense per the scoring rules, and I have to be consistent and abide by those

rules to get -- in order to get an accurate result.

Q: Is it possible that if the motivation behind that charge was not to invade a stranger -- I mean, is it possible that that's just giving him an overly inflated charge -- overly inflated score on the Static 99?

A: I don't think so.

Q: So you would give him the same? You would think his likelihood to reoffend would be the same whether or not he was communicating with his -- let's say his estranged wife and her father got mad at him versus if he was looking into a total stranger's window watching her undress? You'd say that's the same likelihood to reoffend?

A: In terms of scoring the Static, yes, if the charge was peeping Tom because they looked at some offenses with a sexual offense name. So, like, rape, criminal sexual conduct, lewd act, things that are always called sexual offenses. They classified those as always sexual offenses on this -- on this -- on this test. That's how the scores were derived in the research samples.

Now, there are judgments that have to be made about -- about other offenses, such as if it was an assault and battery of a high and aggravated nature. That could be considered a sexual offense or not a sexual offense on this scoring. That would have to address the underlying behavior, the motivation, was it sexually related, not sexually

related, because some assault and batteries are sexually related and some are not. For peeping Tom, it doesn't require that judgment.

Q: Why?

A: Because that's how the researchers scored the items and that's how they created this valid test. So I have to follow those instructions and rules.

Q: Okay. He also got one point for a non-family -- for a family victim; is that correct?

A: For --

Q: For a related victim?

A: He got a point for an unrelated victim.

Q: I'm sorry. And he got a point for a male victim; is that correct?

A: Yes.

Q: Okay. And the male victim is the [Minor 1]?

A: No. That's a female. That's a 12-year-old female.

Q: Give me the initials?

A: It's [Minor 4] --

Q: Right.

A: -- [Minor 4] --

Q: [Minor 4] maybe or whatever?

A: Yeah.

Q: The male victim was the lewd act on a minor charge that he pled guilty to when he pled guilty to the other two on his

last sentencing date?

A: Yes. He was convicted of lewd act upon a minor.

Q: Okay. Had he not had a male victim, what would his score have been?

A: If he didn't have a male victim, it would be a 4.

Q: Okay. And I'm just asking you to speculate, but if he didn't have the peeping Tom -- if you didn't have to include the peeping Tom and he didn't have a male victim, what would his score be?

A: It would be a 2.

Q: Which would that be the same likelihood; is that correct? Then his score -- then the -- then the relative risk would have been a 1?

A: I'm sorry. If his score was a 2, it would be the same as what?

Q: I spoke wrong. If his score was a 2, his relative risk to reoffend would be a 1; is that correct?

A: Yes. A score of 2 is an average score on this test. So he would have the average score.

Q: All right. Now, this test that we're relying on -- and I think Mr. Bogle made some comparisons to, like, insurance rates. How accurate of a test is it?

A: It is moderately predictive of sexual offending.

Q: And how did --

A: Recidivism.

Q: And how accurate are -- do you know how accurate the tables are that they likely generate insurance previews from?

A: I do not know how accurate they are, no.

Q: Do you have a sense what -- that they're more accurate or less accurate?

A: I don't know.

Q: How big is the sample size that you used here?

A: It's thousands of people. It depends on which norms that you look at, but I think that it's -- I couldn't tell you right off the top of my head. I think it might be around 20,000 in some samples, but do you want me to find that answer?

Q: Just -- just an estimate.

A: It's thousands.

Q: Okay. But it's not millions? It's not hundreds of thousands?

A: I think it's tens of thousands, but not hundreds of thousands.

Q: Okay.

A: Not millions.

Q: Now, moderately predictive. What does that mean?

A: Excuse me?

Q: Moderately -- you said it was moderately predictive?

A: Yes.

Q: What does that mean?

A: It means that it's -- I mean I could get into the statistics. It means that it's pretty good at doing it, not great.

Q: Is there a numerical classification? Has anyone ever given it a score?

A: Well, we look at the area under the curve to see how accurate it is. The area under the curve is about a .67. Some studies show that it's a .7 something.

Q: Okay. And so with a .7, just so this jury can understand, how does that compare? If it got a .5, what would it be?

A: It would be --

Q: If the area under the curve, this measure of accuracy of the test, if it was a .5, would that be considered a good test? That's really no different than a coin toss, is it not, if it had a .5?

A: It would not be very good. Yes, that's correct.

Q: Okay. And if it got, like, a .9 to 100, that would be a great test, would it not?

A: Yes.

Q: And then some are going to be between 80 and 90. That would be, like, a B; right?

A: That would be a good test, yes.

Q: Okay. And so this is a moderate test?

A: Yes.

Q: Okay. But it's the only one that you have to rely on; is that correct?
A: Yes. It's -- it's the most accurate test for measuring sexual recidivism that we have.
Q: That is available?
A: That's available.
Q: Right. Has anyone tested in South Carolina how accurate it is? Has anyone ever looked at people's static scores going into the Department of Corrections and people released and then seeing their recidivism rates?
A: Not that I know of.
Q: Because some places -- are you familiar with a study done in Texas where the recidivism rate -- where the -- it was suggested that the way it was tested in Texas that it came out the test was almost, like, a .6 or less?
A: I'm not familiar with that, no. Not that I know of.
Q: But as far as you know, nobody's ever sort of validated that use of the Static 99 in South Carolina?
A: Not that I know of.
Q: And that's the only test that you have to rely on?
A: It's the only test that I've relied on for -- like, for the risk assessment, but that wasn't the only decision that went into the risk assessment and to my determination as to whether he was likely or not.
Q: And the MMPI does not tell you whether or not he's a sex

offender; is that correct?

A: That's correct.

Q: Would you agree that people's likelihood to reoffend -- that there's a relationship between age and a lowering of a rate to reoffend?

A: Yes. There is a relationship between age and recidivism.

Q: Okay. Are you familiar with -- who is Carl Hansen?

A: He's a researcher out of Canada. He's one of the authors of the Static 99-R.

Q: Okay. And in your profession, do you currently look at articles? Is it part of your business to stay current to read scholarly articles on sexual recidivism?

A: Yes.

Q: Okay. I sort of came across this one last night. I apologize for not having printed it out, but I'm going to show you just the cover page of it to just see if you are familiar with it.

MR. BOGLE: May we approach, Your Honor?

(WHEREUPON, a bench conference was held in the presence of the jury panel but out of the hearing of the jury panel off the record, after which the proceedings resumed as follows.)

THE COURT: Ask your question again, Mr. Falk.

MR. FALK: Oh, I'm sorry.

BY MR. FALK:

Q: I showed you a document that I found and it's -- one of the authors is Carl Hansen and there are other authors on there. Are you familiar with those other authors?

A: Yeah, I'm familiar with their names. Yeah.

Q: And so they are -- they publish in your field?

A: Yes.

Q: Forensic psychology?

A: Yes. They -- they tend to publish in risk assessment.

Q: Okay. And did you have a chance to see that article?

A: I don't know if I've seen this article. I believe that I have, but it was published in a journal, not from this -- not from this website.

So you just got a tweet.

Q: What did Donald Trump do now?

A: It was a Donald Trump tweet.

MR. FALK: May I approach?

BY MR. FALK:

Q: I'm just going to just flip to the back and see if -- having said that you had seen the article before, if you recall looking at these tables?

MR. BOGLE: Your Honor, I object at this time on lack of proper foundation and lack of disclosing the entire article to Dr. Gehle. She thinks she's seen it, thinks she read it. It's probably a 20- or 30-page article. I don't think a

proper foundation has been laid.

THE COURT: Well, if this is simply to see if she remembers it. If she does, she can comment upon it. If she doesn't, then she can say I'm not familiar with it.

MR. BOGLE: Thank you, Your Honor.

THE COURT: But I think he's just trying to establish whether she is or is not familiar with the article.

BY MR. FALK:

Q: And again, here are some tables that were generated at the end of the article.

THE COURT: The question is are you familiar with it.

BY MR. FALK:

Q: Are you familiar with those tables or have you seen those?

A: I'm not familiar with these tables directly, no.

Q: Do you think that there is a correlation between -- well, do you want to -- my question is the tables list what the rates of -- that table that I'm asking you to look at talks about -- what really it has done is separated out different risk levels for 4s and 5s on the --

MR. BOGLE: Renew objection, Your Honor. I think he's --

THE COURT: Sustained. Sustained.

MR. BOGLE: Thank you.

BY MR. FALK:

Q: Can you tell me what the absolute risk to reoffend if you're a 60-year-old sex offender is?
A: I mean it would -- it would depend on that sex offender.
Q: Well, I mean because you said earlier that he -- because in response to Mr. Bogle's questioning when I was talking about the fact that he's older and you said that his risk would be lower -- I think that was part of the test. I'm just trying to get a sort of quantitative number.
A: Yes. His risk would be much higher if he wasn't older.
Q: Okay.
A: His risk would just be increased. The Static 99-R has considered -- like, his age has been considered in the score that I arrived at, a score of 5. He would have a much higher score if he was younger.
Q: I'll grab that back from you.
MR. FALK: One moment, Your Honor.
BY MR. FALK:
Q: And his risk to reoffend is all related to routine sex offenders; is that correct?
A: Yes.
Q: So you're not telling us today what his risk is to reoffend directly? It's always by comparison to somebody else?
A: I'm estimating it compared to other sex offenders.
Q: And you're sort of estimating how he compares to being

in a group of other people?

A: Compared to a group of people with a score of 5.

Q: Okay. We've talked some about his plans if he were released. That was part of your conversation?

A: Yes.

Q: Did he talk to you about -- you know, did he talk to you about what possible options there would be as far as castration?

A: He said -- I think he said something about he would rather be castrated. He would volunteer to be castrated instead of going into the sexually violent predator program.

Q: Is that an option?

MR. BOGLE: Objection, Your Honor.

THE COURT: Sustained.

BY MR. FALK:

Q: The treatment that he is going to get, his crime -- or his diagnosis is antisocial personality disorder; is that right? That's what you had said. It's antisocial personality disorder and narcissistic personality disorder?

A: Yes.

Q: Do you know if the treatment is geared towards people who are pedophiles or, you know, biastophilia people? I mean does the treatment -- is there treatment for somebody who is an anti -- who has ASPD? Do you know?

A: I believe that there is. In the treatment program, it's

my understanding that -- that they target the dynamic risk factors, those areas in particular.

Q: Is there any -- is there anything about the treatment program as far as the ability to treat somebody, just the efficacy, how effective it is, is there anything about the treatment program that it needs to inpatient versus outpatient?

A: In general, if you look at the research about sex offenders, where they're treated at, it doesn't make that much of a difference in terms of whether the treatment is going to work or not.

Q: And is it your understanding that the treatment is, like, talk therapy and group discussions?

MR. BOGLE: Your Honor, may we approach?

THE COURT: You may.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury off the record, after which the proceedings resumed as follows.)

MR. BOGLE: Your Honor, for the record, I was objecting based upon some pretrial matters we discussed.

THE COURT: All right. I'll sustain the objection.

MR. BOGLE: Thank you.

BY MR. FALK:

Q: Based on your research and your understanding, there's nothing about the treatment that it has to be done in this

care facility for the effectiveness of the treatment?

A: In general, that's what -- that's what the research available has shown. That it doesn't matter that much if it's inpatient or outpatient, but it would depend on each individual program most likely as to whether it's effective inpatient or outpatient.

Q: Okay.

MR. FALK: One moment, Your Honor.

THE COURT: Yes.

MR. FALK: We have no further questions.

REDIRECT EXAMINATION

BY MR. BOGLE:

Q: Very briefly, Doctor, going to the last question, inpatient treatment versus outpatient treatment as far as the effectiveness of it, but that's not what this case is about, is it?

A: No.

Q: This case is about Mr. Hulon's risk to reoffend unless he's confined for treatment; correct?

A: I don't look at it as confined for treatment. I look at it as what the law says, confined for control, care, and treatment.

Q: Control, care, and treatment?

A: He could be committed to the sexually violent predator program and choose to refuse treatment.

Q: Uh-huh.

A: So my part is whether he's likely to do it if he's not confined to a secure facility for long-term control, care, and treatment.

Q: Okay. And as far as going back to the Static 99-R, whether or not it accounts for things you might have done in prison other than what's on the actual scoring system itself, in my insurance example when the doctor is looking at my heart condition and my family history, my exercise, my salt intake and things like that, he doesn't care if I went to law school, does he? He's looking for certain other characteristics related to heart risk; right?

A: If going to law school is associated with an increased risk of a heart attack, he might care about it.

Q: Okay.

A: But if it's not, then he won't.

Q: Okay. And that's the same thing with the Static? If he did something good in prison, like a class or something like that, but he wasn't in sex offender treatment, it's not a static factor that you relate to the Static 99, is it?

A: Right. It gives an estimate baseline risk level.

Q: In earlier testimony when the question was getting into how the victims acted when they were being assaulted, did they fight, did they scream or something like that, I understand from your answer what you're looking for is was

the perpetrator aroused by the violence, not necessarily the sex; right?

A: Yes.

Q: Okay. And as far as the MMPI when Mr. Falk was asking you about certain questions and things like that, you're not trying to cherry pick certain questions of those 400 and some odd questions, are you? You're looking for trends?

A: Exactly. It's all trends.

Q: Okay. And as far as people -- he made the comment -- well, I think he made the comment that -- and my question is just because you're -- if you were diagnosed to be a pedophilic -- pedophilia, okay? If that was your diagnosis, that you had pedophilic disorder, that doesn't make you automatically someone that has to be committed to the sexually violent predator treatment program, does it?

A: No, it doesn't.

Q: Because some people can have that diagnosis and control themselves and not act on it; right?

A: Yes.

Q: Okay. And the fact that the peeping Tom charge was included, that's not a rule that you made, is it?

A: It's not a rule I made, no.

Q: It's a rule that's in the book?

A: Yes.

Q: Okay. And maybe he should've been convicted of

something else, but he wasn't. He was convicted of peeping Tom; right?

A: Well, yeah. That's what he was charged with. That's what he was convicted of. I mean that's what it was called.

Q: That's what he -- he chose to do that. That's what he got charged with. That's what he got convicted of?

MR. FALK: Objection, Your Honor.

MR. BOGLE: Right?

MR. FALK: That's calling for speculation that he chose to do that.

MR. BOGLE: All right. Let me back up then and rephrase the question.

BY MR. BOGLE:

Q: He got convicted. He got charged with that indictment and convicted of it; right?

A: Yes.

Q: It was a guilty plea, wasn't it?

A: I believe so, yes.

MR. BOGLE: Thank you. Nothing further, Judge.

THE COURT: All right. You may step down. We will break for lunch.

Remember my caution. No discussions about the case. No research. No investigation.

Do have a good lunch. Please report to your jury room at two o'clock, two o'clock this afternoon. Have a good

lunch.

(WHEREUPON, the jury exited the courtroom at 1:00 p.m.)

THE COURT: Court is in recess until two o'clock.

MR. BOGLE: With your permission, Your Honor, we're going to rest when they come back. I'd like to rest in front of the jury. Do you want me to rest now and handle the DV motions right now?

THE COURT: If you want to.

