

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF DAMEON MONTRELL BROWN,

APPELLANT.

APPELLATE CASE NO. 2018-001904

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED OCTOBER 15-16, 2018.....	1
JURY SELECTION.....	7
PRE-TRIAL MOTIONS.....	56
DR. AMY SWAN (IN CAMERA).....	71
OPENING STATEMENT BY MR. BOGLE	163
OPENING STATEMENT BY MR. FALK	168
TESTIMONY	
MELANIE CORA RUBIO	271
DAMEON BROWN	287
CLOSING ARGUMENT BY MR. BOGLE	319
CLOSING ARGUMENT BY MR. FALK	325
FINAL CLOSING ARGUMENT BY MR. BOGLE.....	339
CHARGE ON THE LAW	340
VERDICT	360
STATE'S EXHIBIT NO. 1 (SENTENCE SHEET AND INDICTMENT).....	364
STATE'S EXHIBIT NO. 2 (SENTENCE SHEET AND INDICTMENT).....	367
STATE'S EXHIBIT NO. 3 (SENTENCE SHEET AND INDICTMENT).....	371
COURT'S EXHIBIT NO. 1 (RESPONDENT'S MOTION IN LIMINE FOR COUNSEL HEARING TO DETERMINE THE ADMISSIBILITY OF OPINION TESTIMONY FROM DR. AMY SWAN REGARDING THE STATIC-99R RISK ASSESSMENT MEASURE)	374
COURT'S EXHIBIT NO. 2 (JURY QUESTION)	386
CERTIFICATE OF COUNSEL	388

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort

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4 Case No.: 2017-CP-0700038

5 In the Matter of the Care and
6 Treatment of:

7 Dameon Montrell Brown

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TRANSCRIPT OF RECORD

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14 October 15-16, 2018

15 Beaufort, South Carolina

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20 BEFORE:

21 The Honorable Carmen T. Mullen

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1 INDEX

2

3 WITNESS:

PAGE:

4 DR. AMY SWAN (PRETRIAL)

5	Direct Examination By Mr. Bogle	71
6	Cross Examination By Mr. Falk	98
7	Cross Examination (Contd) By Mr. Falk	105
8	Redirect Examination By Mr. Bogle	124
9	Re-Cross Examination By Mr. Falk	133
10	Further Redirect Examination By Mr. Bogle	134
11	Further Re-Cross Examination By Mr. Falk	142
12	Further Re-Cross Examination (Contd) By Mr. Falk	145

9 DR. AMY SWAN

10	Direct Examination By Mr. Bogle	173
11	Cross Examination By Mr. Falk	237

11 MELANIE CORA RUBIO

12	Direct Examination By Mr. Falk	271
13	Cross Examination By Mr. Bogle	281

13 DAMEON BROWN

14	Direct Examination By Mr. Falk	287
15	Cross Examination By Mr. Bogle	308
16	Redirect Examination By Mr. Falk	313

16 Court's Exhibits: Marked: Received:

17 1-3 convictions 157 157

18

19 State's Exhibits:

20	1 conviction	191	191
21	2 -295 Indictment	194	194
22	3 -2408 Indictment	196	196

22

23

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25

1 10-15-2018 PROCEEDINGS

2 THE COURT: Ladies and gentlemen, I am about to
3 call the case entitled The State of South Carolina,
4 County of Beaufort, in reference to the care and
5 treatment of Dameon Brown. Is it Damon or Dameon?

6 MR. BROWN: Dameon.

7 THE COURT: Thank you, sir. I appreciate that.
8 Ladies and gentlemen, this is a civil case. This is a
9 civil term of court. The State has brought this case
10 under the sexually violent predator law of South
11 Carolina, and what the State is doing is seeking a
12 civil commitment of Mr. Brown for long term control,
13 care, and treatment in a secure facility. Ladies and
14 gentlemen, again, I remind you this is not a criminal
15 proceeding seeking incarceration. But, rather, a
16 proceeding concerning civil commitment.

17 Now, ladies and gentlemen, the State of South
18 Carolina alleges or claims that Mr. Brown is a sexually
19 violent predator under the law, and the defendant in
20 this case, or, I'm sorry, the Respondent in this case
21 denies that he is a sexually violent predator, and,
22 therefore, the burden of proof will be on the State to
23 present evidence sufficient to satisfy you, as jurors,
24 beyond a reasonable doubt, that Mr. Brown is a sexually
25 violent predator. And, ladies and gentlemen, if the

CALLING OF THE CASE

1 State is unable to meet that burden as to even one of
2 the elements of the claim, Mr. Brown will be entitled
3 to a finding that he is not a sexually violent
4 predator.

5 Again, ladies and gentlemen, there are a number of
6 questions I need to ask you in regards to this case. I
7 understand that some of it may be a bit sensitive.

8 Ladies and gentlemen, if there's any question that you
9 need to respond to, and you do not want to stand and to
10 announce it in front of your fellow jury panel, you are
11 welcome to ask me if you may approach, and I encourage
12 you to do that.

13 Ladies and gentlemen, I also emphasize that it is
14 a vitally important, and also under the oath you took,
15 that if any of these questions apply to you, you need
16 to respond to them. If, for some reason, I were to
17 find out that you didn't disclose something that you
18 were required to and you sat as a juror in the case, I
19 would have to declare a mistrial, which would mean you
20 would undo anything that had been done that far.

21 Ladies and gentlemen, these attorneys are ready to
22 go. The Respondent's ready in this case. We want to
23 go ahead and take care of this matter, and we certainly
24 don't want anything to jeopardize it. So, I just
25 emphasize the importance of disclosure where it's

CALLING OF THE CASE

1 necessary.

2 Ladies and gentlemen, the first thing I need to
3 ask you is, is there any member of the jury panel who
4 knows Mr. Dameon Brown, if so, please stand.

5 (No response.)

6 THE COURT: Additionally, ladies and gentlemen,
7 does anyone know, and I know you don't know him, does
8 anyone know anything about the crimes that he is
9 alleged that had occurred in the past regarding Mr.
10 Brown, if so, please stand.

11 (No response.)

12 THE COURT: And when I say do you know Mr. Brown,
13 is anyone related by blood, connected by marriage, have
14 a close personal relationship, special relationship, or
15 know any of his family, if so, please stand.

16 (No response.)

17 THE COURT: Ladies and gentlemen, the following
18 are also potential witnesses in this case, and it is a
19 list of people. And I need to know are you related by
20 blood, connected by marriage, have a close personal
21 relationship, or are a special friend of any of these
22 potential witnesses.

23 They include Melanie Rubio, Shannon Hollman,
24 Sheila David, Alvin Dough, Corey Brown, Dajuan Dough,
25 Minor 3, Minor 2, or Minor 1, or Dr.

JURY SELECTION

1 Amy Shaw.

2 Again, is anyone related by blood, connected by
3 marriage -- am I correct?

4 MR. BOGLE: Swan.

5 THE COURT: Swan. I apologize. Dr. Amy Swan.

6 Again, is anyone related by blood, connected by
7 marriage, have a close personal relationship, or
8 any special friendship with any of those people or any
9 of their family members, if so, please stand.

10 (No response.)

11 THE COURT: Ladies and gentlemen, has any member
12 of the jury panel ever been the victim of a violent
13 crime, if so, please stand.

14 (Juror responds.)

15 THE COURT: Yes, ma'am, if you would just give me
16 your name and juror number.

17 JUROR: I'm Elizabeth Tucker, 297.

18 THE COURT: Mr. Tucker, would you like to talk to
19 me in private, or are you comfortable where you are?

20 JUROR: I was raped.

21 THE COURT: Okay. Ma'am, can you tell me how long
22 ago that was?

23 JUROR: I was 18.

24 THE COURT: All right. Ma'am, what I need to
25 understand is this is not a criminal case, obviously,

JURY SELECTION

1 but there are going to be discussions about past
2 potential crimes against Mr. Brown including sexual
3 assaults. I need to know if you can be fair and
4 impartial in the trial of this case based on the nature
5 of it. If -- you're shaking your head no. So, I am
6 gonna go ahead and excuse you, but I appreciate you
7 being here, and thank you for letting us know.

8 JUROR: Yes, ma'am.

9 THE COURT: Ladies and gentlemen, I am gonna have
10 to open that question up a little bit broader. Again,
11 I asked if anyone had been a victim of violent crime,
12 and, of course, that would include any type of
13 potential sexual assault or any other type of violent
14 crime. But I also need to ask even a broader question
15 of whether or not anyone in your immediate family has
16 ever been the victim of a violent crime or any type of
17 sexual crime? That would include your parents, your
18 sisters and brothers, your children, your grandparents,
19 and that's a little beyond immediate family, the real
20 definition, but I want to know if you have any
21 experience, and the important part about this, ladies
22 and gentlemen, is whether or not you can be fair and
23 impartial in the trial of this case based on your past
24 experience.

25 (Juror responds.)

