

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Charleston County

Honorable R. Ferrell Cothran, Circuit Court Judge

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SC Court of Appeals

IN THE MATTER OF THE CARE AND
TREATMENT OF TIMOTHY J. BROWN,

APPELLANT.

APPELLATE CASE NO 2019-000821

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2017-CP-10-03450
)
)
IN THE MATTER OF:)
) Transcript of Record
THE CARE AND TREATMENT OF)
TIMOTHY J. BROWN,)
)
) DATE: April 15 and 16, 2019
)

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JR.

A P P E A R A N C E:

JAMES G. BOGLE, JR.
Attorney for the State of South Carolina

JAMES KRISTIAN FALK
Attorney for Timothy J. Brown

Original transcript ordered by:
Commission on Indigent Defense

Karen V. Andersen, PMR, CRR
Circuit Court Reporter

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1 (State's Exh. 1, Indictment 2005-GS-10-1492, was
2 marked for identification.)

3 (State's Exh. 2, Indictment 2005-GS-10-1494, was
4 marked for identification.)

5 (State's Exh. 3, Indictment 2005-GS-10-1490, was
6 marked for identification.)

7 THE COURT: Ladies and gentlemen, we are about to
8 begin the case in the matter of Timothy J. Brown. Is there
9 any member of the jury panel connected by blood or marriage,
10 close personal friends, social relations with Mr. Brown? If
11 so, please stand.

12 (No response from the jury.)

13 THE COURT: Potential witnesses in this case are Dr.
14 Marie Gehle, Harvey Brown, Eva Brown, Kaiwanna Brown, Marie
15 Meyers, Iris Waring. Any member of the jury panel connected
16 by blood or marriage, close personal friends or social
17 relations with any of those potential witnesses? If so,
18 please stand.

19 (No response from the jury.)

20 THE COURT: The attorneys involved in this case,
21 representing the Attorney General, Mr. James Bogle; James
22 Falk, representing Mr. Brown. Any members of the jury panel
23 connected by blood or marriage, close personal friends,
24 social relations, or have been represented by either of these
25 two attorneys? If so, please stand.

1 (No response from the jury.)

2 THE COURT: Okay. Thank you.

3 JUROR 95: I know Mr. Falk.

4 THE COURT: Okay. What's your number?

5 JUROR 95: 95.

6 THE COURT: Are you a client of his or just know
7 him?

8 A JUROR: No, sir, just social friends.

9 THE COURT: And the fact that he's an attorney in
10 this case, would that affect your ability to be a fair and
11 impartial juror?

12 A JUROR: I'm fine with it.

13 THE COURT: Okay. Thank you. What was your number
14 one more time?

15 JUROR 95: 95.

16 THE COURT: Mr. Brown has been convicted of certain
17 sexual offenses. Does anybody in the jury panel know
18 anything about any potential sex offenses that Mr. Brown has
19 been convicted of? If so, please stand.

20 (No response from the jury.)

21 THE COURT: Any member of the jury panel or a member
22 of your immediate family ever been a victim of a sexual
23 assault? If so, please stand.

24 (No response from the jury.)

25 THE COURT: Any member of the jury panel ever been

1 charged with the offense of sexual assault? If so, please
2 stand.

3 (No response from the jury.)

4 THE COURT: Any member of the jury panel have any
5 training or experience in the fields of psychiatry,
6 psychology or the law? If so, please stand.

7 JUROR 55: Yes, Your Honor, Juror No. 55, J. Davis.
8 I'm an attorney in Charleston.

9 THE COURT: Okay. Thank you, Mr. Davis.

10 JUROR 284: Juror No. 284, Phillip Ward. I'm an
11 attorney in Charleston as well.

12 THE COURT: Okay. Thank you.

13 JUROR 2: I'm sorry. I was just saying, I have a
14 degree in psychology, but I have not practiced or used it.

15 THE COURT: Okay. And what's your number?

16 JUROR 2: 2.

17 THE COURT: Thank you.

18 JUROR 94: This backs up to a previous question.
19 Would the immediate family include stepchildren?

20 THE COURT: Yes.

21 JUROR 94: Yes.

22 THE COURT: So you had stepchildren that have been a
23 victim of sexual assault?

24 JUROR 94: Yes, two stepdaughters.

25 THE COURT: Okay. Did you raise them? Were they in

1 your household?

2 JUROR 94: I did not raise them, but I am married to
3 their father.

4 THE COURT: Okay. Would that affect your ability to
5 be fair and impartial in this case?

6 JUROR 94: No.

7 THE COURT: Okay. And tell me your number again.

8 JUROR 94: 94.

9 THE COURT: Okay. Thank you, ma'am. Any member of
10 the jury panel ever been involved in prison ministry or
11 prison outreach programs or any program dealing with
12 incarcerated people? Does that apply to anybody?

13 JUROR 284: 284, I started my career in the
14 solicitor's office in Georgetown County.

15 THE COURT: Okay. Thank you.

16 Mr. Falk, you've got some people listed here that
17 are not potential witnesses on your voir dire.

18 MR. FALK: May I approach, Your Honor?

19 THE COURT: Yes.

20 (Whereupon, a bench conference takes place off the
21 record.)

22 THE COURT: Any member of the jury panel know [REDACTED]

23 [REDACTED], [REDACTED], [REDACTED], [REDACTED],

24 [REDACTED], [REDACTED]? I've asked you about

25 [REDACTED] Anybody know any of those people?

1 (No response from the jury.)

2 THE COURT: Okay. Any member of the jury panel ever
3 done any research or ever researched on the Internet sexual
4 offender registry? Anybody ever look up sexual offender
5 registry?

6 JUROR 2: Before buying a house.

7 THE COURT: Your number again?

8 JUROR 2: 2.

9 THE COURT: All right.

10 JUROR 72: 72. I get a listing. It automatically
11 comes to me. And I can view it for my neighborhood and
12 general vicinity.

13 THE COURT: Okay. Thank you.

14 Any member of the jury panel employed with the
15 Department of Social Services? If so, please stand.

16 (No response from the jury.)

17 THE COURT: Anybody a court-appointed special
18 advocate? If so, please stand.

19 Involved in the guardian ad litem program or the
20 foster care program? If so, please stand.

21 JUROR 55: 55, Jay Davis. I've been appointed
22 before. And my wife used to work in a foster care company
23 that did private placements.

24 JUROR 284: Juror 284. I went through the counselor
25 verification process in law school.

1 THE COURT: Thank you.

2 Any member of the jury panel or your spouse employed
3 in the law enforcement in any level? If so, please stand.

4 (No response from the jury.)

5 THE COURT: Any member of the jury panel or your
6 spouse employed with the Charleston County Solicitor's
7 Office? If so, please stand.

8 (No response from the jury.)

9 THE COURT: Any member of the jury panel work in any
10 correctional facilities, state or federal? If so, please
11 stand.

12 JUROR 72: 72, I worked at Lieber Correctional
13 Institute.

14 THE COURT: Are you still at Lieber?

15 JUROR 72: No.

16 THE COURT: Thank you, ma'am.

17 Any member of the jury panel a medical technician, a
18 volunteer fireman or first responder? If so, please stand.

19 (No response from the jury.)

20 THE COURT: Is any member of the jury panel a member
21 of victim's rights organizations, such as CAVE, People
22 Against Rape, or any of those organizations dealing with
23 victims of crimes? If you are a member of any of those
24 organizations, please stand.

25 (No response from the jury.)

1 THE COURT: Any member of the jury panel have recent
2 communications with the Charleston County Solicitor's Office
3 or the Attorney General's Office? If so, please stand.

4 THE COURT: Okay.

5 JUROR 55: I spoke with the solicitor.

6 JUROR 284: My too.

7 THE COURT: Okay. Any member of the jury panel know
8 anything about this case at all or formed or expressed an
9 opinion about anything about this case? If so, please stand.

10 (No response from the jury.)

11 THE COURT: Any member of the jury panel aware of
12 any bias or prejudice either towards the Attorney General's
13 Office or this defendant? If so, please stand.

14 (No response from the jury.)

15 THE COURT: Any member of the jury panel know any
16 reason whatsoever they can't give a fair trial to both the
17 plaintiff and the defendant in this case? If so, please
18 stand.

19 (No response from the jury.)

20 THE COURT: Any further questions?

21 MR. BOGLE: No. 19 on our list.

22 THE COURT: Any member of the jury panel or a member
23 of your immediate family ever been the subject of a civil
24 commitment, either voluntarily or involuntarily? If so,
25 please stand.

1 (No response from the jury.)

2 THE COURT: Okay. Anything further?

3 MR. BOGLE: Not from the State, Your Honor. Thank
4 you.

5 THE COURT: Mr. Falk, anything from you?

6 MR. FALK: It may have been covered by one of your
7 earlier questions, but could you read question 21?

8 THE COURT: I asked that earlier.

9 MR. FALK: Okay.

10 THE COURT: Okay. You can give me a jury.

11 Ladies and gentlemen, the computer is going to
12 scramble your names and send me out a list. We used to do
13 this by blind person. Now we use a blind computer.
14 Sometimes the blind person was faster.

15 How much time do you think you need?

16 MR. BOGLE: One alternate or two?

17 THE COURT: One should be enough. How much time do
18 you need?

19 MR. FALK: Ten minutes.

20 THE COURT: Okay. Ladies and gentlemen, we will be
21 in recess for ten minutes. If you want to sit here, you can.
22 If you want to get up and move around, if you will be back,
23 let's say quarter 'til. Okay? And we will be in recess
24 until quarter 'til 12.

25 (Whereupon, a recess transpired.)

1 THE COURT: Y'all ready?

2 MR. BOGLE: Yes, Your Honor.

3 THE CLERK: Attorneys, please use the numbers on the

4 far left. You each have four strikes. The plaintiff will

5 strike first.

6 MR. BOGLE: Strike No. 4.

7 THE CLERK: Plaintiff strikes 4.

8 MR. FALK: Respondent strikes 18.

9 THE CLERK: Respondent strikes 18.

10 MR. BOGLE: The State will strike 7.

11 THE CLERK: State strikes 7.

12 MR. FALK: Respondent strikes No. 6.

13 THE CLERK: Respondent strikes No. 6.

14 MR. BOGLE: The State strikes 14.

15 THE CLERK: The State strikes 14.

16 MR. FALK: Respondent will strike No. 5.

17 THE CLERK: Respondent strikes No. 5.

18 MR. BOGLE: The State will strike No. 16.

19 THE CLERK: Sir, that is your last strike.

20 MR. BOGLE: Yes.

21 MR. FALK: Respondent strikes No. 10.

22 THE CLERK: Sir, that is your last strike.

23 Your Honor, would you like for me to go ahead and

24 call these jurors?

25 THE COURT: Let's do the alternates.

1 THE CLERK: Or alternate first?

2 THE COURT: Let's do the alternate.

3 THE CLERK: One strike each, sir?

4 THE COURT: Yes.

5 MR. BOGLE: The State will strike No. 22.

6 THE CLERK: The State strikes No. 22.

7 MR. FALK: Respondent will strike No. 23.

8 THE CLERK: Respondent strikes No. 23.

9 May I seat the jury?

10 THE COURT: Yes.

11 THE CLERK: As I call your name, if you would please

12 come forward. Gather all of your belongings and come and

13 have a seat in the jury box. You have been chosen for this

14 trial.

15 Clint Anderson, Juror No. 6.

16 Sir, if it's okay with you, I will just call their

17 juror number moving forward.

18 THE COURT: That's fine.

19 THE CLERK: Juror No. 77, Juror No. 212, Juror No.

20 299, Juror No. 101, Juror No. 66, Juror No. 21, Juror No.

21 124, Juror No. 2, Juror No. 266, Juror No. 18, Juror No. 32.

22 Your Honor, those are the first 12 jurors. I will

23 now call the alternate.

24 Juror No. 105. Juror No. 105, Grant.

25 Sir, the jurors have been chosen.

1 THE COURT: Thank you. Are there any matters of law
2 pertaining to selection of jury, from the plaintiff?

3 MR. BOGLE: No, Your Honor.

4 THE COURT: From the defendant?

5 MR. FALK: No, Your Honor.

6 THE CLERK: The panel, if they can please call the
7 number on the card they were given after 6 p.m., that will
8 advise them of further instructions.

9 THE COURT: Those of you who were not selected
10 service, if you will call back after six o'clock, I assume if
11 it's like every other court, you will not get to talk to a
12 real person. You will get an answering machine. So you
13 can't argue with it. Call back. And if you do that, I
14 appreciate it. Have a nice day.

15 (Whereupon, the venire leaves.)

16 (Whereupon, a bench conference takes place off the
17 record.)

18 THE COURT: You can swear the jury.

19 (Whereupon, the jury is sworn.)

20 THE COURT: Ladies and gentlemen, I've got some
21 matters of law that I need to deal with before we actually
22 start the testimony in this case. So I'm going to send y'all
23 to lunch. So you don't have to sit around and wait on that.
24 I ask you to be back in the jury room at two o'clock.

25 Now, don't discuss this case. Don't allow anyone to

1 discuss it with you. Don't do any research. Don't Google
2 anybody. Everything you learn about this case, you need to
3 learn in this courtroom.

4 And if you come back, come straight to the jury
5 room. If you have an emergency over lunch, you need to call
6 us and let us know that you have a problem. Because if not,
7 I expect to see all 13 of you back. I can't get started
8 until all of you show up. So if I'm missing one of you, I
9 will call a sheriff or somebody to look for you. So I will
10 see you back at two o'clock. Have a nice lunch.

11 (Whereupon, the jury leaves open court at 11:56
12 a.m.)

13 MR. BOGLE: Could I have one second to tell my
14 witness what happened? She's out there.

15 THE COURT: Sure.

16 MR. BOGLE: Judge, the State has two motions in
17 limine in this case.

18 THE COURT: Okay.

19 MR. BOGLE: Judge, the first one, I think Mr. Falk
20 and I may well agree on this one. It's a motion that has to
21 do with where Mr. Brown might go to. It's a motion by the
22 State to prohibit any reference as to the location or place
23 that he might be committed to, such as referring to it as
24 prison or being there for life or for an indeterminate time
25 or words to that effect.

1 As Your Honor knows, we are seeking civil commitment
2 of Mr. Brown. The elements that we have to prove for the
3 Court is whether or not he's been convicted of a sexually
4 violent crime, and does he have a mental abnormality or a
5 personality disorder that makes him likely to commit these
6 crimes in the future unless he's confined to long-term
7 control, care and treatment. So that's it.

8 Any testimony or questions about the location would
9 distract the jury, prejudice the jury. Could take them down
10 a road they are not supposed to go. It's not something we
11 have to prove.

12 Now, for Your Honor's information, several months
13 ago, I think late -- until late last year, the people
14 committed to this program were confined to two unused wings
15 at Broad River Correctional Institution, behind the wire at
16 Broad River. Now, in the last couple of years, the
17 Department of Mental Health was contracted out to a separate
18 company to do all the treatment. It's call Well Path
19 Solutions (sic), I think is their name now. Originally was
20 called Correct Care.

21 Anyway, they built a freestanding facility, separate
22 and independent of any prison on the Broad River campus.
23 It's got a fence around it, but it's not technically behind
24 the wire of any prison. It's a freestanding facility. You
25 turn off of Broad River Road and go into the Department of

1 Corrections headquarters. It's off to the left. It's a
2 brand-new facility. And that's where he would be.

3 So you are confined, but it's not a prison. It's
4 not for life. It's not indeterminate, that sort of thing.
5 So we would ask that those type of words not be allowed,
6 those type of questions not be allowed.

7 THE COURT: Okay. Do you got any --

8 MR. FALK: Your Honor, in the past, I thought
9 Mr. Bogle and I have always agreed I could use the term
10 "indeterminate sentence", not a life sentence. But that is
11 the law. He goes there until he can show probable cause that
12 he can be released. I think since part of what they have to
13 show is that he has to be confined for long-term care and
14 treatment, I mean, long-term is part of the definition under
15 the statute. So I think I can use the term "indeterminate".
16 I am not going to say it's a life sentence.

17 THE COURT: Okay.

18 MR. FALK: And also, I think I'm entitled to say
19 that it is a secure facility. I mean, I never said that it's
20 a prison.

21 THE COURT: Right. And I agree with what you've
22 said.

23 MR. FALK: Thank you.

24 THE COURT: What's the next motion?

25 MR. BOGLE: The second motion has to do with

1 treatment. Again, without repeating myself, Your Honor,
2 those are the things we have to prove. We do not have to
3 prove the type of treatment or the length of treatment or
4 anything like that. And I think one of Mr. Falk's motions is
5 also that we not talk about the respondent's right to
6 petition for release in the future or have annual reviews
7 where he has the chance to petition for release. We agree
8 not to bring that up.

9 But what I'm getting at is, treatment is not
10 something you have to prove. And treatment would only be
11 speculative. Dr. Gehle is a court-appointed expert assigned
12 to evaluate this guy and see whether or not he's been
13 convicted of the right kind of crimes and has the mental
14 abnormality or personality disorder. Her job is to diagnose
15 those, give a medical or psychological diagnosis to the
16 Court, not to speculate about treatment.

17 The only other thing would be, if he is committed,
18 we have no idea what treatment he would need. It would be
19 truly speculative. It would be handled by a separate agency,
20 Correct Care or Well Path Solutions organization. So any
21 question about the type of treatment, the length of
22 treatment, what type of treatment it is, would be outside the
23 bounds of this court and outside the bounds of what the State
24 has to prove. It can confuse the jury and distract them from
25 the elements of proof.

1 THE COURT: You disagree with that?

2 MR. FALK: A little bit, Your Honor. I think that I
3 can go into a little bit of the treatment, because the State
4 has to prove that he has to be confined for treatment. And
5 so I think to the fact that -- and, of course, it would be
6 limited to what Dr. Gehle's understanding would be. But does
7 he need to be treated or does he need to be confined?
8 Theoretically, he could be treated on an outpatient basis.
9 So the fact that this is a treatment that can only be
10 provided in this secure facility where they are going to send
11 him, I think is something I can explore to the extent that
12 the witness has any knowledge.

13 MR. BOGLE: We have no objection to the argument
14 dispute being between outpatient treatment versus inpatient
15 secure facility treatment. That's part of the case. But as
16 far as type of treatment, how many classes, do you sit in
17 front of the computer, do you go through group sessions,
18 things like that, that's the kind of detail Dr. Gehle would
19 give as her job. It would be outside the realm of what we
20 have to prove anyway.

21 THE COURT: That's fine. And if that's -- if any of
22 the questions you think goes outside that, you object. I
23 will rule as it happens. But, generally, I think, depends on
24 what the testimony of the witness is. And the fact that
25 treatment may be a part of it, he can ask that.

1 MR. BOGLE: Thank you, Your Honor.

2 THE COURT: All right. Anything else?

3 MR. FALK: Then I have some.

4 THE COURT: Is that all you have, Mr. Bogle?

5 MR. BOGLE: Yes, sir.

6 MR. FALK: Your Honor, I've also filed a motion in
7 limine. I just handed it to you a few minute ago. I don't
8 think it's relevant in this case that the State goes on and
9 talks about the legislative history of the Sexually Violent
10 Predator Act. I can't think of any other type of trial which
11 is governed by statutory provisions where either side goes in
12 and starts talking about the legislative history of the
13 statute. I don't think it's -- and I think we get to
14 prejudicial when the State starts using terms like an
15 extremely dangerous group of sexually violent predators.
16 Again, I don't think the State needs to talk about the
17 statutory legislative history of the act.

18 MR. BOGLE: If I may approach, Your Honor.

19 THE COURT: Yes, sir.

20 MR. BOGLE: This is a copy of the section 404.820 of
21 the law. The bracketed language there, I would some time
22 read it verbatim or refer to it when I talk in my opening
23 argument as to why the jury is here and what we are doing.
24 Sometimes I will read what the legislature wrote down.

25 MR. FALK: A, I don't think it's relevant. But, B,

1 when we start talking about there's an extremely dangerous
2 group of sexually violent predators, my client is not in that
3 group until the end of the proceeding. So if nothing else,
4 those buzz words, I think, are prejudicial.

5 MR. BOGLE: What I'm doing is I'm educating the jury
6 why they are here. They think they are here for a med mal or
7 something. They have no clue what they are going to be
8 facing. That's why I explain what the case is about by using
9 those words there, and then talk about the burden of proof,
10 expert witness testimony, things like that.

11 THE COURT: I know you can explain why they are here
12 without -- you know, when I charge them on the law, even
13 though that's what the statute says, I would never say that
14 the General Assembly finds that there's mentally, abnormally,
15 extremely dangerous group of sexually violent predators that
16 exist and require civil commitment. I wouldn't tell them
17 that.

18 MR. BOGLE: I'll summarize it.

19 THE COURT: You ought to be able to do that without
20 that lead-in.

21 MR. FALK: Thank you, Your Honor.

22 THE COURT: Because if I did that, y'all would be
23 objecting.

24 Anything else?

25 MR. FALK: The second item I think we already talked

1 about is the fact that I don't want the State to go into the
2 fact, well, he could maybe get out because he could petition
3 for annual release, which I think is already covered.

4 MR. BOGLE: We won't go into that.

5 MR. FALK: Now, I would expect as always, the
6 witness for the State is going to talk about his criminal
7 record as part of the basis for her opinion. And I can
8 appreciate under, if it's 702 or 703, that an expert witness
9 can rely on hearsay evidence and all of that in forming her
10 opinion. But I still believe that it is your obligation as
11 the gatekeeper under 403 to keep information out that is more
12 prejudicial than probative.

13 He has a 1985 arrest for a burglary second and
14 possession of burglary tools. To the best of my
15 understanding and the State's petition that you not know the
16 disposition of that case, nor do they know any of the
17 operative facts that led to it. So I think, just talking
18 about an arrest when we don't know the disposition, is going
19 to become prejudicial. And that would apply also to a 1990
20 arrest for burglary and grand larceny. I don't know the
21 disposition, what this is --

22 THE COURT: What's the State's position on that?

23 MR. BOGLE: Judge, this has been dealt with by our
24 Supreme Court in at least two cases. I have a memo of law
25 that I submitted to the Court last week and handing up right

1 now. In one of them, In the Matter of the Care and Treatment
2 from Edel (ph) from 2008, the Court held that the trial judge
3 improperly admitted testimony as to prior sex offenses as
4 well as prior nonsexual offenses, and some of the
5 convictions, some of the crimes did not even result in
6 convictions.

7 And this is to partly prove the elements of whether
8 or not he is a sexually violent predator. They have to go
9 into all of that past information.

10 The next case that dealt with it was matter of Care
11 and treatment of Corley (ph) in 2003. The Supreme Court held
12 that the probative underlying details of an ABHAN, not even
13 sexually violent crime, were necessary and outweighed any
14 danger of undue prejudice for the purpose of this law.

15 We have to go into the background information,
16 number of crimes he's been charged with, convicted of. And,
17 of course, the expert witness, Dr. Marie Gehle, is behind me.
18 She will go into the weight of those things when she
19 testifies.

20 But, also, one of the diagnoses she got from
21 Mr. Brown was anti-social personality disorder. To show
22 that, we have to prove not only convictions, but the kind of
23 conduct that would be grounds for an arrest, not even
24 arrested, and you have to go back prior to age 15 to show
25 that. So the entire list of his run-ins with the law is

1 relevant in making that diagnosis. And I think as an expert
2 witness, she's allowed to explain to the jury the basis for
3 her diagnosis. And that would be under Rule 703 of the rules
4 of evidence.

5 The State v. Cutro case, original county case in
6 2005 went into that in great detail. And, basically, it's
7 the type of evidence typically relied on by experts in this
8 case in forming her opinion. So the facts of the underlying
9 data need not be admissible in and of itself in the evidence.
10 So she's going to go through those crimes, because that's
11 part of the basis for the opinion, the criteria to diagnosis
12 anti-social personality disorder.

13 THE COURT: Well, my understanding of his objection,
14 clearly of convictions, but the nonconvictions -- the factual
15 basis -- you know, he hasn't been convicted.

16 MR. BOGLE: The Elders case talked about that,
17 crimes that there wasn't even a conviction.

18 THE COURT: I understand that. But that didn't deal
19 with her knowledge of the crime to warrant conviction, did
20 it?

21 MR. BOGLE: It dealt more with the fact that it
22 happened. And that's what Dr. Gehle is going to do. She's
23 going to say the record shows that he was arrested for this,
24 and we don't know the disposition, but a number of times he
25 did the type of conduct which is even grounds for an arrest

1 and could get him in trouble, as part of the criteria for
2 anti-social personality disorder. And I could have her on
3 the stand here if you would like.

4 THE COURT: Well, my understanding of the fact is
5 that he was arrested, and she can use the fact that he was
6 arrested here and here, but he wasn't convicted.

7 MR. BOGLE: Right. She will explain that.

8 THE COURT: But is she going to go into the facts of
9 that arrest?

10 MR. BOGLE: No. She will go into the underlying
11 details of the sexually violent crimes.

12 THE COURT: I understand anything he's been
13 convicted of, that's not necessarily an issue. But the thing
14 that he was arrested for and not convicted of --

15 MR. BOGLE: She won't go into the fact.

16 THE COURT: I think his objection -- the facts of
17 that, she won't know except through hearsay maybe upon
18 hearsay. So for that, she's just going to say he was
19 arrested.

20 MR. BOGLE: That's all she will do.

21 MR. FALK: Your Honor, my objection goes a little
22 bit further, because she doesn't even know the brief facts.
23 If this was a case where there was proof there was probable
24 cause for the arrest and that there was a preliminary
25 hearing -- we don't even have the arrest, the affidavits for

1 the arrest. So he can easily have been -- and, in fact, in
2 this case, deep in the history of this case, there was a
3 false arrest where one of the victims in this case identified
4 somebody else as being one of her attackers. And then later,
5 it was --

6 THE COURT: Yeah, but was he convicted of it?

7 MR. FALK: No. But my point is, we don't know
8 anything. I don't understand how it could at all be relevant
9 if we don't even know why he was arrested. I mean, you know,
10 it's not that the police decided to not go forward. I don't
11 know why he was arrested. I don't know if he was -- without
12 even that, it's just -- it could be a typographical error. I
13 mean, I don't have any confidence that what she could glean
14 from that would be more probative than it would be
15 prejudicial. She doesn't even know why he was arrested. She
16 knows what the charge is. She doesn't know what were the --
17 there's no statement from a victim. There's no police
18 report. There's no incident report. Without that, how could
19 she be saying this is relevant to her diagnosis other than he
20 happened to have been arrested, and he could have been
21 arrested and even completely exonerated.

22 THE COURT: You want to respond?

23 MR. BOGLE: The problem is, to make the diagnosis of
24 anti-social personality disorder, and that's a legitimate
25 diagnosis under this law, there was a recent case last month,

1 I think, a matter of Snow, which the entire case was based on
2 anti-social personality disorder or other specified disorder.

3 The point is, the criteria for that diagnosis
4 include being charged with crimes, as well as convicted of
5 crimes, includes doing the kind of things that can get you
6 arrested, even though you are not arrested. And so
7 Dr. Gehle, in some cases she has been provided the criminal
8 records. Some cases she's gone off NCIC. She's trying to
9 show this diagnosis of anti-social personality disorder,
10 which is a legitimate personality disorder, not a mental
11 abnormality. And the question is, can he control himself?