MR. BOGLE: Or later?

THE COURT: We can.

MR. BOGLE: Well, the State is going to rest.

THE COURT: Okay.

MR. BOGLE: We're done with our testimony.

THE COURT: All right. Motions?

MR. FALK: Your Honor, we would make a motion for a directed verdict. I think the State has failed to prove that there is a mental disease or defect that causes this likelihood to reoffend.

I think she had testified that he is 2.7 times more likely to offend than a routine sex offender. I do not believe that she's given any testimony as to how likely a routine sex offender is to reoffend.

The statute requires a showing of likelihood. I'm not sure that they provided any kind of information that he's 50 percent more likely than somebody else. He's 50 percent

likely to reoffend. And we don't think that she's diagnosed him with a sexually-related mental disease or personality disorder.

THE COURT: Mr. Bogle?

MR. BOGLE: Your Honor, the statute says mental abnormality or personality disorder. Here, she's got a personality disorder, two of them, and she diagnosed him and says he's likely to reoffend.

And again, looking at these percentages, the way the Static score is, he is likely to reoffend. The numbers may sound low, but this is reoffending a sexual offense, not reoffending by robbing a convenience store or burglary or shoplifting or something like that.

Her expert opinion is he's likely to reoffend under the law. He's got the required convictions. We think there's sufficient information to go forward with the case.

THE COURT: Mr. Falk?

MR. FALK: Your Honor, I think there has to be some type of showing of what likely means. Without showing that he's more likely than not, 51 percent likely by a preponderance of the evidence, it's just her opinion that he is likely and I don't think that's enough. The jury has to be convinced that he is likely. Without some type of quantification of what likely means, I think the State has failed in their burden of proof.

THE COURT: All right. I find the evidence to be sufficient. Motion for a directed verdict is denied.

Court is in recess until two o'clock.

MR. BOGLE: Thank you, Your Honor.

(WHEREUPON, there was a break in the proceedings from 1:03 p.m. until 2:05 p.m., after which the proceedings resumed as follows.)

THE COURT: All right. Are we ready for the jury?

MR. BOGLE: Yes, Your Honor.

THE COURT: Bring them in.

(WHEREUPON, the jury entered the courtroom at 2:06 p.m.)

THE COURT: Good afternoon.

THE JURORS: Good afternoon.

THE COURT: The jury is present. Mr. Bogle?

MR. BOGLE: Your Honor, at this time, the State would rest.

THE COURT: All right. The petitioner has rested their case. So we'll now proceed with anything to be offered by the respondent. Mr. Falk?

MR. FALK: At this time, we would call Judy Hulon Hunt to the stand.

THE CLERK: Do you solemnly swear or affirm that the testimony you shall tell the Court and the jury in this case shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated.

JUDY HULON HUNT, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FALK:

Q: Are you ready?

A: Yes, sir.

Q: Please state your name for the record?

A: Judy Hulon Hunt.

Q: Okay. How do you spell Hulon?

A: H-u-l-o-n.

Q: Okay. It's spelled H-u-l-a-n sometimes?

A: No.

Q: H-u-l-o-n; right?

A: (No verbal response.)

Q: And how are you related to my client?

A: He's my brother.

Q: Okay. Did y'all grow up in the same house?

A: Yes, sir.

Q: Okay. Let me show you a picture, if I could. Could you tell me who that is in the picture?

A: That's Butch when he was about 25 in California.

Q: And by Butch, who do you mean?

A: Oh, we call him Butch. Don.

Q: Okay. And how -- do you know where that picture came from?

A: He sent it to me from California when he was out there modeling.

Q: Okay. And so do you think he was about 24 in that picture?

A: Twenty-four or 25.

Q: But that's -- he's not wearing any makeup? That's the way he looked at the time; right?

A: Oh, yes, sir.

Q: Is that a fair and accurate representation of how he looked at that time?

A: Yes, sir. That's him.

Q: All right. You said he was out there modeling? What do you know about that?

A: Well, he went out there and he had several jobs. He was a model. He had a chance to stay a model. He had several opportunities to stay, but he was a mama's boy.

MR. FALK: Your Honor, at this time, I would like to have that photograph introduced in evidence.

MR. BOGLE: No objection.

THE COURT: It's admitted.

(WHEREUPON, Respondent's Exhibit Number 1, a photograph, was admitted into evidence.)

MR. FALK: Can I show that to the jury?

THE COURT: Has it been marked?

MR. FALK: I'll mark it.

Some people age differently. I'm just -- here's a picture of what he looked like back when he was out in California back when he was 20 years old, and I wanted y'all to see that. Maybe you could pass it around.

MR. BOGLE: I think the testimony was 25.

THE WITNESS: It was around 25. I can't exactly say what.

MR. FALK: But this -- this is what he looked like back when he was in Hollywood. He's probably a different-looking dude right now. But this is what he --

MR. BOGLE: Your Honor, he's testifying to the jury.

THE COURT: Yeah. Don't testify. You can pass the picture around, if you'd like, and they can make their own conclusions from it.

BY MR. FALK:

Q: What was Butch like growing up?

A: Just your basic brother.

Q: He got in a lot of trouble, didn't he?

A: As he got older, he did.

Q: What was family life like before?

A: We'd just run the roads, play, have fun like most kids do, no bickering or fighting or nothing like that, you know. Softball games.

Q: Did he -- but when he -- he's told you all these stories about being out in Hollywood and modeling; is that right?

A: I talked to him on the phone back then. Yeah. He's been all over the United States.

Q: Okay. How would he get out there?

A: Back then, he was hitchhiking with friends. They went everywhere.

Q: Okay.

A: You could do that back in '68, you know.

Q: Did he tell you about meeting a lot of famous people?

A: Yeah. Yes, sir.

Q: What did he tell you?

A: Just the ones that he met. I don't recall all the names. And he just happened to be talking to them. He's got a gab of talking, and he went out with some of them.

Q: And where was he living? Do you know where he was living when he was in California?

A: He was staying with some guy, a friend.

Q: Okay.

A: And his wife.

Q: Do you know what city he was in?

A: L.A.

Q: Okay. Did both of y'all get along with your parents?

A: Yes.

Q: How did you get along? Was there any violence in the

household between his father and him?

A: His father was dead --

Q: Okay.

A: -- when we got up some age.

Q: Okay. So there was a stepfather?

A: Yes.

Q: How did y'all get along with him?

A: Well, you know how they say about stepfathers. That was the truth.

Q: What do they say? Was it rough?

A: It was very rough.

Q: Okay. Do you know about him being violent?

A: Not -- not Don. I've never known him to even get in a fight but one time, and that's when somebody jumped him.

Q: Was he kind of a ladies' man?

A: Yeah. He wasn't no fighter. He still ain't got no fight in him.

Q: But was he kind of a ladies' man?

A: Yeah. The picture speaks for itself. The girls were after him.

Q: Okay.

MR. FALK: I have no further questions.

CROSS-EXAMINATION

BY MR. BOGLE:

Q: Who was Calvin?

A: Calvin?

Q: Do you remember Calvin, a friend of your brother's back when he was, like, 14 or 15 -- 16?

A: Calvin? I don't know a Calvin. My stepdad was Calvin.

Q: Okay. Did Calvin -- this Calvin have Mr. Hulon fight people? Ask Mr. Hulon to fight people back then?

A: He wouldn't have fight him.

Q: He told Dr. Gehle he liked to fight people back then. No?

A: I've never known him to fight.

Q: Do you remember him being arrested at age 14 and sent to the state reformatory for boys?

A: Yes, sir. I went to visit him.

MR. BOGLE: Thank you. That's all.

THE COURT: You may step down.

MR. FALK: I'd call Mr. Hulon to the stand.

THE CLERK: Do you solemnly swear or affirm that the testimony you shall offer the Court and jury in this case shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE RESPONDENT: I do.

THE CLERK: Be seated and state your full name.

THE RESPONDENT: My name is Donald Ray Hulon.

DONALD HULON, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FALK:

Q: And how do you spell your last name?

A: H-u-l-o-n.

Q: All right. Thank you.

Mr. Hulon, Dr. Gehle said something to you that -- Dr. Gehle said that you said that you've had a thousand sex partners in your life and you've been with a thousand different women? Is that what you're saying?

A: Well, I mean I asked her a question about how they come to do decision to making people pedophiles.

Q: Uh-huh.

A: A bunch of doctors said that they do this here test and all this here. Well, I got a test from her doctors that said if I have messed with 10 women in my life, I have messed with 1,000 and 2,300 [sic].

Q: So that's what -- so is that what you meant?

A: That's what I meant by that. I mean this -- this is her paper stuff.

Q: So -- but you don't mean -- you weren't trying to brag by saying that?

A: No, I wasn't saying I had messed -- I ain't messed with no thousand women.

Q: Okay.

A: But according to this sexual exposer chart, it says that

if you mess with 10 women and all the women that they messed with and the men that's messed with them women, it comes to 1,023 people.

Q: Okay. That's probably talking about spreading of sexual diseases?

A: Yeah. If every person has only one.

Q: That means --

A: The same number of patterns as you, and that's what it's talking about.

MR. BOGLE: Your Honor, can we -- can we inquire what he's referring to. He's reading from a document that's not been introduced.

THE COURT: I think he is. Mr. Falk, are you aware of the document?

MR. FALK: Yes, I am.

THE COURT: Is it something that you're proposing to --

MR. FALK: No. I just -- I just wanted him to explain what he was talking about.

THE COURT: Oh, okay. Well --

MR. FALK: We're not introducing the document.

THE COURT: You can put the document back up.

BY MR. FALK:

Q: Tell me about -- so you -- so how old were you when you went out to Hollywood?

A: Twenty -- I think the first time I was 23 and I went

back in '75. I stayed -- I was 24. I stayed a couple of years.

Q: What other kind of hitchhiking around the country have you done?

A: I've been about everywheres hitchhiking.

Q: Now, you told Dr. Gehle that you met a lot of celebrities when you were out there?

A: Yeah.

Q: Why don't you tell me something about that?

A: Well, I really met them by accident, to be honest with you.

Q: Okay.

A: I was at the Beverly Hills Hotel.

Q: What were you doing there?

A: Out by the pool. You know, you could -- you could -- anybody could walk up there.

Q: Yeah. Okay.

A: And I was over by the pool and I met a guy. I didn't know who he was. Little old short redheaded guy. His name was Red Buttons. I didn't know who Red Buttons was.

Q: Okay.

A: And I just hung around there and then these three ladies was sitting in a hallway and I spoke to them and they called me over there and wanted me to say y'all come back and stuff because it I had a southern accent. And they was having a

party there and I was asking her about the party. It was Olivia Newton-John's birthday party.

And they just kept sitting there talking to me, the three old ladies, and I'd tell them about South Carolina and all this here stuff. And I asked -- I kept asking her about the party and she said, young man, why don't you be my guest tonight. That's exactly where Ms. Honey -- that was her name, Ms. Honey. So she invited me. When they went in, I went in with her.

Q: Okay.

A: Olivia --

Q: Go ahead. What were you going to say?

A: Olivia Newton-John was there. Lorne Greene and his wife. Buddy Hackett. Warren Beatty. They asked me to ask Mr. Beatty -- he's so handsome and all the women wanted him -- why wasn't he married. So I asked him that.

Q: So you walked up to Warren Beatty and asked him?

A: I asked him. He set on the steps. He was sitting on the steps and he told me -- he said they answered their own question. I'm young and handsome. All the women want me. Why should I marry one? That's what he said.

Q: Why did you tell all that stuff to Dr. Gehle?

A: At the beginning of the thing, she asked me to be truthful. I mean I can tell you stories that you would say the man's a lunatic. That's why I never tell nobody these

stories because who's going to believe them.

Q: So why did you tell it to Dr. Gehle? She asked you? How -- how would they -- was that in response to a question that she asked you?

A: She asked me where had I been and I told her I been about everywheres, and I went to naming cities. I lived in California for two years. I met celebrities and I didn't meet celebrities, and that's how that conversation got started.

Q: How's your health right now?

A: I got -- I got a few things. I mean I got a leaking valve in my heart. I've got diabetes and chronic arthritis in my knees and my left shoulder, but other than that, I'm in good shape.

Q: Are you -- do you have any doctors' appointments scheduled?

A: I just went to a doctor here in Bennettsville, CareSouth, the other day.

Q: Okay.

A: Or SouthCare or whatever it was.

Q: Are you on any kind of prescription medicines?

A: They put me on something. I don't know what it is. They set me up an appointment to go. I've got a murmur or something, some kind of word that she said I had in my --

Q: And you're going for a test for that? You're going for

a test for that?

A: I ain't hear you.

Q: You're going to -- you said you had some kind of murmur? A heart murmur?

A: Yeah, a murmur. A murmur.

Q: Has -- has that affected any other people in your family?

A: My brother died from it.

Q: Okay.

A: He died on the operating table trying to fix it.

Q: Now, in --

MR. FALK: May I approach the witness?

BY MR. FALK:

Q: I'm going to show you what's been marked as State's Exhibit 1. Now, is your signature on that? Look in the middle.

A: Oh, yeah.

Q: Okay. And that's been introduced as a sentencing sheet for an offense of lewd act on a minor?

A: Right.

Q: Is that correct?

A: Yes, sir.

Q: Did you plead guilty?

A: Yes, sir.

Q: Why did you plead guilty?

A: It was part of the bargain.

Q: What was the bargain?

A: That if I would plead to this charge here and this other charge that they would give me 17 years.

Q: No, that's the '98 one that you have in your hands.

A: Huh?

Q: Look at the date. 1998?

A: Where?

Q: Oh, I'm sorry.

A: Oh, yeah. Oh, yeah. No. This one here -- this here I had just did five years in prison.

Q: Okay.

A: For receiving stolen goods and I got out and they had this here, and the onliest way I could get out -- when I come from prison, I came to jail and I talked to my lawyer, Mr. Ronnie Crow, and he told me that they had dropped the charge on me and --

MR. BOGLE: Objection, as to statements made by the other person. It's hearsay.

BY MR. FALK:

Q: Yeah. Don't tell me exactly what your lawyer said. So you were charged with something; is that correct?

A: Right.

Q: And you picked up those charges while you were in custody; is that right?

A: Right.
Q: Okay. And somebody accused you of something that happened before you went to prison; is that right?
A: Yes.
Q: And so when you got released from prison, they brought you back here to Marlboro County Detention Center; is that right?
A: Right.
Q: And they served you a warrant of some kind for lewd act; is that right?
A: Right.
Q: And --
A: No. It was originally sexual conduct with a minor.
Q: Okay. And there was testimony before that that person was --
A: My son.
Q: No. Wasn't it your niece?
A: Yeah.
Q: Okay.
A: Yeah. My sister's daughter.
Q: Your sister's daughter?
A: Yeah.
Q: Did you ever commit a sexual contact with your sister's daughter?
A: No.

Q: That why did you plead guilty?

A: Because it was part of the bargain.

Q: Okay.

A: If I pled guilty, they'd go ahead and drop it down to a lewd act and let me go home.

Q: So the day after you pled, what happened? Did you go to prison?

A: No.

Q: Did you walk out the door?

A: Yeah.