JURY SELECTION

1 THE COURT: Ma'am, give me your name and jury
2 number.

3 JUROR: Mary Mallet, 168.

4 THE COURT: Would you like to come talk to me or
5 no, are you comfortable? Okay.

6 JUROR: When I was a student at the University of
7 South Carolina in Columbia, I was attacked one evening,
8 and --.

9 THE COURT: Okay. Were you -- you were assaulted?

10 JUROR: I was assaulted, right.

11 THE COURT: Okay. All right. Ma'am, can you be
12 fair and impartial in the trial of this case?

13 JUROR: Maybe not.

14 THE COURT: And I appreciate the candor. That's
15 what I need to know because everyone's entitled to a
16 fair and impartial trial. So, I'm gonna go ahead and
17 excuse you. Give me your number again.

18 JUROR: 168.

19 THE COURT: Number 168. All right, ma'am. I'm
20 gonna excuse you, but thank you for being here. I
21 appreciate it.

22 Ma'am, your name and juror number.

23 JUROR: 244, Denise Rizario.

24 THE COURT: Yes, ma'am, would you like to speak
25 with me?

JURY SELECTION

1 JUROR: Yes, please.

2 THE COURT: Come on around. And I'm gonna talk to
3 both these gentlemen too. Sir, as well, your name and
4 juror number?

5 JUROR: William Robinson, 238.

6 THE COURT: Mr. Robinson.

7 JUROR: I'd like to speak to you.

8 THE COURT: Please. And sir?

9 JUROR: Juror Number 13, Carter Baumhoer. I would
10 like to speak to you as well.

11 THE COURT: Absolutely. All right. Thank you,
12 gentlemen. Come on up. And can you give me each of
13 their numbers as they're coming up so the lawyers can
14 find them. Okay. Thank you.

15 THE BAILIFF: Juror 244, Your Honor.

16 THE COURT: Hi. Thank you.

17 (Off-the-record discussion
18 held.)

19 THE COURT: Thank you.

20 JUROR: Yes, my daughter was sexually assaulted by
21 my ex-husband.

22 THE COURT: Okay. Can you be fair and impartial
23 in the trial of this case?

24 JUROR: I don't know.

25 THE COURT: Okay. And---

JURY SELECTION

1 JUROR: It could go either way. I don't know. I
2 may say yes. I'm a professional counselor also.

3 THE COURT: Oh.

4 JUROR: So, I would like to say that I could be.

5 THE COURT: Okay.

6 JUROR: But when push come to shove, I don't know.

7 THE COURT: Okay.

8 JUROR: And domestic violence with my sister was
9 killed by a family member. So --

10 THE COURT: Okay. And that's my next question.

11 JUROR: Yes.

12 THE COURT: Okay. You can't say for sure. I have
13 to know for sure. So, I'll excuse you, and I
14 appreciate that, and I, I completely understand. So,
15 thank you.

16 JUROR: Thank you very much.

17 THE COURT: Thank you. Number 244 is excused.

18 THE BAILIFF: This way, ma'am.

19 (Judge talks to the attorneys
20 off the record and explains what
21 the juror had said.)

22 THE COURT: Okay. All right. Come on, sir.

23 THE BAILIFF: Juror 238, Your Honor.

24 THE COURT: Nice to meet you, sir.

25 JUROR: Yeah, thank you. So, my wife was raped

JURY SELECTION

1 and my son was -- I mean my brother was killed. Shot.

2 THE COURT: Okay.

3 JUROR: So --.

4 THE COURT: Okay. Okay. My question to you is
5 this. Understanding that one has nothing to do with
6 the other---

7 JUROR: Right.

8 THE COURT: ---it's a completely different case,
9 and I need to make sure you understand that there will
10 be allegations, obviously, about some prior sexual
11 assault. Can you be fair and impartial in the trial of
12 this case?

13 JUROR: I don't think so.

14 THE COURT: And I appreciate that. I'm gonna
15 excuse you.

16 JUROR: Okay.

17 THE COURT: Mr. Robinson, thank you again. You're
18 excused, sir.

19 THE COURT: 238 is excused.

20 THE BAILIFF: Juror 13, Your Honor.

21 THE COURT: Nice to meet you.

22 JUROR: Both of my parents have been victims of
23 sexual assault. I -- my biological mother was raped by
24 my father, and that's why I'm here. And my mother --
25 the one, the lady I call mom, was abused since she was

JURY SELECTION

1 a kid by her family.

2 THE COURT: Okay.

3 JUROR: I don't know if I could be partial.

4 THE COURT: Okay. And that's what I need to know.

5 JUROR: Okay.

6 THE COURT: Okay. I'm gonna go ahead and excuse
7 you, but I appreciate it. Thank you. Thank you. All
8 right. Number 13 is excused.

9 THE BAILIFF: Juror 22, Your Honor.

10 JUROR: Hi, Your Honor.

11 THE COURT: Nice to meet you, sir.

12 JUROR: Hi, nice to meet you too. So, what I
13 wanted to disclose is that, in the last year, my oldest
14 daughter, who's 24, disclosed to my wife and I that she
15 had been sexually assaulted, but, at the same time, I
16 was gonna say I believe I could still serve
17 impartially. But I did---

18 THE COURT: And you could be fair and impartial?

19 JUROR: Yeah, I did want to disclose that.

20 THE COURT: And I -- that's exactly what I needed
21 to know, sir.

22 JUROR: Okay.

23 THE COURT: Thank you. That's appropriate. I
24 appreciate it.

25 THE BAILIFF: You staying with us?

JURY SELECTION

1 JUROR: Yes, sir.

2 THE COURT: Ladies and gentlemen, I'm just gonna
3 go ahead and kind of open this up a little bit more.
4 Has anyone here ever been -- and this would be
5 considered a violent crime, but also I just wanted to
6 make sure you understood, anyone here been either
7 accused of or a victim of domestic violence?

8 Also, is there anyone here who either you or a
9 family member has been accused of a sexual assault?

10 It could be in a lot of different scenarios, but I
11 need to know that as well. So, I want those people to
12 come talk to me as well. So, come on around.

13 THE BAILIFF: Juror 266, Your Honor.

14 THE COURT: Okay. How are you?

15 JUROR: I'm great.

16 THE COURT: Sir, all right. So.

17 JUROR: In '90, '94, in the City of Beaufort, the
18 Public Works, and my ex-girlfriend broke in my house,
19 and then she lied and said I raped her. So, they
20 locked me up for it.

21 THE COURT: But you were never convicted of
22 ever---

23 JUROR: No, I got Dunn to -- to get me out of
24 that.

25 THE COURT: Okay.

JURY SELECTION

1 JUROR: And then the year before last up in
2 Florence---

3 THE COURT: Okay.

4 JUROR: ---the guy came in the house and raped my
5 girlfriend.

6 THE COURT: Okay.

7 JUROR: So, I ain't too much.

8 THE COURT: You don't want to sit.

9 JUROR: Nah.

10 THE COURT: You don't feel comfortable enough.
11 All right. Mr. Singleton, I'll excuse you. Okay. 266
12 is excused. Thank you.

13 THE BAILIFF: Juror 37, Your Honor.

14 (Off-the-record discussion
15 held.)

16 THE COURT: It doesn't have anything to do with
17 this case. It's just something that we want to know
18 just as far as the case is concerned. I just want to
19 make sure you can be fair and impartial, and
20 understanding, like I said, this has nothing to do with
21 domestic violence, but I want to make sure, and it's
22 the question the lawyers asked me. Are you comfortable
23 sitting on this case?

24 JUROR: Yes.

25 THE COURT: Okay. Thank you. I appreciate it.

JURY SELECTION

1 JUROR: Okay.

2 THE COURT: Number 37 is gonna stay with us.

3 THE BAILIFF: Juror 28, Your Honor.

4 THE COURT: Nice to meet you, sir. Come on in.
5 Get a little closer.

6 JUROR: I was accused and convicted in 2003 of
7 domestic violence.

8 THE COURT: Okay. Do you remember what was -- the
9 degree?

10 JUROR: Something like it was my daughter.

11 THE COURT: Okay. And that is -- okay. So, I
12 just need to know from you, just so I understand, it
13 doesn't affect your ability to be fair and impartial in
14 the trial of this case understanding this has nothing
15 to do with domestic violence.

16 JUROR: Okay.

17 THE COURT: It's just a question I'm required to
18 ask.

19 JUROR: I mean I can be---

20 THE COURT: Do you feel fine?

21 JUROR: I can be -- you know.

22 THE COURT: Okay. Let me ask you. What did you
23 get as a sentence when you were convicted of that
24 charge? Do you remember?

25 JUROR: It was in Beaufort County.

JURY SELECTION

1 THE COURT: Well, it was here in Beaufort County.

2 JUROR: Yes, ma'am.

3 THE COURT: But I'm saying did you, did you get
4 time served or did you get ~~in~~

5 JUROR: I did 30 days here.

6 THE COURT: You did 30 days. Okay. That's
7 absolutely fine.

8 JUROR: Okay.

9 THE COURT: Okay. I appreciate it, Mr. Brown.
10 You're gonna stay with us.

11 JUROR: Okay.

12 THE COURT: Number 28's gonna stay with us.

13 THE BAILIFF: Juror 131, Your Honor.

14 THE COURT: Sir, what is your number again?

15 JUROR: 131, Steve Hobbs.

16 THE COURT: Come on up. Come a little closer.

17 JUROR: I was -- what am I looking for?

18 THE COURT: Accused?

19 JUROR: Accused.

20 THE COURT: Okay.

21 JUROR: Accused, yeah, two different times of
22 domestic violence.

23 THE COURT: Okay. No convictions?

24 JUROR: No, they were all found not guilty.

25 THE COURT: This case has nothing to do with

JURY SELECTION

1 domestic violence. It's just a question I'm required
2 to ask. I just need to make sure you can be fair and
3 impartial in the trial of this case.