12 And that's the kind of thing she has to go into,
13 that list. Her job is not to investigate the crime. She's
14 not a police woman. She's not to go out and investigate why
15 he was arrested. The fact the charges were dropped or nolle
16 pros'd is the fact there may not have been anything to it.

17 The point is, if you do the kind of stuff that get
18 you arrested over and over again, there's an anti-social
19 issue. And that's where you get that diagnosis.

20 MR. FALK: Your Honor, that's my whole point.
21 There's no proof he was doing the kind of stuff to get
22 arrested. There's no evidence of the kind of stuff that got
23 him arrested. He could have been sitting in his house and
24 falsely accused. There's no evidence of any record in here
25 of the kinds of stuff that got him arrested, term Mr. Bogle

1 used twice.

2 MR. BOGLE: Again, I'm summarizing from the
3 Diagnostic and Statistical Manual which is the guideline book
4 for all diagnoses used by psychologists and psychiatrists.
5 So you don't have to be sitting in your house. If there's
6 probable cause to arrest you, doesn't matter how it comes
7 out, that's relevant to the diagnosis of anti-social
8 personality disorder.

9 If you would like, I can have Dr. Gehle testify
10 briefly about that just to make a record.

11 THE COURT: I will do whatever you want to do. I
12 can read these cases over lunch. And when I get back,
13 whatever you want is up to you.

14 MR. BOGLE: If I may, Your Honor.

15 THE COURT: I assume it is an issue in this case you
16 know. I mean, I understand his objection. So you know that
17 it is an issue? Go ahead. I will find out right now whether
18 or not it's an issue.

19 DR. MARIE GEHLE,

20 having been duly sworn, testifies as follows:

21 THE CLERK: Please state your name and spell your
22 last name.

23 THE WITNESS: My name is Marie Gehle, G-E-H-L-E.

24 MR. BOGLE: Judge, for the purpose of this
25 examination, can we stipulate to her expertise

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. BOGLE:

4 Q. Dr. Gehle, you were ordered to evaluate Mr. Brown;
5 is that correct?

6 A. That's correct.

7 Q. As part of your evaluation, what was the mental
8 abnormality you diagnosed him with?

9 A. I diagnosed him with other specified paraphilic
10 disorder, biastophilia, and anti-social personality disorder
11 and substance use disorders.

12 Q. Let's talk about the anti-social personality
13 disorder. In your report beginning on page 14, there's a
14 list of crimes that he was arrested for, convicted for. Some
15 were nolle pros'd. Somebody dismissed. Some convicted of.
16 Why is it necessary to look into his entire criminal history
17 in a case like this?

18 A. Well, it's important to see a timeline of the
19 offenses. And to look at time that somebody may have been
20 charged with something, but not convicted. They still might
21 have been subject to arrest, spent time in jail. I also ask
22 about those during the interview, whether they were charged
23 or convicted. And so I asked Mr. Brown about those incidents
24 during this -- during the interview that I had with him.

25 Q. So the list of crimes beginning on page 14,

1 including burglary, DUS, and some others, going all the way
2 up to 1999, you asked him about all these; is that right?

3 A. Yes.

4 Q. And he admitted to all these arrests to you, these
5 arrest and convictions?

6 A. He admitted to some of them.

7 Q. Why is it important to look at things where he
8 wasn't convicted?

9 A. Again, it's part of just the timeline of the
10 person's history. When they were subject to arrest, they had
11 charges. I look at that to see how they behaved during that
12 period of time. I also ask about them. So sometimes people
13 admit to them. And that's what Mr. Brown did. He admitted
14 to some of those incidents that he wasn't convicted for.

15 Q. You mean, he wasn't convicted, but he admitted his
16 guilt to you?

17 A. Yes.

18 Q. Okay. Now, the criteria for anti-social personality
19 disorder diagnoses, what are the criteria for that, and how
20 does that relate to a list of criminal convictions and
21 nonconvictions?

22 A. Well, it's a pervasive pattern of disregard for and
23 the violation of the rights of others occurring since age 15,
24 as indicated by three or more of the following. So it's a
25 failure to conform to social norms with respect to lawful

1 behaviors as indicated by repeatedly performing acts that are
2 grounds for arrest; deceitfulness, as indicated by repeated
3 lying, use of aliases, or conning others for personal profit
4 or pleasure; impulsivity or failure to plan ahead;
5 irritability and aggressiveness, as indicated by repeated
6 physical fights or assaults; reckless disregard for safety of
7 self or others; consistent irresponsibility, as indicated by
8 repeated failure to sustain consistent work behavior or honor
9 financial obligations; lack of remorse, as indicated by being
10 indifferent to or rationalizing having hurt, mistreated, or
11 stolen from others.

12 And then there's a couple of caveats, that is
13 individual must be at least 18 years of age; there's evidence
14 of conduct sort of with an onset before age 15, and the
15 occurrence of anti-social behavior is not exclusively during
16 the course of schizophrenia or bipolar disorder.

17 Q. Now, the criteria you just read for us, is that from
18 the Diagnostic and Statistical Manual, Edition V?

19 A. Yes.

20 Q. What we call DSM-V?

21 A. Yes.

22 Q. Is that the book that lists all the criteria for
23 personality disorders and mental abnormalities diagnosed in
24 your field?

25 A. Yes.

1 Q. And one of the earlier -- on that list of things you
2 read, one of the early ones was conduct that could be grounds
3 for arrest; is that correct?

4 A. Yes.

5 Q. So if he shot out a window in a house, but never got
6 arrested for it, that would be something you would look at;
7 is that correct?

8 A. Yes.

9 Q. If he shot out the window and got arrested, but not
10 convicted, you would have to look at it?

11 A. Yes.

12 Q. And if he shot out the window and did get convicted,
13 you would have to look at it?

14 A. Yes.

15 Q. If he shot out the window and didn't get convicted,
16 but told you, yeah, I did it, I shot out that window, you
17 would have to look at it?

18 A. Yes.

19 Q. Would all those things be the basis of a diagnosis
20 of anti-social personality disorder?

21 A. Yes, except for if they are not -- if they are
22 charged but not convicted and they don't admit to that
23 behavior, then I wouldn't necessarily apply it to that
24 diagnosis. But if he was charged, not convicted, but he
25 admitted to that behavior, then, to me, I will take that as

1 factual evidence.

2 Q. And that happened in some of the instances here?

3 A. That's correct.

4 MR. BOGLE: Thank you.

5 THE COURT: So I assume --

6 MR. FALK: If I could.

7 THE COURT: Go ahead.

8 CROSS-EXAMINATION

9 BY MR. FALK:

10 Q. The 1990 arrest for burglary and grand larceny, did
11 he admit to it?

12 A. He said he could not remember that incident.

13 Q. Do you know any of the operative facts that led to
14 his arrest?

15 A. I just know that he was charged with burglary in the
16 first-degree and grand larceny.

17 Q. Do you know if he spent the night in jail?

18 A. I do not.

19 Q. All you know are the charges?

20 A. That's correct.

21 THE COURT: So she didn't use that in her diagnosis,
22 based on what she just said?

23 MR. FALK: I beg your pardon?

24 THE COURT: Based on what she said, she's not using
25 that in her diagnosis, because he didn't admit to it, she

1 didn't have any facts.

2 Q. It was brought out in her report. So that's what
3 you are saying, you are not going to use the 1990 grand
4 larceny?

5 A. The way that I look at things is giving the person
6 the benefit of the doubt. I know if they are charged but not
7 convicted, it may not have happened. But I do ask them about
8 that in the interview to see if they have a recollection and
9 if they admit that to me.

10 THE COURT: And he did not?

11 THE WITNESS: He did not. He said he didn't
12 remember the incident.

13 THE COURT: So we won't use that one.

14 MR. FALK: Thank you. I think that's the only one
15 that isn't covered.

16 THE WITNESS: Well, it would be the next one as
17 well, I believe.

18 MR. BOGLE: He had a 1990 burglary third-degree
19 conviction.

20 MR. FALK: No, no, the -- oh.

21 MR. BOGLE: Page 15?

22 THE WITNESS: On page 15, there were two incidents.
23 So a January 9th, 1990, charge of burglary in the
24 first-degree and grand larceny that he didn't remember and
25 that was nolle pros'd. And then there was a June 23rd, 1990,

1 charge of burglary in the third-degree. And he didn't
2 remember that. So those two would be things that I noted in
3 my report because they were on the NCIC, but he didn't
4 provide details of that and that were nolle pros'd.

5 MR. BOGLE: Well, I got -- yeah. And then another
6 June 24, 1990, burglary in the third-degree, convicted, five
7 years incarceration suspended to probation. You got that in
8 your report right after that?

9 THE WITNESS: Yes.

10 MR. FALK: All right.

11 THE COURT: All right.

12 MR. FALK: There's a couple more items. We would
13 object to using information about South Carolina Department
14 of Corrections disciplinary offenses that were either
15 nonassaultive or nonsexual in nature. It seems to me that
16 it's too easy for the jury to equate the judicial process
17 that happened inside SCDC as being the same type of
18 conviction that you would get in -- the administrative
19 process would be the same type of conviction as you could get
20 in a normal court. I mean, people are getting -- two of his
21 arrests were for being disrespectful, being out of place.

22 I think SCDC sometimes could be a little arbitrary
23 charging people with these things. There's a whole a lot of
24 rules that don't make a lot of sense to some folks. And if
25 they are not assaultive conduct and if it's not sexual

1 conduct, I think it becomes highly prejudicial.

2 MR. BOGLE: Judge, one of the normal things they
3 look for is a person's disciplinary history in prison. If a
4 guy is being watched 24/7 in a prison environment and still
5 can't behave, it makes you wonder how you are going to be on
6 the outside when the jury lets him loose. So you look at all
7 kinds of disciplinary history in prison, including violent,
8 nonviolent, sexual and nonsexual, look at how a person
9 adjusts in that kind of environment. And it's one of the --
10 also part of the basis for anti-social diagnosis because some
11 of these things he does in prison, while not hauled down to
12 court here and convicted, is still against the law.

13 THE COURT: She used those in her diagnosis?

14 BY MR. BOGLE:

15 Q. Dr. Gehle, did you look at his prison disciplinary
16 history?

17 A. I did.

18 Q. Was that part of your diagnosis?

19 A. It's a consideration in the diagnosis. It's, I
20 guess, weighted less heavily than things that he's done on
21 the outside. But one thing that was important in his
22 disciplinary history was the use of substances, which he had
23 a lot of problems with in the community.

24 MR. BOGLE: Okay. Again, within that limitation, I
25 think it would be relevant to her overall diagnosis and

1 opinion about him.

2 MR. FALK: Whatever you say.

3 THE COURT: It probably is, but if it is something
4 you can object to and I can deal with it at the time --

5 MR. FALK: Thank you.

6 THE COURT: I mean, she just looks at it, based on
7 what she said here, it's to be admitted. If some unusual
8 thing, you know, you object and -- you know, the fact that he
9 was disrespectful to somebody in the cafeteria may not be an
10 issue. If she used it in her diagnosis, we will deal with
11 that.

12 MR. FALK: Thank you. Here's the last one. And I
13 get that it's -- I get that the underlying conduct is
14 relevant for her diagnosis. However, I think it can be very
15 prejudicial. I think we can get around her without being as
16 graphic. And this is the story about putting a cat's head in
17 a bucket and drowning it. I had two cats. It really
18 bothered me when I read this. The jury members that can be
19 irrational when it comes to cruelty to animals. I think it
20 would be fine if Dr. Gehle said he admitted to conduct of
21 cruelty to animals when he was a child. But kind of what he
22 really did, I'm hoping that the jury does not have to hear.
23 He was only five. He said he was five or six at the time.

24 MR. BOGLE: In her report, again, she's trying to
25 get an entire picture of this guy, and her report on page 5

1 when she talks about him having trouble following rules as an
2 adolescent and as a child, she quotes him saying, I would do
3 things to animals like normal people wouldn't want to do. I
4 used to do some weird things.

5 And then outside of those quotes, he elaborated to
6 her that he would torture animals as a child. And then he
7 goes on and talks about a theft, later on talking about a
8 theft that does not involve an animal. So he mentions that
9 as part of his issues and as part of his overall personality.
10 I think she can go into. She doesn't have to talk
11 specifically about drowning a cat in a bucket. But his
12 quote, his language to her, what he told her, I think is
13 relevant.

14 THE COURT: Probably is relevant. I mean, you could
15 object if you don't think it's relevant at the time. But
16 basically what he told her and the diagnosis is probably
17 relevant. And he says he's not --

18 MR. FALK: He was only five. I mean, we are
19 holding somebody to some conduct, he was five or six.

20 THE COURT: I understand that. That goes to the
21 weight. You can argue that to the jury that he was five
22 years old. I assume he says he's not going to go into detail
23 about drowning a cat.

24 MR. FALK: All right.

25 THE COURT: Just had abnormal thoughts.

1 MR. FALK: Like I said, I just think some juries
2 might convict him just on drowning a cat. Thank you, Your
3 Honor.

4 MR. BOGLE: Thank you, Your Honor.

5 THE COURT: So I will see y'all at two o'clock.
6 Okay. Thank you.

7 MR. BOGLE: We got marked for evidence three
8 sexually violent convictions. I got them from the clerk's
9 office. They're certified. Mr. Falk usually wants the
10 woman's last name redacted out. Our feeling it comes from
11 the clerk's office. It's been certified. I feel awkward
12 coloring on it, but I'll do whatever you think.

13 MR. FALK: I think the Court should direct that we
14 redact the last names out of it.

15 THE COURT: Those are certified copies, not
16 originals, right?

17 MR. BOGLE: Certified, all three of them.

18 THE COURT: I don't have any problem. It's just as
19 much for their protection, I guess, than anything else.

20 (Luncheon recess was taken.)

21 THE COURT: So we are ready for the jury now?

22 MR. BOGLE: Yes, sir.

23 (Whereupon, the jury returns to open court at 3:35
24 p.m.)

25 THE COURT: I'm glad y'all made it back. Thank you.

1 And I'm going to just give you some brief remarks. I am not
2 going to charge you the law at this time. I will charge you
3 at the end of the case the law that you will apply in this
4 case. But I'm going to basically explain a little bit about
5 what your duties are and what your responsibilities are.

6 This is not a criminal case. This is under the
7 civil docket. But this, the State seeks to commit Mr. Brown
8 for treatment under state statute. And your job -- they have
9 to prove to you that he needs this treatment beyond a
10 reasonable doubt. So your job is to listen to the evidence
11 in this case and determine whether or not he, in fact, needs
12 to be civilly committed for this care and treatment.

13 The evidence will come to you basically in three
14 forms, most of all, through testimony of the witnesses.
15 Witnesses will come before you under oath and testify about
16 facts or things that they know.

17 The other way you may receive evidence is documents
18 that the attorneys have introduced under our rules.

19 And the third way that you may receive evidence in
20 this case is through stipulations of the attorneys.
21 Sometimes there are facts that both sides agree on. And they
22 will stipulate that these are the facts in this particular
23 case.

24 I am not allowed to have an opinion about the facts.
25 My job is to rule upon the admissibility of the evidence that

1 comes before you and to charge you on the law at the end of
2 this case. So I need -- it's important for both sides that
3 you pay close attention throughout this trial. I will try to
4 take a break every hour or hour and a half. And I try not to
5 break in the middle of a witness's testimony, but sometimes I
6 have to. Having said that, if any of you need a break before
7 that, just simply raise your hand. Because I need all of you
8 to pay close attention. And if you are uncomfortable for any
9 reason, you can't pay attention. So if you need a break,
10 raise your handbook and we will stop, take a break and come
11 back and discuss -- I will continue with the case.

12 And I'm going to tell you, you can't talk about this
13 case until the end when I tell you you can. And you can't --
14 I know after one witness and we take a break, you go back in
15 the jury room and you may want to decide, why can't we talk
16 about what this witness said or didn't say? And the reason I
17 don't want you to do that, because if you do do that, at the
18 end of the trial, you are going to want to defend that
19 opinion you had at the beginning of the trial with your
20 fellow jurors. And I don't want you to start forming
21 opinions and expressing those opinions to each other until
22 you heard all of the evidence as well the law I'm going to
23 charge you on. And then and only then will it be proper for
24 you to discuss the case.

25 Our system works and it works good when everybody

1 does what they are supposed to do. And it's important for
2 both sides that you listen fairly. And it's important that
3 you get it right, so if you would do that.

4 The attorneys are going to get up and make opening
5 statements to you. And we will proceed with the trial and
6 evidence in this case. And they will make closing arguments
7 for you. I will charge you on the law. And give you this
8 case to decide.

9 In all probability, you probability won't get it
10 today, maybe tomorrow, tomorrow morning. I don't know how
11 many witnesses you are going to hear from. But if you pay
12 close attention to the attorneys, we will get started.

13 Mr. Bogle.

14 MR. BOGLE: Thank you, Your Honor. May it please
15 the Court, Mr. Falk. Okay. I didn't introduce myself, but
16 the judge introduced me this morning during jury
17 qualification. My name is Jim Bogle. I'm with the Attorney
18 General's Office out in Columbia.

19 Now, when people sometimes hear these types of
20 cases, they think, well, why isn't our solicitor or county
21 attorney or somebody local doing it? The reason is, when the
22 legislature passed this law in 1998, they gave our office the
23 job of presenting these cases around the state. That's why
24 it's us.

25 I would like to open by giving you a phrase that you

1 will hear later on. It is more exciting to sexually assault
2 a stranger than to have consensual sex with your girlfriend.

3 Now, when you got drawn for jury duty, you probably
4 thought that you would be hearing a wreck case, maybe a
5 medical malpractice case, an accident case, something like a
6 slip and fall, something like that. Instead, this case is
7 brought under South Carolina Sexually Violent Predator law, a
8 law passed in 1998.

9 And, basically, what the General Assembly is doing
10 here, if a person has been convicted of at least one sexually
11 violent crime -- and they have 16 others listed in the
12 statute, 16 different types of crimes -- the person can then
13 be evaluated. The Court has a hearing. Appoints a
14 psychologist from the Department of Mental Health to evaluate
15 the guy, look at him, talk to him, look at all the records
16 they have on the guy, study everything about the guy, and the
17 question is then -- the question then is, does this person --
18 first of all, has he been convicted of a sexually violent
19 crime. In this case, you heard three of them along with
20 Mr. Brown, criminal sexual conduct with a minor, two times,
21 and assault with intent to commit criminal sexual conduct
22 with a minor, so three crimes classified as sexually violent.

23 The next thing is, does he have a mental abnormality
24 or a personality disorder that makes him likely to commit
25 these same types of crimes after he gets out of prison to the

1 extent that he can't control it and has to be confined for
2 long-term control, care and treatment?

3 So this is a civil commitment process. Mr. Brown
4 has committed these crimes. He was sentenced for them and
5 convicted back in 2006. He served his time. He's finished
6 his prison time. And the way this law is written, once you
7 finish your prison time, if the case is still going on, you
8 wait in the little detention center until the case is tried.
9 So he's been in the detention center until today's trial.

10 So it's not a criminal case. No one is trying to
11 put him away for crimes. He's already done that. He's been
12 convicted of the crimes. He's done the time. The question
13 is, does he have a mental abnormality or a personality
14 disorder that he cannot control?

15 Now, earlier the Court appointed Dr. Marie Gehle
16 sitting there in the black. Dr. Gehle is a psychologist with
17 the Department of Mental Health. And she does lots of these
18 cases. Her job is to evaluate the guy, sit down, talk to
19 him, look at all the medical records we have, look at all the
20 criminal records, witness statements, police records, police
21 reports, all of that kind of stuff, and then score him on
22 what's called an actuarial scoring test. We will talk about
23 that later on.

24 And the idea is, based on her expertise, does he
25 have a mental abnormality? And he does. It's a paraphilic

1 disorder, which is a deviant sexual disorder. Does he also
2 have a personality disorder? He does. It's called
3 anti-social personality disorder. And you will hear more
4 about what the criteria are for those when she testifies.

5 And the problem is, this conduct has been going on
6 for almost 21 years involving victims of different ages. And
7 it goes back a long time. So the question is, is this
8 something he can control? She will talk about his criminal
9 record. She will talk about the disciplinary problems he had
10 while in prison.

11 So, normally, the case, a witness can only testify
12 about facts, things they see, things they smell, things they
13 hear, I saw the gun go off, I heard the man yell, I saw the
14 traffic light turn red, that kind of thing. They can't give
15 opinions. But if a witness has the kind of training and
16 expertise that could help you, the jury, decide the facts,
17 they can be allowed to give opinions. They are qualified as
18 an expert witness by the judge and allowed to testify and
19 give an opinion. And that's what Dr. Gehle is doing.

20 She will give an opinion that in her psychological
21 opinion, after examining Mr. Brown, looking at everything she
22 can find about him, he's got a mental abnormality, he's got a
23 personality disorder, and they are to such a degree he cannot
24 control it. And the question is then, we have to prove this
25 to you beyond a reasonable doubt.

1 Normally, the burden of proof in civil cases, like a
2 car wreck or medical malpractice or something like that, is
3 what is called clear and convincing evidence.

4 But in the case, because Mr. Brown's liberty is at
5 stake, the General Assembly, when they passed this law, they
6 put a stronger burden on the Government. So we have to prove
7 to you beyond a reasonable doubt the things I've been talking
8 about.

9 So that's the kind of case it is. Your job is to
10 listen to everything you hear from the witness stand. Then
11 when it is all over, listen to the judge. He's going to tell
12 you what the law is. And you will apply the facts you hear
13 from the witness stand and make your ultimate decision, which
14 I submit, when all the dust is settled, will be a verdict
15 that Mr. Brown is, in fact, a sexually violent predator.

16 THE COURT: Thank you, sir.

17 Mr. Falk.

18 MR. FALK: May it please the Court. Ladies and
19 gentlemen, just who I am, my name is Jim Falk. I'm an
20 attorney here in Charleston. And I get appointed to a lot of
21 these cases, all sort of this side of 95. I do a lot of
22 these cases, these sexually violent predator civil commitment
23 cases.

24 Things to remember in a case like this, my client
25 has been in prison since about 2004. And he got out about

1 2017, first of 2018. So he's already done certain amount of
2 time in the Department of Corrections. He's really already
3 paid the price for the crimes that he's committed.

4 Now, the Court is going to charge you on the law,
5 but what I think the judge is going to tell you is that the
6 State's has got to prove three things. And these cases are
7 hard because you have to sort of separate the emotional side
8 of the case and sort of stay right on track with the way the
9 law is the setup.

10 First, the State has got to prove that he committed
11 sexually violent crimes. And my client admitted, he pled
12 guilty. Didn't go to court, he pled guilty for the crimes.
13 There's no issue there.

14 The second thing is, they have to prove that he has
15 a mental health issue, mental health diagnosis. My client
16 has got a mental health diagnosis. There's no question
17 really about that.

18 The third thing is, and this is really what I think
19 these cases all turn on, is whether or not he's dangerous,
20 whether or not there's some reason to think that he needs to
21 go somewhere to be separated from society, or whether it's
22 okay for him to go home and be with his family.

23 So I think this case is really going to turn on
24 whether or not the State is able to convince you that he's a
25 dangerous person. Now, in 2004, when he pled guilty, he was

1 a dangerous person. But what you are focused on today is, is
2 he today, on April 15th, a dangerous person that needs to be
3 put away someplace, not who he was in 2004.

4 There's another thing that you have to sort of keep
5 in mind, because we are talking about a mental health
6 diagnosis. And sometimes with mental health diagnosis in
7 criminal conduct, those can kind of get to be blurry lines.
8 And the example I always use -- not trying to make light of
9 the situation here -- but sometimes somebody might go into,
10 you know, might go into the Kangaroo gas station, might steal
11 a chocolate bar. Now, that's a crime. That's shoplifting.
12 But what's the motivation behind the crime? Some people
13 really like chocolate and they don't have the money, and they
14 were going to get what they wanted. Well, that's criminal.
15 That's criminal. That's a criminal mental state. That's a
16 criminal mindset.

17 Now, there's other people who really enjoy stealing
18 things. And it could have been a chocolate bar. It could
19 have been a bottle of water. It could have been anything. I
20 think all of you know the term "kleptomania". Well, this
21 court, this trial right now, is really more interested in the
22 kleptomania than the shoplifting, if you understand what I'm
23 saying. There's no question that he's committed crimes. And
24 he has committed rapes. There's no question about that. But
25 the question is whether or not he's got the mental -- whether

1 or not he's got something that he just really likes stealing,
2 not that he really wanted to have a chocolate bar.

3 I hope that makes some sense. It's sort of hard to
4 get your arms around that. But that is really what these
5 cases are. Stay alert at this, because you are going to hear
6 some awful stuff. There were young victims in this case.
7 You are going to hear some awful stuff. There's no question
8 about that. But he paid the price for that.

9 So I want you all to focus on who he is right now,
10 April 14th, April 15, 2019. And I think at the end of the
11 day, you are probably not going to like my client, you know,
12 and you may be mad at him for what he's done. But I don't
13 think the State is going to be able to convince you beyond a
14 reasonable doubt that he's a sexually violent predator. And,
15 therefore, at the end of the day, I'm going to ask you to
16 find a verdict of not guilty. Thank you.

17 MR. BOGLE: Thank you, Your Honor. May it please
18 the Court. The State will call Dr. Marie E. Gehle.

19 DR. MARIE GEHLE,

20 having been duly sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. BOGLE:

23 Q. State your name and spell your last name.

24 A. Marie Gehle, G-e-h-l-e.

25 Q. Dr. Gehle, good afternoon. What is your occupation,

1 please?

2 A. I'm a chief psychologist at the South Carolina
3 Department of Mental Health.

4 Q. How long have you been so employed by the South
5 Carolina Department of Mental Health?

6 A. I've been working there for almost 10 years.

7 Q. Okay. Now, what degrees do you possess? What
8 educational degrees do you possess and where from?

9 A. I have a bachelor's degree in psychology from Ohio
10 Northern University. I have a master's degree in clinical
11 psychiatry from Xavier University and a doctorate in clinical
12 psychology from Xavier University.

13 Q. What, basically, is the study of psychology?

14 A. Well, it's the study of the way people think, feel
15 and behave.

16 Q. Sometimes I hear the word "forensic" located with
17 psychology, like forensic psychology. What does it mean in
18 that context, the word forensic when it's used with
19 psychology?

20 A. Well, forensic psychology is a subspecialty of
21 clinical psychology. So it is the assessment and treatment,
22 evaluation of mental health problems. And when you apply it
23 to forensics, it means that we are doing that in relation to
24 questions that the law might have. So we do things like
25 competency to stand trial evaluations, not guilty by reason

1 of insanity evaluations, risk assessments for the court, and
2 things like today, doing sexually violent predator
3 evaluations.

4 Q. What states are you licensed to practice in?

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

7 Q. Have you done forensic psychological evaluations for
8 people for reasons other than this particular law, the
9 Sexually Violent Predator Act?

10 A. Yes, I have in the past. I've done competency to
11 stand trial and criminal responsibility evaluations.

12 Q. Do you have membership in any professional
13 organizations related to your field?

14 A. Yes. I'm a member of the American Psychological
15 Association, the American Psychology and Law Society, the Sex
16 Offender Civil Commitment Program Network.