Q: And you probably told the judge that you're pleading guilty because you wanted to plead guilty; is that right?

A: Yeah.

Q: Okay. And you're not denying the fact that you have the charge, are you? I mean you've been sentenced for this lewd act charge in 1998?

A: Oh yeah. Yeah.

Q: Okay. But did you touch your niece?

A: No.

Q: Okay.

A: I mean we speak now and talk. You know what I'm saying?

Q: Okay. I'm going to show -- let me look at Number 4. I'm going to show you the sentencing sheet for -- that's the other lewd act charge, isn't it?

A: Yeah.

Q: All right. And without using the name, can you describe who the alleged victim was on that case? Was that a male or a female?

A: A male.

Q: Okay. Why did you plead guilty there?

A: Well, the day I came to court I mean in this courtroom, they met me in the hall -- I mean back here on this side.

Q: Why did you think you were coming to court that day?

A: Oh, I knew why I was coming to court. I had pled to the -- the [Minor 1].

Q: Okay. That's the criminal sexual conduct with [Minor 1]?

A: Yeah.

Q: Okay.

A: And they brought this and I wanted to know what it was and they told me. I said, no, I won't plead.

Q: Okay.

A: And then they told me what they would do.

Q: And what -- if you didn't -- what was your understanding of what would happen if you did not plead to that charge?

A: I was going to get sent up the road for a long time.

Q: Well, you already got 17 years?

A: Yeah.

Q: Did you think it was going to be longer?

A: Well, I mean I was 51 years old. Seventeen years, I mean I'm 67 now.

Q: Yeah.

A: I'm lucky to still be here, you know, breathing.

Q: Did you assault that male?

A: No.

Q: And was it your understanding that in order to get the benefit of the plea bargain, you had to plead guilty?

A: I had to plead guilty.

Q: Okay.

THE RESPONDENT: Your Honor, can I ask a question?

MR. FALK: Oh, no.

THE COURT: No, sir.

THE RESPONDENT: No?

BY MR. FALK:

Q: Let me show you -- let me show you this.

THE COURT: Excuse me. Mr. Hulon, did you understand me when I said you could not ask a question?

THE RESPONDENT: Yeah. I was going to ask you. That's what I was talking about. Okay?

THE COURT: I thought maybe you were talking to Mr. Falk --

THE RESPONDENT: No.

THE COURT: -- with that question. I've already said you could not.

THE RESPONDENT: Yeah.

BY MR. FALK:

Q: This is the sentencing sheet for the criminal sexual conduct with a minor, first degree. Okay? And that box there is checked most serious?

A: Most serious.

Q: Did your lawyer -- when you were pleading that day, did your lawyer explain to you what that meant?

A: No. I didn't know what it meant until you told me.

Q: What's your understanding of what that means?

A: It's serious.

Q: Was there not any explanation to you about whether or not that was a two-strike offense?

A: No.

A: That if you had another serious offense, you would -- could receive life without parole?

A: Judge Cottingham said that in -- in -- in -- in the transcript.

Q: Okay. So you understood at least that day that if you picked up -- you know, since that day, you understood that if you pick up another serious offense, you could go away for life?

A: He explained that. He explained that.

Q: Okay. That was explained to you?

A: Yeah.

Q: Have you ever assaulted a male child sexually? Have you ever done that?

A: No.

Q: Let's talk about the peeping Tom offense?

A: All right.

Q: What were the facts about that case?

A: Me and my common-law wife lived together and every time we'd get in an argument, she would --

Q: All right. How long had you been living together for the time?

A: Five years.

Q: And what was her name?

A: Theresa. Theresa Scott.

Q: Theresa Scott? And where were y'all living?

A: In McColl, next door to her father, Buck Scott.

Q: What?

A: Next door to her father, Buck Scott.

Q: So y'all were on the same, like, piece of property?

A: It was his house, our house, and her sister's house.

Q: Okay. And so where was your wife at the time?

A: She was over at his house.

Q: Why was that?

A: Because we had an argument.

Q: Okay.

A: And she went over to her daddy's house.

Q: All right. And so then -- and Mr. Scott is the one that took -- and you understand that Mr. Scott is the one who took

the charges out --

A: Yeah.

Q: -- against you?

A: He told me not to go over there, but at night I'd go over there anyhow and talk to her at the window --

Q: Okay.

A: -- trying to get her to come home.

Q: All right.

A: It didn't take but a couple days and we'd went through this two or three times.

Q: What do you mean you went through this two or three times?

A: Every time she got mad or we got in an argument, she'd go to her daddy's.

Q: Okay. And did you plead to that?

A: Yeah.

Q: And why did you plead?

A: I mean I was at her window talking to her. And I mean it -- to me, it wasn't nothing. I was just talking. I'm trying to get her to come home. I didn't know it was a sex offense.

Q: Okay. Did you have any kind of -- why were you trying to -- you were just trying to talk to her?

A: Yeah. I mean we'd do that all the time.

Q: What was the sentence for that?

A: I don't know. I got probation.

Q: Okay.

A: Yeah.

Q: How did you get along with Theresa's father?

A: It varied from time to time. Buck was old. He had his ways. He was old and had his ways, but . . .

Q: Now, what have you been doing since you've been in prison?

A: Well, the first few years, I didn't do nothing. I was at Lee County.

Q: Uh-huh.

A: And I decided I had 17 years. If I didn't change while I was in here, I'm not going to change when I get out. So I just started jumping in classes and I went to all kind of classes and I got certificates and all.

Q: What kind of classes did you take?

A: I took AAN --

Q: What are you looking at? Are you looking at some type of certificates?

A: Certificates from prison.

Q: Okay. And what kind -- what was that class?

A: AA, NA, EA, substance abuse, New Direction, parenting.

Q: So that's Alcoholic Anonymous class? Narc --

A: Narcotic agent and emotional class, substance abuse class, and a New Direction class, but that New Direction had

a bunch of classes in it.

Q: Okay. So how long did that last?

A: It was about six-month classes.

Q: Okay. And how many times a day did you go to class or how many times a week would you go to class?

A: You'd go to class one day a week.

Q: Okay. And did y'all have, like, homework or something in between?

A: Yeah. You -- I mean in most of these AA/NA classes, we'd just sit around in groups and discuss our problems.

Q: Okay. And did you complete that class?

A: Yeah.

Q: What kind of trades do you have now?

A: I've got a -- not a degree, but a plumbing class. I finished that and got a certificate in that.

Q: You got a GED while you were in custody?

A: Yeah. I got that on this one here.

Q: Okay. And when did you get that?

A: That was last -- I mean -- no, it wasn't last year. 2016.

Q: Okay. And did you take any type of vocational classes while you were inside?

A: I went to GED. I went to anger management, Character One, the House of Healing, Four Mile Walk, and Pass class in the chapel.

Q: What is Character One? What is that?

A: It's one of the best programs the governor -- it's backed by the governor.

Q: And what's it about?

A: It's where you go in and they teach you how to regroup back into society.

Q: Okay. How long did that class last?

A: It's -- I mean it lasts as long as you're in prison. You can stay in that class as long as you want to.

Q: How many days a week did you go to class?

A: Every day.

Q: For how long?

A: Each class lasted an hour.

Q: Okay.

A: And you had to -- if you didn't have a job, you had to at least take three classes a day.

Q: I see.

A: Yeah.

Q: And what types of classes?

A: Well --

Q: What kind of stuff did you learn in the classes?

A: Well, that's what I'm saying. You go to anger management or House of Healing, Four Mile Walk or Pass or GED or anger management.

Q: I see. I see.

A: That's the classes I took.

Q: What is -- so what kind of stuff do you learn in anger management?

A: In anger management?

Q: Yeah.

A: You sit around and discuss how you get angry and what causes you to get angry and how you stop from being -- I mean it's -- it's a lot of -- and each person tells about how quick they get -- I mean, like, you go in class today and they -- most people call me Butch and they'd say, Butch, who'd you get mad at yesterday or when we left class yesterday. Well, I went back to the dorm and somebody's doing this and doing that and that made me mad. What did you do about it? Went to my room and laid down and went to reading a book instead of getting involved in it.

Q: It taught you different ways to deal with the anger?

A: Yeah. I mean there's just so many ways you got to deal with anger.

Q: And you've got community supervision when you get out, don't you?

A: Yeah.

Q: And --

A: I got to wear an ankle monitor.

Q: And what else?

A: I've got to go to 31 sex classes.

Q: So it's your understanding that you're going to go to something?

A: Huh?

Q: So it's your understanding that you're required to go to sex offender treatment classes?

A: Yeah. Thirty-one or 32.

Q: Okay. Classes.

Q: Where are you going to live?

A: Back here with my sister.

Q: Okay.

A: They're going to -- they're going to -- they're going to help. She's been helping me for -- well, soon be 17 years. I mean she's been helping me all along.

Q: What you going to do for money?

A: I get disability.

Q: Okay. Are you going to get a job?

A: Huh?

Q: Why do you have disability? For what?

A: Because when we left -- when we left prison, they give you a -- a reenter program, this little booklet here that tells you everything about, like, when you reenter life back in life and it tells you everything in there. Tries to help you get back in society because you -- I spent 16 years out here. I mean 15 years out here.

Q: No. I mean you said that you were going to get

disability?

A: Huh?

Q: You said that you were going to get disability; correct?

A: Yeah.

Q: Why?

A: Because of my chronic arthritis.

Q: Okay.

A: In both knees. I'm supposed to -- I'm -- well, I got my thing here somewhere.

Q: Well, let's --

A: I was in a wheelchair.

Q: Okay.

A: But then they give me a walker, but out there at the jail, we can't have walkers or walking canes.

Q: Okay.

A: So --

Q: So you're not going to necessarily be working because you've got disability in your knees?

A: Well, I mean I'd rather be working. Disability ain't enough really. I mean 7- or $800 a month.

Q: Do you have skills to look for a job? Are you going to look for a job?

A: Yeah. Because this paper here says if any company will hire me, I'm bonded for a year.

Q: I see.

A: And they'll give them $2,400 deductible from their taxes.

Q: If they hire you?

A: If they hire me and they'll -- if I steal something or break something or tear it up, the government is backing saying that they'll pay for it.

Q: Okay.

A: It's a guarantee from the government to try to help felons get jobs.

Q: Reintegrated --

A: Yeah.

Q: -- into society?

A: And then they give us a list of all the jobs in America that hires felons.

Q: Okay. And you're going to be on the sex offender registry?

A: Yes, sir.

Q: Okay. And what do you -- what do you have to do about that? What's your understanding?

A: I've been on it.

Q: Okay.

A: Yeah. I have to report to the sheriff once a year.

Q: Okay.

A: And I have to give them -- take a picture and everything every -- every time I go, give my residence where I'm living.

If I leave the state, they've got to be notified. If I go move to North Carolina, then I have to register over there.

Q: Uh-huh.

A: And let South Carolina know so they can transfer my paperwork over there.

Q: Okay. Now, you've got a criminal record that goes back to when you were about 20 years old; is that right?

A: Yes, sir.

Q: And it's got 22 -- 23 offenses; right?

A: Twenty-two what?

Q: You've been charged 22 or 23 times; is that right?

A: Yeah.

Q: Why? What were you thinking when you were 21 years old? You've got a lot of charges for larceny back then.

A: Really, nothing. I wasn't going through much thinking.

Q: Well, why don't you tell me something about that?

A: I mean it was just -- I was 21 -- 22 years old, lived in a town like McColl, lived on a little mill village and we thought we was bad little kids. That's what it was.

Q: Uh-huh.

A: I mean we was more stupid than we was anything else, but we didn't realize it. And I didn't realize until I went to the prison this time how stupid I was.

Q: But you'd been to prison before, hadn't you?

A: Yeah.

Q: I mean you did a pretty good stint on that housebreaking charge; isn't that right?

A: Yeah.

Q: What was that? How long were you there?

A: The what?

Q: You got a ten-year sentence? You got five years and five years?

A: Okay. That wasn't -- that was for -- oh, no. Ten years? That was back in 1982 I think it was.

Q: Yeah.

A: Yeah. To be honest with you, I shouldn't tell the truth about this here, but I'm going to be honest.

Q: Well, that's why we're here.

A: They had my mama for fraud.

Q: I beg your pardon?

A: They had my mother for fraud.

Q: Okay.

A: I didn't have a job, and they was going to send her to prison because she was babysitting a woman's child for $15 and didn't report it to DSS.

Q: Okay.

A: And she was on probation and she got behind $300 because we was poor. My mama didn't have a job and didn't have a husband and she raised eight kids by herself, and then she got disability. And she was babysitting for an extra $15 and

she asked me did I, you know, had any money. I didn't have it and I asked her why. Come Monday, they're going to put me in jail.

Wait a minute.

And I didn't have the money; so when the store closed, I went in there and I took it so she wouldn't go to jail. I'd rather be there than her. She's dead now though.

Q: Is your mama still alive?

A: No.

Q: How about the rest of your family?

A: I've lost everybody but her. It was eight of us. All of them died since I've been gone. And my son's in the hospital now. He got in a car wreck. Four people back in March got in a -- five people got in a car wreck. All of them died but him. He's still in the hospital. I ain't seen him. I ain't heard from him. Got no way to get in contact with him.

Q: Did you have a character dorm at Evans?

A: Sir?

Q: Were you in a character dorm at any of the facilities?

A: At Evans.

Q: Tell me a little bit about what a character dorm is?

A: Military ain't that bad. If I'm sitting here and they're sitting there, if I can hear them talking, I raise my hand. Everybody in the dorm has got to raise their hand

until it gets completely silent. There's no talking in there. You can talk, but it's real low.

Q: So there are a lot of rules in the character dorm? It has a lot of rules?

A: Oh, man. It's piled full of rules.

Q: And is it voluntary?

A: When you walk to the mess hall, you have to walk in a straight line. When you go into the mess hall, you can't -- you can't sit -- there are four to a table. You can't sit there and talk. You've got to eat. You only got 10 minutes to eat. And you've got to walk back to the dorm in a straight line. You can't get side-by-side walking. You've got a yellow line you've got to walk on. You can't bring no food back from the mess hall or nothing.

Q: Is that a choice or is that a --

A: That's -- that's in the program. If you want to be in this program, you got to go by the -- they're preparing you to get back in society.

Q: So why -- is there any benefit to being in the character dorm?

A: Well, if you got -- just say I had a life sentence or something like and needed parole. If you're in that character program and you done did 20 or 30 years, you're going home. And that's why I got in it so I could better myself, but then they come up with this charge here. They're

talking about I need to go to a crazy house or something, but I was about ready to get out.

Q: Other than the rules, is the character dorm -- is it safer? I mean is that why --

A: Oh, yeah. There ain't no fighting. You ain't -- if me and -- me and you arguing, you're kicked out.

Q: Okay.

A: You ain't arguing in there.

Q: And you wanted to stay in the character dorm?

A: You want to stay in there because there ain't -- you're safe in there.

Q: Okay.

A: Evans is -- they -- you don't know from time that -- when you walk out of your door in the morning time, you don't know that you're going to come back. That's everybody. That ain't -- except the character dorm. I mean that's just how bad Evans is. They don't care. They beat women there. I've seen an officer get beat down with a lock and a sock, a young girl from Chesterfield. This officer over here, he worked out there. He can tell you how it is. It is rough there.