4 JUROR: Okay.

5 THE COURT: It has nothing to do with that.

6 JUROR: Oh, all right.

7 THE COURT: So, you okay?

8 JUROR: All right. Yeah.

9 THE COURT: Okay. All right I appreciate you
10 staying with us. Okay. Number 131's gonna stay with
11 us.

12 THE BAILIFF: Juror 41, Your Honor.

13 THE COURT: Hi, how are you?

14 JUROR: Nice to meet you.

15 THE COURT: Nice to meet you. 41.

16 JUROR: I have a little altercation with my
17 husband a few years back.

18 THE COURT: Okay.

19 JUROR: But I mean---

20 THE COURT: Okay. This case has really nothing to
21 do with domestic violence. I want you to know that.

22 JUROR: Yeah.

23 THE COURT: Again, I just want to make sure. It's
24 a question I have to ask. But can you be fair and
25 impartial in the trial of this case?

JURY SELECTION

1 JUROR: Yes.

2 THE COURT: Okay. Thank you.

3 THE BAILIFF: Juror 73, Your Honor.

4 JUROR: My sister's daughter, about 20 years ago,
5 was assaulted sexually by her stepfather, my sister's
6 second husband.

7 THE COURT: Okay.

8 JUROR: My sister was in school in Atlanta, and he
9 was assaulting her while she wasn't home.

10 THE COURT: Okay.

11 JUROR: And it had a just very disruptive effect
12 on her life as she grew up, and even as an adult now,
13 and it went on for like six months.

14 THE COURT: Okay. Was she, was she a minor at the
15 time when this occurred?

16 JUROR: Yeah, she was 14, and he was convicted.

17 THE COURT: Okay. What I need to know from you in
18 this -- in this case, to prove under this statute the
19 State's gonna have the burden of proving that Mr.
20 Dameon was previously convicted of sexual assault.
21 And, in doing that, they're gonna have to show in one
22 of those prior sexual assaults, that it involves a
23 minor. I need to know whether or not you can be fair
24 and impartial in the trial of this case understanding
25 that what happens here is absolutely completely

JURY SELECTION

1 separate from what happened to your niece, and I need
2 to make sure you can make that separation.

3 JUROR: I'm not sure that I can.

4 THE COURT: Okay. I'm gonna go ahead and excuse
5 you.

6 Number 73 is excused.

7 THE BAILIFF: Juror 313, Your Honor.

8 THE COURT: Come a little closer.

9 JUROR: I was just -- I don't even -- it's so long
10 ago. I was one night in jail for I guess drunk and
11 disorderly with my wife---

12 THE COURT: Okay.

13 JUROR: ---a couple of times.

14 THE COURT: Okay.

15 JUROR: And I guess (inaudible)...

16 THE COURT: Okay. And it was just one night?

17 JUROR: And I just plead guilty the next day.

18 THE COURT: Okay.

19 JUROR: I don't even know why she wants to charge
20 me..

21 THE COURT: Okay.

22 JUROR: I just wanted you to know.

23 THE COURT: Okay. And I appreciate that. This
24 case has nothing to do with domestic violence.

25 JUROR: Okay.

JURY SELECTION

1 THE COURT: So, I'm not concerned. It's just a
2 question I'm required to ask. Again, what's most
3 important is that you can be fair and impartial in the
4 trial of this case.

5 JUROR: Yes.

6 THE COURT: And I just need to make sure you can
7 do that.

8 JUROR: Yes, ma'am.

9 THE COURT: I appreciate it. Number 313 is gonna
10 stay with us.

11 THE COURT: All right. Ladies and gentlemen,
12 understanding that these are difficult cases, I need to
13 know whether or not you can be fair and impartial in
14 the trial of this case understanding that what is going
15 to be required to be proven by the State is that Mr.
16 Brown has been previously convicted of sexual assaults.
17 And I can tell you, in this specific case, it does
18 involve minors. I know that some people, when they
19 hear that a child is potentially involved, they can't
20 be fair.

21 And, ladies and gentlemen, the whole idea behind
22 the justice system and a trial is that we have fair and
23 impartial jurors. I need you to be able to listen to
24 the evidence that's put out. I need you to be able to
25 make fair decisions as to all parties in this case.

JURY SELECTION

1 So, if I have anyone who absolutely cannot do that
2 based on the nature of this case, if so, please stand.

3 (Jurors respond.)

4 THE COURT: All right. I'm gonna have you come
5 talk with me, and I'm gonna have both of you come talk
6 with me as well. Okay. Come on around. Okay.

7 THE BAILIFF: Juror number 4, Your Honor.

8 THE COURT: Hey. How are you?

9 JUROR: All right. I've been a pre-K teacher.
10 Also I've been involved in---

11 THE COURT: Okay.

12 JUROR: ---cases with children.

13 THE COURT: Okay.

14 JUROR: I just can't be fair.

15 THE COURT: All right. I'm gonna go ahead and
16 excuse you, but I appreciate you letting us know that.

17 JUROR: Okay.

18 THE COURT: Thank you. Juror Number 4 is excused.

19 THE BAILIFF: Juror 118, Your Honor.

20 THE COURT: Hey. It's nice to meet you.

21 JUROR: My sister, older sister was --

22 (Off-the-record discussion held.)

23 THE COURT: Okay.

24 JUROR: But I don't know.

25 THE COURT: Oh goodness.

JURY SELECTION

1 JUROR: I have a twin sister, so I don't know.
2 It's just -- that last thing you mentioned kind of
3 rings a bell, but I'm not too sure, but my twin sister
4 might be (inaudible) but I just don't --

5 THE COURT: Okay. You just don't feel
6 comfortable?

7 JUROR: No.

8 THE COURT: Okay. I'm gonna go ahead and excuse
9 you.

10 (Off-the-record discussion
11 held.)

12 THE COURT: Number 118 is excused. Thank you.

13 THE BAILIFF: Juror 125, Your Honor.

14 THE COURT: Hi. Nice to meet you. Okay. You
15 just don't feel comfortable sitting?

16 JUROR: I think I formed an opinion---

17 THE COURT: Okay.

18 JUROR: -- if there's child and previous history.

19 THE COURT: Okay. I'm gonna go ahead and excuse
20 you, but I appreciate your candor very much.

21 JUROR: Okay.

22 THE COURT: Number 125 is excused. Come on
23 forward.

24 THE BAILIFF: Juror 69, Your Honor.

25 THE COURT: Thank you. Hi. Bless your heart.

JURY SELECTION

1 JUROR: I'm estranged from my brother, who was
2 convicted of child pornography, and since I can't
3 forgive him, I don't feel that I could be best---

4 THE COURT: Okay.

5 JUROR: ---in this case.

6 THE COURT: And I appreciate that. I'll go ahead
7 and excuse you. Thank you.

8 (Off-the-record discussion
9 held.)

10 THE CLERK: Number 38.

11 THE COURT: 38?

12 THE CLERK: 38.

13 THE COURT: Are you sure?

14 MR. FALK: Oh, I thought she was later. Oh, that
15 is it.

16 THE COURT: Could I see Number 38 for a minute?
17 Come let me talk to you really quickly, and come on
18 around.

19 THE BAILIFF: Juror 38, Your Honor.

20 THE COURT: Hi. How are you? It's nice to meet
21 you.

22 THE JUROR: Good. How are you?

23 THE COURT: Pleasure. I want to touch base with
24 you. I want to make sure you're okay sitting in this
25 case cause you kind of had a lot of movement.

JURY SELECTION

1 JUROR: I don't, I don't really understand how
2 anybody can be okay with that. I mean like I can come
3 into a case and be as, as unbiased as I can. I mean
4 that's all I can say. But I don't see how anybody can
5 be okay---

6 THE COURT: Okay.

7 JUROR: ---with a case like that.

8 THE COURT: Well, a part of it is that you're
9 gonna be charged by me on the laws in this state, and
10 the law is, is that, until a jury decides someone is
11 guilty---

12 JUROR: Right.

13 THE COURT: ---that they are not.

14 JUROR: Okay.

15 THE COURT: And so that's the whole reason why we
16 have a jury.

17 JUROR: And I mean that's why I didn't raise my
18 hand and say that I couldn't.

19 THE COURT: Okay.

20 JUROR: I mean---

21 THE COURT: Okay.

22 JUROR: ---that's just something that I was
23 listening to.

24 THE COURT: Okay. I mean do you think you could
25 follow the law as I give it to you --

JURY SELECTION

1 JUROR: Yeah.

2 THE COURT: -- and apply it to the facts---

3 JUROR: Yeah.

4 THE COURT: ---as you find them and feel
5 comfortable?

6 JUROR: Absolutely.

7 THE COURT: I want you to stay. Thank you.

8 JUROR: Yeah.

9 THE COURT: Pleasure. Thank you. Number 38, you
10 can go sit down again. Y'all can go sit down. I'm
11 just gonna look over what else I have.