17 Q. Does your job have you doing forensic evaluations of
18 people?

19 A. Yes.

20 Q. What types of assessments have you done in relation
21 to sex offenders, career-wise?

22 A. With sex offenders, I've done some competency to
23 stand trial, criminal responsibility evaluations, and largely
24 sexually violent predator evaluations.

25 Q. Can you tell the jury about your experience and your

1 worker within the field of sexually violent predators law we
2 are her on today?

3 A. My experience with sexually violent predators in
4 Washington State, I did a rotation there during my
5 pre-doctoral internship doing treatment with sexually violent
6 predators committed to their program. And then I began
7 working in South Carolina in the sexually violent predator
8 program in November of 2009. At the beginning of my work
9 there, I was supervising treatment and doing evaluations of
10 the people who were committed to the Sexually Violent
11 Predator Program. And then a couple of years later, I began
12 doing what I do now, which is all of the -- I do solely
13 evaluations to determine if somebody should be committed as a
14 sexually violent predator.

15 Q. So if we call today's case a pre-commitment case,
16 your job is to decide whether or not, based on your
17 expertise, this person, Mr. Brown, should be committed; is
18 that right?

19 A. That's correct.

20 Q. And about how many of these pre-commitment
21 evaluations have you done?

22 A. It's around 165 of them.

23 Q. Have you been previously recognized and testified as
24 an expert witness in the field of forensic psychology with
25 regard to cases under the Sexually Violent Predator law in

1 the courts of this state?

2 A. Yes.

3 Q. Roughly how many times?

4 A. More than 115 times.

5 MR. BOGLE: Your Honor, at this time, I would ask
6 the Court to declare Dr. Gehle to be an expert in the field
7 of forensic psychology.

8 MR. FALK: No objection.

9 THE COURT: The Court so finds.

10 BY MR. BOGLE:

11 Q. Now, Dr. Gehle, how did you get involved in the case
12 involving Timothy Brown?

13 A. I was appointed by the Court to do this
14 evaluation.

15 Q. And what type of evaluation were you appointed to
16 do?

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

19 Q. Would you tell the jury your protocol, your
20 step-by-step method, how you do these types of evaluations?

21 A. Yes. When I get a referral for one of these
22 evaluations, it's accompanied by a file full of information,
23 that includes the petition from the Attorney General's
24 Office. It will include legal records, warrants,
25 indictments, sentence sheets, police reports related to the

1 sex offenses, typically. I will get a full criminal history
2 report. I will get victim statements, witness statements,
3 prior evaluations, all of that kind of stuff. And I will
4 review that information.

5 Then I will have an interview with the person. And
6 I will sit down with them for several hours, ask them all
7 kinds of questions about their background, where they were
8 born, raised, about their childhood history, about their
9 behavior when they were an adolescent, school history, work
10 history, medical history. And also, I will ask them a lot of
11 questions about their sexual history.

12 I will get a count of all of the criminal offenses
13 from them, ask them about their future plans, how they feel
14 about themselves as a sex offender, that kind of stuff.

15 And I will take all the information from the records
16 and from the interview, and I will write a report. And then
17 that report I send to the Court and to the Attorney General's
18 Office.

19 Q. Now, in this particular case, as part of this
20 evaluation, did you meet with and interview Timothy Brown?

21 A. I did.

22 Q. How long did you interview him?

23 A. I interviewed him for about four hours and 50
24 minutes.

25 Q. Just for the record, is the man that you interviewed

1 present in the courtroom today?

2 A. Yes.

3 Q. Will you point him out for the record?

4 A. Yes, he's sitting there in the white shirt at the
5 table.

6 Q. Let the record reflect she's identified the
7 defendant, Your Honor.

8 Did you explain the purpose of this evaluation to
9 Mr. Brown when you talked to him?

10 A. I did.

11 Q. Did he consent to be evaluated?

12 A. Yes.

13 Q. Any objection on his part?

14 A. No.

15 Q. Now, you've described the kind of information you
16 got a minute ago. But in addition to meeting with him and
17 talking to him, what types of information did you receive to
18 look at and study about Mr. Brown? You described it a minute
19 ago. Was that a pretty accurate list?

20 A. Yes.

21 Q. Is this the type of documentary information that is
22 typically and reasonably relied upon by other experts in your
23 field?

24 A. Yes, it is.

25 Q. Did you consider and rely upon that documentary

1 information along with your interview with Mr. Brown
2 regarding this matter?

3 A. I did.

4 Q. Were there any additional records about his health
5 conditions that had to be gotten besides -- that were
6 separate and apart from the records you received?

7 A. Well, I requested records for his mental and
8 physical health while he was in the Department of
9 Corrections. I also received an evaluation that he had, a
10 pretrial evaluation that he had. I believe it occurred
11 in around 2006, 2005, 2006.

12 Q. Okay. Dr. Gehle, explain to the jury, why is it
13 important or how does a person's past sexual offense behavior
14 relate to their future behavior?

15 A. Well, a person's past sexual offense behavior and
16 their past sexual behavior in general is the best predictor
17 of their sexual behavior in the future. So people are very
18 consistent with their sexuality over time. So the past is
19 the best predictor of the future.

20 Q. Now, in your interviewing of him, did you talk about
21 his entire past and his entire interactions, wrong things
22 he's done, either with the police or the people where the
23 police were not even involved?

24 A. I tried to be all-encompassing. So if there were
25 things that I knew that occurred or things that he had been

1 accused of, I asked him about those things during the
2 interview.

3 Q. Was there conduct that he told you about that he had
4 done that was bad conduct, wrong conduct, at an early age?

5 A. Yes.

6 Q. Look on page 5 of your report, for example. What
7 early ages did he describe this type of this conduct
8 occurring?

9 A. Well, he said that he was a very bad kid from a
10 young age. So all throughout the time that he was -- I think
11 four or five was the earliest behavioral problems that he
12 described having. But then they occurred all through his
13 adolescence.

14 Q. Age 5 and 6 is what?

15 A. Well, he reported a wide variety of problems. He
16 had trouble following rules as a child in adolescence. He
17 was physically aggressive to people. He tortured animals.
18 He started a lot of fights. He used a weapon to cause
19 physical harm to another person. He did things like destroy
20 property. He violated, like, serious violations of rules
21 before age 13. So he stayed out at night despite being told
22 to be home by his parents. He ran away overnight. He was
23 skipping school by age 11. He had a problem with stealing
24 and lying and breaking and entering, all while he was a
25 juvenile.

1 Q. And these are things he admitted to you?

2 A. These are things that he told me, yes.

3 Q. Now, Dr. Gehle, in cases like this, where you have
4 to evaluate a guy under this particular law, this Sexually
5 Violent Predator Law, is it important to look at prior
6 evaluations that had been done of the person?

7 A. Yes. If they exist, it's important to look at
8 those.

9 Q. And in this case, did you find some?

10 A. Yes. There were some prior evaluations.

11 Q. Looking at page 8 of your report, were there some
12 prior evaluations done of him relating to his criminal
13 convictions back in 2006?

14 A. Yes.

15 Q. And what did you find that you found significant to
16 your evaluation from those prior evaluations of him?

17 A. Well, this one in particular, that evaluation,
18 really the diagnoses were most important. And he was
19 diagnosed with anxiety disorder and a psychotic disorder and
20 then some substance and alcohol use disorders. Those were
21 the primary important part of that evaluation.

22 Q. Was he hospitalized or seen by any psychiatric
23 institutions during this time frame?

24 A. He was hospitalized at M.U.S.C. in December of 1997.
25 And then he was also hospitalized at the Department of

1 Corrections in 2010 and 2013.

2 Q. Is that called Gilliam Psychiatric Hospital?

3 A. Yes..

4 Q. Is Gilliam the one associated with the Department of
5 Corrections?

6 A. It's a Department of Corrections psychiatric
7 hospital.

8 Q. Okay. What did you find significant from these
9 prior evaluations and these prior hospitalizations?

10 A. Well, the most important ones were in terms of the
11 Department of Corrections, because those were most recent.
12 And he was diagnosed with some mental health problems. He
13 was diagnosed with schizoaffective disorder. And he was
14 diagnosed with post-traumatic stress disorder. And he was
15 medicated for those.

16 So that was important for me to consider, just in
17 terms of what kind of mental health problems he may be
18 having. And when I talked to him, he reported a couple of
19 symptoms, but he said he had no current symptoms, that the
20 medications that he was taking was working very well, and
21 that he had a hard time remembering his symptoms in the past.

22 Q. What is schizoaffective disorder? Is that what you
23 called it?

24 A. Yes.

25 Q. What is that?

1 A. It's a combination of a mood disorder and, like,
2 schizophrenia. So it's psychotic symptoms, which are
3 hallucinations, delusions, usually a negative affect, meaning
4 you see very little expression of emotion or you have a flat
5 tone of voice, a flat expression, that kind of stuff. They
6 can also act in bizarre ways. And then also, it's a mood
7 disorder. So it's problems with depression or mania.

8 Q. Now, based upon your interview with Mr. Brown, your
9 research into the files and looking at these prior
10 evaluations and things like that, did you determine whether
11 or not he had been convicted of any crimes that were
12 classified as sexually violent?

13 A. Yes.

14 Q. How many?

15 A. He was convicted of three sexually violent offenses.

16 Q. I would like to hand you what's been pre-marked as
17 State's Exhibit 1. It's a certified copy from the clerk's
18 office here in this building, and Indictment 2005-GS-10-1492
19 for criminal sexual conduct with a minor in the second
20 degree. Is this a document you would have looked at?

21 A. I would have looked at a copy of this, yes.

22 Q. And is that the sentencing sheet and the indictment?

23 A. Yes, it is.

24 Q. Okay. I hand you what's been pre-marked as State's
25 Exhibit 2, another indictment from the clerk's office

1 downstairs, 2005-GS-10-1494, for assault with intent to
2 commit criminal sexual conduct with a minor in the second
3 degree. Is this also something you would have looked at?

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

5 Q. And finally, I hand you what's been pre-marked
6 State's Exhibit No. 3, a copy of another indictment from
7 downstairs in the clerk's office, number 2005-GS-10-1490,
8 criminal sexual conduct with a minor in the second degree.
9 Is that also a document you looked at or copies you looked at
10 as part of your investigation?

11 A. I looked at copies of these, yes.

12 Q. Now, the two types of crimes that these cover,
13 criminal sexual conduct with a minor in the second degree and
14 assault with intent to commit criminal sexual conduct with a
15 minor in the second degree, are those crimes classified as
16 sexually violent crimes under the law we are dealing with
17 today?

18 A. Yes, Your Honor.

19 MR. BOGLE: Your Honor, I move to introduce State's
20 Exhibit 1 through 3, certified copies of the sexually violent
21 crimes.

22 THE COURT: Any objection?

23 MR. FALK: No objection.

24 THE COURT: In without objection.

25 (State's Exhibit 1 is moved into evidence.)

1 (State's Exhibit 2 is moved in evidence.)

2 (State's Exhibit 3 is moved into evidence.)

3 Q. Now, is it important in your line of work to look at
4 nonsexual convictions, crimes that don't involve sexual
5 crimes?

6 A. Yes.

7 Q. Why is that important?

8 A. Well, it's important when I'm considering whether
9 the person has a personality disorder, because those are not
10 all related to sexual offending. So I want to see, like, if
11 there's a pattern of behavior, when it started, what kind of
12 consequences they've had, if they were on probation, if they
13 violated the terms of probation, and where their sexual
14 offending fit into their criminal history.

15 Q. Is it also important to look at things where he
16 might have been charged with a crime, but the charge was
17 dismissed or he was found not guilty or something like that?

18 A. Yes.

19 Q. Why is that, even if he's found not guilty of a
20 charge and it got dismissed, why is that still important to
21 look at?

22 A. He could still be subject to arrest, still be bonded
23 out, be under supervision during that time. It's also
24 important because I will ask about those in the interview.
25 And sometimes people admit to committing those crimes even

1 though they were not convicted of them.

2 Q. Okay. Now, is considering these a part of the basis
3 of your opinion about Mr. Brown?

4 A. Yes.

5 Q. And is this the type of information typically and
6 reasonably relied upon by experts in your field?

7 A. Yes, it is.

8 Q. Okay. Could you please, starting on page 14 or so
9 of your report, give the jury an overview of Mr. Brown's
10 criminal history?

11 A. Okay. In November of 1985, he was charged with
12 burglary in the second degree and possession of burglary
13 tools.

14 Q. Now, is there any disposition of that, how it wound
15 up?

16 A. No, there was no disposition on his national
17 criminal history report or in the public index record. So I
18 don't know what happened to that offense.

19 Q. What did he say about it?

20 A. He said that he thought that that was a laundromat.
21 And he told me that he had broken into the back of a
22 laundromat to smoke dope. And that was that incident. The
23 police were called. He fled. And he said that he didn't
24 steal anything. So it was more of a breaking and entering.

25 Q. Did he also -- I think it's addressed on page 14 of

1 your report -- also have criminal conduct that began when he
2 was a juvenile, in other words, under 17?

3 A. Yes. He told me that he had been arrested for
4 stealing when he was a juvenile.

5 Q. Okay. So after this burglary charge from 1985, what
6 was next?

7 A. In June 1986, he was charged with driving under
8 suspension. And he was convicted of that and ordered to pay
9 a fine or serve 30 days in jail.

10 Q. Okay. And next?

11 A. Next offense was July of 1989. He was charged with
12 simple possession of marijuana. He was convicted and
13 sentenced to serve 30 days in jail.

14 Q. Stepping apart from this for a minute, was substance
15 abuse something you look at in these types of evaluations?

16 A. Yes.

17 Q. Did you interview and talk with Mr. Brown about any
18 substance abuse issues that he had?

19 A. Yes.

20 Q. What did you find out from that?

21 A. That he had a long history of using drugs and
22 alcohol in problematic ways. I ended up diagnosing him with
23 a number of substance abuse disorders.

24 Q. Okay. We will get to that in a minute then. Now,
25 you talked about possession of marijuana 1989. What's next?

1 A. The next offense was June of 1990. He was charged
2 with burglary in the third-degree. He was convicted and
3 sentenced to five years of incarceration. And that sentence
4 or the prison time was suspended to probation

5 Q. Okay. Burglary third-degree, convicted and after
6 that?

7 A. On February 10th, 1991, he was charged with burglary
8 in the second-degree and resisting arrest. He was convicted
9 of the burglary charge and he was sentenced to 12 years. At
10 the same time, he was convicted of a probation violation
11 because he was on probation for that June 1990 burglary in
12 the third-degree conviction.

13 Q. So is there a significance to someone having their
14 probation revoked? They're out on probation for a prior
15 crime, in the streets, free to walk around, yet they commit a
16 crime and their probation gets revoked. Is there a
17 significance of that type of thing to you in this line of
18 work?

19 A. It is significant because it's a risk factor for
20 sexual offending, resisting rules and supervision. And
21 violating probation is a factor in that risk factor.

22 Q. So that's a 1991 probation revocation from earlier
23 burglary?

24 A. That's correct.

25 Q. Okay. What's next?

1 A. Next one is August of 1989. He was charged with
2 armed robbery and he was convicted of strong-arm robbery. He
3 was sentenced to 15 years of incarceration, suspended upon
4 the service of nine years of incarceration and four years of
5 probation.

6 Q. Okay. Now, let's wind the clock forward. We have
7 the sexual offenses you've identified already. I would like
8 to show you what's been marked as State's Exhibit No. 1, his
9 criminal conviction for criminal sexual conduct with a minor
10 in the second-degree. Now, you've seen that before, you told
11 us already, right?

12 A. Yes.

13 Q. It is an indictment and sentencing sheet, correct?

14 A. That's correct.

15 Q. And did you review this as part of your evaluation?

16 A. Yes.

17 Q. Now, is it necessary in this type of case to also
18 look at the underlying details and facts behind the crime?

19 A. Yes.

20 Q. In this particular case, the crime is what, criminal
21 sexual conduct with a minor in the second-degree; is that
22 correct?

23 A. That's correct.

24 Q. What was the date he was convicted?

25 A. The date he was convicted was August 28, 2006.

1 Q. Was it a guilty plea or did he go to trial?

2 A. He pled guilty.

3 Q. What was the sentence of the court?

4 A. He was sentenced to 16 years of incarceration.

5 Q. Okay. Was this part of a negotiated plea or a plea
6 bargain?

7 A. Yes, it was a negotiated sentence.

8 Q. Negotiated sentence, okay. What were the underlying
9 details of the crime that you found significant to your
10 evaluation of Mr. Brown in determining whether or not he
11 meets the criteria as a sexually violent predator?

12 A. Well, there were several things that were have
13 important about this offense. First off, the victim was a
14 14-year-old female. So this is a minor. And he was she was
15 a stranger. So her being a stranger is related to increased
16 risk of sexual offending. So this incident --

17 Q. Go ahead.

18 A. This victim, this 14-year-old, I call her [REDACTED] for her
19 initials, she was walking along the railroad tracks in the
20 early afternoon in -- it was May 20th of 2004. She saw a man
21 come from the wood line. And he approached her wielding a
22 large knife. He grabbed the girl, put the knife to her
23 throat, forced her to the ground, ordered her to undress,
24 covered her face with her T-shirt and then he sexually
25 assaulted her by having intercourse. So he put his penis

1 into her vagina and had intercourse until he ejaculated.

2 When he finished, he told her to keep the T-shirt
3 over her face and he fled the scene. And the victim got
4 dressed. And then she went to friend's house and they called
5 the police.

6 Q. How old was this girl?

7 A. This girl was 14.

8 Q. Okay. What did he say to you about it?

9 A. What did he say?

10 Q. You talked to Mr. Brown about it. What did he say
11 to you about it?

12 A. Yes. He said that he committed this offense. He
13 said he was in the woods. He was getting high. He was
14 smoking crack. He said he started hallucinating. He started
15 seeing faces of people. He said that he didn't know what
16 made him do it, but he heard someone on the track. He saw
17 the young lady. He said he just jumped out of the woods,
18 grabbed her. And he said he couldn't remember everything he
19 said to her, but he definitely had sexual contact with her.
20 And he said that he had sexual intercourse with her.

21 Q. This is a girl he did not know in the community
22 prior to this event?

23 A. That's correct, they were complete strangers.

24 Q. And the crime he was convicted of, criminal sexual
25 conduct with a minor in the second-degree, is that a sexually

1 violent crime?

2 A. That is a sexually violent crime.

3 Q. Let me hand you Exhibit 2, assault to intent to
4 commit criminal sexual conduct with a minor second-degree
5 Indictment 2005-GS-10-1494. Again, you identified that, you
6 looked at it?

7 A. Yes. If I can just say one more thing about that
8 offense, though.

9 Q. Number 1? Go ahead.

10 A. Yes. So that offense happened on May 20th, 2004.
11 He had just gotten out of prison for that burglary. So --

12 Q. How long before?

13 A. I believe that he got out of prison in -- I believe
14 it was March 2004.

15 Q. So two months later this happens?

16 A. Yes, he got out of prison on March 1st, 2004. So
17 two months later this happened.

18 Q. Okay. Next one I handed you, indictment ending
19 1494, assault with intent to commit sexual conduct with a
20 minor in the second-degree, you also looked at that?

21 A. Yes.

22 Q. And that's typically something that's looked at by
23 experts in your field; is that right?

24 A. Yes.

25 Q. Can you tell the jury the underlying details about

1 this crime that you found of significance?

2 A. Okay. So this incident happened on May 17th, 1999.
3 And this involved a 13-year-old stranger, 13-year-old female.
4 She was a stranger. And this incident involved the girl, I
5 refer to her by her initials, which are [REDACTED] She left home
6 around 7 a.m. to walk to the bus stop. And she walked along
7 the railroad tracks. When she heard somebody coming up from
8 behind, she heard somebody running towards her from behind,
9 so she turned around, saw a man who was later identified to
10 be Mr. Brown. He was running towards her. So she stepped
11 aside to let him pass and, you know, run by her. But
12 instead, he grabbed her, put his hand over her mouth, told
13 her to shut up or he would kill her.

14 He walked her back in the direction from which he
15 had ran. She cried, asked him to stop. He repeatedly told
16 her to shut up. He pushed her down a hill towards the woods,
17 pushed her to the ground, said that he would stab her if she
18 looked at his face. Pulled down her pants. Pushed her face
19 into the ground. And placed his penis on her rectum. She
20 said that she cried very loudly because it hurt. He
21 repeatedly told her to shut up. And she struggled with him.
22 Tried to negotiate with him. Said that she did not do
23 anything to him. He agreed with that. He told her to stay
24 on the ground until he left the area. And then he ran away.

25 He had digitally penetrated -- I'm sorry. She had a

1 rape kit done when she reported this incident. And semen was
2 collected from vaginal swabs taken from her. So he had
3 penetrated her.

4 Q. Okay. This happens in May of 1999?

5 A. That's correct.

6 Q. The first one we introduced into evidence happened
7 in 2004?

8 A. That's correct.

9 Q. Let me show you No. 3, criminal sexual conduct with
10 a minor in the second-degree, Indictment No. ending in 1490.
11 This is also something you looked at?

12 A. Yes.

13 Q. Okay. And this is a document you would have looked
14 at consistent with your job is trying to evaluate Mr. Brown;
15 is that right?

16 A. That's correct.

17 Q. Is the crime there a sexually violent conviction?

18 A. Yes, it is.

19 Q. Would you tell the jury, what's the date of the
20 crime? No, let me back up a second. On the previous one you
21 talked about, Exhibit No. 2, that little girl, was she a
22 stranger to Mr. Brown when this happened?

23 A. Yes.

24 Q. Okay. Let's move on to the one you've got in front
25 of you right now.

1 A. Okay. This incident involved a 15-year-old
2 stranger. The incident happened on October 22nd, 1998. So
3 it's actually the first sexual offense that he has been known
4 to commit. This incident again happened along the railroad
5 tracks. The girl was walking home from the bus stop along
6 the railroad tracks when she was approached by a stranger who
7 was later identified to be Mr. Brown. He yelled at her to
8 come here. She tried to run away. He grabbed her and
9 dragged her into the woods. She was screaming, crying. He
10 repeatedly told her to shut up. She attempted to flee
11 without success. She continued to struggle with him
12 throughout the assault. He pushed her to the ground. He
13 pulled down his pants and attempted to penetrate her vagina
14 with his penis.

15 She managed to get away from him and she attempted
16 to you run. However, he grabbed the back of her hair, pulled
17 her back to the ground. She reported that he was unable to
18 penetrate her vagina with his penis because she squeezed her
19 legs together and she still had her underwear on.

20 But according to the records, he did digitally
21 penetrate her vagina. So he put his fingers inside her
22 vagina.

23 Q. So this is the third stranger, the three you are
24 talking about, girls that did not know Mr. Brown prior to
25 these crimes?

1 A. That's correct.

2 Q. You talked to him about these crimes? Did he admit
3 them?

4 A. Yes..

5 Q. Did he say anything to you about his sexual interest
6 which you found significant, things he said to you about his
7 sexual interest?

8 A. Yes. He admitted to all three of these offenses.
9 He said that he had sexual intercourse with two of the three
10 victims. And he confirmed that they were all strangers. He
11 didn't think that they were too young, though. And they were
12 all teens.

13 He explicitly told me that he found it more
14 exciting, more sexually arousing to sexually assault a
15 stranger than to have consensual sex with a girlfriend or
16 with his wife or with a consensual partner.

17 Q. His words?

18 A. Those are my words. He did not put it in those
19 words exactly.

20 Q. That's essentially what he said?

21 A. Yes. He said it was just the thrill of it and that
22 he could ejaculate more easily, so he found it much more
23 arousing to sexually assault somebody than to have sex with a
24 consenting person.

25 Q. Was there also some comment he made to you in your

1 interview about a television show?

2 A. Yes.

3 Q. What did he say about that?

4 A. Well, he told me that before the offenses in -- the
5 first one being in 1998, that he was in prison and he saw a
6 television show where a man pulled a girl into the woods and
7 began having sex with her. And he said that thought stayed
8 in his head. And he ended up engaging in similar behavior
9 when he was released from prison.

10 Q. What did he say about the tracks? These crimes --
11 did all three of these girls, get assaulted while they were
12 walking down a railroad track in the neighborhood?

13 A. Yeah. He said that he would get high on the tracks.
14 He would use drugs, things like that, and that he was just
15 waiting for somebody to come by. And that when girls came
16 by, he sexually assaulted them.

17 Q. What did he say about his sexual interest other than
18 what we talked about right now?

19 A. He said that he was heterosexual. So he's
20 interested in females sexually. But he said that he was
21 sexually abused as a child, that he had had sex with quite a
22 few partners. He estimated it was between 15 and 100 sexual
23 partners. Many of them were strangers. He said he often
24 paid for sex. He paid with cash or he traded sex for drugs.
25 He said that he paid for sex because it wouldn't matter to

1 him. He wouldn't have to think about the person when he had
2 sex with them. So he indicated that he liked that
3 emotionless kind of sex. He also said that he had sex with
4 men, even though he wasn't sexually aroused by men, but that
5 he did that several times, and that he would feel bad about
6 it afterwards.

7 Q. Let me have all three. So here's No. 2, which you
8 looked at right here, and No. 3. I will put them over here.

9 Dr. Gehle, you just described comments he made about
10 being high on drugs when some of these things happened. Did
11 you diagnose him with a substance abuse disorder?

12 A. I did.

13 Q. Is that based on his substance abuse while in
14 prison, while out of prison or both or what?

15 A. It's based on his self-reported drug use in his
16 past, so really any time.

17 Q. Is drug use an excuse for attacking young girls like
18 this walking along the railroad track?

19 A. No. He tended to blame his drug use for committing
20 the sexual assaults. But he also said that really it was --
21 he was very sexually aroused when he used crack cocaine. And
22 that can be a common occurrence with crack cocaine users.
23 They become hypersexual. But he said that that really just
24 gave him the guts to do it. It just gave him -- put him in
25 the right mind frame to be able to commit the sexual assaults

1 that he wanted to commit anyway.

2 Q. Did he try to blame his other criminal history, the
3 burglary, the strong-arm robbery, on drugs as well?

4 A. No, I don't believe so.

5 Q. Dr. Gehle, in an evaluation like this, is it also
6 important to look at a person's disciplinary history while
7 they are in prison?

8 A. Yes, that's something that I look at.

9 Q. Why is that important?

10 A. Well, I want to see what kind of offenses he might
11 commit while he's in the Department of Corrections, while
12 he's under, you know, lock and key and under, you know, that
13 kind of close supervision.

14 Q. Are these types of records the things that are
15 typically and reasonably looked on and relied upon by other
16 experts in your field?

17 A. Yes.

18 Q. And did you use his disciplinary records as part of
19 the basis in forming your ultimate opinion about Mr. Brown?

20 A. It's something that I considered, yes.

21 Q. What did you find that you found of significance?

22 A. Well, one thing that I found of significance is, he
23 told me that he stopped using substances, for the most part,
24 in 2004. But he did have two drug offenses in prison. And
25 then he had some fighting and some threatening in prison,

1 things like that. But he didn't have any sexually related
2 disciplinary infractions.