Q: How long did you stay in the character dorm?

A: I went in in August and came out in January.

Q: And when you came out in January, what happened?

A: I got into this pre-release program.

Q: Oh, I see.

A: Because I was getting ready to come home in May. They released me April 28th to Marlboro County Jail and I've been there ever since.

Q: All right. Did you take sex offender treatment while you were in the jail -- while you were in prison?

A: They didn't offer it to us. She said that I refused, but they couldn't -- nobody's never showed me a refusal where I signed no paper saying I refuse. I'd have took it if they'd have give it to me.

Q: Did anybody ever come to you and say that there was a possibility?

A: What was a possibly?

Q: Did anyone ever come to you and ask you whether or not you wanted to be in the program?

A: Never. I'd have took it.

Q: And you're going to get some treatment? If you're released and you're under community supervision, you've got 31 -- 32 classes to go to?

A: Right.

Q: At least that's your understanding?

A: I think you've got the paper over there.

Q: But that's your understanding of what you've got?

A: Yeah. I mean they -- they read -- they sit down and read you all them papers you've got and that paper I got. They sit down and read all this to you and make you sign it

saying that you understand it. You can't tote a pocketknife. You can't have no kind of weapon on you or none of all that stuff. No alcohol, drugs. Of course, I don't drink.

I got a -- I got another paper --

Q: Let me just --

A: -- where I was an inmate representative.

Q: Don't --

A: Oh.

Q: That's the paper you were just talking about?

A: That's the paper I'm talking about.

Q: And where did you get that?

A: When they released me out there. About 14 days before they release you, they take you up to the visiting room, everybody that's getting released on the first of the month, and you sit down and go over this.

Q: Okay.

A: Because it's called a supervised furlough.

Q: Okay.

A: And they reads everything and you have to sign it with -- well, a probation officer signs it saying that you understand all of these rules.

Q: Okay. So how long are you going to be on supervision?

A: Two years.

Q: That's your understanding?

A: Yeah. I mean it tells you right here.

MR. FALK: One moment, Your Honor.

THE RESPONDENT: It's 31 sessions.

MR. FALK: Your Honor, I have no further questions.

THE COURT: All right. Mr. Bogle?

MR. BOGLE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BOGLE:

Q: Can I see the paper Mr. Falk handed you just a minute ago?

MR. BOGLE: May I approach, Your Honor?

THE COURT: Yes.

BY MR. BOGLE:

Q: All right. So let's see. So additional conditions?

A: Yes, sir.

Q: It talks about no contact with the victim. That's number 4?

A: Right.

Q: Number 14, released to --

A: Marlboro County.

Q: -- county detainer for a sexual predator review. That's what you're doing today?

A: Right.

Q: All right. Each one has got a number by it, and here's number 23, community supervision calculations. That tells what your sentence was, 17 years. Okay. And your community

supervision ends right here. It says supervision ending date, April 30, 2019?

A: Yes, sir.

Q: That's about eight months from now?

A: Yeah.

Q: Okay. And the last thing it says attend sex offender counseling? And that 31 --

A: Thirty-one.

Q: -- doesn't mean 31 sessions, does it? You don't know how many sessions it will be until you start going?

A: I thought he said -- that's what I was going by, 31.

Q: Well, right above it says 27 GPS monitoring. You don't wear 27 GPS monitors, do you?

A: No. That's --

Q: That's just numbers.

A: No. You're right. Yeah.

Q: Those are just numbers?

A: Yeah.

Q: So basically, you got community supervision for about eight more months; right?

A: Well, I can't answer that question, sir, because --

Q: Let's look again.

A: I know, but I don't know if it counts. I've been out there at the county jail 17 months. It says here -- does this count?

Q: Supervision ending date April 30, 2019. Is that what it says?

A: That's what it says.

Q: Okay. That's about eight months from now?

A: I've been locked up. It don't -- I don't think it counts while I'm locked up.

Q: Okay.

A: I don't know.

Q: Well, you've heard Dr. Gehle's testimony that the clock began running on that when you maxed out your prison term?

A: But where did she get that from?

Q: This sheet of paper apparently. So, Mr. Hulon --

A: Yes, sir.

Q: You talked about your criminal conduct. Mr. Falk was referring to 20 or 25 offenses and all. The earliest one, like your sister mentioned, goes back to when you were about 14? A juvenile offense? You got sent to reformatory?

A: Yes, sir.

Q: Okay. So it goes back a lot further than just 20 years or so; right?

A: Do what now?

Q: It goes back a long time to when you were 14?

A: Yeah.

Q: It goes back about -- what? Fifty-one years? Fifty-two years?

A: Whenever I was 14.
Q: Okay. And as a result of some of these crimes, you've gone to prison?
A: Yes, sir.
Q: And got out or escaped a couple of times and gone back to prison and got out. And then yet despite -- prison is not a fun place to be, is it? You don't like being in prison, do you?
A: Not now. No, sir.
Q: Okay.
A: No, sir.
Q: All right.
A: It's too rough now.
Q: And of the courses you said that you completed, you were reading about some courses like AA and NA and stuff like that. None of those involved sex offender treatment; right?
A: None of them.
Q: Okay. And for all of these crimes that we've talked about today, all these sentencing sheets, all these indictments, on every single one of those, you pleaded guilty in front of a judge in this courtroom; correct?
A: Correct.
Q: And when you plead guilty, the solicitor then reads what happened?
A: Exactly.

Q: And then the judge asks you a bunch of questions to make sure you're pleading freely and voluntarily; right?

A: Uh-huh.

Q: And he placed you under oath?

A: Yes.

Q: Before he asked you those questions to make sure you're telling the truth; right?

A: Yes, sir.

Q: Same oath you've taken today?

A: Yes, sir.

Q: Okay. And at the end, the solicitor then tells what the crime was and the judge turns to you and says, okay, you heard what he said, is that what you did, and you've got to say yes; right?

A: That's a part of your plea bargain.

Q: Right. You said yes and you said it under oath?

A: But that's part of your plea bargain.

Q: I'm talking about that same --

A: If you don't say yes, you ain't going to get that plea.

Q: But you said it under oath; right? That you did these crimes?

A: Yeah.

Q: All right.

A: But that don't mean I did them. I just plead to get that plea bargain.

MR. BOGLE: Nothing further.

THE COURT: Okay. You may step down.

MR. FALK: No redirect.

THE COURT: I'm sorry. Do you have something else?

MR. FALK: No.

THE COURT: All right. You can step down.

MR. FALK: At this time, the respondent rests.

THE COURT: Any reply?

MR. BOGLE: No, Your Honor. Thank you.

THE COURT: All right. That's all of the evidence. What remains to be done are the lawyers' final summations and then I'll instruct you on the law and then you will begin deliberations.

I need to take a few minutes to talk to the lawyers before we do that. It should take only a few. So please go to your jury room, but don't talk about the case. I'll bring you back in just a few minutes.

(WHEREUPON, the jury exited the courtroom at 2:50 p.m.)

THE COURT: Mr. Falk, do you want to renew your motions?

MR. FALK: Yes, Your Honor.

THE COURT: Do you have any additional grounds?

MR. FALK: Same grounds.

THE COURT: All right. That motion is denied. Anything else?

MR. FALK: No, Your Honor.

THE COURT: All right. Y'all have provided me with a jury instruction request. Do you have any other matters we need to address before we conclude?

MR. BOGLE: The State has provided a proposed jury instruction. It's one we've used in these cases. The defense has also provided an alternative one, and I have some objections to some of their things.

THE COURT: Okay. Well --

MR. BOGLE: The State's proposed jury charge is one we've gotten from different circuit judges over the years.

THE COURT: Well, let me ask you this. Mr. Falk, do you have any objection to the State's request? I have my own, but I'm just asking you whatever they have provided me and you, is there anything in there that you specifically object to?

MR. FALK: I want to make sure that we're talking about that he has to be sent to a secure facility, and that's not always in there.

THE COURT: Well, you've heard me say that twice.

MR. FALK: No. I know.

THE COURT: I'm going to say it one more time.

MR. FALK: I know. I appreciate that.

THE COURT: Yeah. Because I know you're saying you have your own.

THE COURT: I do, but that doesn't mean y'all's is not

appropriate. I'm just -- I do have my own. So Mr. Bogle has submitted one and I just want to know if there's anything in there that you object to.

MR. FALK: No, Your Honor. I just would like to supplement it.

THE COURT: All right. And you've provided your supplement.

MR. FALK: Yes, Your Honor.

THE COURT: All right. Now, Mr. Bogle, do you have some objections to Mr. Falk's request?

MR. BOGLE: Yes, sir. Looking at his, do you have his jury charge in front of you?

THE COURT: I do.

MR. BOGLE: Page 1, paragraph 1.

THE COURT: All right.

MR. BOGLE: The second sentence beginning with the words the mental abnormality or personality disorder. I don't think that's in the statute we have here. It's something I've have never seen before and I don't think that's appropriate.

THE COURT: All right. I'll hear from Mr. Falk. I'm not inclined to charge that second sentence, but I'll hear from you on it.

MR. FALK: Your Honor, I think that lists right out of Kansas v. Hendrickson and Kansas v. Green that there's got to

be some type of connection to a -- that the reason they're going away is because they need treatment. It's got to be a health issue. It can't be just an order to impose additional punishment.

Therefore, there's got to be something in there and, like I said, it's language I think comes right out of those two Supreme Court cases that shows that the reason why the sexually violent predator statute in Kansas, which is the same one that we're using, is because it is separating recidivism, just people who commit crimes and other crimes versus people who have a mental disease which causes the recidivism.

We think especially in a case like this where he is being -- I would not be fighting so hard for that if he was diagnosed with being a pedophile or, you know, a rapist, but he's being diagnosed as having antisocial personality disorder, which she had testified to.

THE COURT: Well, now, I think you're -- I think your concern perhaps is going to be alleviated. I'm going to -- I'm going to instruct the jury, obviously, that it's not -- it's not that he's likely to commit some crime. It's that he's likely to commit crimes of sexual violence. I mean it's not just committing the crime of larceny, you know. It's got to be likely to commit crimes of sexual violence.

MR. FALK: Because of a mental disease.

THE COURT: Oh, of course, yeah.

MR. FALK: Yes. Your Honor, I think -- I think my language is appropriate.

THE COURT: Okay. I understand. I'll -- I'll note your exception to it.

MR. BOGLE: The second objection is on the bottom of page 1, paragraph 2, continuing onto the second page at the second line. The language beginning with you must, therefore, limit your consideration. I think that's kind of to the end of the paragraph. We would object to that. It is not in the statute. It seems more editorial.

THE COURT: You're objecting to the second sentence?

MR. BOGLE: No. The ones beginning with the words you must, therefore, limit your consideration. All the way to the end of the paragraph.

THE COURT: Well, isn't that the second sentence?

MR. BOGLE: Yeah, it's the second sentence.

THE COURT: Okay.

MR. BOGLE: That's correct. It starts on page -- the top of page 2.

THE COURT: Right.

MR. BOGLE: That's like the first one I objected to. It's more like an editorial comment.

THE COURT: All right. Well, yeah. Well, I'm going to instruct them that it has to be related to the sexually

violent offense, not some other offense, and that's going to be clear, I think.

MR. FALK: Okay.

THE COURT: I hope it is. I mean that's why we're here.

So anyway, I'm going to -- I'm not going to charge that specific request, but I think it -- I'm going to make it absolutely clear that it's got to be related to a sexually violent offense, but I know y'all are going to be listening carefully. So if I don't convey the appropriate instruction, then you can let me know at the end.

All right. What else?

MR. BOGLE: Paragraph 3, four lines down, the sentence beginning with the words -- the second sentence. Mental disorders do not include merely deviant behaviors. From there to the end of the paragraph.

We -- you've got that covered in the charge where it defines mental abnormality. You defined likely to engage in acts of sexual violence and --

THE COURT: Well, let me -- let me tell you --

MR. BOGLE: That's all straight out of the statute.

THE COURT: All right. Well, let me tell you what I propose on that. I've got that included.

MR. BOGLE: Our charge is word for word out of the statue.

THE COURT: I know. Hang on.

Clearly, this came out during the course of the evidence, but here's my instruction that I think covers that. Well, let me just let you all look at it. How about that? That way, the court reporter won't have to take it all down. You can come around.

(WHEREUPON, a bench conference was held off the record, after which the proceedings resumed as follows.)

THE COURT: All right. So Mr. Falk's request number 3 is not objected to and it's covered by my instruction. All right?

MR. BOGLE: Let's see. On page -- page 4 of his instructions --

THE COURT: That's the last page?

MR. BOGLE: On top of that page, the second line, the word -- the sentence beginning with the words two lines down, you do not have to be convinced beyond all doubt the respondent will commit a sexually violent offense. This is a clarification of the reasonable doubt statute.

THE COURT: Now, wait a minute. Where are you? My page 4 is his last page. Is that where you are?

MR. BOGLE: Right. Right. At the very top of that page.

THE COURT: All right.

MR. BOGLE: Two lines from the top are the words beginning with the phrase you do not have to be convinced

beyond all doubt.

THE COURT: I don't have that.

MR. BOGLE: I guess that seems -- that's kind of the reasonable man hesitates to act charge.

THE COURT: Well, let me see what you have. I don't have that.

MR. BOGLE: Okay. Oh. Your pages came out pretty differently than mine. See?

THE COURT: Wait a minute. It's different. It's supposed to be the same stuff.

MR. BOGLE: It is, but it's just -- when the computer printed it, it must be --

THE COURT: Okay.

MR. BOGLE: Okay. Well --

THE COURT: Oh, you wanted the other one. All right.

MR. BOGLE: I'm starting right there.

MR. FALK: I guess because this was emailed and printed.

MR. BOGLE: Yeah. This was emailed and printed on a different printer is what happened.

So I'm starting right here.

THE COURT: Well, I've got a reasonable doubt charge. I'm going to give my own.

MR. BOGLE: Okay.

MR. BOGLE: And then paragraph 6 about the plea bargain and how people have the right to plead guilty for stuff they

are not, in fact, guilty of. I've read that case, Robinson v. State. I don't think that's what it says. It talks about the context of an Alford plea, and none of the respondent's guilty pleas were Alford pleas.

THE COURT: I agree with that. And I know that Mr. Hulon -- and he's not the only person I've ever heard say it, but they operate under the assumption that in order to get the plea bargain, you have to actually lie to the judge when he asks you a question, and that is not the law in South Carolina, nor is it the law anywhere in the world so far as I'm -- well, not in the United States. Let's put it that way.

In fact, you can't lie to the judge, whether you want to get the deal or not. I mean that's the whole point. And I don't if y'all have those transcripts of those guilty pleas, but --

MR. BOGLE: I don't.

THE COURT: -- I would be quite surprised if -- if he was told by anybody, including his lawyer, that it's okay to lie to the judge just to get through the plea.

That certainly is not what he's contending, is it, Mr. Falk?

MR. BOGLE: That's where I object from, from 6.

MR. FALK: Yeah.