12 Ladies and gentlemen, does any members of the jury
13 panel or a member of your immediate family work with
14 any law enforcement agency, if so, please stand. That
15 would include police. That would include the
16 Solicitor's office or a prosecutor's office, an
17 Attorney's General office, anything along those lines.

18 (Juror responds.)

19 THE COURT: Sir, give me your---

20 JUROR: Wilfried Koch, 149.

21 THE COURT: Yes, sir.

22 JUROR: My son-in-law worked for the Hartville
23 Police in New Jersey.

24 THE COURT: What does he do there?

25 JUROR: Huh?

JURY SELECTION

1 THE COURT: What does he do there? What does he
2 do for them?

3 JUROR: He's a police officer.

4 THE COURT: He's a police officer. All right,
5 sir. Thank you. You may be seated.

6 Ladies and gentlemen, these are not just
7 qualifying questions. They are just for the attorney's
8 information.

9 All right. Yes, ma'am.

10 JUROR: My husband is a volunteer chaplain for the
11 Town of Bluffton, volunteer.

12 THE COURT: Very good. Give me your name and
13 number.

14 JUROR: Latonya Jenkins, 138.

15 THE COURT: Thank you, Ms. Jenkins. You may be
16 seated. Yes, ma'am.

17 JUROR: My brother worked for the Corrections in
18 Seminole County.

19 THE COURT: Okay.

20 JUROR: He just retired.

21 THE COURT: Give me your name and juror number.

22 JUROR: 133, Cynthia Holmes.

23 THE COURT: Thank you, Ms. Holmes. I appreciate
24 that. Oh, I'm sorry, sir.

25 JUROR: 313. I have a nephew in North Carolina.

JURY SELECTION

1 He's a jailor.

2 THE COURT: He's a -- I'm sorry?

3 JUROR: A jailor.

4 THE COURT: He's a jailor. He works at the jail
5 there. Okay. Thank you, sir. You may be seated.

6 Yes, ma'am.

7 JUROR: Number 137, Linda Jenkins. I have a
8 nephew's who's a -- I think is magistrate in Bluffton,
9 an attorney.

10 THE COURT: Who's your nephew?

11 JUROR: Clifford Bush.

12 THE COURT: Very good. Thank you. You may be
13 seated. I appreciate that. Ladies and gentlemen,
14 anyone else? Does any member of the jury panel hold a
15 degree in either psych -- psychiatry or psychology, if
16 so, please stand.

17 Yes, ma'am.

18 JUROR: I have a Bachelor in Psychology.

19 THE COURT: In psychology. Have you ever
20 practiced psychology or gotten any kind of licensures
21 after that?

22 JUROR: No.

23 THE COURT: Thank you. You may be seated. What
24 was your number again?

25 JUROR: Number?

JURY SELECTION

1 THE COURT: Yes.

2 JUROR: 37.

3 THE COURT: Thank you. I knew that it was Ms.
4 Cameron. Ladies and gentlemen, is any member of the
5 jury panel ever worked for or in any way been connected
6 with a Social Services Agency, a guardian ad litem
7 program, a foster care program, or any other private or
8 governmental entity that investigates or counsels
9 alleged victims of sexual abuse, if so, please stand.

10 JUROR: Debra Malphurs, 169.

11 THE COURT: Yes, ma'am.

12 JUROR: I worked in a private practice where I
13 treated foster care children.

14 THE COURT: Okay.

15 JUROR: And have testified in sex abuse cases.

16 THE COURT: Okay. And I apologize. I wasn't here
17 during the roll call. Tell me what you do.

18 JUROR: I'm a social worker.

19 THE COURT: You're a social worker. Thank you.
20 All right. Ma'am, do you think you can be fair and
21 impartial in the trial of this case?

22 JUROR: Yes..

23 THE COURT: Thank you. I appreciate that. Anyone
24 else? Sir?

25 JUROR: Yes, I'm Juror 80.

JURY SELECTION

1 THE COURT: Yes.

2 JUROR: Pierre-henri Dumas. I speak to kids of
3 off a program in Florida through -- I'm a professional
4 tennis coach and I spend time give -- it's free, but I
5 work with children, and I've been doing this for almost
6 five years now.

7 THE COURT: Okay.

8 JUROR: So, they are just kids, teenagers that are
9 detained, detained --

10 THE COURT: Okay.

11 JUROR: -- for different matters.

12 THE COURT: Okay. All right. And I need to know
13 whether or not you can be fair and impartial in the
14 trial of this case?

15 JUROR: I believe I can, yes.

16 THE COURT: Thank you, sir. I appreciate that.
17 Anyone else?

18 (No response.)

19 THE COURT: Ladies and gentlemen, is there any
20 person on this jury panel who is either a volunteer for
21 or contributes money to any group which has as its
22 primary importance victim's rights or law enforcement
23 rights. And that would include even like a
24 neighborhood watch group. It would include Citizens
25 Against Violent Crime known as CAVE here, or any crisis

JURY SELECTION

1 lines, that type of thing. Here in, in Beaufort, we
2 have CAPA. If you are a member of or contributor to
3 CAPA or anything like -- also there's another program
4 in South Carolina called Darkness to Light. Is anyone
5 here a contributor to or a member of any of these types
6 of groups, if so, please stand.

7 JUROR: I helped out at CAP -- oh, sorry.

8 THE COURT: Yes, ma'am.

9 JUROR: Juror 145. I helped out at CAPA several
10 years ago, but I don't any more.

11 THE COURT: What did you do for CAPA?

12 JUROR: I helped them raise money in their store--

13 THE COURT: Okay.

14 JUROR: -- and other such events.

15 THE COURT: All right. Thank you, ma'am. Let me
16 just ask you, can you be fair and impartial in the
17 trial of this case?

18 JUROR: I'm on the fence being a teacher.

19 THE COURT: You're on the fence.

20 JUROR: And being a teacher.

21 THE COURT: So, you are a teacher?

22 JUROR: Yes.

23 THE COURT: Okay. Again, you can't sit unless you
24 can be fair and impartial.

25 JUROR: No.

JURY SELECTION

1 THE COURT: Okay. And I appreciate that. I'll go
2 ahead and excuse you. Thank you. Ma'am?

3 JUROR: I was an interpreter on CAPA.

4 THE COURT: Okay.

5 JUROR: Years ago.

6 THE COURT: Okay. And, again, I know I've asked
7 you, but I'm gonna ask you again, can you be fair and
8 impartial in the trial of this case?

9 JUROR: Yes.

10 THE COURT: Thank you. I appreciate that, and
11 give me your number one more time. Ms. Cameron, give
12 me---

13 JUROR: 34. 34.

14 THE COURT: Thank you. 34, I'll remember it. yes,
15 Ms. Malphrus.

16 JUROR: 169.

17 THE COURT: Yes.

18 JUROR: Thirty years ago, I was on the Board of
19 CODA.

20 THE COURT: Okay. Thank you, ma'am. And, again,
21 I need to make sure you can be fair and impartial on
22 the trial of this case.

23 JUROR: Yes, ma'am.

24 THE COURT: Thank you. All right. Ladies and
25 gentlemen. Do I have anyone here -- again, I wasn't

JURY SELECTION

1 here during roll call. So, I apologize. Does anyone
2 here that has any background or experience other than
3 maybe a degree in either psychiatry, psychology, or the
4 -- other than those people that have already disclosed.
5 I've already got my person back here who's in social
6 services. Anyone who hasn't already disclosed that
7 they have some type of background, either work history,
8 or education experience, in the law, psychiatry,
9 psychology, anything along those lines?

10 (No response.)

11 THE COURT: Now, ladies and gentlemen, I didn't
12 even ask you, and usually this is my very first
13 question. The attorneys trying this case, we have Mr.
14 Bogle from the Attorney General's Office, Jim Bogle.
15 If you'll stand please just so they can take a look at
16 you. And also Peter Falk here as well.

17 MR. FALK: James Falk.

18 THE COURT: James. I apologize.

19 MR. FALK: Peter's the actor.

20 THE COURT: Pete -- I know you get that all the
21 time, and, Mr. Falk, will you introduce who's with you
22 at the table.

23 MR. FALK: Yes, this is my wife, Morgan Falk. She
24 helps me in my trial.

25 THE COURT: And she calls you Peter Falk.

JURY SELECTION

1 MR. FALK: Dameon Brown, my client.

2 THE COURT: Thank you. I appreciate that. My
3 question is is anyone related by blood, connected by
4 marriage, have a close personal relationship, special
5 friendship, ever been employed by, or ever use the
6 services of these attorneys that are trying this case,
7 or if they know Mr. Falk's wife, if so, please stand.

8 (No response.)

9 THE COURT: Very good. Ladies and gentlemen, is
10 any member of the jury panel or any of your immediate
11 family members ever been subject to a civil commitment
12 proceeding or been voluntarily or involuntarily civilly
13 committed, if so, please stand.

14 (No response.)