3 Q. Okay. Now, in this type of case, is it also
4 important to look at whether or not the person had sex
5 offender treatment while in prison?

6 A. Yes.

7 Q. Did you look for that? And what did you find?

8 A. I looked to see if he had sex offender treatment,
9 and he did not.

10 Q. How does that impact on your ultimate findings, the
11 fact that he had no sex offender treatment while serving time
12 for sex offenses?

13 A. Well, it makes some impact. But oftentimes, not
14 having sex offender treatment is not his fault because a lot
15 of people in prison don't get sex offender treatment. They
16 don't have the capacity to treat all the sex offenders, from
17 my experience with the system.

18 Q. But he was there from about 2006 at least until
19 2017?

20 A. Yes.

21 Q. And sex offender treatment is offered at the
22 Department of Corrections, is it not?

23 A. That's correct.

24 Q. Did he claim he had some?

25 A. Yeah. He said that he had completed sex offender

1 treatment at SCDC, but I did not find that in the records.

2 Q. You are talking about what it is he thought he
3 completed? Can you describe it?

4 A. What he talked about was taking anger management
5 classes. He said that he -- that a lot of his problems
6 stemmed from anger that he had for his wife, who he really
7 was estranged from for many, many years. And he said that
8 when he learned about what she was doing on the outside and
9 that she hadn't stuck by him, that he would get mad and want
10 to fight with people. So he was really describing day-to-day
11 problems in the prison with anger. And he was a little bit
12 convoluted in the way he described that. He seemed to say
13 that anger was related to his sexual offending, but then
14 not.

15 Q. So based upon your review of the prison records,
16 which said none, and what he told you describing anger
17 management, in your opinion, do you think he went through any
18 kind of sex offender treatment in prison?

19 A. No, I don't think that he did.

20 Q. Now, Doctor, as part of all of this process, were
21 you able to diagnose Mr. Brown with a mental abnormality?

22 A. Yes.

23 Q. What mental abnormality did you diagnose?

24 A. I diagnosed him with other specified paraphilic
25 disorder and biastophilia, basically.

1 Q. Let's back up a second. Other specified paraphilic
2 disorder, what did paraphilic mean in the context of
3 psychology here?

4 A. So a paraphilia is when you are sexually aroused by
5 things that are considered deviant. So it's any intense or
6 persistent sexual interest other than sexual interest in
7 genital stimulation or preparatory fondling with
8 phenotypically normal, physically mature normal, mature
9 consenting human partners.

10 Q. So it's a deviant -- generally speaking, a
11 paraphilia would be deviant sex?

12 A. Yes.

13 Q. Now, you qualified it. You said other specified
14 paraphilic disorder, and you identified the type it was.

15 A. Yes.

16 Q. You called it biastophilia?

17 A. Yes.

18 Q. What does that mean?

19 A. Biastophilia is when you are sexually aroused by
20 having coercive, forced sex with a nonconsenting person.

21 Q. Okay. Now, these girls were all over puberty,
22 right?

23 A. Yes.

24 Q. So this is not a case involving pedophilia?

25 A. That's correct.

1 Q. Which is sexual urge for prepubescent children?

2 A. Correct.

3 Q. These girls are also illegal to have sex with
4 because of their ages, right?

5 A. Yes.

6 Q. They are, what, 13, 14, 15?

7 A. Yes.

8 Q. So is that what biastophilia is?

9 A. It has nothing to do with their ages. It has more
10 to do with the context in which he sexually assaulted them.
11 So he surprised them. He did it outdoors. He did it in the
12 face of them struggling, screaming, fighting, trying to get
13 away. Despite all of those behaviors that the victims was
14 having to show I don't want to have any part of this, he was
15 still sexually aroused and still able to perform. And that's
16 abnormal, because we think that when most people, if they
17 have nondeviant sexual interest, if somebody is not
18 consenting, if they are not into it, that's usually a
19 turn-off. That usually decreases arousal. In his case, it
20 increases arousal. And he said it was more arousing to have
21 sex under those conditions with a nonconsenting person than
22 it is to have sex with a consenting person.

23 Q. Okay. By doing it outdoors, anybody can see you?

24 A. Yes, it's risky.

25 Q. Okay. Victim is screaming, yelling out, anybody can

1 hear him.

2 A. Yes, it's risky.

3 Q. Did you also diagnose Mr. Brown with a personality
4 disorder?

5 A. Yes, I did.

6 Q. And what was it?

7 A. Anti-social personality disorder.

8 Q. What are the criteria for that, and how does he meet
9 it?

10 A. So anti-social personality disorder in general is
11 just a pervasive pattern of disregard for and a violation
12 for the rights of others occurring since age 15 years old, as
13 indicated by at least three of these symptoms. So number one
14 is failure to conform to social norms with respect to lawful
15 behaviors as indicated by repeatedly performing acts that are
16 grounds for arrest.

17 So Mr. Brown has that symptom because he's
18 repeatedly acted in ways that are grounds for arrest. He's
19 been -- he has been, in fact, arrested repeatedly.

20 Q. This goes back to his youth when he wasn't arrested
21 for stuff, like the animal cruelty and beating up with other
22 kids and disobeying --

23 A. Yes.

24 Q. Go ahead.

25 A. Second symptom is deceitfulness, as indicated by

1 repeated lying, use of aliases or conning others for personal
2 profit or pleasure. He has that kind of history of
3 deceitfulness, of lying to others. So he has that.

4 Number three is impulsivity or failure to plan
5 ahead. And he definitely was impulsive and failed to plan
6 ahead in many situations.

7 Number four is irritability and aggressiveness, as
8 indicated by repeated physical fights or assaults. He has a
9 history of irritability and aggressiveness, starting from
10 when he was a child continuing to when he was in prison. He
11 has repeated physical assaults.

12 Number five is reckless disregard for the safety of
13 self and others. And he seems to have that, in that he just
14 does what he wants, puts himself on the line a lot, but also
15 just disregards to the rights of others and puts their health
16 and their mental health in serious peril.

17 Q. And these crimes you talk about, the sexually
18 violent crimes, and the list you went through and the things
19 he did as a child that were criminal in nature, these are
20 things he admitted to you, correct?

21 A. Yes. He also has been consistently irresponsible.
22 And he had some remorse for his behavior, although he did
23 also blame others or, like, external factors for his
24 behavior. And he has a history of problems dating back to
25 prior to age 15, which is also a necessary criteria of

1 anti-social personality disorder.

2 Q. So he got anti-social personality disorder. And
3 then the mental abnormality is other specified paraphilic
4 disorder biastophilia?

5 A. That's correct.

6 Q. Doctor, in these types of cases, do you also look at
7 the person's risk to reoffend?

8 A. Yes.

9 Q. How do experts such as yourself measure a person's
10 risk to reoffend?

11 A. Well, the most common way that we do that is by
12 using actuarial risk assessments that are especially designed
13 to estimate sexual recidivism, so whether somebody is going
14 to be charged or convicted of another sex offense.

15 Q. Let's play that back a little bit. When you say
16 actuarial risk assessment, you are talking about something
17 called the Static-99R; is that correct?

18 A. Yes.

19 Q. What do we mean when we say actuarial risk
20 assessment? Can you give us an example of that we can relate
21 to our everyday lives?

22 A. Actuarial just means that when you come to a score
23 on this test, that you can go to a table and it will give you
24 a percentage. So people with that score recidivated at a
25 certain percentage. But in common, common everyday example

1 would be if you have a heart attack and you go to the doctor
2 and you want to know what your chance are of having another
3 heart attack, they are going to look at a bunch of risk
4 factors, whether you smoke, whether you are overweight, how
5 old you are, whether you are male or female, a lot of factors
6 like that. And then they can give you an estimation of what
7 your chance, if you didn't change anything, of having another
8 heart attack.

9 Q. Okay. And so in this field of sexually violent
10 predators, there's an actuarial testing mechanism called the
11 Static-99R; is that right?

12 A. Yes.

13 Q. It's based on the studies of thousands of sex
14 offenders?

15 A. Yes.

16 Q. Now, what does it measure? What type of risk
17 factors do you deal with when you are doing this type of
18 evaluation?

19 A. Well, that test in particular looks at things that
20 are more historical, things that can't be changed, but that
21 are associated with increased chance of committing another
22 sex offense.

23 Q. Is that why they are called static factors?

24 A. Yes, yes.

25 Q. What was his score on the Static-99R?

1 A. He had a score of 4.

2 Q. What's the lowest score you could get and what's the
3 highest score?

4 A. You can get a negative 3 to a 12, but most of the
5 scores top out at about 8. So he was a 4.

6 Q. What about the average sex offender who has
7 reoffended, where will he or she score?

8 A. They will have a score of 2.

9 Q. Where does a 4 put Mr. Brown in the likelihood to
10 reoffend category?

11 A. That puts him about above average risk. And it
12 makes him about twice as likely to commit another sex
13 offense. And if we look at a percentage, it is people with a
14 score of 4, about 11 percent of them reoffended within five
15 years.

16 Q. Okay. Now, is there something else called the
17 Static-2002R, which you ran on or you scored Mr. Brown on?

18 A. Yes.

19 Q. What's the difference between the two, Static-99R
20 you talked about, but there's something else called
21 Static-2002R?

22 A. The name is similar, but they are actually separate
23 instruments. They are made by the same group of researchers,
24 but they look at risk in different ways. So the Static-99R
25 looks a lot more -- I guess it gives more weight to charges.

1 And the Static-2002R gives more weight to convictions and
2 disregards charges for the most part. And they just look at
3 things in a different way.

4 Q. Is the Static-2002R also a test used by experts in
5 your field to estimate a person's risk to reoffend sexually?

6 A. Yes.

7 Q. What score did he get on the 2002R?

8 A. He got a score of 5.

9 Q. Okay. And is the rational -- you gave an example a
10 minute ago, a person has a heart attack and goes to the
11 doctor to see if they are going to have another one, and
12 doctor looks at all these risk factors. Is that the same
13 type of background that goes into 2002R?

14 A. Yes.

15 Q. What was the score again, a 5?

16 A. He had a score of 5.

17 Q. Where does that put him on the likelihood to
18 reoffend scale?

19 A. Well, those scores range from negative 2 to 13. And
20 a 3 is the average score. So it's a little bit different
21 than 99R. But that also places him in the above-average risk
22 category. Individuals with a score of 5 on that test, about
23 13.8 percent reoffend within five years. And individuals
24 with a score of 5 have 1.9 times higher the expected
25 recidivism rate than the average sex offender.

1 Q. Now, we talked about the way you measure static or
2 unchanged things about the guy. Is there something called
3 dynamic risk factors?

4 A. Yes.

5 Q. What are those?

6 A. Dynamic risk factors are risk factors that have also
7 been associated with increased sexual offending, but they are
8 things that can be changed through treatment. They are
9 things that can be changed. And they are not just static,
10 they are changeable.

11 Q. What dynamic risk factors did you find that
12 Mr. Brown had?

13 A. Well, he has a history of sexual pre-occupation. He
14 has sexualized violence, a lack of emotionally intimate
15 relationships with adults, lifestyle impulsiveness, poor
16 problem solving, and resistance to rules and supervision.

17 Q. How do these static and dynamics factors relate to
18 his risk to reoffend if he's not confined in a secure
19 facility for treatment?

20 A. Well, it's my opinion that his risk is such that he
21 needs to be in a secure facility for long-term control, care
22 and treatment.

23 Q. Okay. Let's wrap it up like this then. Based on
24 your analysis of Mr. Brown, the documents you looked at, the
25 convictions we talked about here, the sexually violent

1 convictions, do you have an opinion to a reasonable degree of
2 psychological certainty, does Mr. Brown have a mental
3 abnormality or a personality disorder or both?

4 A. He has both.

5 Q. Okay. And what's the mental abnormality again?

6 A. It's other specified paraphilic disorder,
7 biastophilia.

8 Q. And personality disorder?

9 A. Anti-social personality disorder.

10 Q. And again, to a reasonable degree of psychological
11 certainty, do these diagnoses affect Mr. Brown's emotional or
12 volitional capacity so that he's predisposed to commit future
13 sexually violent offenses?

14 A. Yes, they both do.

15 Q. By volitional, what am I talking about?

16 A. His ability to control his behavior and make good
17 choices.

18 Q. And again, do you have an opinion to a reasonable
19 degree of psychological certainty whether or not Mr. Brown
20 has the propensity to be dangerous and commit future sexually
21 violent offenses?

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

23 Q. Do you also have an opinion, again to a reasonable
24 degree of psychological certainty, as to whether this
25 propensity to commit future sexually violent offenses is of

1 such a degree that it will pose a menace to the health and
2 safety to others?

3 A. Yes, it's my opinion that it does.

4 Q. Do you also have an opinion, again to a reasonable
5 degree of psychological certainty, as to whether Timothy
6 Brown has serious difficulty in controlling his behavior and
7 his propensities to be dangerous?

8 A. Yes, I think that he does. And he said that the
9 offenses were impulsive. So that gives merit to that.

10 Q. Do you also have an opinion, again to a reasonable
11 degree of psychological certainty, do these diagnoses make
12 him likely to engage in acts of sexual violence unless he's
13 confined to a secure facility for long-term control, care and
14 treatment?

15 A. Yes, I believe that they do.

16 Q. Okay. Is outpatient treatment in the community,
17 going on outpatient place, is that the right route for this
18 guy?

19 A. I don't believe so.

20 Q. He needs to be confined for treatment, is that what
21 you are saying?

22 A. Well, I believe that he does, because he committed
23 offenses while he was on probation. Those 1998, 1999
24 offenses were on probation. He went undetected for those
25 until 2004. In 2004, the DNA of that victim, when they

1 looked at the DNA in that offense, that matched back to the
2 1998, 1999 offenses. That's how he got caught for that. And
3 that 2004 offense was committed just a couple of months after
4 he got out of prison. And he had gotten away with those
5 earlier offenses for quite some time, but he went out and
6 reoffended again.

7 Q. And the DNA from the 2004 offense matched the
8 unsolved cases?

9 A. Yes.

10 Q. Do you have an opinion also to a reasonable degree
11 of psychological certainty, does Timothy Brown meet the legal
12 criteria to be found a sexually violent predator at this
13 point?

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

15 Q. Do you know of anything, other than confinement,
16 that could get him the necessary sex offender treatment that
17 he needs?

18 A. Well, he is subject to community supervision, and
19 that would be until some time in 2020.

20 Q. January 31 of 2020, correct?

21 A. Yes, January 31, 2020, he's subject to that
22 supervision. And he would be required to do sex offender
23 treatment during that program. But that would also be on an
24 outpatient basis. And that would be under probation. And
25 it's my opinion that he's proved that he can't control his

1 behavior even while he's on probation.

2 Q. Because he's violated probation by sexually
3 offending in the past, right?

4 A. Yes.

5 MR. BOGLE: Thank you, Doctor. Please answer any
6 questions the Court may have or counselor may have.

7 THE COURT: Do you all need a break?

8 Okay. We will take a ten-minute break.

9 (Whereupon, a recess transpired.)

10 (Whereupon, the jury leaves open court at 3:30 p.m.)

11 (Whereupon, the jury returns to open court at 3:37
12 p.m.)

13 THE COURT: You can cross-examine, Mr. Falk.

14 MR. FALK: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. FALK:

17 Q. Dr. Gehle, what's the difference between a
18 psychologist and a psychiatrist?

19 A. A psychiatrist goes to medical school and then
20 specializes in mental health illnesses, usually treating them
21 through medication during their residency. And a
22 psychologist goes to graduate school and spends that whole
23 time learning about mental health issues and treatment and
24 assessment.

25 Q. Now, can you become board-certified in forensic

1 psychology?

2 A. Yes.

3 Q. Are you board-certified?

4 A. No, I am not.

5 Q. How long have you been with the South Carolina
6 Department of Mental Health?

7 A. Almost 10 years.

8 Q. Is there any -- are you planning to become
9 board-certified?

10 A. Not at the current time, because in order to become
11 board-certified, you have to have practice in, like, two
12 different areas, because you have to submit work samples in
13 two different areas. And currently, this is the only kind of
14 work I do. So my practice is not diverse enough to apply for
15 that.

16 Q. Because all of your practice has been with sexually
17 violent predators; is that correct?

18 A. Yes, with the Department of Mental Health, yes.

19 Q. Last five years, 100 percent devoted to doing these
20 evaluations; is that correct?

21 A. It's been, since about 2012, it's been just these
22 evaluations.

23 Q. So your entire day is devoted to evaluating whether
24 somebody is a sexually violent predator?

25 A. Yes, for the most part, yes.

1 Q. You are familiar with the -- if he were to be
2 committed, how long would he -- if he were to be committed,
3 do you know when he would be released?

4 MR. BOGLE: Objection, Your Honor. May we approach
5 the bench, please?

6 (Whereupon, a bench conference takes place off the
7 record.)

8 BY MR. FALK:

9 Q. There's a term "indeterminate commitment". Do you
10 know what that means?

11 A. I know what those words mean, yes.

12 Q. What would that mean?

13 A. Indeterminate would mean it would be to be
14 determined. It would be determined at a later date. It
15 could be up in the air, I guess.

16 Q. So if he shows up at a sexually violent predator
17 treatment tomorrow, you wouldn't know when he would be
18 released; is that correct?

19 A. That's correct.

20 Q. He would have an opportunity to try and get out on
21 sort of a regular basis; is that correct?

22 A. Yes.

23 Q. Now, you talked a little bit about treatment. And
24 you are aware of the treatment that is -- at some point, did
25 you observe the treatment that was being done at the SBP?

1 A. I supervised the treatment at the beginning of my
2 work with the Department of Mental Health.

3 Q. What about that treatment that is conducted at the
4 SBP could not be done on an outpatient basis?

5 A. Well, I don't know what the treatment is at the
6 program currently, because the Department of Mental Health
7 contracted with a private organization to run the treatment
8 program now. So I am not involved in that at all. And I
9 don't do the evaluations of the people who are committed
10 anymore. So I am not very familiar with what the treatment
11 program all entails at this point. But -- so I'm not sure if
12 I can answer your question.

13 Q. Are you familiar with -- well, as part of his
14 community supervision, he would have to have sex offender
15 treatment; is that correct?

16 A. Yes.

17 Q. And that would be done on an outpatient basis; is
18 that correct?

19 A. Yes.

20 Q. Okay. Do you know if there's any difference between
21 the type of treatment he would get at an outpatient basis
22 than he would get at the program?

23 A. Well, there would be differences, because part of
24 what the inpatient treatment facilities entail is like milieu
25 therapy, is what it's called. So it's demonstrating the

1 things that you are learning and learning how to cooperate
2 with others on an ongoing basis, so learning in the
3 environment. That would not be present in an outpatient
4 setting.

5 Q. At some point we talked -- you talked a little bit
6 that he was at Gilliam Psychiatric Hospital; is that correct?

7 A. Yes.

8 Q. That is a facility run by South Carolina Department
9 of Corrections; is that correct?

10 A. It is an inpatient psychiatric hospital run by the
11 Department of Corrections.

12 Q. Okay. And there's also another South Carolina
13 mental health hospital, is there not? What is the facility
14 on Crafts-Farrow Road?

15 A. That's called Bryan Psychiatric or G. Werber Bryan
16 Psychiatric Hospital.

17 Q. And what goes on in that hospital?

18 A. Okay.

19 Q. Do you get put there by some kind of state -- is
20 there some kind of state action that puts you in that
21 hospital?

22 A. So that hospital houses people who have been
23 evaluated on an outpatient basis for competency to stand
24 trial. And they go into the hospital for 15 days to
25 determine if they are competent, because the outpatient

1 evaluator is having difficulty making that determination in
2 an outpatient evaluation. So they will send them for a
3 15-day evaluation. People who are found incompetent to stand
4 trial and likely to be restored to competency with treatment
5 are sent there for 60 days of treatment.

6 People who are found incompetent to stand trial and
7 can't be restored to competency and are still considered
8 dangerous and civilly committable under the regular mental
9 health laws, they are committed there.

10 And there are people who are found not guilty by
11 reason of insanity. They are committed there.

12 And then that facility also houses some federal
13 inmates through -- because that's also run by a private
14 organization.

15 Q. All right. So if he were -- it's your understanding
16 that if he were committed, he would not be going to Gilliam
17 Psychiatric Hospital, and he would not be going to whatever
18 we call the one on Crafts-Farrow Road?

19 A. Bryan, that's correct.

20 Q. So this place is not a hospital; is that accurate?

21 A. I don't know that I would call it a hospital, no. I
22 don't think I would call it a hospital.

23 Q. Okay. Let me go back. When you were talking about
24 your diagnosis, and I will talk a little more about it later,
25 but when you were talking about your diagnosis, and I think

1 you were making some comparisons to someone who had a heart
2 attack in talking about risk factors, but are there any kinds
3 of tests that you can provide, like blood test or DNA tests
4 or genetic testing or anything like that that helps confirm
5 your diagnosis?

6 A. Not in terms of paraphilic disorders, no.

7 Q. Now, you would agree that what's relevant today at
8 this trial is what his condition is April 14, April 15th,
9 April 16th, whatever, of this year; is that correct?

10 A. Yes.

11 Q. Whether he is at this moment a sexually violent
12 predator and dangerous; is that correct?

13 A. Yes.

14 Q. A lot of what you base your opinion on is behavior
15 that occurred prior to 2004; is that correct?

16 A. It occurred in 2004 and before.

17 Q. Prior to 2005?

18 A. Yes.

19 Q. And has there been any changes -- has he had any
20 type of medical changes or things that may actually affect
21 his likelihood to reoffend? That was a bad question. He is
22 taking a group of psychological or psychiatric drugs; is that
23 fair? While he was at SCDC, he was given four different
24 psychiatric drugs; is that correct? I can tell you that.
25 When I looked through the reports, I saw he was taking

1 Zoloft, nortriptyline, Risperdal and Remeron.

2 A. Well, I think I have a couple more. He was taking
3 nortriptyline, prazosin, Zoloft, Remeron, Risperdal Consta.
4 And then he was also taking an antihistamine, which helps
5 decrease side effects of the anti-psychotic medications.

6 Q. I've looked at some of those medical reports.
7 Thought he was going in there with a runny nose. I thought
8 that's what the antihistamines were for. But that was for
9 the psychiatric drugs?

10 A. Yeah. They are commonly given with psychiatric --
11 especially when you give somebody an anti-psychotic, they
12 have side effects which makes people stiff. And
13 antihistamines help reduce those symptoms, side effects.

14 Q. Is there any -- in your review, is there any record
15 that he was getting Zoloft or nortriptyline, Risperdal and
16 Remeron prior to 2005?

17 A. No. I don't believe I have information that he was
18 getting those medications prior to 2005.

19 Q. Is it fair to say that a lot of those medications
20 are there to treat the schizoaffective disorder?

21 A. Yes. And what -- they diagnosed him in SCDC with
22 schizoaffective disorder and post-traumatic disorder. And
23 that's what those medications are to treat.

24 Q. And you had seen that he's also suffering from
25 diabetes now; is that correct?

1 A. Yes.

2 Q. And did you see some record that some of his blood
3 sugar was not checked well with his current medicines?

4 A. I'm not sure. I would have to --

5 Q. Let me ask you this. Is there -- in your field, do
6 you ever see a correlation between high incidents of diabetes
7 and a decrease or an increase in sexual dysfunction?

8 A. In terms of -- like, sexual dysfunction in terms of
9 sexual performance?

10 Q. Yes.

11 A. Those two things can be related.

12 Q. Okay. How about some of these medicines?

13 nortriptyline, I guess that's a tricyclic. And I'm really
14 going off of med MD. But can that have an effect on sexual
15 performance and sexual desires?

16 A. Antidepressants can, but typically the side effects
17 are associated with SSRIs. Those are a specific type of
18 anti-depressant.

19 Q. And you don't have any information about
20 nortriptyline being tricyclic and having an effect --

21 A. I am not a medical doctor. I don't prescribe
22 medications. So I know some things about medications, but
23 it's not something that I'm an expert in.

24 Q. Here's the big one. How about the Risperdal?

25 A. Risperdal is an anti-psychotic medication.

1 Q. Okay. And do you have any information on how it
2 affects sexual desires, sexual performance, sexual
3 dysfunction?

4 A. I don't have information about how that affects it,
5 no.

6 Q. Okay. Is it fair to say that he's had substance
7 abuse issues from a pretty early age?

8 A. Yes.

9 Q. And how old would you say that was, or when is the
10 onset there? I mean, there was a history of alcohol use in
11 high school, maybe earlier than that.

12 A. He told me that he has started drinking alcohol
13 before age 9. Then he used a combination of heroin and
14 cocaine in his late 20s. Started using crack cocaine at age
15 24 or 25, and used that until 2004, is what he told me.

16 Q. Let me ask you. Are you familiar -- I know you are,
17 but I mean, DSM-V, is that an authoritative source in the
18 field of forensic psychology?

19 A. Yes. It's what we use to make diagnoses.

20 Q. This is a book that you rely on; is that correct?

21 A. Yes.

22 Q. In fact, do you have yours up there?

23 A. I have a small copy. So it's not as comprehensive
24 as the one that you have.

25 Q. If I could approach?

1 THE COURT: Certainly.

2 Q. I dog-eared page 105. And on that page, are they --
3 is there description of a personality disorder?

4 A. No. It's schizoaffective disorder, which is not a
5 personality disorder. It's a mental abnormality.

6 Q. That's a mental abnormality? So that's described on
7 that page; is that correct?

8 A. In part, yes.

9 Q. Does it have diagnostic criteria on that page?

10 A. Yes, and then going on to the next page.

11 Q. And so that lists specific things that doctors need
12 to see in order to make the diagnosis; is that correct?

13 A. Yes.

14 Q. And then if I could grab the book back, or maybe you
15 know what page it's on, but the anti-social personality
16 disorder, so that again, so anti-social personality disorder
17 is described there, and that's a personality disorder?

18 A. Yes.

19 Q. Okay. And on that page, there are specific
20 diagnostic criteria; is that correct?

21 A. Yes.

22 Q. For biastophilia, is there any page in this book I
23 can look to that shows the diagnostic criteria for
24 biastophilia?

25 A. Well, you would look to the page that has other

1 specified paraphilic disorder.

2 Q. Am I going to find the word "biastophilia" in this
3 book?

4 A. No, you are not.

5 Q. Do you have the page that has the criteria you can
6 look for your diagnosis for "other specified"?

7 A. I do, yes.

8 Q. Can you read that?

9 A. This category applies to presentations in which
10 symptoms, characteristic of a paraphilic disorder that cause
11 clinically significant distress or impairment in social,
12 occupational or other important areas of functioning,
13 predominant, but do not meet the full criteria for any of the
14 disorders in the paraphilic disorders diagnostic class.

15 The other specified paraphilic categories used in
16 situations in which the clinician chooses to communicate the
17 specific reason that the presentation does not meet the
18 criteria for any specific paraphilic disorder. This is done
19 by recording other specified paraphilic disorder followed by
20 the specific reason, for example, zoophilia.