THE COURT: I agree.

MR. FALK: That is exactly what he's contending because not all judges will accept an Alford plea, and he is entitled to enter into a plea deal with the State. It's a -- it's a contractual right and he's entitled to do it.

THE COURT: He is entitled to enter into a plea bargain with the State, but that does not entitle him while he is under oath to lie to the Court. You're not suggesting that's all right, are you?

MR. FALK: Yes, Your Honor, I am. I'm suggesting that that --

THE COURT: Let me be sure I'm hearing you. You're suggesting to me right now that it's okay to lie to a Court to get what you're wanting?

MR. FALK: No, Your Honor. I'm suggesting that if the State makes an offer for a plea deal and if --

THE COURT: Right.

MR. FALK: And if that's what he has to -- I'm not saying -- I'm not saying that he can lie, Your Honor.

THE COURT: Okay. Well, he can't. I mean as a matter of fact, he cannot. And we all can agree with that surely.

MR. FALK: I'm just saying that he should be able to strike a plea bargain.

THE COURT: He can. He can strike a plea bargain and there's always all kind of ways to do that, but striking a plea bargain doesn't mean that when the judge says did you

commit the crime just as the solicitor just described it, you don't get to say yes when your answer is really no. That's lying under oath.

MR. FALK: Regarding the male --

THE COURT: All right.

MR. FALK: -- that we talked about, the only thing that was read to him was -- there was a comment -- I have the transcript. Was a comment -- and I'll be glad to show it to you, but a comment that the boy said that some sexual contact occurred. And when he actually pled guilty, it was -- this was, like, a two-step thing.

And if you read the transcript, it doesn't -- it does not look like he admitted to the charges the first time he pled and then there was a second hearing and are you pleading guilty because you are guilty. That was the extent of the question and it also referred to all three of those charges. He didn't say are you pleading guilty to sexual conduct -- I mean lewd act on a minor because you are guilty. Again --

THE COURT: Well, I don't need to see it because my point still remains and that is, in other words, Mr. Hulon can do whatever he feels is necessary for him to do to get the benefit of what he wants, but it does not include -- it does not include all of us sanctioning lying to a Court.

MR. FALK: Yes, Your Honor.

THE COURT: That's my point.

MR. FALK: Thank you.

THE COURT: In other words, I understand he thinks he -- maybe he thinks I've got to lie about it because I didn't do it. So I'm going to lie about it so I can get the benefit of the bargain.

Well, that's up to him, but that doesn't mean it's okay. In other words, later on -- you can't come later on and say, well, yes, I'm testifying today under oath, but I lied under oath before because I was trying to get something for it because that's the same thing we're doing here today. So I mean I don't know how you distinguish between lying to a Court and it's okay and it's not okay. Is there such a thing as that?

MR. FALK: Well, the significance -- I understand your ruling.

THE COURT: No, I know you do.

MR. FALK: My last point is that he's not denying that he has those charges. He's not denying that he pled guilty to those charges.

THE COURT: Well, he is though. Well, excuse me. He's not lying that he pled guilty. He's lying that he -- he's stating that he lied when he admitted his guilt.

MR. FALK: He's not trying to change -- he is not coming back in. This is not like a PCR case where he's coming back in here.

THE COURT: Oh, I know.

MR. FALK: And the reason why -- I'm just saying in these sexual cases, the reason why it makes a significant difference is because he -- the State is allowed to draw assumptions. The examiner for the State, the Department of Mental Health, draws assumptions that if they pled to it, they did it.

THE COURT: And they should. They should be able to assume that, just like I should be able to assume. If I asked him if he committed the crime as described and he says yes, then I should be able to assume that he committed the crime just as it is described. I shouldn't assume that he's just lying to get through the guilty plea. We don't allow that.

MR. FALK: Thank you, Your Honor.

THE COURT: Okay.

MR. BOGLE: I think that covers everything, Judge.

THE COURT: Okay. Good. All right. Do y'all need a few minutes before we close? How much time are you going to need to close?

MR. BOGLE: I'll probably take about 10 minutes.

THE COURT: Ten?

MR. BOGLE: Yeah, if that.

MR. FALK: Maybe a little longer.

THE COURT: Okay. All right. Well, let's take five

minutes and then we'll conclude.

MR. FALK: Okay.

(WHEREUPON, there was a break in the proceedings from 3:04 p.m. until 3:11 p.m., after which the proceedings resumed as follows)

THE COURT: All right. Are we ready?

MR. BOGLE: Yes, Your Honor.

THE COURT: All right. Bring them in.

I don't know if I made it clear, but I'm not going to instruct as to number 6 on the respondent's requests.

MR. FALK: I think it was clear.

THE COURT: Well, I wasn't trying to be too clear.

(WHEREUPON, the jury entered the courtroom at 3:12 p.m.)

THE COURT: All right. Ladies and gentlemen, as you know, you're going to hear from the lawyers and then you're going to hear from me and then you're going to deliberate and then we'll hear from you. So please give the lawyers your attention now as they give you their final summations.

Mr. Bogle?

MR. BOGLE: Thank you, Your Honor. May it please the Court. Mr. Falk.

CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. BOGLE: Again, thank you on behalf of the State and Mr. Hulon and Marlboro County for doing your job. This has not been -- as we talked about earlier, this has certainly

not been the kind of case you might have thought you were going to hear in civil court. It's not a car wreck. It's not a medical malpractice. But in a way it's kind of a medical case, and I'll talk about that in a second.

Now, here's where we are. All the evidence is in. All the testimony you're going to hear has been done. All the documents and whatever pieces of evidence that are coming in are right here. You've got the picture of the respondent and then four copies of the sentencing sheets and the indictments he pleaded guilty to. All that's going to come in and it'll be back in the jury room to look at.

But the point is it's all over now and your job is to decide the facts of the case. I'm going to talk about the law here in my argument and so will Mr. Falk I'm sure, but the judge -- at the close of this, he'll instruct you as to what the law is on this type of case and how you are to apply that law to what you've heard and what you're going to look at.

So if we say something that differs from what the judge says, please, the judge is the instructor of law. Go by what he says.

Now, here's where we are. Like I said, this law was passed about 20 years ago and the question is for the State to prove to you beyond a reasonable doubt, number one, has Mr. Hulon been convicted of a sexually violent crime, and the

answer is yes. There's four of them right there, and what are they?

The first one he was convicted back in 2000. It was a 1998 indictment. The charge and the crime happened in 1997. It was a lewd act upon a girl when she was about 14 years old. So that's the first one. He got a suspended sentence.

The second one is criminal sexual conduct with a minor in the first degree. That means the victim is 11 years or under 11 years of age. That was also a girl. She was about 10. The crime happened in 2002, and you'll see that at the top of the sentencing sheet where it says date of incident. The date of the crime is on there.

The third thing is also a criminal sexual conduct with a minor, this time in the second degree because the girl was a little bit older. The crime happened also in 2002.

And the fourth and final one is a lewd act on a child. This is a little boy who was 12 years old. The crime happened also in 2002, and these last three crimes I've mentioned, he pled guilty to all of them on the same day.

Now, you heard testimony from him that he didn't do it, he wasn't guilty, and he pled guilty to get a deal or pled guilty because he thought he'd get a suspended sentence or something like that. We talked about that on the witness stand.

And how it works is the way I described it to him. When

you plead guilty, the judge asks you a number of questions. First, he's trying to find out if you're pleading guilty freely and voluntarily. No one's forcing you to. You're pleading guilty of your own free will.

Then the prosecutor or the assistant solicitor reads a summary of what the crime is, what it was you did, and then the judge turns to the defendant, in this case Mr. Hulon, and says you heard what he said. Is that what you did? And the defendant says yes.

Then two things have happened. Number one, the judge has determined the plea is being given freely and voluntarily. And number two, there's a factual base. The crime happened and he admitted doing it and that same admission is done under oath. He's under oath. He was back then, just like he is today.

If he's saying today he didn't do it, that means he told the judge a few years ago, yes, I did do it. Which time was he telling the truth?

Now, as we all know, Dr. Gehle has done a bunch of these things for several years for the Department of Mental Health. She was appointed by the Court at a prior hearing to evaluate Mr. Hulon.

She looked for evidence of a mental abnormality, like was he a pedophile? Because these were young girls, but they had done an examination of the girls at the time the crimes

happened. While they were young girls age-wise, they had matured. So she couldn't really find evidence that he was a pedophile or what that's called is a pedophilic disorder, a sexual attraction to prepubescent children. She couldn't find that. She looked but could not find it.

What she did find though based on his lifetime history going back to age 14 of committing crimes, going to prison and getting out, committing crimes again, getting probation revoked, and then finally committing these sexual crimes, she found a lifetime history of criminal activity and she diagnosed him with a personality disorder.

Now, remember what the law says. We have to prove the existence of a sexually violent crime. Right here. We also have to prove that he has a mental abnormality or a personality disorder. This time, it's a personality disorder and he's got two of them. He's got antisocial and he's got the narcissistic personality disorder. The whole thing is about him.

Evidence of that is some of the comments he made about his sexual prowess with women, about the comment to the little girl, I'm teaching you. The reason I have to touch you this way is so your body will develop and make you more attractive to young boys. The fact that he was watching when he arranged for other men to have sex with [redacted].

The letters he wrote. After he'd already pleaded or

been found guilty, he writes letters to the cops about what happened, to the SLED agents telling them what happened and pointing out these things. It's all about him. Okay? He's the most important thing.

And that's not what this case is about. What this case is about is a lifetime criminal history that evolved into the sexual history that evolved into a determination by Dr. Gehle, based on her years of experience, that he's likely to reoffend, and that's the whole question. That's what the case turns on.

Now, she uses some different tests. One of them was called the Static 99-R. We tried to describe that earlier like a person going to a doctor with certain kinds of symptoms and the doctor knows based on those symptoms that you have a chance of some kind of medical problem, and that may affect your insurance rates. It may affect the diagnosis. It doesn't mean you're going to have that heart attack or going to have that problem. It means you're likely to.

And what the Static 99-R has been developed into is a similar checklist, thousands of sex offenders, convicted and then commit crimes again, and his score was a 5. That gives him a 15 percent chance of reoffending sexually over the next five years and he's 2.7 times greater chance of offending than the average sex offender.

Now, as the judge will tell you and as I told you this morning, the burden of proof, as you know, is on the State to prove all this stuff to you beyond a reasonable doubt. I know what you're thinking. Fifteen percent, 2.7 times more likely. Shouldn't it be above 50 percent?

Well, you've got to take this in context. The number 5 on that score is a likelihood to reoffend, much higher than average, which is a 2.

Also, the fact is we're not talking about robbing a convenience store or shoplifting some cigarettes. We're talking another sexual crime on a young child. You've got to put this in some perspective as to what it is.

He didn't have any sex offender treatment at the Department of Corrections. Now, there was disputing testimony about it never was offered to me, it wasn't available, I turned it down. Their records show he turned it down.

You've got to decide what to believe and the bottom line is despite the things he did do in prison -- which I find admirable taking the Narcotics Anonymous course, the substance abuse course. He got his GED. That's a great idea, but he didn't take sex offender treatment. Does he have a sex offender treatment plan when he gets out if you let him go? I don't know.

He does under his probation. He's got about eight

months left on community supervision and they will require sex offender treatment. The question is -- that's outpatient, and his history of criminal activity from the crimes he committed and the things he did along with committing them, like arranging all those men to be with Minor 1, this takes it across the line. It makes him likely to reoffend in a sexually violent manner, commit more sexually violent crimes like the one he's done now.

This isn't the kind of guy that is a candidate for good outpatient treatment. He needs to be in a secure facility for what they call long-term control, care, and treatment, and that's what the State is asking for and that's what I feel we've proven you beyond a reasonable doubt. He's got the crimes. He's got the personality disorders. And the details of these crimes are such that it takes him over the top.

So, the way this works is in a civil case is I give you my closing argument, Mr. Falk will do his. If he says anything, you may hear from me again, but probably not.

So I'd like to thank you for your attention to this case. Thank you for listening to what was said, looking at the exhibits.

And I would suggest to you that we have proven beyond a reasonable doubt that Mr. Hulon is indeed a sexually violent predator. Thank you.

Your Honor.

THE COURT: Mr. Falk?

MR. FALK: May it please the Court.

THE COURT: Yes, sir.

MR. FALK: Mr. Bogle.

CLOSING ARGUMENT ON BEHALF OF THE RESPONDENT

MR. FALK: The question today is whether or not he's a sexually violent predator. Dr. Gehle was pretty clear that my client is not a pedophile. He's not attracted to children. She also made it pretty -- and she also said there's no evidence that he was aroused by raping women. There's no evidence in the file of that. So what she said is that he is a narcissist and that he has an antisocial personality disorder.

What I found kind of interesting is, you know, when she was talking about his narcissistic behavior, she talked a bit about all his big stories that he told while he was out in Hollywood and that, you know, why did she tell him [sic] those stories unless he was trying to -- what was the purpose in him telling those stories? Well, she was talking to him she said for 11 hours, probably I think it was over more than one day, but I'm not sure and she was asking him questions about his history and so he's telling stories.

I guess, you know, if I probably lived that life, I'd probably tell you the same stories too if you talked for 11

hours in trying to get to know each other. I'm not sure that the purpose there was trying to make himself look any better, but Dr. Gehle kind of focused on that as being sort of supporting this diagnosis of -- of narcissism.

And the other thing about the narcissistic diagnosis that she seemed to focus on, which I really do not understand, is this idea that the fact that he was trying to get law enforcement to go investigate these other eight men in town. He was contacting law enforcement to sort of try to push them along. Finally had to get SLED involved in this.

She somehow was turning that against him and saying that that's some kind of a sign that he's a narcissist, but maybe it's a sign that he was doing what he was supposed to be doing in writing law enforcement about this alleged crime. That's sort of what's -- that's what's sort of pushing -- that's what's sort of supporting her diagnosis of narcissism.

And then she also said that he has antisocial personality disorder. There's no question that my client has a criminal record as far as crimes go that starts when he was about 20 years old. As far as other kind of offenses, you know, juvenile offenses, I guess he got one when he was about 14.

This guy has got a long criminal record. Most of the stuff that he did was larceny kind of stuff, where it was breaking and entering, receiving stolen goods, those kinds of

things, that housebreaking. That's what -- that's what he has done.

And honestly, if he got out tomorrow, he may go and commit another kind of crime like that. He might go ahead and commit another larceny or something like that, and that would be regrettable, but that is not y'all's job. Y'all's job's limited focus is likely that he's going to commit a crime of sexual violence if he's not held. I guess there's a possibility he could commit another crime and we have to leave that to the criminal justice system because that's that job.

Your job today is not to punish my client for his past history. Your job today is to determine whether or not -- you heard Dr. Gehle's evaluation and whether or not, based on what Dr. Gehle told you, you think that that -- that he has a mental disease or personality -- mental -- that he has either a mental problem or a personality defect that makes it likely that he's going to commit a crime of sexual violence. That's y'all's job today.

And you think whether or not he's narcissistic, likes to tell stories about kind of a wild past that he has, does that support that diagnosis? And, you know, her testimony was he's got criminal thinking, he thinks like a criminal. That may be.