15 THE COURT: Ladies and gentlemen, has any member
16 of the jury panel ever been involved in any prison
17 ministry programs, any outreach programs, or anything
18 having to do with any persons who are incarcerated, if
19 so, please stand.

20 (No response.)

21 THE COURT: And, hopefully, lastly, ladies and
22 gentlemen, is there any member of the jury panel who is
23 related by blood or marriage to any other member of the
24 jury panel, if so, please stand.

25 (No response.)

JURY SELECTION

1 THE COURT: All right. Is there anything further
2 required -- oh, sir, yes.

3 JUROR: I have a question.

4 THE COURT: Yes..

5 JUROR: Wilfried Koch, 149. When you talk about
6 civil, my nephew's son was in a case where he was in
7 school, and I don't know if it's sexual assault, but it
8 ended up in court where -- and he got, later on, he got
9 a judgment for his son, and my wife had become like in
10 charge of the money.

11 THE COURT: Okay. His conservator.

12 JUROR: Yeah, that, that's it.

13 THE COURT: Okay.

14 JUROR: Conservator. Does that count?

15 THE COURT: Well, it's good for us to know. Do
16 you know why he was committed?

17 JUROR: Yeah, the -- he was committed. He was in
18 school and he was singled out by his teacher. Had to
19 go underneath the table, and was accused of like a
20 Nazi.

21 THE COURT: Okay.

22 JUROR: And that ended up in court.

23 THE COURT: Okay. All right.. This obviously has
24 nothing to do with that.

25 JUROR: Okay. That's what I wanted to know.

JURY SELECTION

1 THE COURT: But -- absolutely nothing to do with
2 that. I want to make sure that you can be fair and
3 impartial in the trial of this case.

4 JUROR: Oh, I can be fair.

5 THE COURT: I appreciate it, sir.

6 JUROR: Okay.

7 THE COURT: Thank you for the disclosure. Anyone
8 else?

9 (No response.)

10 THE COURT: Ladies and gentlemen, after this, I'm
11 gonna find this panel qualified and you are all gonna
12 be subject to be chosen as potential jurors in the
13 trial of this case. You cannot have an uh-oh moment
14 of, once you've been chosen, I can't be fair and
15 impartial. It is vitally important, ladies and
16 gentlemen, that you can be fair and determine the facts
17 in this case. And if you're gonna be able to apply
18 those facts to the law, which I will give you. Again,
19 it is so important, in the jury trial system, ladies
20 and gentlemen, this is why we have 12, 13 jurors to
21 decide these matters because 12 and 13 heads are much
22 better than one will ever be.

23 All right. Sir, you can come talk to me, yes.

24 All right. Anyone else? Because, again, after

25 this, I am going to qualify you and you are going

JURY SELECTION

1 to be subject to being on this jury. Okay. All right.

2 Sir, what's your number?

3 THE BAILIFF: 286.

4 THE COURT: Okay. Pleasure, sir.

5 JUROR: Nice to meet you. I have to say this
6 because I want to make sure that I'm fair. I think
7 that I can do it.

8 THE COURT: Okay.

9 JUROR: But I've always said my two boys, if
10 somebody ever did that, I would shoot them. So, I want
11 to make sure. I think -- they're not my children.

12 THE COURT: Right.

13 JUROR: So, I believe I could be fair.

14 THE COURT: Okay.

15 JUROR: But I would shoot them if they were my
16 children.

17 THE COURT: Okay. And I understand that. But,
18 again, you understand it, it is not your children.

19 JUROR: Right.

20 THE COURT: And it is completely separate and
21 again---

22 JUROR: Yes.

23 THE COURT: ---it's a---

24 JUROR: I just wanted to bring up here and say
25 that because, if I didn't, it's been wearing on me for

JURY SELECTION

1 the last four or five questions.

2 THE COURT: And I appreciate that. Let me just
3 ask you, can you be fair and impartial?

4 JUROR: I think I can.

5 THE COURT: I've got to know you can.

6 JUROR: I don't know. I mean I want to serve.
7 But, at the same time, I'm -- I don't know.

8 THE COURT: Okay. Do this. Go take a seat and
9 let me talk to the lawyers. Okay?

10 THE JUROR: Okay.

11 THE BAILIFF: This way, sir.

12 (Bench conference.)

13 THE BAILIFF: Juror 241.

14 MR. BOGLE: The number please.

15 THE BAILIFF: 2-4-1.

16 JUROR: I don't know if I can be impartial.
17 Especially, if it means this man's already been accused
18 of -- I mean not accused, but he's already been
19 charged.

20 THE COURT: Uh-huh. (Affirmative).

21 JUROR: Sex crimes against children, I don't know
22 if I can be impartial.

23 THE COURT: Okay. I appreciate it. You have---

24 JUROR: I tried to get through it, but --

25 THE COURT: Okay. I gonna excuse you, but I

JURY SELECTION

1 appreciate that. Number 241 is excused.

2 THE BAILIFF: Juror 98, Your Honor.

3 THE COURT: Hi. Nice to meet you.

4 JUROR: I have a question. My son was, was
5 convicted for domestic violence.

6 THE COURT: Your son was?

7 JUROR: Yes.

8 THE COURT: Okay. That is -- well, I appreciate
9 that. That wouldn't disqualify you in any way. This
10 doesn't really have anything to do with domestic
11 violence.

12 JUROR: I just wanted to make sure cause I
13 heard---

14 THE COURT: I'm glad you told me that.

15 JUROR: Okay.

16 THE COURT: Can you be fair and impartial in this
17 case?

18 JUROR: Yes.

19 THE COURT: Okay. Thank you. Number 98 is gonna
20 stay with us.

21 (Off-the-record discussion
22 held.)

23 THE COURT: Okay. Number 286, where is my
24 gentleman? Where did he go? I'm gonna excuse you.
25 Thank you. Okay. Anyone else? Anyone else for cause?

JURY SELECTION

1 MR. BOGLE: No, Your Honor.

2 THE COURT: Okay. All right. So, I think we've
3 got just enough. Anyone---

4 MR. FALK: I'll make my motion for cause.

5 THE COURT: I'll put it on the record.

6 (Off-the-record discussion
7 held.)

8 THE COURT: All right. I find this panel
9 qualified. You want to go ahead and draft your list?

10 Ladies and gentlemen, what happens now is this.
11 Those of you who have been qualified, your name is
12 being placed into the computer. It's going to draft a
13 random list. The attorneys are gonna be entitled to
14 about 15 minutes or so to look at that list. They will
15 then exercise strikes.

16 With all that said, ladies and gentlemen, by the
17 clock in the back of the courtroom, it is five minutes
18 til 12:00. I am going to go ahead and give you a break
19 while they're doing that so you're not sitting around
20 waiting. You are welcome to refresh yourselves. If
21 you-all will be back here by 12:15, we are gonna strike
22 this panel and I'm gonna send the rest of you off. I
23 will also tell you, ladies and gentlemen, that, even if
24 you do get chosen as jurors in this case, I'm probably
25 gonna send you-all to lunch after this anyway. So,

JURY SELECTION

1 everyone's getting a break after this.. The only thing
2 I ask, ladies and gentlemen, during this 20-minute
3 break that you have, do not leave the courthouse unless
4 you absolutely have to. And if you absolutely have to,
5 just go let Minor 2 know so she's got your badge. I
6 can't start until every one of you are here, and we are
7 literally going to be counting heads looking for. And
8 if you're out smoking, I need to know where you are
9 okay. Okay. All right. Y'all, twenty-minute break if
10 you would. Be back at 15 after.

11 (Break.)

12 MR. BOGLE: One alternate or two?

13 THE COURT: We're gonna do one alternate, y'all, I
14 think. Just one alternate, okay, Mr. Falk?

15 (Break.)

16 THE BAILIFF: All jurors are present, Your Honor.

17 THE COURT: Very good. Thank you, ladies and
18 gentlemen. You're a few minutes early. Well, let me
19 ask, are you ready to go?

20 MR. BOGLE: Yes, Your Honor.

21 MR. FALK: Yes, Your Honor.

22 THE COURT: Fabulous. All right. Ladies and
23 gentlemen, I need to tell you this. If you think your
24 number has been struck, it has not because you all now
25 have been reassigned new numbers. So, for the

JURY SELECTION

1 attorneys, you are striking between, for the actual
2 panel, between one and 20 with the numbers on the left.
3 All right. So, again, ladies and gentlemen, if you
4 think that you hear your number struck, you haven't.
5 Just sit tight. Okay.

6 THE CLERK: Please begin.

7 MR. BOGLE: Strike Juror 3.

8 THE CLERK: First strike, strike for the
9 Defendant.

10 MR. FALK: Respondent strikes Juror Number 17.

11 THE CLERK: Second strike, Plaintiff.

12 MR. BOGLE: Juror Number 4.

13 THE CLERK: Second strike, second strike,
14 Respondent.

15 MR. FALK: Juror Number 12.

16 THE CLERK: Third strike, Plaintiff.

17 MR. BOGLE: Juror Number 18.

18 THE CLERK: Third strike, Respondent.

19 MR. FALK: Juror Number 8.

20 THE CLERK: Fourth strike, Defendant, or I'm
21 sorry, Plaintiff.

22 MR. BOGLE: Juror Number 20.

23 THE CLERK: And fourth strike, Respondent.

24 MR. FALK: Juror Number 6.

25 THE CLERK: Selecting one alternate. Numbers 21,

JURY SELECTION

1 22, 23, striking for the Plaintiff.