21 Examples of presentations that can be specified
22 using the other specified designation include, but are not
23 limited to, recurrent intense sexual arousal involving
24 telephone scatologia, which is obscene phone calls;
25 necrophilia, which is corpses; zoophilia, which is animals;

1 coprophilia, which is feces; klismaphilia, which is enemas;
2 or urophilia, which is urine, that has been present for at
3 least six months and causes marked distressed or impairment
4 in social, occupational or other important areas of
5 functioning. Other specified paraphilic disorder can be
6 specified as in remission and/or as occurring in a controlled
7 environment.

8 Q. So none of what you read there refers specifically
9 to an interest in nonconsensual sex; is that correct?

10 A. That's correct, in this definition, right.

11 Q. And would you find an interest in -- would you say
12 that biastophilia is a sexual interest in nonconsensual sex?

13 A. It is interest in coercive sex with a nonconsenting
14 person.

15 Q. Okay. And we can agree that that is not listed in
16 the DSM file?

17 A. Biastophilia is not listed in the DSM-V but it's
18 part of that, "but not limited to" designation. Because
19 there are hundreds of paraphilias. And they only list, I
20 think, seven or eight in the body of this section. And then
21 they list other specified paraphilic disorder, which is where
22 you talk about the other types of paraphilias that they chose
23 not to list.

24 Q. But, I mean, is it safe to assume that they would
25 put the more common ones in there in the "others"? You

1 listed zoophilia and telephone scatologia. Those seem rare;
2 is that fair to say?

3 A. I don't know if that's fair to say. And I don't
4 know why they chose those to list in this manual in this
5 paragraph.

6 Q. Okay. Well, you would agree that -- would you agree
7 that everybody who went to the Department of Corrections who
8 was convicted of rape is not necessarily a sexually violent
9 predator?

10 A. That's correct.

11 Q. Well, how do you then distinguish between somebody
12 who had a criminal mindset to rape somebody else versus
13 somebody who has got a psychological defect that makes them
14 want to rape somebody else?

15 A. Well, you look at a variety of factors. One is the
16 context in which they committed the sex offenses. So did the
17 victim acquiesce? Was it something that -- were there
18 indications that the offender wanted a consenting victim and
19 they used manipulation or tactics that were less violent?
20 Did they offend people that they know? Like, you could take
21 somebody out on a date and sexually assault them. That
22 victim might acquiesce. There might not be screaming,
23 crying, things like that that would show the offender that
24 the victim was absolutely nonconsenting.

25 Q. Would it be possible -- or if somebody is -- if it's

1 a crime of opportunity, somebody is in the wrong place at the
2 wrong time, versus, I think -- let's take an example of
3 somebody breaks into a house. And his motivation for
4 breaking into the house is because he wants to steal
5 something. And when he's inside the house at night, he sees
6 somebody in the house, and rapes that person. Now, would you
7 say that's somewhat of a crime of opportunity? That's not
8 what the person was planning on doing?

9 A. Well, how do we know what they were planning on
10 doing? I mean, like, that would be most likely from their
11 self-report. So I don't know. It would depend on that
12 person and how honest they were and whether they had other
13 reasons to say that that weren't true.

14 But in this case, Mr. Brown told me that he was more
15 sexually aroused by raping strangers than having sex with a
16 consenting person. So he's saying that he has a preference
17 for that. And that was more arousing. It was easier for him
18 to ejaculate than it would be if he was having sex with a
19 consenting person.

20 Q. Mr. Brown certainly self-reported having lots of
21 sexual partners; is that correct?

22 A. Yes, he did.

23 Q. He admitted to paying people for sex; is that
24 correct?

25 A. Yes.

1 Q. And while he was married, he had a -- he was seeing
2 another woman; is that correct?

3 A. Yes.

4 Q. And, actually, he was seeing another woman, maybe
5 cheating on the person he was cheating on with?

6 A. Yes. He said that he would have sex with more than
7 one person in a day. He would make rounds.

8 Q. And when he's talking about that, he's not talking
9 about not consensual sex; is that correct?

10 A. As far as I know, he's talking about consensual sex.

11 Q. And so the basis for your comment that it was
12 easier -- that he said it was easier to ejaculate, that's
13 really the basis for your saying he has this preference?

14 A. That and -- I mean, he clearly said that he
15 preferred that, that that was more sexually arousing. He
16 said it was thrilling.

17 Q. Not to make light of the fact that he was charged
18 three times, but he certainly had, based on his
19 self-report -- that's really all we have here -- he's had 50
20 to 100 sexual partners, none of which seem to be
21 nonconsensual; is that accurate?

22 A. He said that they were consensual and the three
23 victims were not consensual.

24 Okay. I think as part of your testimony when you
25 were talking about biastophilia, you were saying that people

1 who had an interest in sex, phenonormative (sic) -- what are
2 those terms you were using? What is normal sex?

3 A. Okay. So the DSM-V defines paraphilia as any
4 intense and persistent sexual interest other than sexual
5 interest in genital stimulation or preparatory fondling with
6 a phenotypically normal physically mature consenting human
7 partner.

8 Q. So the right age and consenting; is that correct?

9 A. Yes.

10 Q. And you said that people who that is their
11 preference, they usually are turned off by -- for sex, is
12 that your testimony?

13 A. For the average person without a paraphilia, yes.

14 Q. Is there scientific data to support that?

15 A. There is some data to support that, yes. In terms
16 of -- there's some PPG or penal plethysmograph research. But
17 just in terms of surveys and stuff, that would be where that
18 research would be found.

19 Q. But certainly people who are having sex with a
20 phenotypical partner can also have an interest in rough sex
21 or, you know, play-acting sex, you know, role playing, those
22 types of things?

23 A. Of course. And if they have sex like that with a
24 consenting partner, and that's all agreed to, and it didn't
25 cause them to distress or impairment, didn't cause them

1 problem in their day-to-day functioning, then it wouldn't be
2 called a paraphilic disorder.

3 Q. Then we talked a little bit about the anti-social
4 personality disorder and the diagnostic criteria that's in
5 the back for that. Can you tell me, based on your
6 experience, if we rode up to Lieber right now, Lieber
7 Correctional or correctional facility in South Carolina, what
8 percentage of the inmate population there would you estimate
9 could be diagnosed as having anti-social personality
10 disorder?

11 A. I don't know.

12 Q. Do you think it could be more than half?

13 A. I don't know.

14 Q. Do you think it could fit a -- so you are saying you
15 don't know if it's zero percent or if it's 50 percent?

16 A. Yeah, I don't, I don't know.

17 BY MR. FALK: One moment, Your Honor.

18 Q. As part of your staying current, do you read any of
19 the court decisions in this field?

20 A. I read some court decisions. It depends on whether
21 I know that they come out or ...

22 Q. Have you read the decision in Crane or Hendricks,
23 the Supreme Court decisions?

24 A. I'm familiar with them. It's been awhile since I
25 read them.

1 Q. Well, it's either Crane or it's in Hendricks where
2 in one of the opinions, they made an estimate that 80 percent
3 or they said 68 percent of the prison population could be
4 diagnosed with anti-social --

5 MR. BOGLE: Your Honor, asked and answered. He
6 asked her if she knows, she said she doesn't know.

7 MR. FALK: That wasn't my question.

8 THE COURT: He hadn't finished the question
9 yesterday. He's just quoting a court case.

10 Q. In one of those two cases, there was a comment in
11 the opinion that said 60 to 80 percent of the criminal
12 population could be diagnosed with anti-personality disorder.
13 Do you have any reason to think that's accurate or not
14 accurate?

15 A. I would think that if you are looking at strictly
16 the criteria for anti-social personality disorder, that that
17 would probably be an over estimate. What people get caught
18 up on is the criteria about that you are basing in a way
19 that's grounds for arrest. But that's not the only criteria.
20 That's just one thing.

21 So if we just looked at that criteria, then
22 everybody in prison has behaved in a way that's been grounds
23 for arrest. But it's looking at things in a more
24 comprehensive way. So I would think that that would be
25 high.

1 Q. Deceitfulness is indicated by repeated lying, using
2 aliases, is that not something that you think be would be not
3 uncommon in the criminal population in prison?

4 A. It probably won't be terribly uncommon, but it would
5 depend on what population you are looking at.

6 Q. Certainly the first one, failure to conform with
7 social norms, that would hit all the populations, right?

8 A. Yes, but it's not just that. You have to say by
9 repeatedly performing acts that are grounds for arrest, so it
10 should be repetitive not just a one-time thing.

11 Q. Irritability and aggressiveness as indicated by
12 repeated physical fights or assaults, do you think that is
13 common in the prison population?

14 A. It can be, depending on the classification level of
15 the prison, but it can be. But not all criminals are going
16 to have that symptom.

17 Q. Reckless disregard for the safety of others?

18 A. Again, not all criminals are going to have that
19 symptom.

20 Q. You would agree that everybody who has a diagnosis
21 of anti-social personality disorder is not necessarily going
22 to meet the criteria to be a sexually violent predator; is
23 that correct?

24 A. That's correct.

25 Q. We talked a little bit about the Static-99. And he

1 has a score of 4. And that score of 4 was when you did the
2 test last year; is that correct?

3 A. Yes.

4 Q. And that was an above-average risk factor; is that
5 correct?

6 A. Above average, yes.

7 Q. And he was 57? Was he 56 when he did the test?

8 A. Yes.

9 Q. So he's 57 now. In that three years, he will be 60.
10 Will his static score, score on the Static-99 go down?

11 A. When he turns 60, it will go down by two points.

12 Q. That would put him at a 2; is that correct?

13 A. Yes.

14 Q. And you had said that between -- was it your -- your
15 testimony was that he has 11 percent chance of committing
16 another offense in the next five years; is that correct?

17 A. That's not exactly right. It's 11 percent of people
18 with a score of 4 reoffended within five years.

19 Q. Okay. Can you say with any type of degree of
20 certainty what the risk that he's going to reoffend in the
21 next five years is going to be?

22 A. Well, I based it on that. And I base it on his
23 history. So it's my opinion that he's likely to reoffend.

24 Q. Does that mean there's an 11 percent chance he's
25 going to reoffend?

1 A. Again, I didn't say there's 11 percent chance. I
2 look at what his likelihood is on the actuarials compared to
3 what the average sex offender recidivism rates are. And
4 those are anywhere between, like, 5 and 10 to 15 percent. So
5 to me, his risk is higher than that because he has the
6 actuarial risk that I talked about, but also those dynamic
7 risk factors, which put him higher.

8 Q. Can you say with any degree of certainty what's the
9 percentage chance he's going to reoffend in the next five
10 years?

11 A. I cannot say -- I cannot predict it to a percentage
12 chance.

13 Q. And you just used the term "likely"?

14 A. Yes.

15 Q. What does "likely" mean?

16 A. "Likely" as defined by our law is to such a degree
17 as to pose a menace to the health and safety of others.

18 Q. So if he were released today or tomorrow, he would
19 have community supervision for, obviously, a year and a half?

20 A. He would be subject to that until January 31st,
21 2020.

22 Q. Okay. So he would have -- and he would be required
23 to take a sex offender treatment during that time; is that
24 correct?

25 A. Yes.

1 Q. Now, when you are looking at Static-99, how do you
2 factor in the fact had somebody has been in prison for a
3 certain period of time?

4 A. This test was designed to look at people who have
5 been in prison for however long. I mean, all the people that
6 this test was done on were in secure confinement. So it's
7 something that's just inherent in the test.

8 Q. So if somebody has been in prison -- is there any
9 studies that will show what the affect of being in prison for
10 14 years -- no, excuse me, for 13 years -- does the test give
11 any credit for rehabilitation that can occur when you are in
12 their prison?

13 A. This test does not, no.

14 Q. Why is that?

15 A. Because they were looking at people who had been
16 incarcerated for a sex offense. And they wanted to see how
17 many of those people went on and reoffended. So it didn't
18 matter how long they had been in prison.

19 Q. You had also talked about his dynamic risk factors.

20 A. Yes.

21 Q. And some of the dynamic risk factors that you
22 highlighted were sexual pre-occupation?

23 A. Yes.

24 Q. Since his incarceration, let's say in 2005 until
25 now, what evidence is there of sexual pre-occupation?

1 A. Well, it was just from his self-report, when he told
2 me about when he was in the community and had free access,
3 that he wanted to have sex for the sake of it, that he had
4 sex with multiple partners a day, that he viewed sex as a
5 transaction, and that he enjoyed paying for sex because he
6 didn't want that emotional connection. Those were attitudes
7 that he expressed in the interview.

8 Q. From conduct from prior to his last incarceration?

9 A. Those were attitudes that he expressed in the
10 interview when we were talking about historical events, but
11 he still expressed those attitudes now.

12 Q. In terms of who he was then?

13 A. I don't know that I would put it in that term. I
14 mean, he thought that the way that he was, in my opinion,
15 seemed pretty normal. He didn't see a problem paying for
16 sex, in my opinion.

17 Q. You would agree that there's no disciplinary conduct
18 that he got in trouble for that would show that he still had
19 a pre-occupation with -- that he still had a sexual
20 pre-occupation; is that correct?

21 A. He did not get in trouble for any sexual infractions
22 in prison, but a sexual pre-occupation doesn't just mean,
23 like, frequency of sex. It means -- you know, what was the
24 quality of the sexual interactions they had? Did they want
25 to have sex just for the sake of it? Was it about emotional

1 intimacy? Was it sex in a relationship or was it a lot of
2 sex outside of relationship that was just transactional and
3 things like that? And that's how he meets criteria for that
4 dynamic risk factor.

5 Q. Since 2005, when he was at SCDC, or I guess he was
6 sent to 2006, he was in jail prior to sentencing date,
7 sexualized violence, so there's been no sexualized violence
8 that he's acted on since he was incarcerated; is that
9 correct?

10 A. No. It's talking about his criminal history. And
11 it's also talking about his preference that he reported in
12 terms of preferring sexually violent interactions as opposed
13 to consensual sex.

14 Q. Has he shown any poor self-control since he's been
15 in prison?

16 A. He's had some infractions that would show some
17 problems with self-control, I would say.

18 Q. How many, which ones are you talking about?

19 A. Well, the substance-related ones, fighting with a
20 weapon, disrespect, those things can all be evidence of
21 impulsivity and poor problem solving and things like that.

22 Q. So he had 13 infractions since he was in prison?

23 A. Yeah, I believe that's the count, yes.

24 Q. Two of those were for a substance issue; is that
25 correct?

1 A. Yes.

2 Q. Just let me come back around. As far as a
3 phenotypical sexual partner, is it a side of mental health
4 problem if a man, a 50-year-old man, finds a 14-year-old girl
5 sexually attractive?

6 A. If that 14-year-old girl is sexually mature, then,
7 no, it's fairly normal.

8 Q. Clearly, criminal conduct, but that's not
9 necessarily a mental health issue, being attracted to a
10 14-year-old girl, provided she's sexually mature?

11 A. That's correct.

12 Q. And that's different from pedophilia, where there is
13 no explanation for attraction to a six-year-old girl; is that
14 correct?

15 A. If you are sexually attracted to a six-year-old,
16 assuming that six-year-old has not started puberty, it
17 wouldn't matter the quality of those interactions, whether
18 they were nice to the victim, whether there was violence or
19 not, whether there was no violence, whether it was a stranger
20 or not a stranger, things like that. Just having sexual
21 activity with a six-year-old in and of itself over a period
22 of time, having a pattern of that kind of arousal, can be a
23 mental abnormality.

24 Q. Mental abnormality and criminal conduct?

25 A. Yes.

1 Q. Acting on it would be criminal conduct?

2 A. Yes.

3 Q. Do you have an opinion how the medicines that he's
4 been receiving for the schizoaffective disorder, PTSD, would
5 effect his desires to commit sexually violent crimes?

6 A. I don't.

7 Q. I was just curious. Did you have any concerns that
8 Victim No. 3, TM, that that person, either one of the victims
9 from '99 or '98, actually identified another person as their
10 assailant?

11 A. Did I have concerns about that?

12 Q. Yes.

13 A. I looked at those records, because they were
14 included in the records that I received. I'm not sure which
15 victim that was off the top of my head.

16 Q. Well, it wasn't MB, the 2004. It was either the '99
17 or '98; is that correct?

18 A. Yes.

19 Q. It was either RJ or TM; is that correct?

20 A. Yes.

21 Q. Because somebody had -- because that, actually,
22 there was an arrest made and there was a photo pack
23 identification by one of those; is that correct?

24 A. I believe so. But to me, I mean, it was very
25 concerning that somebody was arrested and spent some time in

1 jail for that. I mean, that's an injustice. But he admitted
2 to sexually assaulting all three of these victims. So in
3 terms of whether, like, somebody else actually committed the
4 offense, that was not a concern at all, because Mr. Brown
5 admitted to sexually assaulting these victims and he was
6 identified by DNA.

7 MR. FALK: I have no further questions.

8 REDIRECT EXAMINATION

9 BY MR. BOGLE:

10 Q. By "admitted", you mean pleaded guilty and admitted
11 to you, right?

12 A. Yes.

13 Q. There was talk about all these medications he's
14 taking right now. I believe Mr. Falk asked you if there was
15 any indication he had been taking those medications in the
16 past before these sexual offenses happened, before 2004; do
17 you remember that?

18 A. Yes.

19 Q. And you said there was no indication he was taking
20 those meds back then?

21 A. I don't believe that he was.

22 Q. Okay. And are you aware of any indication or any
23 positive proof we can have that he will take these
24 medications in the future?

25 A. No.

1 MR. BOGLE: Thank you, Doctor.

2 THE COURT: Thank you. You can come down.

3 MR. BOGLE: Your Honor, we would ask that Dr. Gehle
4 be excused.

5 THE COURT: Any objection?

6 MR. FALK: No objection.

7 THE COURT: You are excused.

8 (Whereupon the witness is excused.)

9 MR. BOGLE: Your Honor, at this time, the State
10 rests.

11 THE COURT: Do you have a witness you could put up
12 that's short?

13 MR. FALK: Yes, Your Honor. I prefer if we could
14 just start in the morning.

15 THE COURT: Okay. Any objection?

16 MR. BOGLE: No, Your Honor. If we may approach?

17 MR. FALK: Yes, sir.

18 (Whereupon, a bench conference takes place off the
19 record.)

20 THE COURT: Ladies and gentlemen, we are going to
21 stop for the day. I ask you to be back at 9:30 in the
22 morning. If you have an emergency, please call to let us
23 know. Otherwise, I expect you to be here at 9:30.

24 Don't discuss the case or allow anyone to discuss it
25 with you, and don't do any research. I will see you in the

1 morning. Thank you.

2 (Whereupon, the jury leaves open court at 4:25 p.m.)

3 THE COURT: Anything else we need to do?

4 MR. FALK: Your Honor, I make my motion for directed
5 verdict.

6 THE COURT: Okay. And I will respectfully deny your
7 motion. I think there's enough evidence in the record.

8 MR. BOGLE: Thank you, Your Honor.

9 (Whereupon, the proceedings are adjourned for the
10 day.)

11 (Whereupon, the trial continues on April 16, 2019.)

12 MR. FALK: Your Honor, we have one matter. I
13 realize I did not put my client's name on the witness list,
14 but I plan on calling him.

15 THE COURT: I don't think -- I questioned the jury
16 about his name anyway. So, you know, that shouldn't be a
17 problem.

18 MR. FALK: Thank you.

19 THE COURT: We got all the jury now? Y'all ready to
20 get started?

21 MR. BOGLE: Yes, sir.

22 THE COURT: How many witnesses do you have today?

23 MR. FALK: I have two relatively brief ones and then
24 my client.

25 THE COURT: Okay. All right. Get the jury and we

1 will get started.

2 (Whereupon, the jury returns to open court at 9:38
3 a.m.)

4 THE COURT: You may call your next witness.

5 MR. FALK: We call Harvey Brown to the stand.

6 HARVEY BROWN,

7 having been duly sworn, testifies as follows:

8 THE CLERK: For the record, will you please state
9 your name and spell your last name.

10 THE WITNESS: Harvey Brown, B-r-o-w-n.

11 DIRECT EXAMINATION

12 BY MR. FALK:

13 Q. Mr. Brown, can you just tell me a little bit about
14 yourself. How are you related to my client?

15 A. I'm his younger brother.

16 Q. By how many years?

17 A. Six.

18 Q. Okay. And y'all have other brothers and sisters?

19 A. Yes, nine boys and three girls, so 12 kids total.

20 I'm the youngest of the 12.

21 Q. Whereabouts was Timothy in that order? Somewhere in
22 the middle?

23 A. He's the 5th from me.

24 Q. Okay.

25 A. 5th or 6th from me.

1 Q. All right. And if you could also just -- who else
2 is in the courtroom sitting with you today?

3 A. His mother-in-law, his wife and his daughter.

4 Q. Okay. Thank you. Now, you live here in this
5 community?

6 A. Yes.

7 Q. North Charleston?

8 A. North Charleston, yes.

9 Q. And what do you do?

10 A. I'm retired military.

11 Q. Now, you, obviously, know about Timothy's criminal
12 charges?

13 A. Yes.

14 Q. Have you had opportunities to visit him while he was
15 at the Department of Corrections?

16 A. Yes.

17 Q. And can you sort of tell, did you notice any changes
18 in him while you were visiting him at the Department of
19 Corrections?

20 A. Yes, I've seen significant change compared to when
21 he first was incarcerated. In all over the last 17-plus
22 years, I visited him on numerous occasions, and saw the
23 change in him.

24 Q. While don't you describe him before he was
25 incarcerated?

1 A. A loose cannon.

2 Q. Did he have problems with substance abuse?

3 A. I really wasn't aware of that, because, like I said,
4 I was in the military. So I really wasn't -- I have never
5 seen them. A lot of things that I've found out, I found out
6 yesterday. So I wasn't aware of the person that was
7 described yesterday. I don't know that person. He was more
8 like a -- him and my older brother was more like father
9 figures for me when I was coming up. They kind of kept me
10 straight, so to speak.

11 Q. So how long did you serve a branch in the military?

12 A. I served in the Army and Navy. I did three years in
13 the Army. And I did four in the Navy. I got wounded during
14 Desert Storm, so I was retired, medically retired.

15 Q. So what period of time were you away from
16 Charleston?

17 A. From '86 'til, I think, like later part of '92,
18 maybe August of '92.

19 Q. So you were back in Charleston in the early 2000s?

20 A. Yes, yes.

21 Q. Why don't you describe a little bit more about how
22 you think he's changed since he's been at the Department of
23 Corrections?

24 A. Like I said, over the last 17-plus years, he became,
25 to me, more calmer, more religious. He has been on the choir

1 at MacDougall Correctional Institute. I talked to the
2 chaplains there. And all of them say that he was -- if you
3 could say model prisoner, I don't know what that means. But
4 anyway, that's how they described him, pretty much.

5 Q. Just try not to say sort of exactly what somebody
6 told you.

7 A. Okay. Okay. Well, what I observed, he was calmed
8 down compared to how he was. Like I said, he was -- he had a
9 short fuse. That's the only way I can describe it. I see
10 now that he got more patience. The medications that they
11 have him on seem like it calmed him down a whole lot. He
12 wasn't getting in or hanging with the sort of clique in
13 prison that usually people do. He was more to himself, more
14 spiritual or more biblical. He always talked positive. It
15 was a positive change I saw in him.

16 Q. You are aware that they were giving him some sort of
17 mental health medicine?

18 A. Yes, yes, yes.

19 Q. And so you observed him some before the medicine and
20 after the medicine; is that correct?

21 A. Yes.

22 Q. And you noticed the difference in his demeanor?

23 A. 100 percent change in him. Like I said, I've known
24 him before he even was diagnosed with anything compared to
25 now. He's a totally different person. I don't take light of

1 what he did. He accepted responsibility for it and he
2 admitted his wrong. And it's like I told him, I don't
3 condone it, but just like I told him, I don't care how have
4 you done or what he was charged for, I'm going to love him
5 regardless. He's still my brother and I'm going to support
6 him any way I can, because I myself know what it is to deal
7 with mental health. I mean, I suffer from PTSD, not in the
8 same aspect as him, but me being in war, but --

9 Q. Yours is service-related?

10 A. Yes, yes. And I take medication myself. But it was
11 more of a struggle for me, because me have to admit that
12 something was wrong with my mind, even though it was a
13 situation or event that caused it. But, like I said, the
14 medication that I see, I see that it works. And over the
15 years, I guess, the different cocktails that they try for
16 whatever he's on now, it seems like it's working. I am not a
17 medical doctor. I am not going to try to even get into that,
18 but I've just seen the difference of him being on medication
19 versus not being on it.

20 Q. What assurance will this jury have that he will be
21 on medication when he leaves?

22 A. I feel like he knows that the medicine helps him.
23 And I don't feel that they are actually forcing him to take
24 it. He's basically taking it voluntarily, from my
25 understanding. So he knows he needs it. I mean, I can't

1 just say it's going to be 100 percent he's going to take it.

2 I can't say that.

3 Q. There's no stigma in your family for taking that
4 kind of medicine, is there?

5 A. No, no, no.

6 Q. Because you are taking it?

7 A. Yeah, yeah, yeah.

8 Q. Tell me a little bit about your family. Do you have
9 any grands?

10 A. Yeah, I have one granddaughter, she's 15. And I
11 have one daughter. I have four kids, three girls and one
12 boy. And they -- I don't have a problem with him being
13 around my kids.

14 Q. You have a 15-year-old daughter?

15 A. 15-year-old granddaughter.

16 Q. Excuse me. I'm sorry, 15-year-old granddaughter.
17 And you heard the testimony yesterday about the ages of his
18 victims?

19 A. Yeah, yeah.

20 Q. And you don't have a problem with him being around
21 your granddaughter?

22 A. Not the man that he is today. Like I said, that
23 person that was described yesterday, I never knew that
24 person. A lot of things I heard for the first time yesterday
25 caught me by surprise, but I'm back here again today. Like I

1 told him, he's my brother. I love him. I don't agree with
2 what you did. I would never condone what you did. But I
3 still love you. And I will still support you. As long as
4 you are trying to help yourself, I'm here for you.

5 Q. Do you know what he's going to do for money when he
6 gets out?

7 A. Well, I talked with a guy Fresh Start on yesterday,
8 because, like I said, I talked with my brother and I was
9 trying to get him in this program that's called First
10 Start.

11 Q. Is that up in Spartanburg?

12 A. Yes. And the guy's name -- director's name is Tim
13 Terry, I believe. And he says they still have a bed for him.
14 I coordinate back and forth with him.

15 Q. What's your understanding of Fresh Start? It's a
16 bed. And what about employment?

17 A. Well, actually, they teach him employment skills.
18 They teach him life skills. They teach him different --
19 basically, he will be on a pretty much a trial basis. So he
20 knows if he goes there and messes up, he will get kicked out
21 of the program. They don't basically give you leeway to mess
22 up. And, like I said, I coordinated with Tim Terry.

23 Q. Is there a spiritual component to that program?

24 A. Yes, it's a spiritual-based program. He said that
25 he has a place for him. If he's willing, he has to go do the

1 different counseling sessions they have, like I said,
2 computer skills, life skills for somebody that's been
3 incarcerated a long period of time like he was. So it's
4 not -- it's not like a 30-day program. It's much longer than
5 that.

6 Q. And it's not just a bed?

7 A. And it's not just a bed. It's not that you just go
8 in and a warm body just occupying a bed. You physically have
9 to be doing something to be productive.