And she also -- when I asked her questions, she admitted

that a high percentage of people in custody would have an antisocial personality disorder. That's kind of what criminals have. You know, they commit crimes against society. That's what they have. My client is no angel sitting there.

But why are we going to send somebody to get sex offender treatment if they're having antisocial personality disorder and they're a narcissist, if they are? That's y'all's decision too today. You have to decide that today.

And the State always likes to talk about this diagnosis and they just want to make some kind of comparisons between the evaluation that Dr. Gehle did and what would happen if he went to go see a medical doctor. And I don't think that that is necessarily a good analogy or a good comparison because of the type of science that the two people are talking -- are using.

And I think Mr. Bogle -- part of the time, he talked -- he made some kind of reference to, you know, the Static 99 and it helps you predict, just like you go to a doctor and they can help you predict whether or not you're going to have a heart attack.

Well, I think that's kind of an interesting point. About 18 months ago, plus or minus -- about 18 months ago, I was having some problems and I went to the doctor. I was getting some numbness in my arm and that's a symptom, and the

doctor was able to give me some tests. He first put me on a treadmill and then it had a printout and that told them, well, there's something going on in there.

And then the next test he gave me is he shot some dye in one of my arms and I went through an MRI and he got a printout and he got a readout. And then you've got some sort of a scientific test and he says, look, the way the dye is going through your heart, it looks like it's not going all the way through your heart. It's not -- you know, it's not flowing normally.

And then the next step -- he took a procedure and I don't know if any of y'all had a heart catheterization, but they put something up your arm and then they can look inside your heart and see if you've got a problem. And based on that, I woke up from that procedure and he said you're having open heart surgery next week.

That's a lot different. That's some hard science from a doctor. That's a diagnosis that a doctor has made using hard science. You know, the test results that other doctors can look at. You know, I couldn't -- he could have -- I mean he showed me the printout from the EKG and he showed me where the irregularities were. I don't think I saw the dye thing, but I mean, you know, the other doctor saw that.

That's hard science. So I'm confident in that diagnosis. I was so confident of that diagnosis that I said,

okay, Doc, cut my chest open and do open heart surgery.

I'm not sure about the science that Dr. Gehle is relying on. One of the tests she used was the MMPI. She said it was 560 true/false questions, and I asked what was his score and she said, well, you don't really get a score. You kind of look at how all these things came up with some kind of graph.

But here's the best part. What was the first question on the test? Do you like *Mechanics* magazines? I get that that's probably a test that they use, but I'm trying to show you that's the difference. That's the kind of science that the psychological community uses. That kind of -- that's not hard science. That's not like giving somebody an x-ray. That's not like giving a blood test. That's not -- I guess x-rays and blood tests we won't talk about.

That's not that kind of hard science. I mean it's a lot of interpretation. And is that giving you the same kind of confidence to make a decision that the State's asking you to make? Is that giving you enough ammunition to make the same kind of decision?

I was confident when the doctor told me he needed to cut my chest open and give me six heart grafts, but you've got to decide based on what Dr. Gehle told you whether or not you're going to make the decision that he's got to go into custody in a secure environment and get sex offender treatment. I contend that there's a difference in the reliability and the

science in those two questions.

And let's talk about their other test, the Static 99-R. Two things I want to talk about here.

One is she included this conviction he had for peeping Tom, and she said I had to do that. The test makes us include that conviction. If it's called peeping Tom, we have to include it.

And I would get it and it would make sense that if somebody is looking in on strangers for some reason, that's a sexual offense and that's probably something that should be considered in looking at his background and his history and the likelihood that he's going to commit another crime.

And she also told you that that peeping Tom offense had a huge impact on the way she had to score his test. If he did not have that peeping Tom conviction, she said it went from a 5 down to a 3, and I think she said it approximately would cut his risk in half.

I don't think there was much dispute about the facts. I mean his story about the peeping Tom conviction never changed. It was his girlfriend. They were living together for five years. They were all on the same piece of property. They were in a fight. She goes and lives with her father. He goes over to the father's house and is talking to the girl through the window, and the father -- the father got mad. They take out this peeping Tom charge.

Maybe it should've been trespassing. I don't think he would've understood the significance of pleading to peeping Tom, but Dr. Gehle has to rely heavily on that charge because it takes him from a 3 to a 5.

You've got to decide whether or not you're going to put that same kind of faith in her opinion. She didn't -- she sounded like the reason why she -- she didn't include it because, you know, under the facts it really meant something about him. She was saying that she had to include it because that's what the scoring rules tell her to do.

Now, my client is telling you that he did not touch that male and that he pled guilty because he was pleading to a plea because that was the deal that he had to get. And that's what -- he knew that in order to get the plea deal, he had to plead guilty. He also had to plead guilty that prior time in 1998 when it was the offense about the niece.

On the charge in 1998, he walked out the door that day after he pled. And on the other charge, it was all -- on the time with the boy, that was a charge that was wrapped up in this other plea deal. If you want to get into this is he lying then, is he lying now, you have to decide whether or not you think he did it.

The State wants to say you think he did it because he said he did it and, you know, he raised his hand before the judge. You decide whether or not people will plead guilty to

charges in order to get the benefit of the plea deal. They know there might be evidence out there, but they plead guilty because they want to get the benefit of the bargain. They should be entitled to be able to plead to get the benefit of the bargain, and that's what my client did.

Let me go back around. I want to go back to that Static 99 test. I don't know how accurate the test is. I don't know if it's fair to compare that test. They say it's an actuarial measurement, and every time you think about actuarial measures, you think about insurance companies and rates that you get for life insurance and rates that they impose for driving cars.

You know, a 24-year-old boy is probably more likely to get into an accident. There's probably -- that's probably a pretty good test that they have, but she said that the test that she's using, that she's relying on to do her risk assessment is moderately predictive.

So you don't necessarily think, well, this is just like looking at an insurance table. I mean, you know, if I'm -- if I'm such and such years old and based on the history, you know, you set insurance rates based on how much longer you're going to live and all that kind of stuff.

That may be more reliable. That may be less reliable. But she said this test gets a 70 and that was moderate. It's a moderately reliable test. That was her word.

She's basing her opinion on it because she says that's the best thing that they got. I understand why she uses it because it's the best thing that they have, but is that enough to create an opinion in your minds beyond a reasonable doubt?

And then you have to think she said the likelihood that he would commit another crime of sexual violence is 15 percent. I assume that had he not had the peeping Tom charge, she would've said that that crime would have been something less than 15 percent. She certainly said that the risk would be about half.

So I've got two problems here. One is does 15 percent mean likely that something is going to happen? If there's a 15 percent chance that it's going to rain -- if you hear that on rain -- if you hear on the weather report that there's a 15 percent chance of rain, do you necessarily take an umbrella to work that day or do you kind of think that's not enough? That's one. Is a 15 percent chance enough?

And two, is that even an accurate measure when she has to include this peeping Tom charge when that really had a huge impact and inflated the way she had to score his test? I think that if you have an opportunity to go back there and kind of listen to what you've heard, you'll be convinced that my guy has had a criminal lifestyle, a criminal past, and y'all might not like him.

He might not be a likable person, but I think you'll find that the State has not proven beyond a reasonable doubt that my client has a mental disease or a personality defect that makes it likely -- that whatever his personality defect is makes it likely that he's going to commit a crime of sexual violence and that he needs to be committed for long-term care and treatment.

I think you'll be convinced that my client is a criminal, but he's not a sexually violent predator. I think that's the only conclusion that you can reach.

Your decision is going to have a huge impact on my client because it's just going to be like whether or not you're sending him to jail because he's going to not be able to come home. He's going to be in a secure environment. That means you can't come and go as you please. He's not going to a mental hospital.

It's y'all's decision, and I hope that if you can sort of put aside all the bad things he did that he has already paid the criminal price for, 17 years -- he's already paid the price for that. The solicitor was happy with the price that he paid for that. At least they -- they -- they agreed to the deal.

Put that aside. Just look about whether or not you think he's got a mental disease. He's not a pedophile. Whether or not you think somebody who is narcissistic and has

antisocial personality disorder, that that's going to drive him to commit a crime of sexual violence in the future. I hope that you'll give some thoughtful consideration and I hope you'll come back with a verdict of not guilty.

MR. BOGLE: Nothing further, Your Honor.

CHARGE ON THE LAW

THE COURT: All right. Ladies and gentlemen, you have heard and seen all of the evidence in the case and you've now heard the final summations of the lawyers and, therefore, it now becomes my duty and obligation to instruct you on the law that's applicable and then you'll be asked to go back and to begin with your deliberations.

And through that process, you will examine all of the evidence received during the course of the trial. Where you can, you will determine the facts as they relate to the material allegations that are contained in the petition and the request by the petitioner.

You will then apply the law as I will have provided it to you and you will determine whether or not the petitioner has proven beyond a reasonable doubt that Mr. Hulon is a sexually violent predator. And if they have proven it, then you would make that finding that he is a sexually violent predator. And if they have failed to prove it, then you would make a finding that he is not proven to be a sexually violent predator.

It is your exclusive duty to determine what the facts are. You do that through your own common-sense examination and evaluation of all of the testimony and the other evidence received during the course of the trial.

And you twelve jurors alone will decide what weight, value, and effect to give to any particular testimony or other evidence in the case. Your sole objective is to simply render a fair and impartial decision based upon the evidence presented and the law that's applicable, as I will have provided it to you.

Now, as you know, this is an action brought pursuant to 44-48-10 of the South Carolina Code of Laws. That is referred to as the Sexual Predator Act.

In this action, the State is seeking to have the respondent, Mr. Hulon, civilly committed in a secure facility for long-term control, care, and treatment under the supervision of the South Carolina Department of Mental Health.

The State alleges that Mr. Hulon is a sexually violent predator as defined in Section 44-48-30 of the South Carolina Code of Laws, and that he suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

Although Mr. Hulon has previously been convicted of an

offense classified as a sexually violent offense and has satisfied any sentence that was imposed for that conviction, this is not a criminal proceeding wherein the State is seeking any incarceration or additional punishment for any criminal offense that the respondent has shown to have already committed, but rather it is a civil proceeding wherein the State is seeking an involuntary commitment under the supervision of the Department of Mental Health for care, control, and treatment until such time as the respondent's mental abnormality or personality disorder has so changed that he is safe to be released from that commitment.

The respondent denies that he is a sexually violent predator as defined by state law, and he denies that he suffers from any type of mental condition that makes him likely to engage in acts of sexual violence in the future.

Now, because the parties do not agree as to what the facts are, that's why you have been selected. Your obligation and duty is to consider all of the evidence in the case to decide the facts where you can as they relate to the material allegations and then apply the law that I will have provided to you in order to arrive at your decision.

Now, because you are the sole judges of the facts in this case, you are, therefore, necessarily the sole judges of the credibility, that is the believability, of each witness that has testified during the course of this trial, and you

twelve jurors alone will decide what weight, value, and effect to give to any particular witness's testimony or even portions of that testimony, but there are a number of factors which you should consider in arriving at your assessment as to a particular witness's credibility.

Some of those are that you should consider the demeanor of the witness. That is how the witness appeared to you while the witness was testifying from the witness stand.

Was the witness straightforward in responding to questions or was the witness hesitant or evasive in responding to questions that were asked of that witness? Simply put, did the witness appear to you to be telling the truth and to have knowledge of the facts to which that witnesses has testified?

You should also consider whether or not the testimony of a witness is consistent or is it inconsistent with that witness's testimony provided here in court or whether it is consistent or inconsistent with other statements or other testimony made by that witness outside of this particular proceeding? And you should also consider whether or not the testimony of a witness is consistent or inconsistent with any other evidence received during the course of this particular trial.

You should also consider how the witness came to know the facts to which that witness has testified. In other

words, what was that particular witness's opportunity and ability to perceive the existence of those facts to which that witness has testified by having previously used his or her senses? And then what is that witness's ability to be able to come into court and to accurately recollect to you as to what they had previously perceived?

You should also consider any bias or prejudice that you find a witness might have with regard to the case. In other words, if you find some reason that a particular witness would come into court and would testify one way or another to help or hurt one side or the other.

And you may consider any interest that a witness might have in the outcome of the case, if you determine that that witness does have such an interest and you find that that interest would bear upon that particular witness's credibility. And you should also consider whether or not the testimony of a witness is consistent -- excuse me -- is strengthened or weakened by other testimony or other evidence received during the course of the trial.

Because the determination as to whether a person suffers from a mental abnormality or a personality disorder that makes that person likely to engage in acts of sexual violence is ordinarily beyond the knowledge and experience of an ordinary layperson, you may consider testimony provided during the trial provided by someone who was called and

qualified to testify as an expert witness in the field of psychology and knowledgeable in the identification and diagnosis of mental conditions.

Although lay witnesses are generally limited to testifying only to facts within their own personal knowledge, experience or perception and they're not allowed to give opinions with respect to a particular matter that's in question, certain witnesses who do have special education, training, and experience in relation to a particular subject matter may be considered as an expert in that particular field.

And when that witness is qualified by the Court as an expert in that field, the witness may give testimony in the form of an opinion as it relates to the facts of the matter which is the subject of the lawsuit. And those conclusions and those opinions are evidence to be considered by the jury, along with all of the other testimony and other evidence received during the trial of the case, in arriving at your ultimate decision in this case.

If you find that the opinion of an expert witness is not based upon sufficient education, training, experience, skill or proper consideration of the facts that relate to this particular case, then you may reject that expert's opinion in its entirety or you may accept it in part and reject it in part, just like you may do with any other witness that

testifies during the course of the trial.

But because you are the judges of the facts and because you are, therefore, the judges of the credibility of each witness, you are permitted to believe as much or as little of what a witness has testified to as you deem is appropriate.

So you may believe everything that a witness testified to. You may choose to believe none of it. You may believe some portion of it and reject some other portion of it. You could believe one witness as opposed to several or several as opposed to one.

But whatever your good judgment and common sense tells you is the most believable and credible testimony is the testimony you should accept, and you should reject any testimony or other evidence that you find not to be credible or believable. Again, your sole objective is to simply render a fair and impartial decision based upon the law and the evidence received during the trial.

Now, the same law that provides that you are the judges of the facts also provides that I am the judge of the law, and that simply means that nobody is going to tell you how to arrive at your determination of fact in this case. As I've already stated, you do that -- you do that through the exercise of good judgment and common sense, conscientiously applied to the testimony and evidence received during the trial.

You must, however, under your oath as a juror accept the law as I provide it to you as being the law that you are to apply in the case. In other words, you're not to concern yourself with what you thought the law was before you came to serve as a juror this week or what you think the law ought to be.

Under your oath as a juror, you must simply accept the law as I provide it to you as being the law that you are to apply in the case and then you take that law and you apply it to the facts as you twelve jurors determine those facts to be based upon your consideration of the evidence in the case.

Now, because the Attorney General has made the accusation by way of its petition that Mr. Hulon is a sexually violent predator, the State has the burden of proving that fact beyond a reasonable doubt. Now, proof beyond a reasonable doubt does not mean that the State has to prove that fact beyond all doubt or beyond any possible doubt, but it does require the State to prove that fact to your satisfaction beyond a reasonable doubt.