2 MR. BOGLE: Juror Number 22.

3 THE CLERK: And strike for the Respondent.

4 MR. FALK: Juror Number 23.

5 THE CLERK: Calling back strikes for the
6 Plaintiff, striking Number 3, Number 4, Number 18,
7 Number 20, and Number 22. Is that correct?

8 MR. BOGLE: That is correct.

9 THE CLERK: Thank you. Strikes for the
10 Respondent, striking Number 6, Number 8, Number 12,
11 Number 17, and Number 23. Is this correct?

12 MR. FALK: Yes.

13 THE CLERK: Okay. Thank you.

14 THE COURT: All right. Ladies and gentlemen, when
15 your name is called, please bring all your belongings
16 to come up and take a seat in the jury box. Okay.

17 THE CLERK: Juror Number 272, Norman Solon. Juror
18 Number 5, Daniel Andrade. Juror Number 47, John
19 Coggins. Juror Number 169, Debra Malphurs. Juror
20 Number 202, Lisa Newton. Juror Number 28, Mario Brown.
21 Juror Number 167, Robert Magyarosi. Juror Number 37,
22 Claudia Carmona-Aleman. Juror Number 21, Carla
23 Blackmon. Juror Number 81, Tammy Eleftheriou.

24 JUROR: Eleftheriou.

25 THE CLERK: Thank you.

JURY SELECTION

1 THE COURT: Thank you.

2 THE CLERK: Thank you. Juror Number 276, Peggy
3 Spurlock. Juror Number 137, Linda Jenkins. And our
4 alternate is Juror Number 313, Lee Williams.

5 THE COURT: Are there any matters we need to take
6 up regarding jury selection process, Mr. Bogle?

7 MR. BOGLE: None from the State, Your Honor.

8 THE COURT: Mr. Falk?

9 MR. FALK: Just to preserve my earlier objection.

10 THE COURT: Thank you, sir. I appreciate that.
11 Welcome, ladies and gentlemen, as you understand,
12 you're the jury, my jury, for the trial of this case.
13 You will sit tight. I will speak with you briefly, and
14 we'll be back with you.

15 Ladies and gentlemen, you, obviously, have not
16 been chosen as jurors in the trial of this case. I get
17 to excuse you with my thanks. If you need a work
18 excuse, ask the bailiffs in the back. They'll also
19 take your tags. Thank you for being here. We
20 appreciate it.

21 (The jury panel members exit the
22 courtroom.)

23 THE COURT: If I could talk to the attorneys for a
24 moment please..

25 (Off-the-record discussion

JURY SELECTION

1 held.)

2 THE COURT: Ladies and gentlemen, we are talking
3 scheduling. I'm trying to figure out the most
4 efficient way to use your time. There are some
5 pretrial matters I have to take up with the attorneys.
6 There's always some issues as far as witnesses
7 availability. So, I'd asked the attorneys to go talk,
8 really quickly, to any potential witnesses to see how I
9 can do better. All right. All right.

10 (Pause.)

11 THE COURT: Come on around, Mr. Bogle.

12 (Off-the-record discussion held.)

13 THE COURT: Okay. All right. Ladies and
14 gentlemen, that was good news. Because there are other
15 matters we need to take up, I don't want you taking a
16 really long lunch break, and because we will have to be
17 here tomorrow regardless, what I am gonna do is ask
18 you-all to come back tomorrow morning at 9:30. We will
19 complete the case tomorrow, ladies and gentlemen. It's
20 just whether or not I needed to start this afternoon,
21 and I believe we can get everything taken care of as we
22 need to tomorrow.

23 So, I need to give you a few ground rules before
24 we part, ladies and gentlemen. You're gonna hear me
25 say this every time that you walk out of this

REMARKS BY THE COURT TO THE CHOSEN JURY PANEL

1 courtroom, whether it's back to your jury room, whether
2 it's to lunch, whether it's to home, to begin with, you
3 are not to discuss this case with anyone, and that
4 includes each other. You, obviously, haven't heard any
5 of the evidence in the case. You haven't heard my
6 charge on the law, and it'll be inappropriate for you
7 to do that. When you go home this afternoon, the only
8 thing you're allowed to say to any family members,
9 colleagues, whoever, you've been chosen as a juror in a
10 trial of a civil case. You cannot say the parties
11 involved, what the case entails. You cannot say the
12 lawyers involved, and the reason is this. Someone is
13 gonna try to tell you something about something when
14 they know nothing about this case, ladies and
15 gentlemen. And it would be inappropriate for them to
16 give you an opinion or to talk to you in any way about
17 the case. So, I tell you and order you not to discuss
18 it.

19 Additionally, ladies and gentlemen, I don't think
20 there's gonna be anything in the TV, or the newspaper,
21 or the radio, or any other type of news. But you are
22 not to read anything, watch anything, or listen to
23 anything, nor are you to do any independent research.
24 We are gonna give you everything you need to decide
25 this case right here in this courtroom. The lawyers

REMARKS BY THE COURT TO THE CHOSEN JURY PANEL

1 are gonna put up the evidence in the case. I am gonna
2 charge you on the law that's applicable to this case.
3 And it would be highly inappropriate for you to do any
4 outside research.

5 Again, the reason why we have jurors is to bring
6 your common, every day sense to this, and apply them,
7 and to decide the facts. I will give you the law.
8 And, at the end of the case, I'm gonna tell you that
9 you are to apply the law as I give it to you to the
10 facts as you, the jury, find them. You're gonna hear
11 me say a number of times that I have no opinion about
12 the facts of this case, and the reason why is the law
13 does not allow me to have an opinion about the facts of
14 this case. The jury is the sole judge of all facts.
15 I'm the judge of the law, and, again, you are gonna
16 determine the facts of this case from the evidence
17 that's been presented, and you're gonna apply it to the
18 law. And, there, you are gonna render your verdict in
19 this case.

20 All right. So, also, with that said, what are we
21 doing with cell phones these days here? Every
22 courthouse does it differently.

23 THE CLERK: They're not allowed, ma'am.

24 THE COURT: You're not letting them bring them in?

25 THE CLERK: That's right.

REMARKS BY THE COURT TO THE CHOSEN JURY PANEL

1 THE COURT: All right.

2 THE CLERK: Except for lawyers.

3 THE COURT: Ladies and gentlemen, I know some
4 people can't stand not being without their phones.
5 Although you're gonna have to for this one purpose, and
6 for tomorrow, ladies and gentlemen. And the reason why
7 is you can get so much information off of a smart phone
8 these days that I wouldn't want anyone to be tempted.
9 So, this is what I need you to do. I need you to leave
10 your cell phones back in your cars when you come in
11 tomorrow or back at home.

12 Now, I'll tell you two things about that because
13 I'm one of those people that doesn't know anyone's
14 number any more cause, if I don't have my cell phone, I
15 don't know the number. If you think you may have to
16 call day care, nursery, your husband even, whoever, and
17 you don't know their cell number while you're here,
18 make sure you bring that in with you. If you need to
19 use a phone while you're here, simply ask the bailiffs.
20 We're gonna take you to a phone so you can use it.

21 Also, if you're worried about a school or work or
22 someone calling you emergently, like your husband or
23 your wife while you're here or anyone else, tell them
24 to call the Clerk of Court's Office. Give them the
25 phone number, and I will come get you immediately. I

REMARKS BY THE COURT TO THE CHOSEN JURY PANEL

1 don't want you to worry about being out of touch, but,
2 again, I can't have you with a phone. If you have an
3 absolute extreme circumstance where you are really
4 waiting on a vitally important call, I need you to,
5 afterwards, talk with me. And what I can do, if I have
6 to, is have that phone be given to one of the bailiffs
7 so at least they can have it so they can answer it if
8 they need to. That's only in pretty extreme
9 circumstances, ladies and gentlemen, because, again,
10 they're not answering services, and they don't like to
11 be answering people's phone calls because it's a cell
12 phone. Anyone can be calling. Okay. So, that's just
13 to let you know the rules.

14 Also, ladies and gentlemen, I can't start until
15 all 13 of you here. So, if you are running late, I
16 need you to call the Clerks -- Clerk of Court's Office
17 because we're gonna be looking for you. If you fall
18 ill over the evening or you have car trouble, call in.
19 I will send somebody to come get you.

20 All right. I can't try this case without all 13
21 of you are here. Okay. So, please understand that the
22 lawyers, the parties, they're ready to go. We're ready
23 to try this case, ladies and gentlemen, and you are
24 gonna decide this for us tomorrow.