10 Q. And they have resources to help you find jobs?

11 A. Yes. Resources to help you find the jobs, to get
12 his driver's license back, if he wants his driver's license,
13 or if he needs any state-issued identification, they help him
14 with that. They help him with any type of disabilities that
15 you are working with. If you are able to work, they help you
16 work. If not, they help you with your disability claims and
17 so forth.

18 Q. Is there anything else you want to tell this jury
19 about your brother?

20 A. Like I said, you know, the person they described
21 yesterday, I mean, like I said, I don't know that person. I
22 really don't. And I am not going to, like I say, take light
23 of what he said and justify what he did. It despises me.
24 But he's still my brother. I know he's not that person
25 anymore. Like I said, a lot of things I found out, I found

1 out yesterday. I had no clue. So it was like a blindside.
2 But at the same token, you know, my family is very religious,
3 very Christian-oriented. So he asked me if I forgave him,
4 but he don't have anything for me to forgive him for, because
5 he didn't do anything to me, per se.

6 Am I disappointed? Yeah. Disgusted at the charges?
7 Yeah. Do I despise the act? Yes. But I don't despise the
8 person because I know that's not my brother. That's not him
9 today. Like I said, I would trust him around my kids, the
10 man he is today.

11 Q. And your grandkids?

12 A. And my grandkids, the person he is today.

13 Now, the person he was before, like I said, I wasn't
14 aware of that. I was away from Charleston. I didn't know
15 that person. He was one of the reasons why I was able to go
16 in the military, because he kept me on the straight and
17 narrow, you know. When I got sort of out of line, he kind of
18 put his foot down. And he bought a lot of my school clothes.
19 You know, that's the person I know.

20 The person that they described yesterday, I don't
21 know that person. And I would not try to even -- I didn't
22 even want to know that person. I wouldn't want to know him,
23 you know, that person. That person that they described
24 yesterday, I wouldn't trust with a dollar bill. But the
25 person that I know he is today, you know, I trust that

1 person.

2 And I know that these last 17 years he's been
3 incarcerated, he told me many times, brother, I can't go
4 back, you know, I'm done, you know. And that's something he
5 had never said, you know, to me or anybody else. And he had
6 never really taken responsibility like he has. So that's a
7 big change in him for admitting that he was wrong. Being
8 that I know him, that was kind of hard for him to do,
9 because, you know, I've never known him really to take
10 responsibility, you know, because there's always been a
11 justification, well, I did this because of this. By him
12 taking responsibility, like I said, I feel like he's changed.
13 And I am not naive and I am not gullible. I'm far from it.
14 But I feel like the man he is today is different from the man
15 17, 18 years ago.

16 Q. How many of your brothers and sisters are still with
17 us?

18 A. It's 10 of us still living.

19 Q. And how many are in South Carolina?

20 A. I think, like, six of us.

21 Q. So he has a big community?

22 A. Yeah, yeah.

23 Q. And he has a brother Johnnie Brown?

24 A. Yes.

25 Q. What does he do?

1 A. He owns his own foundation company where he lays
2 foundation for homes. And he also builds, like, outdoor
3 chimneys and different patios and stuff like that.

4 Q. So if he's up in Spartanburg at Fresh Start, are you
5 still planning on staying in contact with him?

6 A. Oh, yeah. Oh yeah. If I can stay in contact with
7 him when he was incarcerated, what makes me won't stay in
8 contact with him when he's out? That's not even a question.
9 As a matter of fact, I probably will be more in contact with
10 him because now there's a control contact, you know. I can't
11 call him at MacDougall. You know, he calls me. But being
12 out there, I can check on him on a regular basis. I can even
13 go see him, you know, on a regular basis.

14 Like I said, when he was at MacDougall, I used to go
15 see him like every other Saturday to make sure he had that
16 structure family support regardless of what. Like I said, we
17 know that that's not the person we grew up with. He made a
18 lot of choices that I wouldn't have made. But at the same
19 time, you know, I still love him. That's not going to change
20 regardless.

21 MR. FALK: I have no further questions. Please
22 answer any questions Mr. Bogle asks.

23 CROSS-EXAMINATION

24 BY MR. BOGLE:

25 Q. Good morning, Mr. Brown.

1 A. Good morning.

2 Q. I have to get a timeline here. All right. Your
3 military service, you served in two branches of the service?

4 A. Yes, Army and Navy.

5 Q. And began in 1986?

6 A. '86.

7 Q. And then Desert Storm was in 1991?

8 A. It was in '90.

9 Q. And you got medically retired in 1992?

10 A. '92.

11 Q. After being medically retired, that means you are
12 out?

13 A. Yes.

14 Q. And did you come back to the North Charleston area?

15 A. No, actually, I stayed in Virginia, Norfolk,
16 Virginia, for probably a year and a half, and then I moved
17 back home.

18 Q. So you came back to North Charleston probably around
19 '98, '99?

20 A. No. I got out in '92. I came back in the later
21 part of '93, '94, somewhere in the beginning of '94.

22 Q. And when you came back, where was Timothy Brown
23 living when you came back? You came back around '94. Where
24 was Timothy Brown living? Did you know at the time?

25 A. No, I don't. No, I don't.

1 Q. You understand from what you heard yesterday that
2 the crimes he committed, the dates of these crimes, sexual
3 crimes against the young girls, were in '98, '99 and 2004?

4 A. Uh-huh.

5 Q. So he was in the area doing those crimes and you
6 were in North Charleston about that same time; is that
7 right?

8 A. Yeah, yeah.

9 Q. When you talked with the people at the Department of
10 Corrections about things he had done there, did you talk
11 to -- did you ask anybody whether or not he had any sex
12 offender treatment that's given at the Department of
13 Corrections?

14 A. No, I didn't.

15 Q. Okay. And the place, if he gets out -- you are
16 settled in North Charleston; is that correct?

17 A. Yes.

18 Q. Your family is there?

19 A. Yes.

20 Q. Granddaughter is in that general area?

21 A. Yes.

22 Q. So the place he would live, if he's released, you
23 reached out to somebody up in Spartanburg that can put him in
24 a program up there?

25 A. Yes. His office is actually in Summerville, but the

1 facility is in Spartanburg.

2 Q. Living place would be up in Spartanburg?

3 A. Yes..

4 MR. FALK: No further questions.

5 THE COURT: Anything further?

6 MR. BOGLE: No redirect.

7 THE COURT: Thank you, sir. You can step down.

8 You may call your next witness.

9 MR. FALK: We call Kaiwanna Brown.

10

11 KAIWANNA BROWN,

12 having been duly sworn, testifies as follows:

13 THE CLERK: Please state your name and spell your
14 last name.

15 THE WITNESS: My name is Kaiwanna Brown. Last name
16 spelled B-r-o-w-n.

17 DIRECT EXAMINATION

18 BY MR. FALK:

19 Q. If you could also please tell us spelling of your
20 first name?

21 A. K-a-i-w-a-n-n-a.

22 Q. Thank you. You were here all day yesterday?

23 A. Yes, sir.

24 Q. And so you heard some pretty disturbing stuff. How
25 are you related to Timothy Brown?

1 A. I'm his baby daughter.

2 Q. Baby daughter? You heard some troubling things
3 about your father yesterday?

4 A. Yes, sir.

5 Q. Did you stay in any kind of contact with him while
6 he was in prison?

7 A. Yes, sir.

8 Q. So you heard somebody being described. You heard
9 Dr. Gehle describing him. Do you think he's that person
10 today?

11 A. I don't know that person. I always had a closer
12 relationship with my dad and always wanted to go to him. He
13 was very over protective of me. So it's like I don't know
14 him, like I only know the good side of my daddy.

15 Q. I think I know what you said, but I want to make
16 sure. You don't know the person that Dr. Gehle was
17 describing; is that what you are saying?

18 A. Yeah, I don't know that person.

19 Q. Okay. And so was he ever violent with you?

20 A. No, sir.

21 Q. Ever have a short fuse with you?

22 A. No, I don't even remember ever.

23 Q. Do you have children?

24 A. Yes, sir.

25 Q. What ages are your children?

1 A. I have three daughters, 13, 11 and one-year-old.

2 Q. So you have a 13-year-old daughter and an
3 11-year-old daughter. Would you have any concerns with your
4 father being around your daughters?

5 A. No, sir.

6 Q. You heard what they said yesterday; is that correct?

7 A. Yes, sir. But like I said, my daddy didn't do
8 anything to me. I never even saw my dad look at me in a way
9 that was uncomfortable. So, like, I only know the good side
10 of my dad.

11 Q. You would have no problem with him --

12 A. No, sir.

13 Q. And you would leave your daughters alone with him?

14 A. I can't honestly say that. I can't honestly say
15 that.

16 Q. But you would have no problem with him being with
17 him?

18 A. I wouldn't.

19 MR. FALK: No further questions. Please answer
20 anything that Mr. Bogle has.

21 CROSS-EXAMINATION

22 BY MR. BOGLE:

23 Q. Do you also live in the North Charleston area?

24 A. Yes, sir.

25 MR. BOGLE: No further questions.

1 THE COURT: You can step down.

2 MR. FALK: We call Timothy Brown to the stand.

3 TIMOTHY BROWN,

4 having been duly sworn, testifies as follows:

5 THE CLERK: For the record, please state your name,
6 your full name, and spell your last name.

7 THE WITNESS: My name is Timothy Brown. Last name
8 is B-r-o-w-n.

9 DIRECT EXAMINATION

10 BY MR. FALK:

11 Q. Mr. Brown, I was looking at your medical records.
12 And we talked a little bit about those yesterday with Dr.
13 Gehle. And you've been getting several medicines from South
14 Carolina Department of Corrections while you were at
15 MacDougall; is that correct?

16 A. Yes, sir.

17 Q. And you were getting Zoloft and something called
18 nortriptyline and Risperdal and Remeron; is that correct?

19 A. Yes, sir.

20 Q. When did you start getting medicines like that?

21 A. In 2005, I think.

22 Q. Okay. How did they make you feel?

23 A. They make me feel a whole lot better than I used to
24 feel for myself. They give me the confidence I need to just
25 be a productive person in society.

1 Q. There was a note in your file about having dreams,
2 bad dreams or nightmares or something. Are one of those
3 medicines for that?

4 A. Yeah, I take variety of medication now. And I thank
5 God for it, because it helped me cope with that in general.
6 And I take a lot. I don't remember all the name of the
7 medicine, but I take quite a few medicines.

8 Q. Okay. And there's also a bunch of notes in your
9 file about diabetes. And is that under control, or what's
10 going on there?

11 A. Well, I got Type 2 diabetes. I also have a bad
12 back. I have a bullet in my spine that caused me a lot of
13 pain, pain at times. And, basically, that's it.

14 Q. When you were at the Department of Corrections, you
15 were there for how long, about 15 years?

16 A. 15, 16 years, 15 years.

17 Q. What kind of stuff were you doing when you were
18 there?

19 A. Well, I was going through a lot of -- I felt that I
20 needed a lot of spiritual program to help my inner man. You
21 know? I went through a variety of programs that they offered
22 me. When I been in the Department of Corrections, I went
23 through program called Kirose (ph) --

24 Q. Kirose?

25 A. Yes. In that, it taught me how to love and be

1 loved, you know, and love each and every person.

2 I also went through a program called Jump Start. It
3 was spiritually based. I went through a couple -- I went
4 through a couple counseling. I went through My Relationship
5 With Others. This is the certificate that --

6 Q. That's a class that you took? Title of the class
7 was My Relationship With Others?

8 A. Yes, sir.

9 Q. And what do you remember about that class?

10 A. Well, basically, it taught me how to respect others,
11 how to treat others as I would have them treat me, you know.

12 Q. How often would that be?

13 A. This here?

14 Q. Uh-huh.

15 A. Every Monday, every Monday night. I feel -- and I
16 felt that my problem was more spiritual than anything else.
17 That's why I started taking medicine, because, like I said,
18 one time before I couldn't cope with life. I had a lot of
19 problems coming up. And these programs helped me. It helped
20 me a whole lot.

21 I also went through a program, Building on God's
22 Foundation, a New Freedom. And that just keeps me how to
23 trust the Lord with all my heart.

24 Q. How often would class be?

25 A. That class would be one day a week, one day a week

1 for about 60 days. I mean, I have a lot of other things that
2 I went through. I don't have with me right now because I got
3 it somewhere in another property that I couldn't get ahold of
4 my property.

5 Q. Let's talk about, did you have an anger management
6 class?

7 A. Yes, sir, I went through anger management class
8 quite a few times.

9 Q. What did you learn there?

10 A. I learned that -- I learned the resources that I
11 needed that guides myself and others around me.

12 Q. I'm sorry. Could you repeat that?

13 A. I learned --

14 Q. Sources you needed were where?

15 A. Around me, you know, just learned that -- taught to
16 take a look at myself to see the changes I've made over my
17 course of doing prison sentences.

18 Q. Somewhere in Dr. Gehle's, in her report, she was
19 talking about trigger mechanisms. What are your triggers,
20 did you find were your triggers?

21 A. My triggers were mostly crack cocaine. But over
22 the -- I know I have taken no sex courses, because they
23 didn't have nothing to offer me while I was doing time. But
24 I took a bunch of spiritual courses. Like I said, it was
25 more -- to me, it was more spiritual than anything to having

1 to get to know myself and who I am and what I am.

2 Q. Let's talk about Jump Start. Is there a component
3 of that program that's while you are inside?

4 A. Yes, sir.

5 Q. And what kind of stuff do you do on the inside? How
6 do you make the --

7 A. We did a lot of stuff. Like I said, again,
8 spiritually it helped me get to know who I really was.

9 Q. Who were you?

10 A. I'm a kind-hearted person that made some bad
11 choices. And the choices cost me the relationship with my
12 wife, my family, you know. And I'm deeply, deeply sorry for
13 what I've done. I know I wouldn't have did it if I was in my
14 right state of mind at the time, but I wasn't. And I can't
15 forgive myself for not, you know --

16 Q. You talked a bit about how your choice affected your
17 family. How about the three girls?

18 A. Well, I was a good father.

19 Q. No, the three victims.

20 A. Oh, the three victims. Will you repeat that again.

21 Q. How did your choices affect -- how do you think your
22 choices affected them?

23 A. Well, when I look back at my life and see the same
24 thing I've done to them that happened to me, I'm remorseful
25 about it, you know, because I know what they went through,

1 the pain and suffering. Like I said, I didn't mean to hurt
2 anybody. I really didn't. I was in the wrong place at the
3 wrong time doing the wrong things. And when I look back over
4 my life, those are the things that hurt me even more because,
5 like I said, I didn't meant to hurt anyone. And if I had a
6 chance to ask them to forgive me, I would.

7 Q. Well, the first two victims were in 1999 and 1998.
8 And then the third one was in 2004. What were you thinking
9 about the first two victims in, like, 2002? I mean, how is
10 it different now than it would have been then?

11 A. It's a whole lot -- it's totally different now than
12 then, because then I wasn't in my right state of mind.
13 Today, all I want to do is do what's right for the rest of my
14 life, whatever it takes. I know I am not going back to
15 drugs, you know. I know that from the bottom of my heart. I
16 am not going back to drugs. And that is what caused me to
17 have done a lot of things, so much it was, it caused me to
18 have done it. And like I said, I'm sorry for that. I'm
19 sorry for it.

20 Q. You had a contraband charge in SCDC. Says used
21 possession of narcotics. And that was on January 8th, 2015.
22 What was that?

23 A. Well, actually, that wasn't the type of drugs that
24 you might assume it was. It was self-medication that I was
25 saving up, because I was saving up to try to kill myself.

1 And I went to -- well, they found the drugs on me when I been
2 on lockup. And I told them the reason why I was saving the
3 drugs is because I wanted to self-medicate to kill myself at
4 that point in time. That's the beginning of when I first
5 started doing time. And it wasn't no drugs like marijuana or
6 crack cocaine or cocaine or nothing like that. It was
7 medication that was prescribed for me that I saved up. And
8 they did a search in the lock-up. And that's where they
9 found the medication.

10 Q. Were there other attempts at suicide?

11 A. Yes, sir. I attempted suicide quite a few times in
12 my life.

13 Q. All the time while you were in SCDC or prior?

14 A. No, no, before, before SCDC. I attempted to kill
15 myself with medication and alcohol on the street. I woke up
16 three days later in a hospital with tubes running through my
17 body. They say I almost succeeded, you know. But I was --
18 at that time, I was, like, going through a lot of stress, you
19 know, pressure. And I just wanted to take my life.

20 Q. Dr. Gehle said that you reported to her that you
21 preferred having sex where you were forcing yourself on
22 somebody?

23 A. I never said that. I never said that to her. The
24 first time Ms. Gehle had talked to y'all before the jury had
25 been here, she said not so much my words, but her words.

1 That's what she quoted, because I didn't say that.

2 Q. Did you tell her that you thought it was exciting?

3 A. No, sir, I never said I did.

4 Q. How did you describe that experience to her?

5 A. I don't actually remember, but I know it wasn't
6 that.

7 Q. Do you find -- is that your preference?

8 A. No, sir. No, sir.

9 Q. Have you had lots of sexual partners?

10 A. Yes, sir.

11 Q. And has that, those sexual partners, has it been,
12 you know, rough sex, forceful sex?

13 A. No, it just was sex. That's what it was, sex.

14 Q. Was there some trading sex for drugs along the
15 way?

16 A. Yes, sir.

17 Q. So when did you reach out to Jump Start?

18 A. When I went back in 2000 -- I think either '15 or
19 '16, I think '16, yeah, 2016. I was just getting my life
20 back in order. And I realized that I needed more spiritual
21 awakening for my future, you know, as far as -- I sang in the
22 gospel. And I found out that since I was in prison, I had a
23 desire and a love for it. And I wanted to praise my God the
24 way he wanted me to praise Him, doing my song. I wrote a lot
25 of songs since I've been in prison. So those are the

1 activities I would probably be doing if I could get back on
2 the street.

3 Q. What kind of skills do you have for a job?

4 A. Sir?

5 Q. What kind of skills do you have for a job?

6 A. Well, I did brickwork. I'm a layperson by trade. I
7 had various similar jobs, like packing parachutes for the
8 jets on the Air Force Base, working at a supply center on the
9 navy base. So I had all sorts of jobs coming out.

10 Q. Is it possible that you could -- your brother Johnny
11 Brown, he has a --

12 A. Yes, sir. Yes, sir.

13 Q. Have you had discussions about that?

14 A. Well, I used to work for him when I been on the
15 street. And I also have a cousin that owns a brick company.
16 And I used to work for him growing up on the street. So the
17 job was no big thing for me. You know, the job is there.
18 All I have to do is go to work.

19 Oh, I want to say something. When I've been doing
20 time in the county jail, I went through a drug program called
21 Peer Philosophy. They called it DAODAS. And there's a
22 pattern of what I'm trying to say. I know I needed to help
23 coping with drugs, with me without drugs. And this is one of
24 their philosophies that I've learned since I've been there.
25 It says: We came together by the grace of our higher power

1 to overcome the power of the prison of addiction and to
2 restore our hope and dreams knowing that honesty and truth
3 can change others into responsible, productive people. We
4 came to a point in our lives where we could not handle our
5 behavior in a responsible manner toward the well-being of
6 others our family and others. We now know that through part
7 of the relationship, we can reach our potential and stay
8 clean and sober. Realizing we are not where we want to be,
9 we are now striving to better ourselves one day at a time.
10 Knowing that change comes from within, we must be willing to
11 commit ourselves to the change we are seeking, acknowledging
12 that we cannot change the past, but having the courage to
13 accept it and be willing to make amends whenever possible,
14 which allows us to grow to our full potential, overcoming our
15 prejudices toward the different race and rely on our moral
16 standards. We know that to grow requires trust in each
17 other. Just like a stepping stone in life, we have the to
18 come to know that nothing is permanent except change.

19 Q. That sounds similar to an AA meeting or an NA
20 meeting. Did you go to those types of meetings?

21 A. Yeah, I went to those, yes, sir.

22 Q. And you were in the county lockup. When did I get
23 out of South Carolina Department of Corrections?

24 A. Well, February 1st, I think, 2018.

25 Q. And they sent you to --

1 A. I've been in county jail since then.

2 Q. Okay. Did you also have any -- was there any
3 substance control classes, you know, NA classes while you
4 were at MacDougall?

5 A. Yes, sir, MacDougall. I went through some psych
6 classes too when I been there, quite a few times, yeah.

7 Q. Again, how are you different than you were in 2005?

8 A. Well, like I said, with the medicine I'm taking
9 right now, it's helping me in a lot of ways to better myself
10 in a lot of ways also. I am not the same person I used to
11 be. That person shocked me too yesterday when Dr. Gehle was
12 up here saying what I said. I remember some of the things I
13 said, but some of the things I did not say. But I just --
14 I'm a totally different person from that person I used to be.
15 And I thank God for that, for the change He has placed in my
16 life.

17 Q. So if you are released today, you are going to go to
18 Jump Start in Spartanburg?

19 A. Yes, sir. No, actually, go to Fresh Start.

20 Q. I'm sorry, Fresh Start.

21 A. Fresh Start.

22 Q. Is that related to Jump Start?

23 A. It's a branch, just like they branch off.

24 Q. So one is on the inside and one is on the outside?

25 A. Yes, sir.

1 Q. I see. So you are going to Fresh Start?

2 A. Yes, sir.

3 Q. In Spartanburg?

4 A. Yes, sir.

5 Q. And you've made contact with them?

6 A. Yes, sir.

7 Q. And have they told you anything about helping you
8 find employment?

9 A. Helping me find employment, helping me get my
10 insurance, helping me get my driver's license back, things
11 like that, helping me get my medications, you know, keep
12 getting my medication and all that.

13 Q. And you are going to have community supervision?

14 A. Yes, sir.

15 Q. And they are going to require you to go to sex
16 offender treatment?

17 A. Yes, sir.

18 Q. Do you think you will benefit from that?

19 A. I feel I'm passed that past life of mine, but
20 anything that I need to do just to show and prove that I'm a
21 changed person on the outside, I will do that.

22 MR. FALK: No further questions. Please answer any
23 questions Mr. Bogle asks you.

24 I'm sorry. Is there anything else you want to say?

25 THE WITNESS: I just want the jury to know that I am

1 not that person I used to be. I'm a totally different
2 person. I feel a whole lot better about myself today than I
3 did the other day. I know I am not going back to doing any
4 wrong or hurting anybody, you know, because I want to live
5 the rest of my life free of drugs, free of doing anything
6 that could cause harm to anyone. I know I am not going to do
7 that anymore. I'm a completely changed person. Thank you.

8 MR. FALK: No further questions. Please answer
9 anything Mr. Bogle asks you.

10 CROSS-EXAMINATION

11 BY MR. BOGLE:

12 Q. Good morning, Mr. Brown. When you were testifying
13 about the overdose attempt that happened, I was looking
14 through Dr. Gehle's records, and she reported that, in 1997,
15 you tried to kill yourself with an overdose and woke up at
16 the hospital in M.U.S.C. Is that what you were talking
17 about?

18 A. Yes, sir. Yes, sir.

19 Q. And but then the crimes against the first two girls
20 happened in 1998 and 1999, right?

21 A. Yes, sir.

22 Q. Okay. And you testified earlier when counsel asked
23 you, I think, how you felt about what you did to those girls,
24 and you said you felt pretty bad about it, right?

25 A. Yes, sir.

1 Q. Well, so you felt real bad about what you did to the
2 two girls in '97 and '98 or '99, or '98 and '99?

3 A. Yes, sir.

4 Q. Yet, five years later, doing it again to girl No.
5 3?

6 A. Yes, sir.

7 Q. These railroad tracks where these girls were walking
8 along, were those near your house?

9 A. Yes, sir.

10 Q. And I got the impression from the testimony we heard
11 so far both yesterday and today, that you are currently
12 taking a number of medications?

13 A. Yes, sir.

14 Q. Like four or five or six different types of
15 medications?

16 A. Yes, sir, plus diabetes.

17 Q. Plus diabetes, but for mental health reasons, it's
18 about three or four?

19 A. Five or six.

20 Q. And right now, you are taking those because they are
21 being provided to you either by the Department of Corrections
22 or by the county jail; is that right?

23 A. Yes, sir. Yes, sir.

24 Q. When you get out, if you are released by this jury,
25 you go to Spartanburg, where will you get the medications

1 then?

2 A. Where will I get the medications?

3 Q. Where will you get them from then?

4 A. Wherever it's available at.

5 Q. Like a pharmacy?

6 A. Yes, sir.

7 Q. Okay. And you will pay for them? They sound like
8 pretty expensive medications. If you had to buy them on the
9 outside and they weren't being given to you by the jail or
10 prison, they sound pretty expensive.

11 A. Well, I'm going to be on probably disability because
12 of my ailment. And like I said, insurance, they will help me
13 get my insurance. And insurance would help me pay for the
14 medicine.

15 Q. So that's the plan?

16 A. Yes, sir.

17 MR. BOGLE: Okay. That's all, Judge. Thank you.

18 THE COURT: Anything further.

19 REDIRECT EXAMINATION

20 BY MR. FALK:

21 Q. Mr. Brown, I don't know if Mr. Bogle heard you or at
22 least heard the same thing. I asked you today how you feel
23 about the three girls that you -- your three victims.

24 A. I feel horrible about what I did. I can't change
25 the fact that it happened, because it did happen. And I take

1 full responsibility of what I did, what I've done.

2 Q. Then I also asked you, like, in 2002, how did you
3 feel about those two girls then? That was before you were in
4 prison. That was before you were getting the medicine. I
5 asked you how did you feel about your two victims then?

6 A. I feel bad about it, you know, remorseful that I've
7 done it. But I realize that I didn't done it -- the state of
8 my mind was not working. I was using drugs at the time. And
9 the drugs enhanced my thinking, you know, to do wrong. You
10 know, but I feel real bad about it. I still do. And any
11 chance I get that I could tell them to forgive me, I would
12 when it's necessary.

13 Q. But in that '97, '98 to 2004, you were still on the
14 streets, right?

15 A. Yes, sir.

16 Q. Still doing drugs?

17 A. Yes, sir.

18 Q. And you weren't taking any of these medicines?

19 A. No, I wasn't taking none of the medicine at that
20 time. I only got the diagnosis of my sickness when I got in
21 prison, you know. They told me what I had, bipolar disorder,
22 schizophrenia. And just after I start taking the medication,
23 I feel a whole lot different and a whole lot better than I
24 used to feel about myself. And I'm going to do anything
25 possible to just stay on my medication, because I know I need

1 it.

2 MR. FALK: No further questions.

3 THE COURT: Thank you, sir. You can step down.

4 Anything further?

5 MR. FALK: We have no further witnesses.

6 THE COURT: Any reply witnesses?

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

8 THE COURT: Okay. Ladies and gentlemen, you've
9 heard all of the evidence you will hear in this case. We are
10 going to take a break for a few minutes. And on that break,
11 I need you to select a foreperson from the original 12 of
12 you. That person will have no greater vote than anyone else.
13 They will simply fill out the verdict form and preside over
14 the deliberations. So if you go do that, we will come back
15 in 10 or 15 minutes. You will hear the closing arguments of
16 the attorneys. I will charge you on the law and give you
17 this case to decide. Okay? Thank you.