And the term reasonable doubt should be given its plain and ordinary meaning. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act upon the information provided.

The respondent is entitled to any reasonable doubt that arises from the evidence or lack of evidence in the case and

if upon any factual issue essential to your ultimate determination you have a reasonable doubt as to how that issue should be resolved, it would be your duty to resolve that reasonable doubt in favor of the respondent. Proof beyond a reasonable doubt is proof that leaves you firmly convinced based upon the law and evidence that the defendant is a sexually violent predator as defined by statute.

There are very few things in this world that we know with absolute certainty, and the law does not require proof that overcomes every possible doubt.

If -- based upon your consideration of the evidence in this case and your application of the law to those facts as you determine them to be, if you are firmly convinced that the respondent is a sexually violent predator, then you must make that finding under your oath as a juror.

If, on the other hand, you think there's a real possibility that the respondent is not a sexually violent predator, then you must give him the benefit of that doubt and find that he is not a sexually violent predator.

Now, in order for the respondent to be found to be a sexually violent predator, it is necessary that the evidence in this case has established to your satisfaction beyond a reasonable doubt two essential elements.

First of all, the evidence has to establish that the respondent has been convicted of a sexually violent offense.

And you are instructed that Section 44-48-30 of the South Carolina Code of Laws provides that the crime of criminal sexual conduct with a minor and the crime of commission of a lewd act upon a child are both and each designated and classified as sexually violent offenses under the law.

Secondly, the evidence in the case must prove beyond a reasonable doubt that the respondent suffers from a mental abnormality or a personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

In order for you to better understand the elements which must be proven in order for the respondent to be declared to be a sexually violent predator, I will provide for you certain definitions of terms that are contained in the statute and that are also provided for by a separate statutory provision.

The term mental abnormality or personality disorder means a mental condition affecting the emotional or volitional capacity of an individual that predisposes a person to engage in acts of sexual violence and causes that person serious difficulty in controlling that behavior.

Mental disorders do not include merely deviant behaviors that conflict with preparing societal standards. Not all persons who commit sexually violent offenses are diagnosed as suffering from a mental disorder, and not all persons with a

mental disorder are predisposed to commit sexually violent offenses or have serious difficulty in controlling their behavior.

The State must prove that the respondent in this case suffers from a mental condition which he cannot sufficiently control, rendering him likely to commit acts of sexual violence without the structure, treatment, control, and care provided by a secure facility under the supervision of the Department of Mental Health.

The term likely to engage in acts of sexual violence means the person's propensity to commit acts of sexual violence is of such a degree of significance as to pose a menace to the health and safety of others so that he is dangerous to others.

Therefore, as I have stated, the burden of proof is on the State to prove to your satisfaction beyond a reasonable doubt, first, that the respondent has been convicted of a sexually violent offense and also suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

If the State satisfies you beyond a reasonable doubt the existence of each of these two elements, it would be entitled to a finding that the respondent is a sexually violent predator. If the State has failed to meet that burden of

proof as to one or both of those elements and, therefore, you have a reasonable doubt as to whether the respondent is a sexually violent predator, then it would be your duty to make that finding that he is not a sexually violent predator.

Now, ladies and gentlemen, I am not in any way concerned with what your decision is, but as I've told you, the verdict has to be unanimous. All twelve of you must be in agreement before any decision may be rendered and returned to the Court.

Madam Forelady, you're going to preside over jury deliberations while the jury is engaged in those deliberations, and you're also going to be tasked with the responsibility of completion of the verdict form. And I'm going to send that verdict form back with you with the other exhibits which have been introduced.

And the way the verdict form will be completed is you are simply going to be asked a question and that question is has the petitioner, the State of South Carolina, proved beyond a reasonable doubt that Donald Hulon is a sexually violent predator under the South Carolina Sexually Violent Predator Act?

You have two potential verdict forms and those are we, the jury, unanimously answer the question as follows. One verdict form is yes, Donald Hulon is a sexually violent predator, and the other verdict form is no, Donald Hulon is

not a sexually violent predator.

Whichever that decision is, you'll check it in the space provided or you can circle the finding if you'd prefer. You'll sign your name as the foreperson. You're the only juror that needs to sign the verdict form and you will also place the appropriate date.

Once you have reached a decision in the case, Madam Forelady, and once you have completed the verdict form and you've signed it, knock on the jury room door. Let the bailiff know that you've reached a decision. We'll bring you back to receive the verdict.

You will hold onto the verdict form. Don't give that to the bailiff. You hold onto it and I'll receive it from you after the jury comes back into the courtroom for us to receive your decision.

Now, during the course of your deliberations, there may come a time where you have some question about the evidence. You may wonder if there's something additional that you can have. You might think there's something that would help you, and so you ask about it.

Well, please understand that I'm not permitted to comment upon the evidence or the facts of the matter. Also, please understand that now that the case is closed, no additional evidence can be introduced. So even if it existed, it cannot be introduced. You have all of the

evidence that you will be receiving in order to arrive at your decision.

If at any time you have a question about testimony, I don't have transcripts of the witnesses' testimony, but if you need to re-hear testimony in whole or in part, we can bring you back into the courtroom to have that witness's testimony reheard and we can hear it in its entirety or in just some portion of it, if that's all you need in order to answer a question that you may have.

If at any time you have a question about the law that's applicable, I am permitted to answer those questions. And so if you need a reinstruction or you need an additional explanation or clarification as to the law that you are to apply, I can always provide you with that additional instruction, explanation or clarification.

So, Madam Forelady, if at any time you need to direct some matter or comment to me or question to me, if you'll write it on a piece of paper, give it to the bailiff. He or she will provide it to me, and then I'll respond to that accordingly.

Now, I'm going to ask my two alternate jurors to stay here in the courtroom with me. I'll ask the twelve primary jurors to please retire to your jury room, but do not begin deliberations until I send you word to do so. I've got some matters I'll need to address with the lawyers before you can

start deliberating.

If I don't need to bring you back for any reason, the bailiff will instruct you that you may begin deliberations and, in that event, he'll bring to the jury room all of the exhibits which have been introduced and to you, Madam Forelady, he'll also bring the verdict form for completion.

So please retire to your jury room, but do not begin deliberations until I send you word to do so.

(WHEREUPON, the jury exited the courtroom at 3:59 p.m.)

THE COURT: As for the two alternates, you know, you cannot participate in jury deliberations because it appears that the original twelve are able to do that. So that will conclude your service for the trial of this case.

It's also going to conclude your service for the balance of the week. All of the cases that were going to require a jury's participation have been resolved one way or another. So as you leave today, you won't need to call back or come back any further.

If you're curious as to what the jury might do in this case, you're welcome to stay if you want to, but you don't have to. If you want to be excused, just let the clerk know so they can let you know about your pay voucher. And if you need an employer statement, they can provide you with one of those.

I'll give you the bad news and that is that you only get

paid $10 a day for jury service in Marlboro County. So I'm not sure what that's about, but y'all might want to put in for a raise one day.

But we do thank you for your participation, and I hope that it has not posed too much of a hardship on you. I do sincerely hope that it has been an educational and a beneficial experience for you.

So I'll leave it up to you. You can stay or leave. That's your choice. Okay? Thank you again for your participation.

Do you mail them their money? Are you going to mail them?

THE CLERK: Yes, sir.

THE COURT: They will mail you a check for your service. Anybody need an employer's statement?

(WHEREUPON, there was no response.)

THE CLERK: Do you need a note?

THE COURT: No. Nobody does.

(WHEREUPON, the alternate jurors were released and exited the courtroom at 4:01 p.m.)

THE COURT: All right. Any matters -- exceptions to the instruction or request for additions to the instruction by the petitioner?

MR. BOGLE: No, Your Honor.

THE COURT: By the respondent?

MR. FALK: Just to preserve my request to charge and then ask that they be made a Court's exhibit.

THE COURT: Okay.

THE COURT: And we have five exhibits?

MR. BOGLE: Four? Five, yes.

THE COURT: All right. And are they all accounted for?

MR. BOGLE: They're all here, Judge.

THE COURT: Okay. Good. All right. And here's the verdict form.

Take the exhibits and the verdict form. Tell the jury to begin deliberations and notify us when they have concluded.

Will you give that to the court reporter and have her mark that as a Court's exhibit? I marked it up. Do you want to give her a clean one?

MR. FALK: Yeah. I'll give her a clean copy.

THE COURT: Give her a clean one.

MR. FALK: Thank you.

(WHEREUPON, the respondent's request to charge was marked as Court's Exhibit Number 1.)

THE COURT: All right. We will be at ease while the jury is deliberating.

MR. BOGLE: Thank you, Your Honor.

(WHEREUPON, jury deliberations began at 4:01 p.m.)

(WHEREUPON, there was a break in the proceedings from

4:02 p.m. until 5:45 p.m., after which the proceedings resumed as follows.)

THE COURT: The jury has reached a decision. Are we ready to receive it?

MR. BOGLE: Yes, Your Honor. Thank you.

THE COURT: All right. Bring them in, please.

(WHEREUPON, the jury entered the courtroom at 5:46 p.m.)

THE COURT: Madam Forelady, have you and your fellow jurors reached a unanimous decision?

THE FOREPERSON: Yes, we did.

THE COURT: Have you reflected that decision on the verdict form as requested?

THE FOREPERSON: Yes.

THE COURT: Did you sign it and date it?

THE FOREPERSON: Yes.

THE COURT: If you'll please hand that up by way of the clerk.

(WHEREUPON, the foreperson complied.)

THE CLERK: Thank you.

THE COURT: All right. You may publish the verdict.

VERDICT

THE CLERK: In the Matter of the Care and Treatment of Donald Hulon, Case 2017-CP-34-243, the jury unanimously answers the question as follows.

Yes, Donald Hulon is a sexually -- sexually violent

predator.

Signed, Valerie Pearson, Foreperson. Dated September 26, 2018.

THE COURT: All right. Is this the verdict of each juror and, if it is your decision and still your decision, I would ask that you please indicate so by raising your right hands?

(WHEREUPON, the jurors complied.)

THE COURT: All right. All jurors have responded in the affirmative.

Are there any other matters to be addressed with the jury present?

MR. FALK: No, Your Honor.

MR. BOGLE: No, Your Honor.

THE COURT: All right. Thank you, ladies and gentlemen, for your participation. That's going to conclude your service for the trial of this case. It will also conclude your service for the week. So you won't need to call back or report back any further.

So we do want to thank you for your participation as jurors. You will be paid. Your pay voucher will be mailed to you at the address that appears on your juror summons unless you've given the clerk a different, more current address. And if you have had a change of address, be sure you let the clerk know before you leave. And if you need an

employer's statement, they'll also provide you with one of those.

THE CLERK: We've got one for each one.

THE COURT: Okay. Do you want to go ahead and give them to them now? Yeah.

(WHEREUPON, there was a pause in the proceedings, after which the proceedings resumed as follows.)

THE COURT: All right. You may be excused. Thank you for your participation this week.

(WHEREUPON, the jury was released and exited the courtroom at 5:49 p.m.)

MR. BOGLE: May I approach, Your Honor?

(WHEREUPON, there was a pause in the proceedings, after which the proceedings resumed as follows.)

MR. BOGLE: Jim?

MR. FALK: I'm sorry?

THE COURT: Any post-trial motions?

MR. FALK: Not at this time, Your Honor.

THE COURT: Do you want to reserve the right to?

MR. FALK: I'll reserve, yes.

THE COURT: Do you want to reserve ten days for that?

MR. FALK: Ten days. Yes, sir.

THE COURT: Any objection?

MR. BOGLE: No, Your Honor.

THE COURT: Okay. You have ten days to file post-trial

motions.

MR. FALK: Thank you.

THE COURT: All right. Anything else?

MR. BOGLE: No, Your Honor. Thank you.

THE COURT: All right. Court is adjourned.

(WHEREUPON, the proceedings ended at 5:55 p.m.)

--- END REQUESTED TRANSCRIPT ---

STATE OF SOUTH CAROLINA)
COUNTY OF Marlboro)
STATE VS.)
Donald Ray Hulon)
AKA:)
Race: [redacted] Sex: M)
DOB: [redacted])
DL#:)
SID#:)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
98 -GS- 34 - 0139
A/W#: MAR0492
Date of Offense: 6/13/97
S.C. Code §: 16-3-655
CDR Code #: 013916

SENTENCE
☑ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☑ PLEADS TO: Lewd Act Upon a Minor
in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 214018
☑ 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. 10 yrs susp to 5 yrs prob
ATTEST: he cannot have unsupervised visitation with minor female children
Solicito: Don Baker Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☑ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of 10 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 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CERTIFIED TRUE COPY
CLERK OF COURT

☐ The Defendant is to be given credit for ____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ____

PLAINTIFF'S EXHIBIT
NO. 1 KSS
9-26-16

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 ..... $ ____

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: Transfer to Darlington County

FILED
2016 SEP 28 AM 10:00
CLERK OF COURT
MARLBORO COUNTY

PRESIDING JUDGE: [signature]
Judge Code: 016100
Sentence Date: 6/16/00
Clerk of Court/Deputy Clerk: [signature]
Court Reporter: Annette Herndon

White - Clerk Green - Corrections Canary - Probation Pink - Defendant
SCCA/217 (1/99)

WITNESSES

C R York

McColl Pd

Marlboro Jury

ARREST WARRANT #:

MAR0492

Arrested on June 22, 1997

ACTION OF GRAND JURY

2-2-98

True Bill

Foreman: Grand Jury

VERDICT

Foreman: Petit Jury

Date:

DOCKET #: 98GS34-0139

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: February, 1998

THE STATE

vs.