25 All right. So, with that said, ladies and

REMARKS BY THE COURT TO THE CHOSEN JURY PANEL

1 gentlemen, everyone okay? Everyone have any problems
2 for tomorrow, and I will tell you this. You may want
3 to go ahead -- I have no idea how long you-all are
4 gonna deliberate in this case. Obviously that's your
5 purview. But you might want to say that you might be
6 running a little bit late tomorrow afternoon. There's
7 a potential that that could happen. I don't know. I'm
8 just giving you a "in case" in case you're worried.
9 Okay. So, I just want make sure you understand that.
10 Also, if anyone has any issues with, with
11 transportation, let me know that too cause, certainly,
12 we can have a vehicle, you know, pick you up and take
13 you.

14 All right. Ladies and gentlemen, anyone have any
15 concerns whatsoever? Y'all okay for 9:30 tomorrow
16 morning? Does anyone have a problem getting here?
17 Most places, if you can drop off by about 8:15 or so,
18 you can get here either from the south end of Hilton
19 Head or from St. Helena, which I call it the two
20 opposite ends of Beaufort County, you should be able to
21 get here. And, again, don't worry if you're a couple
22 minutes late. It's okay. I know you're coming.
23 Again, I just want to make sure everyone gets here and
24 gets here safely. All right. Does anyone have a
25 problem with that 9:30 with children dropoff or

REMARKS BY THE COURT TO THE CHOSEN JURY PANEL

1 anything along those lines?

2 (No response.)

3 THE COURT: Very good. Okay. All right. Ladies
4 and gentlemen, I look forward to you deciding this case
5 for us. I look forward to seeing you at 9:30 tomorrow
6 morning. The only thing I need for you to do for me
7 right now is I'm gonna excuse you back to your jury
8 room. My bailiffs, who are in the courtroom, you've
9 got Norman. We've got Tom. Rick is somewhere around.
10 Their entire job, there you are, is to take care of
11 you. They are absolutely wonderful, ladies and
12 gentlemen. I will tell you that, as a circuit court
13 judge, which is the highest trial court in the State of
14 South Carolina, I travel the state. I hold court in
15 every courthouse in the state. And, while every
16 courthouse has bailiffs, we have, by far, the best.
17 They are absolutely wonderful. They're really neat
18 people. And where's Minor 2? She's around here too.
19 But if you need anyone while you're here, simply ask
20 them. Their job is to serve you and to take care of
21 you while you're here. So, if you need anything, let
22 them know. They're gonna get good phone numbers for
23 you just so they know how to reach you if we need to
24 contact you while you're here or you're at home during
25 this jury service. Also, I need you to elect a

REMARKS BY THE COURT TO THE CHOSEN JURY PANEL

1 foreperson amongst the 12 of you.

2 Ladies and gentlemen, a foreperson doesn't have
3 any more say than anyone else. They're simply the
4 person that communicates with me regarding scheduling.
5 And they are also the person, and when I send a case to
6 you for your deliberations, they make sure everyone is
7 contributing and talking during the deliberations, and
8 they're also the person that's gonna sign the verdict
9 form at the very end for me.

10 All right. So, once you've elected that person,
11 one I excuse you back here, you're gonna do that today,
12 and they're also gonna show you how to reenter the
13 courtroom tomorrow. You're gonna come through a back
14 door and you're gonna go straight to your jury room in
15 the morning.

16 All right. Ladies and gentlemen, I appreciate
17 y'all being here. I appreciate, again, you deciding
18 this case for us. I also want you to know that, like I
19 told you, we start with 20 cases on the docket. The
20 simple fact that I have jurors willing to try these
21 cases makes them settle, and makes them go away by
22 other means, ladies and gentlemen. For that, we're
23 grateful. You really do so much more work than you
24 will ever know just by being here.

25 All right. So, you're excused. Elect a

REMARKS BY THE COURT TO THE CHOSEN JURY PANEL

1 foreperson for me. Give that name to the bailiffs, and
2 I will see you-all tomorrow morning at 9:30.

3 (The jury exits the courtroom.)

4 THE BAILIFF: The jury's clear, Your Honor.

5 THE COURT: All right. All right. Gentlemen, you
6 tell me. I would love to go straight into -- Mona, do
7 you need a break?

8 THE COURT REPORTER: Just some time to eat
9 something, but I'm good.

10 THE COURT: Okay. Jamie picked you up some food,
11 didn't she?

12 THE COURT REPORTER: I don't know, but I'm good
13 for the next hour, you know.

14 THE COURT: Okay. This is what I'm thinking.
15 Just to let you know my schedule. I have a 1:30
16 summary judgment hearing. I also have a minor
17 settlement, as you-all know, will take five minutes off
18 the record. That's not a big deal for me. I am happy
19 to, if you want to take five minutes, and then go ahead
20 and start these motions or would you like to take a
21 break first? Gentlemen, you, you tell me your
22 pleasure.

23 MR. BOGLE: The two -- the State has two motions
24 in limine, and they're like five-minute motions..

25 THE COURT: Okay.

PRE-TRIAL PROCEEDINGS/MOTIONS

1 MR. BOGLE: They don't take long at all.

2 THE COURT: Okay. And I know Mr. Falk's motions
3 are probably gonna need some testimony.

4 MR. FALK: Yes, correct. Correct.

5 MR. BOGLE: And Dr. Swan's across the---

6 THE COURT: Perfect.

7 MR. BOGLE: ---hall. She's here.

8 THE COURT: Let's do this. Let's just take five
9 minutes right now just so we can all have a little
10 break. Is that okay?

11 MR. FALK: Your Honor, if I can just put one thing
12 on the record.

13 THE COURT: Sure.

14 MR. FALK: Although -- this case you cannot
15 settle, and I don't want the jury to think that one of
16 us are being obstructive, the only reason we're here is
17 because one of these guys are jerks. This is an
18 unseattleable (sic) case. In a criminal case, you can
19 plea bargain, but a civil case---

20 THE COURT: Right.

21 MR. FALK: And I don't---

22 THE COURT: If you want me to, I can instruct the
23 jury that they cannot be---

24 MR. FALK: I don't know. I'm just saying it's---

25 THE COURT: About that, I know. And after I said

PRE-TRIAL PROCEEDINGS/MOTIONS

1 it, I thought the same thing, obviously, as these
2 things just have to be, you know tried. That's the
3 point of that. I am happy to give some kind of
4 instruction to explain that to them when they come back
5 tomorrow.

6 MR. FALK: Do you mind?

7 THE COURT: Absolutely. I can do that. I'll tell
8 you, Mr. Falk, as it came out of my mouth, I thought
9 about it, and I thought well, that probably wasn't the
10 greatest idea. But absolutely. I'll just tell them
11 and make them understand.

12 MR. FALK: Thank you.

13 THE COURT: Absolutely. Okay.

14 MR. FALK: Now, what did we decide to do?

15 THE COURT: Let's -- okay. Let's just take five
16 minutes. Take a restroom break --

17 MR. BOGLE: Okay.

18 THE COURT: -- for whoever needs it, and I'll come
19 back and then let's just work until 1:30, if that's all
20 right with you-all, and then you-all can grab a bite if
21 we still have more to go, and whatever we're doing.

22 MR. FALK: Thank you.

23 (Break.)

24 THE COURT: Okay. Let's -- why don't we take care
25 of, if it's okay, Mr. Bogle, let's take care of your

PRE-TRIAL PROCEEDINGS/MOTIONS

1 two motions to start with, if we could, and then we'll
2 start with Mr. Falk's motions, and get testimony from
3 our doctor. Okay.

4 MR. BOGLE: I've got a first motion in limine, and
5 a second motion in limine.

6 THE COURT: Okay.

7 MR. BOGLE: The first has to do with the location,
8 and I'm gonna be withdrawing this one in about three
9 weeks because they have built a standalone facility for
10 nothing but the sexually violent predator people. It's
11 all in the Broad River campus, but not behind the wire,
12 so to speak, but they're not there yet. So, basically,
13 as Your Honor told the jury, what we have to prove is
14 whether or not he's got sexually violent convictions,
15 and does he have a mental abnormality that makes him
16 likely to reoffend unless he's confined for long term
17 control, care, and treatment, and that's it.

18 Now, at present, for the next three weeks or so,
19 the sexually violent predator treatment program is
20 located in two unused wings at Broad River Prison.
21 Those guys who are there, they're sealed off from the
22 main prison. So, there's no interaction between them
23 and the inmates doing time for crimes. The only thing
24 they get from the prison system is food.

25 THE COURT: Okay.

PRE-TRIAL PROCEEDINGS/MOTIONS

1 MR. BOGLE: Medical care, security, counseling,
2 everything, that is sealed off and separate from the
3 prison. And so what we don't want is any comments
4 about him being punished, about him being committed for
5 life, about him being -- about this being a prison,
6 about it being a former Death Row, which one of the
7 wings that are on his. We think, under Rule 401, it --
8 it's outside the relevance evidence. It would confuse
9 the jury, prejudice the jury, distract them from what
10 they have to prove.

11 We think any comments about it being the Death
12 Row, at a prison, behind the wire, a life sentence,
13 those sort of things would be inappropriate, and not
14 part of what we have to prove.

15 THE COURT: Mr. Falk.

16 MR. FALK: I never talked about it being part of
17 Death Row, but I do think that it's -- they're entitled
18 to know what a secure facility means, and that he's not
19 just going to a mental hospital.