18 (Whereupon, the jury leaves open court at 10:33
19 a.m.)

20 THE COURT: Anything we need to do?

21 MR. FALK: Your Honor, I would renew my motion for
22 directed verdict.

23 THE COURT: And I still will deny your motion. I
24 think there's evidence in the record that the jury could make
25 a finding from.

1 MR. BOGLE: Thank you, Your Honor.

2 Your Honor, the State submitted a proposed jury
3 charge that we've been using for years around the State.
4 Defense also submitted a proposed jury charge. And we have
5 some concerns about some of their suggestions. So I don't
6 know if you already decided which one you are going to use.

7 THE COURT: Maybe I missed it. I haven't seen the
8 defense's proposed charge.

9 MR. FALK: That was in the packet that I handed up.
10 If nothing else --

11 THE COURT: Here it is.

12 MR. FALK: And my response to Mr. Bogle is that
13 charge is almost taken right out of case that was decided in
14 2019. And I think it's important, if nothing else that you
15 will charge what I'm asking for, I think it's important that
16 this jury understands that it's a three-part test, not a
17 two-part test. Because I think it gets very confusing.

18 There's no -- the State is going to say that the
19 first element is he has to be convicted of a sexually violent
20 offense. And that's a no-brainer in this case.

21 Second part is they string this whole definition
22 together, that he suffers from a mental disease or
23 personality defective that makes it likely. And I believe
24 that in *Snow*, they break that into two different parts, that
25 you have to prove the mental defect or a personality

1 disorder, and the risk, the likelihood to reoffend. And I
2 think it gets very confusing to the jury, because I'm afraid
3 jury says, well, he's got a mental disease, therefore, he's
4 got to go.

5 And my whole case now has been about whether or not,
6 we said it, he has this disease, but we say this is a risk
7 case.

8 THE COURT: Okay. Let me go read this case.

9 MR. BOGLE: Judge, basically, what he's done, he's
10 taken the two elements and broken them into three. I think
11 we quote the statute in our jury charge. Basically, the
12 statute says you have to have a mental abnormality. Well,
13 Section 44-48-30, the definition section where it defines
14 sexually violent predator, that's what we have in our
15 statute, it defines a person who: A, is convicted, been
16 convicted of the right kind of crime; B, suffers from a
17 mental abnormality or personality disorder that makes the
18 person likely to engage in acts of sexual violence if not
19 confined to a secure facility for long-term control, care and
20 treatment.

21 So that's word for word out of the statute. What
22 he's done, he's broken the second one, which is a long
23 sentence, into two parts. We think the statute is the right
24 way to go because that's what the General Assembly defined it
25 as. That's regarding paragraph 1 of his charge.

1 Judge, regarding paragraph 2, the second sentence,
2 the sentence beginning at the very bottom of the page
3 beginning with the words -- after the word "behavior",
4 there's a period. And it begins with the words "mental
5 abnormality" or a person of this sort must be sufficient to
6 distinguish him from recidivist in ordinary criminal cases.

7 That sounds like almost a comment on the facts.
8 It's not in the statute. And that's why we object to that.

9 MR. FALK: That's language adopted right out of two
10 Supreme Court decisions.

11 MR. BOGLE: Paragraph No. 3, on the second page of
12 his charge, about 6 lines down, after the word "future" is a
13 period. Then the next sentence begins with the words, you
14 must, therefore, limit your consideration, and it goes on.
15 To me, this is kind of duplicative to what's already in the
16 State's charge. And I don't think it's an appropriate charge
17 for this case.

18 The case is all about whether or not the mental
19 abnormality will cause him to commit a sexually violent
20 offense in the future. So this thing about an ordinary
21 criminal offense is duplicative. And I don't think is
22 appropriate for the charge.

23 MR. FALK: I would withdraw that one in this case.
24 Because I'm concerned, because sometimes there's cases where
25 they talk about recidivism which is not sexual in nature, but

1 I don't think those were the facts in this case.

2 THE COURT: You agree to withdraw 3?

3 MR. FALK: Yes.

4 MR. BOGLE: As far as No. 4, where he has a
5 definition of mental disorder, we would rely upon the
6 definition of mental abnormality, which is found in our
7 charge. It's taken word for word out of the statute. It's
8 on page 7 of the State's jury charge. And you talk about
9 sexually violent predator and what that means. At the
10 bottom, the Court says, about defining some of the terms I
11 just used, in defines mental abnormality and likely to engage
12 in acts of sexual violence, both of those are words are word
13 out of the statute, we think for the Court to go that way, as
14 opposed to what he has in paragraph 4 of his charge.

15 MR. FALK: I can also withdraw that one.

16 THE COURT: Then on the next page, the last page of
17 this jury charge is paragraph 5, the second sentence,
18 beginning with the words South Carolina's sexually violent
19 predator law was not enacted to add to criminal punishments.
20 I think that's already covered in the case. In the beginning
21 you say, this is not a case about punishment. He's already
22 served his time for the crimes he committed.

23 Personal opinions about appropriate capital
24 punishment, I just think that comments on the facts and it
25 comments on something outside the Court's control and outside

1 of our control. There's no way that we can control the
2 solicitor's decision sent years ago, what sentence to
3 recommend in a plea negotiation. And I don't see how that
4 bears upon the jury's decision today. Their decision today
5 is more of a scientific and medical one, legally, the right
6 kind of crime convicted of; medically, does he have a mental
7 abnormality that makes him likely to reoffend.

8 So this extra language in paragraph 5 of the
9 proposed charge seems to comment upon types of guilty pleas
10 and negotiations. And that's just way outside the line of
11 what we are doing here today.

12 MR. FALK: I'm concerned at every one of these cases
13 that people think people that committed sexually violent
14 offenses should be thrown away for life. And I'm just
15 putting an explanation point on the comment that their job is
16 not to try to punish them further. And I think that
17 adequately expresses that sentiment.

18 MR. BOGLE: That's a voir dire question. If you
19 don't think sex offenders get punished enough should be
20 something brought out in voir dire, not in the jury charge.
21 And paragraph 6 also talks about plea bargains, and again --

22 MR. FALK: This is not that case. I will withdraw
23 6.

24 MR. BOGLE: Okay.

25 THE COURT: Okay. All right. Let me think about

1 it.

2 MR. FALK: Thank you, Your Honor.

3 MR. BOGLE: Thank you, Your Honor.

4 MR. FALK: Your Honor, that was not meant to be the
5 comprehensive charge.

6 THE COURT: I understand.

7 (Whereupon, a recess transpired.)

8 (Whereupon, the jury returns to open court at 11:02
9 a.m.)

10 THE COURT: Y'all selected a foreperson? I assume
11 by the changing the seats, since y'all have been in the same
12 seat the whole time, you are the foreperson.

13 Juror No. 46: Yes, sir.

14 THE COURT: The lawyers will now give you their
15 closing arguments and I will charge you on the law and give
16 you this case to decide.

17 MR. BOGLE: Thank you, Your Honor. May it please
18 the Court, Mr. Falk.

19 First I would like to thank you for doing your job.
20 In Charleston County, the State of South Carolina and for
21 Mr. Brown, it's very important that 12 people listened to
22 these kinds of cases and make a decision what's supposed to
23 happen here. It's very important that y'all have been here.
24 Y'all did your job for the County and the State, and we would
25 like to thank you for that.

1 Now, I come back to what I said at the very
2 beginning, how it's more exciting to sexually assault a
3 stranger than to have consensual sex with your girlfriend,
4 and how he watched the tracks, the tracks that ran through
5 his neighborhood.

6 Now, let's talk about the elements we had to prove.
7 Number one, we had to prove has he been convicted of a
8 sexually violent crime. You've got three of them over here.
9 You will have back in the jury room with you the indictment
10 and the sentencing sheet. Look at it. Read it. See what
11 happened there. Number one was criminal sexual conduct with
12 a minor in the second degree. Number two is assault with
13 intent to commit criminal sexual conduct with a minor in the
14 second degree. That will be he attempted to do it, but
15 didn't quite finish the job. And the third exhibit will be
16 another conviction for criminal sexual conduct with a minor
17 in the second degree.

18 We have, as I recall, 13, 14 and 15-year-old young
19 girls, just walking the tracks, minding their own business,
20 going from Point A to Point B, and he's laying there waiting
21 for them.

22 The burden of proof is beyond a reasonable doubt.
23 The judge will explain that to you. I would suggest to you
24 that reasonable doubt is something that leaves you firmly
25 convinced something is true. If you have a reasonable doubt,

1 if you think it's flawed, the State's case doesn't makes
2 sense to you as a person, then the response is Mr. Brown is
3 entitled to the benefit of that doubt if you find he's not a
4 sexually violent predator. But I would submit to you that we
5 met that burden. And I'll talk some more about that in a
6 second.

7 Let's take this from the top. We have the crimes.
8 The next thing is, does he have a mental abnormality or a
9 personality disorder. Dr. Gehle was appointed by the Court.
10 This is one of her jobs, is doing these types of cases. She
11 was appointed by a judge at a previous hearing to evaluate
12 Mr. Brown. She looked at all the documents she could find.
13 She looked at all the police records, witness statements of
14 these crimes. She looked at his Department of Corrections
15 records, his disciplinary problems there when he acted up and
16 got in trouble. She looked at his hospital record from
17 Gilliam Psychiatric Hospital, which is at the Department of
18 Corrections, and also from M.U.S.C., when he was hospitalized
19 there back in 1997 for an overdose of some sort. She
20 examined the type of medications that he's on.

21 She also looked at -- interviewed him. And she
22 scored him on those two actuarial things I'll talk about in
23 just a minute, the Static-99R and Static-2002. So that's
24 what she did.

25 The next question is, does he have a mental

1 abnormality or a personality disorder. Okay. He met the
2 criteria for mental abnormality. In the book, the DSM-V, the
3 diagnostic manual, there's a paragraph about other specified
4 paraphilic -- paraphilic meaning deviant sex -- disorders.
5 And you can -- it lists four or five of them, but it says
6 including, but not limited to. There's hundreds of others.
7 And one of those would be biastophilia, which is forcing sex
8 on someone without consent. Okay? And here we have three
9 young girls, not below puberty, so is not a pedophile-type
10 case, but they are in early teens, 13 to 14, 15 years of age.

11 And, again, there was also some talk in
12 cross-examination about how medically it's okay for an adult
13 male to be physically attracted to a 14-year-old girl. Yeah,
14 it is. But to act on it is illegal. And to act on it just
15 because they find it more exciting than normal sex with their
16 girlfriend, that's when you cross the line to deviancy or
17 what they call a paraphilia. So paraphilia disorder is
18 biastophilia.

19 The next thing was anti-social personality disorder.
20 To document that, she had to find the kind of criminal
21 activity or things where he got arrested or the kind of
22 activity where he could have gotten arrested prior to the age
23 15. And she found conduct from cruelty to animals, from
24 fighting, from stealing, and things like going back to when
25 he was almost eight years old, if I remember the dates right.

1 So it's been there for a long time.

2 And, again, going back to these three girls, what
3 are the risk factors? She talked about dynamic risk factors
4 that this guy has, things that can be addressed in treatment,
5 but things that kind of make you worry about whether or not
6 he can control himself, because that's the elements here. We
7 have to prove the crimes. We have to prove the mental
8 abnormality or the personality disorder, and we have both.
9 But we also have to prove to you beyond a reasonable doubt
10 that these mental conditions are to such a degree that he is
11 likely, if he's released, to commit the same types of crimes
12 again unless he's confined in a secure place for what's
13 called long-term control, care and treatment. In other
14 words, lock him up for sex offender treatment, that's
15 basically what this is. Let's not mince words, confining him
16 for sex offender treatment that he can't get the appropriate
17 way on the outside.

18 And what do we have here? These girls were
19 strangers to him. They didn't know him. It wasn't like he
20 picked on somebody that he knew, like a child or a neighbor
21 or something like that, total strangers, just minding their
22 own business. He did it out in the open where he could -- a
23 witness could have spotted him. He could have gotten caught
24 very easily. Girls screamed, fought back, making noise,
25 again making it easy to get caught. There was a knife used

1 in at least one or maybe two of the incidents. And the fact
2 that he laid in wait for them walking down the tracks. So
3 these are risk factors that cannot be ignored and suggests to
4 me and to you, I believe, that he has difficulty controlling
5 himself. So he had the diagnoses.

6 Then she scores him on a tool used by psychiatrists
7 and psychologist around the world, the Static-99R and
8 Static-2002R. And like Dr. Gehle said, think of it as though
9 you are worried about a heart problem, you go to see your
10 doctor. The doctor gives you an examination. He looks at
11 certain characteristics you might have, like weight, smoking,
12 exercise, family history, prior heart trouble, things like
13 that. And based on those, he can look at studies of
14 thousands of other people who had the same symptoms, and know
15 how likely they were and therefore how likely you are to have
16 a heart attack again. Doesn't mean you are going to have a
17 heart attack, but it means this is your likelihood to have a
18 heart attack again. Translate that same type of rationale to
19 sex offenders.

20 Studies have been done of thousands of sex offender.
21 And these are guys who have been convicted of a sex offense
22 and gotten out and gone back in and done it again. Okay?
23 And there are certain factors you look at. And the more they
24 have in common, the higher the score they are going to get,
25 the more likely they are to reoffend again.

1 He scored a 4 on one of them, a 5 on the other.
2 Now, the scores go from minus 3 or minus 2, plus 12, or
3 something like that. And like she said, the average sex
4 offender convicted, does it again, scores about a 2. So he's
5 twice as bad as the average sex offender.

6 She also gave some percentages, 11 percent chance of
7 doing it again within five years based on the pattern where
8 he falls into. The other one, I think, was 13 percent. Now,
9 you might be thinking, and I could understand this, okay, the
10 State has to prove this to me beyond a reasonable doubt. 11
11 percent or 13 percent doesn't sound like beyond a reasonable
12 doubt. Shouldn't it be 60 or 70 or 90 or something like
13 that? But think a minute. Put it in perspective. This is
14 an 11 percent or 13 percent chance of offending against
15 another young girl, not stealing cigarettes from a
16 convenience store, robbing a bank or something like that.
17 You know, would you get into a vehicle that had 11 to 13
18 percent chance of breaking down fairly soon? No, you
19 wouldn't. That's where you have to put that type of test in
20 the perspective that it is.

21 Now, the defense had three witnesses. The
22 daughter -- his daughter testified. And I think -- I'm
23 really -- I've got a son. So I can understand the love a
24 child has for a parent. But what did she say when asked,
25 would you leave your young daughters alone with him? And she

1 said, I can't say.

2 His brother also testified that he would stick up
3 for him, find him a place to live up in Spartanburg and
4 treatment program up there and place to live and maybe get a
5 job or something like that. Now, his brother's contact with
6 him, his brother was in the military, and based on the war he
7 was in, the Desert Storm and all that, he was back in town by
8 about 1994. He said medical got him out of the Army in '92
9 or so, stayed in Virginia for a while, came back down here in
10 '94. And, yet, as much as a brother can care for another
11 sibling, and I've got a sister, so I know what it is, I'm
12 sorry, but he offended in '99, he offended in '98. So
13 wherever the brother was, seemed not to help. That's sad.
14 It really is sad. I know his brother is sticking up for him
15 now, but not when these crimes happened.

16 I asked Mr. Brown, how did you feel about these two
17 girls in 1998 and 1999. He said he felt real bad. Well, was
18 it bad enough to then do it again in 2004? Was it more
19 exciting to sexually assault a stranger than have consensual
20 sex with your own girlfriend?

21 So that's the case. We have the crimes. We have a
22 mental abnormality and a personality disorder. We have a
23 lack of control. We have him on a lot of meds right now that
24 seems to be stabilizing things. And I guess what the defense
25 wants you to believe is somehow, wherever he goes, he will

1 somehow get insurance or money or something like that to keep
2 those meds going. I don't know if that's going to happen or
3 not. But we have the past and it can't be ignored.

4 So that's the case. The question is, has the State
5 proved to you beyond a reasonable doubt that he's got the
6 right kind of convictions, that he has the mental abnormality
7 and the personality disorder, and that these are such that he
8 cannot control himself, he's likely to commit these types of
9 crimes again unless he's confined in a secure place for
10 long-term control, care and treatment. And I would submit to
11 you that we've met that burden. Thank you.

12 MR. FALK: Your Honor.

13 THE COURT: Yes, sir.

14 MR. FALK: May it please the Court, Mr. Bogle,
15 ladies and gentlemen. As I said in the opening statement,
16 you have to sort of separate, in cases like this, criminal
17 conduct from conduct that shows a mental health disease. And
18 I mean, it's kind of awkward to ask the expert about whether
19 or not it's a sign of mental health disease for a man, an
20 adult man, to be sexually attracted to a 14-year-old girl.
21 There's no question that acting on that attraction is
22 criminal conduct. But that's not a mental health disease,
23 because it is a -- she said that that is something that you
24 can't say is a sign of disordered thinking. 13-, 14-year-old
25 girl, it would be appropriate for a man to be sexually

1 attracted to them. It would be absolutely a crime to be
2 acting on that.

3 I mean, that's sort of a hard road that you've got
4 to cross between those two lines. So that's why I like to
5 make it sort of simpler to think about my suggestion that you
6 go into a store and you steal a candy bar. Is it because you
7 want the candy, or is it because you like to steal things?
8 Going into stores because you like to steal things, that's a
9 sign of a mental health disease. Going into the store and
10 taking a candy bar is a sign that you want to have a candy
11 bar.

12 So I believe that there's plenty of reasonable doubt
13 in this case. And I think there's reasonable doubt in this
14 case really in two areas that really point to the heart of
15 the State's case, one is diagnosis that Dr. Gehle used in
16 whether or not there's a risk.

17 So I believe that when Judge Cothran charges you,
18 he's going to tell you that there's really three elements
19 here. He's going to suggest -- whatever he says is the law.
20 If I misstate him, please, whatever he says is the law. I
21 think in summary, it's going to be that he's committed a
22 sexually violent offense. And I will tell you right now that
23 he's committed three sexually violent offenses. So the State
24 meets burden one.

25 Then, does he have a mental health disease? That's

1 a second item. But here's a critical point. Is it likely
2 that he's going to reoffend? So it's really, does he have a
3 mental health condition and is there a risk? I think biggest
4 problem with the State's case is proving that there is a
5 risk.

6 Let's talk about the diagnosis that the State is
7 using. Dr. Gehle, first of all, she acknowledged that this
8 was the book that they all rely on. This is the book where
9 they go to look. And this is what they use to base their
10 diagnoses on, to describe their diagnosis. And we talked
11 about one, in 2004 or 2005, when he got to the Department of
12 Corrections, he was diagnosed as having a schizoaffective
13 disorder. And everybody could -- every doctor could turn to
14 page 105 of this book and see schizoaffective disorder. And
15 they can read the diagnostic criteria, that in order to
16 diagnose something with schizoaffective disorder, you've got
17 to see these things. And Dr. Gehle listed those things. And
18 those were the things that were listed in this book.

19 There was also a diagnosis that he has anti-social
20 personality disorder. And we can go to page 659 of this
21 book. And it lists the diagnostic criteria. And Dr. Gehle
22 talked about those. And everybody can look at that.

23 Then I asked Dr. Gehle to find the diagnostic
24 criteria for what she diagnosed him as having. And she spoke
25 for probably three or four minutes. And there's not one word

1 in this book talking about an interest in coercive sex with
2 other, you know, nonconsenting individuals. There's not one
3 word of that. There's talks of other types of disorders,
4 rather unusual ones. She talked about zoophilia, which I can
5 only assume is somehow attracted to animals, and telephone
6 scatologia, which I guess is getting off on talking dirty on
7 the telephone or something like that. But there was no
8 mention of this word "biastophilia". In fact, you can't even
9 find the word "biastophilia" in this book.

10 Dr. Gehle right now spends 100 percent of her time
11 looking at and trying to diagnose people as to whether or not
12 they are sexually violent predators. She doesn't see any
13 other type. That's what she said, 100 percent of her time
14 doing these evaluations. At some point, if you spend 100
15 percent of your time looking for sexually violent predators,
16 it's sort of like that old axiom, if you are a hammer,
17 everything you see is a nail. And I contend she's looking
18 for something to say that she's a sexually violent predator,
19 because that's all she does is looking for sexually violent
20 predators.

21 Now, I really want to talk about the rest. There's
22 11 percent chance that he's going to reoffend in the next
23 five years. That's what she said. Basically, what I tried
24 to get, it's not exactly that, but close enough. So it's an
25 11 percent chance. And also, she acknowledged that in three

1 years, according to that same schedule that she used, that
2 risk drops in half. So that's down to the average. That's
3 like a five percent chance to reoffend.

4 I can tell you, they cannot possibly be the same.
5 The statute doesn't say that he's likely to reoffend. How
6 can an 11 percent chance of something happening be the same
7 as saying something is likely to happen?

8 The State and Dr. Gehle, they both talk about --
9 they made this analogy to a heart attack. And I think that
10 this really goes to the crux of where the problem with the
11 State's argument is in its analysis. Because this is -- she
12 is using the word "diagnosis". And a lot of times, it's
13 really easy to equate a diagnosis from a psychologist from a
14 diagnosis you get from a doctor, a medical doctor. But they
15 are really not the same thing.

16 And let's use their analysis of the heart attack.
17 You go into a doctor. And you tell the doctor that -- well,
18 doctor sees you are 60 pounds overweight. And he asks you
19 what your family history is. And he says that. And you tell
20 him, well, my father had a heart attack, my mother had a
21 heart attack, and by the way, I also smoked two packs a day.
22 Those are risks factors. There's no question those are risk
23 factors that you have a heart attack. The question is, are
24 you going to have the doctor perform open-heart surgery based
25 on that? That's a difference between the doctor convincing

1 you beyond a reasonable doubt.

2 But here's also the problem with psychology versus
3 medicine and heart attack analogy, because about 24 months
4 ago, I walked into the doctor. I was having some pain in my
5 arm. I was getting some numbness in my left arm. And the
6 doctor took an X-ray. And I am not really 60 pounds
7 overweight. I'm probably 20 pounds overweight. I do have
8 the family history of heart disease. Don't smoke, but
9 anyway, I had some of these risk factors. And doctor
10 probably could have told me, we ought to open up your heart
11 and look. No, I am not going to do that.

12 But here's the difference between medicine and
13 psychology. He said, why don't you take a stress test. So
14 they hooked me up on to all these things, you know, measuring
15 my heart rate. And I walked on the incline while it was
16 moving fast. And he could then take the strip that came off
17 that machine and show me and said, look, here's what your
18 heart is doing when you are under stress. Well, that's some
19 kind of thing, that's a test that's verifiable, that I can
20 see that, another doctor could see. Even taking that test,
21 that strip to another doctor in that office. And that other
22 doctor can say, yeah, that's a problem with your heart. I'm
23 still not quite sure I want them to open me up.

24 So then he did this other thing where he put
25 injection, something into my arm, and gave me an MRI. I go

1 through that. Doctor says, look, here's what it shows.
2 Again, this was a test that was done. This is a verifiable
3 test. And it can show me, well, maybe we go to the next
4 step. Next step is not open up high chest yet, no. The next
5 step was to go ahead and do heart catheterization. And they
6 run the thing in there. And he says, look, you have
7 blockages. I could show you these blockages. I can show you
8 the X-rays. Here are the blockages. Seven days later, I was
9 having heart surgery.

10 So there's the combination. Granted, I had the
11 history. But also, there were these tests, scientific tests.
12 These were people tests that other doctors could look at.
13 They could help me for myself to decide beyond a reasonable
14 doubt that I thought it was worthwhile for them to crack open
15 my chest and have open-heart surgery. Because I hadn't had a
16 heart attack yet. This was a preventive measure. But there
17 was more concrete evidence that I was able to receive before
18 I could make that kind of decision.

19 That's really -- I had -- beyond a reasonable doubt,
20 I knew I had to go and have that surgery. I was not at the
21 point of reasonable doubt when I had the history. It wasn't
22 reasonable doubt when I had the stress test. I mean, it
23 takes something to be sure. Granted, she is a schooled,
24 well-educated doctor. But she still is only going on a
25 five-hour interview with him and then her research.

1 I contend that Dr. Gehle gave you an excellent
2 picture of who he was in 2005. But the question is today,
3 April 16th, 2019, is he a sexually violent predator?

4 What's different? One huge thing that's different
5 is, he finally got some medication to address the
6 schizoaffective disorder that he has. He's taking lots of
7 medicine. He understands that he needs the medicine. He
8 doesn't want to be that person who was not on the medicine.
9 He understands that he has a mental disease. He understands
10 that he needs the medicine. And everybody who knows him
11 knows that he's a different person from the person in 2005
12 before he was getting treatment at SCDC than he is today.

13 You heard the kid brother talk about Timothy Brown.
14 You heard how he -- he attributed, you know, being able to
15 serve in the military with some of the fatherly rearing that
16 he got from his big brother.

17 You heard from the baby daughter. She doesn't
18 describe somebody who is, you know, anti-social or anything.
19 She's describing he's overly protective.

20 So what's different? Again, he's finally got the
21 medicine that he needs. He's just been to prison for 15, 14
22 years. That's going to make somebody a different person.
23 He's an older person. He's 57 years old. He's not the
24 person he was.

25 And when the State talks about, well, you know,

1 there's these dynamic risk factors out there, and that's sort
2 of -- if you are not convinced enough that the 11 percent
3 chance that he's going to reoffend, if that's not enough for
4 you, there's all these other dynamic risk factors that sort
5 of push it in one direction. But when she's talking about
6 these dynamic risk factors, she's talking about 2005 and
7 earlier. There's no evidence of sexual pre-occupation that
8 he's had since 2005 forward, any evidence of sexualized
9 violence, or really any evidence of poor self control, the
10 types of dynamic risk factors that she thought were
11 important. Those were all stuff that were in his life then.

12 At the end of the day, you saw that man on the
13 stand, and I just don't think that you can fake his
14 testimony. I mean, I think he was testifying from his heart.
15 He thinks he's a changed man. He knows he's a changed man.
16 One of the things he attributes to the change in him is, one,
17 he's gotten medicine he needs; and, two, he sort of found out
18 who he is spiritually; three, he's a changed man because he's
19 15 years old than the person he was.

20 At the end of the day, this is not Dr. Gehle's
21 decision whether or not to put him in this program. To put
22 him in a program for indeterminate period of time, meaning
23 when he goes, he does not know when he's going to be
24 released. It's your decision. And it's a big decision. And
25 I think the State is saying kind of, well, it's safe than

1 sorry, you know, 11 percent, but, you know, it could be
2 something bad, so let's play it on the safe side. That is
3 not your job. Your job is we are protecting his civil
4 liberties right now, where he's going to go. And this is not
5 a question of it's better safe than sorry. This is a
6 question, are you convinced beyond a reasonable doubt, almost
7 to the point of, are you convinced that if you let him out
8 today, that tomorrow, a 15-year-old girl in this neighborhood
9 is going to be at risk.