Donald Ray Hulon

I N D I C T M E N T F O R

1003

CRIMINAL SEXUAL CONDUCT WITH MINOR

SECOND DEGREE (16-3-655)

A CERTIFIED TRUE COPY

Linda H. Williams

CLERK OF COURT

MARLBORO COUNTY

FILED

2008 SEP 26 PM 2:09

ANITA H. WILLIAMS

CLERK OF COURT

MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) INDICTMENT #98GS34-0139
County of Marlboro)

At a Court of General Sessions, convened on February 02, 1998, the Grand Jurors of Marlboro County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR SECOND DEGREE (16-3-655)

That Donald Ray Hulon did in Marlboro County on or about June 13, 1997, wilfully and unlawfully engage in criminal sexual conduct with a minor in the second degree in that Donald Ray Hulon did engage in sexual battery with a victim who is at least fourteen years of age and less than sixteen years of age and the defendant is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim to wit: that the defendant did have sexual intercourse with [redacted], who is fourteen years of age while the defendant is eighteen years of age or older.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

SOLICITOR: Jay Thurmond

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

WITNESS

16 day of February 2000

x Don Hulon

William B. Sandifer

GUILTY PLEA

State of South Carolina, County of Marlboro,

Donald Ray Hulon

Lewd Act Upon a Minor

16-15-140

x Don Hulon

William B. Sandifer

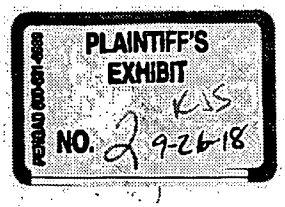
William B. Sandifer

C. C. C. P. & G. S. for Marlboro County

A CERTIFIED TRUE COPY

CLERK OF COURT
MARLBORO COUNTY

FILED
FEB 26 PM 2:02
MARION M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO

STATE VS. DONALD HULAN

INDICTMENT/CASE#: 03 -GS- 34 - 0072

AKA:

Race: W Sex: M Age: 53

DOB: [redacted] SS#:

Address:

City, State, Zip

DL# SID#

A/W#: G-8122.16

Date of Offense: 2/1/02 Through 12/31/02

S.C. Code §: 16-3-655(1)

CDR Code #: 013815

☐ CASE RESTORED

SENTENCE

☑ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☑ PLEADS TO: Criminal Sexual Conduct With a Minor - First Degree

in violation of §16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 013815

☐ 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:

K. S. Mayo, SCCPC, for Sol. Solicitor | Don Hulan Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

A CERTIFIED TRUE COPY

Audrey M. Williams

CLERK OF COURT

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: $ plus 20% fee: $

Payment Terms:

☐ set by SCDPPPS

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ beginning

$ paid to Public Defender Fund

Other:

Recipient:		
*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 138.75

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation

FILED

SEP 26 2018

William B. Sundenwirth

Clerk of Court/ Deputy Clerk

Court Reporter: Sandra McCall

PRESIDING JUDGE

Judge Code: 010411

Sentence Date: 10-13-04

White – Clerk Green – Corrections Canary – Probation Pink – Defendant SCCA/217 (7/2003)

WITNESSES

Langley
W. Erman
Mccoll Pd

ARREST WARRANT #:

G812216

Arrested on December 27, 2002

ACTION OF GRAND JURY

True bill

Foreman: Leroy Smith, Jr.
Grand Jury

VERDICT

Foreman:
Petit Jury

Date:

DOCKET #: 03GS34-0072

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: February, 2003

THE STATE

vs.

Donald Hulan

I N D I C T M E N T F O R

0385

CRIMINAL SEXUAL CONDUCT WITH MINOR

FIRST DEGREE (16-3-655)

A CERTIFIED TRUE COPY

ANITA H. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

CLERK OF COURT
MARLBORO COUNTY

FILED
2003 SEP 26 PM 6 02

STATE OF SOUTH CAROLINA)
) INDICTMENT #03GS34-0072
County of Marlboro)

At a Court of General Sessions, convened on February 10, 2003 the Grand Jurors of Marlboro County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR FIRST DEGREE (16-3-655)

That Donald Hulan aka Butch Hulan in the County of Marlboro on or between February 01, 2002, thru December 31, 2002, willfully and unlawfully commit criminal sexual conduct with a minor in the first degree by engaging in sexual battery with a minor who was under Eleven (11) years of age, to wit: [redacted], 10 years of age, in violation of Section 16-03-0655(1), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

SOLICITOR: _____

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED
2003 FEB 26 PM 6:02

320

PLAINTIFF'S EXHIBIT NO. 3 9-26-18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO
STATE VS. DONALD HULAN

INDICTMENT/CASE#: 03 -GS- 34 - 0073
AW#: G-81 2217
Date of Offense: 2/1/02 through 12/31/02
S.C. Code §: 16-3-655(2)
CDR Code #: 0 1 3 1 9 1 6
☐ CASE RESTORED
SENTENCE
☑ PLEA ☐ TRIAL

AKA:
Race: [redacted] Sex: M Age: 53
DOB: [redacted] SS#:
Address:
City, State, Zip
DL# SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☑ PLEADS TO: Criminal Sexual Conduct With a Minor – Second Degree
in violation of § 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0 1 3 1 9 1 6

☐ 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:
Ismay, SCCPC for Solicitor
Donald Lee Hulan Defendant
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☑ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms:
☐ set by SCDPPPS

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning
$ _____ paid to Public Defender Fund
Other:

Recipient:		
*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 0.75
TOTAL		$ 125.75

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation

William B. Sandelands
Clerk of Court/ Deputy Clerk
Court Reporter: Linda McColl

PRESIDING JUDGE
Judge Code: 0 1 0 2 5 3 1 1
Sentence Date: 10-13-04

FILED
SEP 13 2004
CLERK OF COURT
MARLBORO COUNTY, S.C.

COPY
CERTIFIED TRUE COPY

White – Clerk Green – Corrections Canary – Probation Pink – Defendant SCCA/217 (7/2003)

WITNESSES

~~Lengley~~
W. Cerman
Mccoll Pd

ARREST WARRANT #:

G812217

Arrested on December 27, 2002

ACTION OF GRAND JURY

True bill

Foreman: Grand Jury

VERDICT

Foreman: Petit Jury

Date:

DOCKET #: 03GS34-0073

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: February, 2003

THE STATE

vs

Donald Hulan

I N D I C T M E N T F O R

0396

CRIMINAL SEXUAL CONDUCT WITH MINOR

SECOND DEGREE (16-3-655 (2))

A CERTIFIED TRUE COPY
ANITA R. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED
2018 SEP 26 PM 6:02

STATE OF SOUTH CAROLINA)
) INDICTMENT #03GS34-0073
County of Marlboro)

At a Court of General Sessions, convened on February 10, 2003 the Grand Jurors of Marlboro County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR SECOND DEGREE (16-3-655 (2))

That Donald Hulan in the County of Marlboro on or between February 01, 2002 thru December 31, 2002, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: [redacted], 11 years of age, in violation of Section 16-3-655 (2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

SOLICITOR: _____

FILED
2003 SEP 26 PM 6 02
ANITA W. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

A CERTIFIED TRUE COPY
CLERK OF COURT
MARLBORO COUNTY

PLAINTIFF'S EXHIBIT NO. 4 KS 9-26-18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO

STATE VS DONALD HULAN

AKA:

Race: W Sex: M Age: 53

DOB: [redacted] SS#:

Address:

City, State, Zip

DL# SID#

INDICTMENT/CASE#: 04 -GS- 84 1158

ANN#: Direct Indictment

Date of Offense: 6/1/02 Through 9/1/02

S.C. Code §: 16-15-140

CDR Code #: 2 / 4 / 6 / 8

☐ CASE RESTORED

SENTENCE

☑ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☑ PLEADS TO: Lewd Act Upon a Minor

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2, 4, 6, 8

☑ 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: L Smagh, SCAG, for Solicitor — Solicitor; Donald Lee Hulan — Defendant; [signature] — Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 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 Caroline Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: $ _____ plus 20% fee: $ _____

Payment Terms:

☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning

$ _____ paid to Public Defender Fund

Other:

Recipient:

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation

William B. Burchenbark

Clerk of Court/ Deputy Clerk

Court Reporter: Linda McCall

PRESIDING JUDGE [signature]

Judge Code: 0 1 0 1 2 E - 1

Sentence Date: 10-13-04

FILED 2018 SEP 26 PM 3:02 CLERK OF COURT MARLBORO COUNTY, S.C.

White – Clerk Green – Corrections Canary – Probation Pink – Defendant SCCA/212 (7/2003)

CERTIFIED TRUE COPY

WITNESSES

SLED

ARREST WARRANT #:

MAR0732

Arrested on December 27, 2002

ACTION OF GRAND JURY

Foreman: Grand Jury

VERDICT

Foreman: Petit Jury

Date:

DOCKET #: 04GS34-1158

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: October, 2004

THE STATE

vs.

Donald Hulon

I N D I C T M E N T F O R

2468

COMMITTING OR ATTEMPTING A LEWD ACT UPON

A CHILD 16-15-140

FILED

2005 SEP 26 PM 2:02

ANITA WILLIAMS

CLERK OF COURT

MARLBORO COUNTY, S.C.

A CERTIFIED TRUE COPY

CLERK OF COURT

MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) INDICTMENT #04GS34-1158
County of Marlboro)

At a Court of General Sessions, convened on October 11, 2004 the Grand Jurors of Marlboro County present upon their oath:

COUNT: COMMITTING OR ATTEMPTING A LEWD ACT UPON A CHILD 16-15-140

That Donald Hulon, a person over the age of fourteen (14) years, did in Marlboro County, on or between June 1, 2002 and September 1, 2002, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: [redacted], date of birth [redacted], with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

WAIVER

[illegible] rights explained to me, I Voluntarily waive presentment of the within indictment to the Grand Jury, plead guilty as charged and consent for said plea to be entered on record, against me this 13 day of Oct., 2004

ATTEST:
William B. Funderburk
WILLIAM B. FUNDERBURK
C.C.C.P. & G.S.

FILED
2004 SEP 29 PM 6:02
ANNE H. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

A CERTIFIED TRUE COPY
CLERK OF COURT
MARLBORO COUNTY

STATE OF SOUTH CAROLINA)	IN THE COMMON PLEAS COURT
)	
COUNTY OF MARLBORO)	FOR THE 4th JUDICIAL CIRCUIT
)	
In Re Care and Treatment of)	CASE NO.: 2016-CP-34-0243
)	
)	
)	
Donald Hulon)	
Respondent,)	
)	

RESPONDENT'S PROPOSED JURY CHARGES

1. BEFORE THE RESPONDENT CAN BE COMMITTED, YOU THE JURY MUST FIND THAT THE RESPONDENT SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY DISORDER THAT CAUSES THE RESPONDENT TO HAVE A SPECIAL AND SERIOUS DIFFICULTY IN CONTROLLING HIS BEHAVIOR. THE MENTAL ABNORMALITY OR PERSONALITY DISORDER MUST BE SUFFICIENT TO DISTINGUISH HIM FROM RECIDIVISTS CONVICTED IN ORDINARY CRIMINAL CASES.

Kansas v. Hendricks, 521 U.S. 346 (1997) and Kansas v. Crane, 534 U.S. 407, 122 S.Ct. 867 (2002); In Re Thomas 402 S.C. 373, 741 S.E.2d 27, (SC 2013)

2. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT RESPONDENT HAS A "'MENTAL ABNORMALITY' AFFECTING HIS EMOTIONAL OR VOLITIONAL CAPACITY WHICH CAUSES SPECIAL AND SERIOUS DIFFICULTY IN CONTROLLING BEHAVIOR THAT IS LIKELY TO CAUSE RESPONDENT TO COMMIT A SEXUALLY VIOLENT

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2018 SEP 25 P 3:00
ALICIA G. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT.# 1015
DATE: 9-24-18

OFFENSE IN THE FUTURE. YOU MUST THEREFORE LIMIT YOUR CONSIDERATION TO RESPONDENT'S LIKELIHOOD OF COMMITTING A SEXUALLY VIOLENT OFFENSE AND NOT CONSIDER THE LIKELIHOOD THAT HE MAY COMMIT AN ORDINARY CRIMINAL OFFENSE.

Kansas v. Hendricks, 521 U.S. 346 (1997) and Kansas v. Crane, 534 U.S. 407, 122 S.Ct. 867 (2002); In Re Thomas 402 S.C. 373, 741 S.E.2d 27, (SC 2013)

3. MENTAL DISORDER MEANS A CONDITION AFFECTING THE EMOTIONAL OR VOLITIONAL CAPACITY THAT PREDISPOSES A PERSON TO ENGAGE IN ACTS OF SEXUAL VIOLENCE AND CAUSES SERIOUS DIFFICULTY IN CONTROLLING BEHAVIOR. MENTAL DISORDERS DO NOT INCLUDE MERELY DEVIANT BEHAVIORS THAT CONFLICT WITH PREVAILING SOCIETAL STANDARDS. NOT ALL PERSONS WHO COMMIT SEXUALLY VIOLENT OFFENSES CAN BE DIAGNOSED AS SUFFERING FROM A MENTAL DISORDER. NOT ALL PERSONS WITH A MENTAL DISORDER ARE PREDISPOSED TO COMMIT SEXUALLY VIOLENT OFFENSES OR HAVE SERIOUS DIFFICULTY IN CONTROLLING BEHAVIOR.

Kansas v. Hendricks, 521 U.S. 346 (1997) and Kansas v. Crane, 534 U.S. 407, 122 S.Ct. 867 (2002)

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2018 SEP 26 PM 6:02
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BERKELEY COUNTY, S.C.

4. THE RESPONDENT HAS ALREADY PLEAD GUILTY TO A SEXUALLY VIOLENT OFFENSE. HE RECEIVED A CRIMINAL SENTENCE FOR THAT CRIME AND HAS ALREADY SATISFIED THAT SENTENCE. SOUTH CAROLINA'S SEXUALLY VIOLENT PREDATOR LAW WAS NOT ENACTED SO TO ADD TO THE CRIMINAL PUNISHMENTS IMPOSED UPON INDIVIDUALS THAT COMMIT SEXUALLY VIOLENT OFFENSES. THEREFORE YOUR DECISION WHETHER TO COMMIT RESPONDENT IN THIS CASE MAY NOT BE INFLUENCED BY YOUR PERSONAL OPINIONS REGARDING WHETHER RESPONDENT RECEIVED AN APPROPRIATE CRIMINAL PUNISHMENT.

In Re Matthews, 345 S.C. 638, 550 S.E.2d 311, (S.C. 2001); In Re Manigo, 389 S.C. 96, 697 S.E.2d 629 (S.C. App. 2010); Kansas v. Crane, 534 U.S. 407, 122 S.Ct. 867 (2002).

5. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT UNLESS CONFINED TO A SECURE FACILITY, RESPONDENT IS "LIKELY" TO COMMIT ANOTHER SEXUALLY VIOLENT OFFENSE. IN MAKING THIS DETERMINATION OF LIKELIHOOD, YOU MUST BE FIRMLY CONVINCED THAT RESPONDENT WILL COMMIT ANOTHER SEXUALLY VIOLENT OFFENSE. YOU DO NOT HAVE TO BE CONVINCED BEYOND ALL DOUBT THAT RESPONDENT WILL COMMIT

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2018 FEB 26 P 3:38
CLERK OF COURT
BERKELEY COUNTY, SC

ANOTHER SEXUALLY VIOLENT OFFENSE, BUT IF YOU HAVE A DOUBT THAT CAUSES YOU TO HESITATE TO ACT, THEN SUCH A DOUBT IS REASONABLE AND THE BENEFIT OF THIS DOUBT MUST BE GIVEN TO THE RESPONDENT.

6. A PLEA BARGAIN IS THE RESULT OF A CONTRACT NEGOTIATION BETWEEN THE STATE AND A CRIMINAL DEFENDANT. IF A CRIMINAL DEFENDANT BELIEVES THAT ACCEPTING THE TERMS OF A PLEA OFFER IS IN HIS/HER BEST INTEREST, HE/SHE HAS THE RIGHT TO PLEAD GUILTY TO A CRIME FOR WHICH HE IS NOT IN FACT GUILTY.

Rollinson v State, 346 SC 506, 552 S.E.2d 290 (2001); North Carolina v Alford, 400 U.S. 25, 91 S. Ct. 160, (1970).

Respectfully Submitted,

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Charleston, SC 29402
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jfalklaw@gmail.com

FILED
2018 SEP 26 PM 6 02
ANITA W. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED
SEP 16 2019
SC Court of Appeals

Respectfully Submitted,

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of September, 2019.