10 Is there a risk that he's going to commit another
11 sexually violent crime? I contend that the State has not
12 proven this. And when you go back there, sort of one of the
13 things that they will -- sort of mentally picture a
14 blackboard from when you were in school. I hope y'all are
15 old enough to be back in the days when you had blackboards in
16 school. The teacher writes "reasonable doubt" on this
17 blackboard. Okay? And then start thinking about the State's
18 case. When the State makes a good point in the State's case,
19 you can start erasing the words reasonable doubt. When you
20 listen to everything the State said, if there's even part of
21 that T at the end of the "doubt", there's still reasonable
22 doubt in this case.

23 And I contend when you think about this diagnosis
24 that's not in this book, when you think about an 11 percent
25 risk, that we know that three years is going to drop in half,

1 there's plenty of doubt in this case. I think that -- I'm
2 hopefully that once you do some thoughtful consideration in
3 this case, you will come back with a verdict that Timothy
4 Brown is not a sexually violent predator. Thank you.

5 MR. BOGLE: Nothing further, Your Honor.

6 THE COURT: Okay. Ladies and gentlemen, now that
7 you've heard all of the evidence in this case, as well as the
8 closing arguments of the attorneys, I am going to charge you
9 on the law that you are to apply in this case.

10 Now, the State has brought this case under the
11 sexually violent predator law in South Carolina. The State
12 seeks the civil commitment of Timothy Brown for long-term
13 care, control -- I mean, long-term control, care and
14 treatment in a secure facility. It is not a criminal
15 proceeding seeking incarceration, but it is rather a
16 proceeding seeking civil commitment.

17 The State alleges or claims that the respondent,
18 Timothy J. Brown, is a sexually violent predator under the
19 law of South Carolina. Respondent denies that he's a
20 sexually violent predator. And the burden of proof is,
21 therefore, upon the State to prove by evidence that satisfies
22 you beyond a reasonable doubt that Mr. Brown is a sexually
23 violent predator. If the State is unable to meet that burden
24 of proof as to one or more of the elements of this claim, the
25 respondent is entitled to a finding that he is not a sexually

1 violent predator.

2 Now, ladies and gentlemen, I want to make sure that
3 you understand that Mr. Brown is not accused of committing a
4 crime in this proceeding. You have heard from the testimony
5 that he did have previous charges of which he was sentenced
6 by the Court. Respondent has completed his sentence for
7 these charges. And the State is now alleging that Mr. Brown
8 is a sexually violent predator. The State has the burden of
9 proof in this case and must prove it beyond a reasonable
10 doubt.

11 I told you earlier that the State has not met the
12 burden of proof, the respondent will be released. If the
13 State has met its burden of proof and you find that the
14 respondent is a sexually violent predator, he will not be
15 released and he will be committed to a secure treatment
16 facility in Columbia operated by the South Carolina
17 Department of Corrections.

18 Now, in a trial, you and I have have some different
19 duties. Your duties are to determine what the facts are in
20 this case. I am not allowed to have an opinion about the
21 facts in this case. So if I've said anything or done
22 anything that you think I have an opinion about the facts,
23 you are to disregard that. Because you and only you must
24 determine the fact in this case based on the evidence that is
25 presented before you.

1 And that same law that makes you the exclusive judge
2 of the facts, makes me the exclusive judge of the law. So if
3 you have an idea of what you think the law is and what the
4 law should be and it differs from what I now tell you the law
5 is, you are to disregard your idea and apply the law exactly
6 as I give it to you.

7 And the arguments of the counsel, even the questions
8 the lawyer gave in this case are not evidence. The evidence
9 is based on what came to you from the witness stand in this
10 case.

11 Now, in most civil cases tried in this court, the
12 burden of proof is by a preponderance or greater weight of
13 the evidence. However, in this time of case, under this
14 particular statute, the State has the burden greater than
15 preponderance of the evidence. They have the burden of proof
16 beyond a reasonable doubt.

17 Now, if the State meets this burden, you are to find
18 him a sexually violent predator. If they don't meet that
19 burden beyond a reasonable doubt, you find that he's not a
20 sexually violent predator.

21 And reasonable doubt is proof that leaves you firmly
22 convinced that the respondent is a sexually violent predator.
23 Ladies and gentlemen, there are very few things in this world
24 we know with absolute certainty. And in this type of case,
25 the law does not require proof that overcomes every possible

1 doubt. If, based on your consideration of the evidence, you
2 are firmly convinced that Mr. Brown is a sexually violent
3 predator, then you must return a verdict for the State.

4 If, on the other hand, you think there's a real
5 possibility that he's not a sexually violent predator, you
6 must give to him the benefit of the doubt and return a
7 verdict for the respondent.

8 Reasonable doubt may arise from the evidence that's
9 presented in this case or lack of evidence presented in the
10 case. It is up to you to determine whether or not reasonable
11 doubt exists based on the evidence in this case.

12 And normally in a trial, there are two types of
13 evidence that are introduced, direct evidence and
14 circumstantial evidence. Direct evidence is testimony about
15 which the witness personally saw, heard or did.

16 Circumstantial evidence is indirect evidence that is
17 proof of one or more facts from which one can find another
18 fact.

19 You can consider both direct and circumstantial
20 evidence in this case. And the law makes no distinction or
21 gives greater weight from one or the other. You can use one
22 or both or a combination thereof to decide what evidence you
23 think is important in this case.

24 In determining the facts in this case, you must
25 judge the credibility, which simply means the believability

1 of the witnesses, and give the value and weight to their
2 testimony you think it deserves. And you alone must decide
3 the force and effect and accuracy of that testimony.

4 In making these decisions, there are many things you
5 should take into consideration, such as, the appearance of
6 the witness on the stand or the character or the demeanor of
7 the witness. Was the witness forthright or hesitant? Was
8 the witness's testimony consistent or did it contain
9 discrepancies? What was the ability of the witness to know
10 the facts about which he or she testified? Did the witness
11 have some reason to be biased or prejudice in favor of their
12 testimony? Was the testimony of a witness reasonable in
13 consideration, in light of all of the other evidence in this
14 case, and in light of your own experience and commonsense?
15 Was the testimony of a witness corroborated or made stronger
16 by evidence or other testimony, or was it made weaker by such
17 other evidence or testimony?

18 As jurors, you can understand you have the right to
19 believe a small portion of a witness's testimony and
20 disregard the larger portion, or vice-versa. You may believe
21 all of a witness's testimony or none of a witness's
22 testimony. You may believe the testimony of a single witness
23 against that of many or the other way around.

24 You do not determine the case merely by counting the
25 number of witnesses presented on each side. The fact that

1 testimony is not controverted does not mean you must accept
2 it as valid or undisputed. You still must gauge the
3 credibility of the witness to determine the believability of
4 the facts offered through their testimony.

5 In exercising your mental processes or attempting to
6 decide the accuracy of the testimony, the law requires you to
7 use your judgment, your common sense, your sound logic and
8 reasoning and experiences in life. You then apply these
9 attributes to the evidence and the law that I'm going to give
10 you or that I'm currently giving you, and you arrive at a
11 verdict that speaks the truth.

12 Now, under our rules of evidence, witnesses --
13 normally, witnesses do not -- ordinarily aren't able to give
14 you an opinion or conclusions. An exception of this rule is
15 what we call an expert witness, a witness who, by education
16 and experience, has become an expert in some science,
17 profession or calling. They may state that opinion as to
18 relevant matters in which the witness claims to be an expert.
19 They may also give the reasons for that opinion.

20 You should consider an expert's opinion received in
21 evidence in this case like any other evidence. You give it
22 the weight you think it deserves. If you decide that an
23 opinion of an expert is not based on sound education or
24 experience, or if you conclude that the reasons given in
25 support of the opinion are not sound, or that the opinion is

1 outweighed by the other evidence, you may disregard that
2 opinion in its entirety. An expert witness's opinion is
3 given no greater weight than that of any other witness simply
4 because the witness is an expert. And you are not required
5 to accept the expert's opinion even though it was not
6 contradicted.

7 Now, the elements that the State must prove to you
8 beyond a reasonable doubt are that the respondent has been
9 convicted of a sexually violent offense. And I charge you
10 that criminal sexual conduct with a minor in the second
11 degree and assault with intent to commit a criminal sexual
12 conduct with a minor in the second degree are sexually
13 violent offenses.

14 Now, the second one, that respondent suffers from a
15 mental abnormality or personality disorder, and the mental
16 abnormality or personality disorder makes the person likely
17 to engage in acts of sexual violence if not confined, and
18 that the respondent's propensity to commit acts of sexual
19 violence is of such a degree as to pose a menace to the
20 health and safety of others.

21 Now, inherent in these elements, the State must
22 prove that the mental abnormalities and personality disorders
23 causes him serious difficulty in controlling his behavior.
24 In other words, the State must prove beyond a reasonable
25 doubt the individual it seeks to commit suffers from a mental

1 illness which he cannot sufficiently control without
2 structure and care provided by mental health facility
3 rendering him otherwise likely to commit dangerous acts.

4 In order for you to better understand the elements
5 of the State, the State -- I'm sorry, the elements of the
6 State caused in this action, I'm going to define for you some
7 of the terms that I have used. Mental abnormality means a
8 mental condition affecting a person's emotional or volitional
9 capacity which predisposes the person to commit sexually
10 violent offenses. This mental abnormality or personality
11 disorder must cause Mr. Brown serious difficulty in
12 controlling his behavior.

13 Likely to engage in acts of sexual violence means
14 the person's propensity to commit acts of sexual violence is
15 to such a degree as to pose a menace to the health and safety
16 of others so that he is dangerous to others.

17 Again, I remind you, the burden of proof is upon the
18 State to satisfy you of these elements beyond a reasonable
19 doubt. And the State must prove each of these elements to
20 you beyond a reasonable doubt. You must find beyond a
21 reasonable doubt that all of these elements are present in
22 this case.

23 Now, Mr. Foreman, ladies and gentlemen, you are not
24 advocates for the State of South Carolina of this respondent.
25 You are not here to reward your friends or punish your

1 enemies. That justice won't be tolerated. Based on the
2 evidence you heard in this case and the law that I applied to
3 you, you must reach a verdict in this case that basically
4 speaks the truth. You must determine whether or not you find
5 that the State has met its burden of proving him a sexually
6 violent predator or that the State has failed to meet its
7 verdict.

8 This verdict must be unanimous. All twelve of you
9 must agree. I had my law clerk print up a verdict form. And
10 basically what it says is the caption of the case, has the
11 petitioner, the State of South Carolina, proved beyond a
12 reasonable doubt that Mr. Brown is a sexually violent
13 predator under South Carolina Sexual Violent Predator Law.
14 And your verdict is, we the jury unanimously answer the
15 question as follows: One, yes, Mr. Brown is a sexually
16 violent predator; No. 2, no, Mr. Brown is not a sexually
17 violent predator. The order I put them in you are to draw no
18 conclusions from whatsoever.

19 Once you have reached a verdict, a unanimous
20 verdict, you are to check the appropriate box, sign your name
21 and date it, and knock on the door, and we will bring you out
22 to receive your verdict.

23 Now, I've got to ask the lawyers to confer with them
24 to be sure I haven't left something out. If I have, I will
25 bring you back out and charge you further. If I am not, I

1 will send you this verdict form along with the evidence that
2 was introduced in this case. And that will be your indicator
3 to begin your deliberation.

4 While you deliberating this case, if one of you need
5 to be excused to go to the restroom or anything, you have to
6 stop talking about the case. You can only talk about the
7 case when all twelve of you are present. And it's got to be
8 unanimous, all of you must agree. When you reach a verdict,
9 if you simply knock on the door.

10 If you have a question, you must write that question
11 down on a piece of paper and submit it to the bailiff. I can
12 tell you right now, I can't answer questions of facts. I
13 can't reopen the case and produce new evidence. If you have
14 a question of law, I can bring you back out and answer that
15 question and charge you further the law. But if it's a
16 question of fact, I can't answer it. So only thing I can
17 answer is a question of law.

18 I will send you to the jury room right now. Either
19 I will bring you back out or send you the verdict form.

20 Now, the alternate, you need to stay with me. Only
21 time I needed you was if I lost somebody. It looks like
22 everybody made it. So I ask the rest of you to go to the
23 jury room.

24 (Whereupon, the jury leaves open court at 11:45
25 a.m.)

1 THE COURT: Are there any exceptions or deletions?
2 Anything further from the State?

3 MR. BOGLE: Yes, Your Honor. There was a -- I'm
4 trying to find it right now. At a point in the jury charge,
5 you were telling him that he would go to a facility operated
6 by, and you said the Department of Corrections.

7 THE COURT: Did I? Department of Mental Health. I
8 misquoted that. I can straighten that out.

9 MR. BOGLE: Can you straighten that part out?

10 MR. FALK: I heard that. And I assumed Mr. Bogle
11 was going to bring that up.

12 THE COURT: Okay. I apologize for that.

13 MR. FALK: I believe that the way you read the
14 charge, it still didn't sort of bifurcate that last sentence.
15 You did say the "and", I would have said "and three", but it
16 is what it is.

17 THE COURT: And it was "and" and I didn't put the
18 number 3 in there? But I thought I told that they had to
19 find that he had it. But I will bring them back out and
20 straighten out that mental health. I knew where it was. I
21 just misstated. I've been trying too many criminal cases
22 lately. I'm sorry.

23 MR. BOGLE: Thank you, Your Honor.

24 THE COURT: Somebody bring the jury back and let me
25 straighten that out.

1 (Whereupon, the jury returns to open court at 11:50
2 a.m.)

3 THE COURT: Mr. Foreman, ladies and gentlemen, the
4 lawyers pointed out that I misstated something. It looks
5 like I could read it a little bit better.

6 If you find that the State has met its burden of
7 proof and proved the respondent is a sexually violent
8 predator, then he will not be released, he will be committed
9 to a secure facility in Columbia operated by the South
10 Carolina Department of Mental Health. I misstated that and
11 said by the South Carolina Department of Corrections. He
12 will not go to the Department of Corrections. The facility
13 that the State is seeking to put him in is operated by the
14 South Carolina Department of Mental Health. And I misstated
15 and said Department of Corrections. That is wrong. So
16 that's the only thing I needed to correct.

17 So if you will go back now, send the verdict form
18 when you reached a verdict, simply knock on the door. And if
19 you, in 20 or 30 minutes, if you think -- I am not rushing
20 you, take all the time you need, but if you are going to be
21 awhile, I may need to order you lunch. If you are not going
22 to be awhile, you can get released to go to lunch. So you
23 kind of let us know. I don't know how long it takes.
24 Different counties I go to, some of the rural counties, it
25 takes awhile to get lunch. And I didn't recognize it was so

1 close to lunchtime. Once I give you the case, I can't let
2 you go. So either you decide how long it's going to take,
3 but if you think it's getting to be awhile after y'all talk,
4 if you will let one of the bailiffs know, we will get your
5 lunch going. Okay?

6 (Whereupon, the jury deliberates at 11:52 a.m. and
7 the alternate remains.)

8 THE COURT: You are free to go. Thank you. And you
9 need to report back in the morning at 9:30. Okay? Thank
10 you.

11 (Whereupon, the alternate is excused and a recess is
12 taken.)

13 THE COURT: I got a note from the jury. It says,
14 can you provide a written definition of sexually violent
15 predator?

16 How do you want me to respond to that?

17 MR. BOGLE: Well, you are going to give -- it's
18 defined in your charge. If you are going to give them the
19 charge, you have to give the whole charge. You can't give
20 part of it.

21 THE COURT: I know, unless y'all stipulate. I've
22 got to give the whole charge unless both sides agree.

23 MR. BOGLE: Are you sure? Every time I've had that
24 come up, the whole charge came back.

25 THE COURT: I have to recharge.

1 MR. FALK: Are you talking about handing him your
2 written thing to go back or reading it to them in the court?

3 THE COURT: Well, they want a written definition.
4 They didn't ask me to recharge them on that. That's simple.
5 I have plenty of time to recharge them. I don't have to give
6 my whole charge if I recharge them, but if I give them the
7 charge, the whole charge has got to go back, at least the
8 case says that.

9 MR. BOGLE: Yes.

10 THE COURT: There's some issue that if both sides
11 agree, I may can send them just what they asked for, or I can
12 bring them back and charge them. Part of it telling them
13 they can't get the written definition. So what do you all
14 want me to do? I think I can give them the written
15 definition if y'all both agree. But I've got to give them
16 the written definitions in the charge.

17 MR. BOGLE: I'm looking at page 7 where it defines
18 sexually violent predator, and goes to the middle of page 8,
19 sounds like you were reading from mine.

20 THE COURT: It was combination.

21 MR. BOGLE: Because he broke that two-part into
22 three parts.

23 THE COURT: I know it. And the other thing too,
24 though, give them the whole charge, all came out of criminal
25 case, you know, and this is technically not a criminal case.

1 And so I think y'all could agree or I can give them --

2 MR. BOGLE: If they want a definition of sexually
3 violent predator, we got your charge. We also have the
4 definition word for word in the statute. See the top of the
5 page? That's the statutory definition, just that particular
6 item.

7 MR. FALK: But that was my whole argument, Supreme
8 Court --

9 MR. BOGLE: The Supreme Court argument?

10 MR. FALK: Yeah.

11 THE COURT: And the Supreme Court didn't really add
12 anything to this. They just wrote No. 2 in two sections and
13 called it No. 3.

14 MR. BOGLE: They didn't add any language?

15 THE COURT: No, they didn't add any language. This
16 is what the statute says, you know: B, suffers from a mental
17 abnormality or personality disorder that makes the person
18 likely to engage in acts of sexual violence if not confined
19 in a secure facility for long-term control, care, and
20 treatment.

21 MR. BOGLE: The problem is, playing devil's
22 advocate, I guess, if that's what the statute calls it, as
23 you know, the case law goes on to talk about an inability to
24 control one's self, rendering a person dangerous to the
25 health and safety of others. So it goes pretty far.

1 THE COURT: *Snow* case doesn't say inability to
2 control one's self.

3 MR. BOGLE: Well, the strict definition is in the
4 statute.

5 THE COURT: Because the charge I gave them was kind
6 of broken all up. I don't have it written down in one text.
7 It was part of yours, part of his and part of the expert.
8 Because the expert witness charge isn't any good. I like the
9 other one better than the Supreme Court gave us. And it
10 doesn't do a very good job of direct --

11 MR. BOGLE: Is there a newer one than the one I
12 used?

13 THE COURT: Yeah. And direct circumstantial
14 evidence --

15 MR. BOGLE: I tried to get shorter versions of that
16 from different judges, because my original version just went
17 on and on on collateral facts. Still don't understand what
18 that means.

19 I don't know, Judge. The literal answer to the
20 question is that section of the statute.

21 THE COURT: Yeah. Well, by the written definition
22 of sexually violent predator, so you want me to tell them I
23 can't provide it? You want me to provide it? Want me to
24 charge them on it?

25 MR. FALK: I don't want you to read the statute,

1 because I think that that statute is inconsistent with the
2 decision in *Snow*. And it's the "and".

3 THE COURT: So do you want me to give them your No.
4 1?

5 MR. FALK: Yes.

6 THE COURT: What is the State's position on that?

7 MR. BOGLE: Let me find his No. 1.

8 THE COURT: Can I get that into a form that I can
9 give it to them, though?

10 MR. BOGLE: You want to give it to them? They want
11 something to look at.

12 THE COURT: They want me to hand it to them. So the
13 question is whether both of you all agree you want me to
14 print No. 1?

15 MR. BOGLE: Where is your copy? Your No. 1 kind of
16 takes the statutory definition, then it goes on to add the
17 stuff, propensity to such a degree to pose menace to the
18 safety of others.

19 THE COURT: What?

20 MR. BOGLE: I'm looking at his No. 1.

21 THE COURT: I don't see -- oh, I see, propensity.
22 I'm sorry. I can't read to commit acts of sexual -- and he
23 took that out of the language. The most recent cases is
24 *Snow*.

25 MR. BOGLE: I'm not so sure. This is pretty

1 important to rewrite the statute.

2 THE COURT: Oh, yeah. When they came --

3 MR. BOGLE: They didn't strike it out.

4 THE COURT: They didn't rewrite it. They just put
5 another one out. They can add stuff to it. I mean, you can
6 call and ask them that. I can get them on the phone right
7 now. I've got them on speaker. But I can tell you what your
8 answer is going to be.

9 MR. BOGLE: So you read No. 1?

10 THE COURT: I read No. 1 to them. I didn't read the
11 first part in that y'all agreed to that. I added part of
12 your No. 1 and put all of his No. 2 and No. 3. I didn't say
13 No. 3, but if y'all agree, I can give it to them.

14 MR. BOGLE: I'm sorry. I'm losing track of what --

15 THE COURT: What I propose to do is have my law
16 clerk print his No. 1, taking that out and print that and
17 send it back to the jury. You don't think that's the law?

18 MR. BOGLE: Well, it's the law. The definition is
19 in the statute.

20 THE COURT: I understand that.

21 MR. BOGLE: It's the definition plus some other
22 stuff which is the law.

23 THE COURT: Supreme Court has defined is the
24 definition of sexually violent predator.

25 MR. BOGLE: All No. 1, send back all of No. 1?

1 THE COURT: Yeah.

2 MR. FALK: Thank you.

3 (Whereupon, a recess transpired.)

4 (Court's Exh. 1, Jury note requesting definition
5 of sexually violent predator, was marked for identification.)

6 (Court's Exh. 2, Definition of sexually violent
7 predator, was marked for identification.)

8 (Whereupon, the jury returns to open court at 1:09
9 p.m.)

10 THE COURT: My understanding is you have reached a
11 verdict?

12 THE FOREPERSON: Yes.

13 THE COURT: Is it unanimous?

14 THE FOREPERSON: Yes.

15 THE COURT: Pass it up, please.

16 Please publish the verdict.

17 THE CLERK: The State of South Carolina, County of
18 Charleston, in re: Care and treatment of Timothy J. Brown,
19 respondent, this is on Case No. 2017-CP-10-3450, has the
20 petitioner, the State of South Carolina, proved beyond a
21 reasonable doubt that Timothy J. Brown is a sexually violent
22 predator under the South Carolina Sexually Violent Predator
23 Act, we the jury unanimously answer the question as follows:
24 Yes, Timothy J. Brown is a sexually violent predator.

25 Foreman's signature is signed. And it's dated April

1 the 16th, 2019.

2 THE COURT: Anything before I dismiss the jury?

3 MR. BOGLE: No, your Honor. Thank you.

4 MR. FALK: Can we poll the jury?

5 THE COURT: Will you poll the jury.

6 THE CLERK: Ladies and gentlemen, I'm going to ask
7 you each two questions. The questions are: Is this your
8 verdict; and is this still your verdict? Please answer each
9 question appropriately. Also, please stand when I call your
10 juror number.

11 Juror No. 6, is this your verdict?

12 JUROR NO. 6: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NO. 6: Yes.

15 THE COURT: Thank you, sir.

16 THE CLERK: Juror No. 124, is this your verdict?

17 JUROR NO. 124: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR NO. 124: Yes.

20 THE CLERK: Juror No. 2, is this your verdict?

21 JUROR 2: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR 2: Yes.

24 THE CLERK: Juror No. 266, is this your verdict?

25 JUROR 266: Yes.

1 THE CLERK: Is this still your verdict?

2 JUROR 266: Yes.

3 THE CLERK: Juror No. 77, is this your verdict?

4 JUROR NO. 77: Yes.

5 THE CLERK: Is this still your verdict?

6 JUROR NO. 77: Yes.

7 THE CLERK: Juror No. 212, is this your verdict?

8 JUROR NO. 212: Yes.

9 THE COURT: Is this still your verdict?

10 JUROR NO. 212: Yes.

11 THE CLERK: Juror No. 18, is this your verdict?

12 JUROR NO. 18: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NO. 18: Yes.

15 THE CLERK: Juror No. 299, is this your verdict?

16 JUROR NO. 299: Yes.

17 THE CLERK: Is this still your verdict?

18 JUROR NO. 299: Yes.

19 THE CLERK: Juror No. 101, is this your verdict?

20 JUROR NO. 101: Yes.

21 THE CLERK: Is this still your verdict?

22 JUROR NO. 101: Yes.

23 THE CLERK: Juror No. 66, is this your verdict?

24 JUROR NO. 66: Yes.

25 THE CLERK: Is this still your verdict?

1 JUROR NO. 66: Yes.

2 THE CLERK: Juror No. 32, is this your verdict?

3 JUROR NO. 32: Yes.

4 THE CLERK: Is this still your verdict?

5 JUROR NO. 32: Yes.

6 THE CLERK: Juror No. 21, is this your verdict?

7 JUROR NO. 21: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR NO. 21: Yes.

10 THE CLERK: Your Honor, the jury has been polled and
11 the verdict stands.

12 THE COURT: You want them to call back?

13 THE CLERK: Tonight after 6, if they call the juror
14 number tonight after 6.

15 THE COURT: I want to thank you for serving in this
16 case. I need you to call the number back after six o'clock
17 tonight and they will give you instructions whether you have
18 to come back. Thank you. You can be excused.

19 (Whereupon, the jury leaves open court at 1:13
20 p.m..)

21 THE COURT: Anything else?

22 MR. BOGLE: May I approach, Your Honor?

23 THE COURT: Yes.

24 MR. BOGLE: Who is here from the detention center?
25 I need to give them a file copy of the order to take back and

1 the name of the person to call. Thank you, Your Honor.

2 (Whereupon, proceedings are adjourned.)

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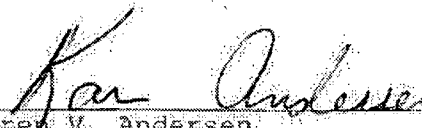
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

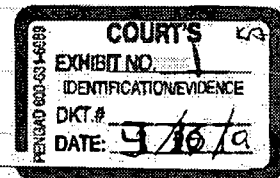
I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

- Can you provide the written definition
of a sexually violent predator?

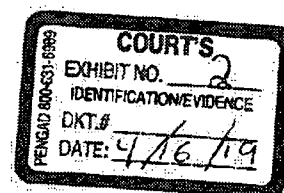
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4/16/19



"SEXUALLY VIOLENT PREDATOR"

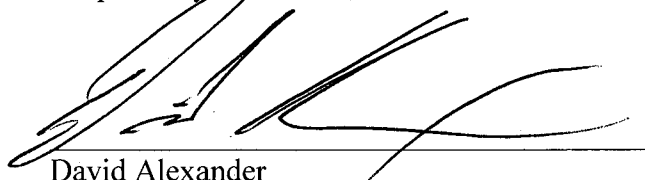
THE ELEMENTS WHICH THE STATE MUST PROVE BEYOND A REASONABLE DOUBT ARE: 1.) THAT THE RESPONDENT HAS BEEN CONVICTED OF A SEXUALLY VIOLENT OFFENSE; 2.) THAT RESPONDENT SUFFERS FROM A MENTAL ABNORMALITY OR PERSONALITY DISORDER; AND, 3.) THE MENTAL ABNORMALITY OR PERSONALITY DISORDER MAKES THE PERSON LIKELY TO ENGAGE IN ACTS OF SEXUAL VIOLENCE IF NOT CONFINED, SUCH THAT RESPONDENT'S PROPENSITY TO COMMIT ACTS OF SEXUAL VIOLENCE IS OF SUCH A DEGREE AS TO POSE A MENACE TO THE HEALTH AND SAFETY OF OTHERS.



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of December, 2019.

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