20 THE COURT: I agree with you.

21 MR. FALK: And so, there's some, you know---

22 THE COURT: Yeah, I think there's some leeway
23 there, but, of course, we don't refer to it as the
24 former Death Row, and all the rest of it. They need to
25 understand a committed facility is just that. It's a

PRE-TRIAL PROCEEDINGS/MOTIONS

1 lock down facility.

2 MR. FALK: In A secure facility.

3 THE COURT: Okay. All right. What's your next
4 one?

5 MR. BOGLE: The second motion has to do with the
6 treatment, and, again, I just told you what we have to
7 prove, and that's all we have to prove. The jury's got
8 to decide whether or not he's been convicted of the
9 right kind of crime, and has the mental abnormality,
10 and whether or not he can control it.

11 Now, treatment is a separate creature. Treatment
12 is administered by, as Your Honor may know, it used to
13 be the Department of Mental Health that handled the
14 day-to-day treatment. About a year and a half ago, by
15 statute, they were allowed to contract out with a
16 private company called Correct Care.

17 THE COURT: Right.

18 MR. BOGLE: Correct Care now does all the
19 treatment at the location we have now. They will run
20 the place. They built the place where they're gonna go
21 in about two weeks.

22 THE COURT: All right.

23 MR. BOGLE: So, any reference to the treatment and
24 what it is or what it might be, first off, is
25 speculative because we don't know what he might get

PRE-TRIAL PROCEEDINGS/MOTIONS

1 until he gets there. Second, it's not Dr. Swan's job,
2 and not---

3 THE COURT: Because she doesn't do a treatment
4 plan, correct?

5 MR. BOGLE: No. No.

6 THE COURT: My understanding is Dr. Swan---

7 MR. BOGLE: She does not.

8 THE COURT: ---never -- and people that do reviews
9 never do a treatment plan.

10 MR. BOGLE: No.

11 THE COURT: That's not their job. That's
12 different.

13 MR. BOGLE: Even for annual reviews---

14 THE COURT: Okay.

15 MR. BOGLE: ---she's reviewing the treatment to
16 see how far along they've gotten.

17 THE COURT: Right.

18 MR. BOGLE: But she doesn't plan it. That's not
19 her role. Wouldn't be her job. Correct Care, I'm
20 told, has four different phases. That's all run by
21 Correct Care.

22 THE COURT: Okay.

23 MR. BOGLE: So, to go into that, I think, would be
24 outside the realm of what we have to prove, and could
25 distract the jury, and it wouldn't really be---

PRE-TRIAL PROCEEDINGS/MOTIONS

1 THE COURT: Right.

2 MR. BOGLE: ---within the expert's knowledge and,
3 and, and, and competence. I think that -- now, at the
4 same time, I understand -- there is a difference in
5 opinion here as to whether they should be inpatient,
6 confined for treatment, versus outpatient. I'm fine to
7 go there. But as far as the specifics of what kind of
8 treatment, I think that should be off limits for the
9 reasons I've stated.

10 THE COURT: Mr. Falk, let me ask you this. Has
11 there been occasions in these types of trials where
12 someone has opened the door---

13 MR. FALK: Well, I think---

14 THE COURT: -- respectively speaking, cause I
15 could see that being a problem.

16 MR. FALK: This is gonna be that case, Your Honor.

17 THE COURT: Okay.

18 MR. FALK: And, first of all, my client has had
19 sex offender treatment while he's been at SCDC. And
20 part of Dr. Swan's opinion is that that is not
21 sufficient. So, you can't say one without saying why.
22 This is gonna be different.

23 THE COURT: Okay.

24 MR. FALK: Also, I believe that Dr. Swan is well
25 aware with Correct Care, I think she has some

PRE-TRIAL PROCEEDINGS/MOTIONS

1 affiliation with them or certainly has some bit of
2 familiarity.

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

4 MR. FALK: And to the extent that she knows what
5 kind of treatment they offer, I think I'm fair to
6 asking that question. If she doesn't know, she doesn't
7 know but I think she knows the types of treatment
8 because I'm -- A, I think there has to be an
9 understanding of what kind of treatment can be done
10 inpatient, what kind of treatment can be done
11 outpatient, and also, is this a treatment that's got to
12 be done at a medical facility or is -- I mean is there
13 something inherently about the type of treatment that
14 has to be done at a medical facility because this
15 treatment is basically talk therapy.

16 THE COURT: Okay.

17 MR. FALK: And, and what I'm saying so that does
18 not have to be done. And, I guess, that really relates
19 to whether it can be inpatient or outpatient, but Dr.
20 Swan, I believe, in her opinion, will opine that what
21 he had was not enough, and, therefore, I think she has
22 to explain why.

23 MR. BOGLE: Well, again, it goes back to what we
24 have to prove. I mean she will testify -- one of the
25 things they always look at is did the offender get sex

PRE-TRIAL PROCEEDINGS/MOTIONS

1 offender treatment in the prison.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. BOGLE: And he did, but the program was fairly
4 short at that time. It's been expanded to a much
5 longer program right now. And the question is though,
6 aside from all that, does he have a mental abnormality
7 that he cannot control. That's what the statute
8 requires us to prove. And so, if he can't control it
9 on the outside, by definition, he has to be confined
10 for treatment.

11 THE COURT: I just think it depends on how far Dr.
12 Swan goes. I mean, I don't know, I'm gonna tell you,
13 until I hear her testimony, I won't know what I'm gonna
14 allow you to go into. But it seems to me that it's
15 fair game. Again, I don't know. I guess either we're
16 gonna have to do a proffer or you're gonna have to do
17 her direct during the trial, and then you're gonna, at
18 that point, say, before we start, can I, you know, can
19 I approach, and, again, I don't know what her
20 testimony's gonna be. I mean, I don't even have the
21 benefit of her report. I'm assuming she did a report.
22 Is that correct?

23 MR. BOGLE: That's correct.

24 THE COURT: All right. May I have a copy of that
25 if you have an extra copy? But I don't think that was

PRE-TRIAL PROCEEDINGS/MOTIONS

1 in my materials, but --

2 MR. BOGLE: We don't file it with the courthouse.

3 THE COURT: Right.

4 MR. BOGLE: And I---

5 THE COURT: And I understand that.

6 MR. BOGLE: If you want it, I'll give you a copy.

7 THE COURT: That would be great just so I -- I just
8 don't know the extent of her opinion. So,
9 unfortunately, I'm gonna have to tell you that I need
10 to take that motion in limine under advisement. I'm
11 gonna need to hear either what she testifies to this
12 afternoon as to that or as to when she testifies in the
13 morning.

14 MR. FALK: Which one do you have?

15 MR. BOGLE: That's the July 5---

16 MR. FALK: Okay.

17 MR. BOGLE: ---report she did on your client.

18 THE COURT: Okay. Cause she did two reports,
19 correct?

20 MR. FALK: Correct.

21 MR. BOGLE: She did.

22 THE COURT: I saw that in the notes. Okay. Okay.
23 All right. So, that's under advisement. So, those are
24 your two motions. Anything else, Mr. Bogle, from you?

25 MR. BOGLE: Nothing from the State, Your Honor.

PRE-TRIAL PROCEEDINGS/MOTIONS

1 THE COURT: All right. Mr. Falk.

2 MR. FALK: Your Honor, I'll sort of take these in
3 the order that I think, Your Honor, that the Court
4 can---

5 THE COURT: Okay.

6 MR. FALK: And so I filed a motion that's been
7 entitled Respondent's Motion in Limine to exclude
8 certain testimony. It's a two-page motion.

9 THE COURT: I've got it.

10 MR. FALK: It's the last one that I filed.

11 THE COURT: Got it.

12 MR. FALK: And I would anticipate that the State
13 is going to, in his opening arguments, quote from the
14 legislative history of the act, and use such terms as,
15 you know, that there's an extremely dangerous group of
16 sexually violent predators. I don't think that that
17 language is necessary in order for the jury to get an
18 understanding of this case. I mean, and, honestly,
19 everybody who has committed a sexually violent offense
20 sort of gets thrown into this mechanism to determine
21 whether or not, you know, we get to the Court in this
22 State.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. FALK: Granted, not that they don't all get
25 through the Prosecutor's Review Committee and the

PRE-TRIAL PROCEEDINGS/MOTIONS

1 Multidisciplinary Panel, but I mean everybody's in that
2 group. My client has certainly not been found to be a
3 sexually violent predator. I just don't think that
4 that language is necessary in front of the jury. And I
5 think it can be prejudicial to my client.

6 THE COURT: Is it -- is your concern the extremely
7 violent, cause I have a problem with -- that's the
8 statutes. So, how am I gonna tell him that he can't
9 talk about the law?

10 MR. BOGLE: If I may approach? Sometimes I read
11 this verbatim. Sometimes I paraphrase it. But here's
12 the---

13 THE COURT: Here's what you said.

14 MR. BOGLE: Here -- well, there -- they wrote it.
15 Not me.

16 THE COURT: This is the statute. Okay.

17 MR. BOGLE: They wrote it.

18 THE COURT: Okay.

19 MR. BOGLE: Sometimes I've done this in my opening
20 argument. Just the bracketed part.

21 THE COURT: Oh, I understand. I just have a hard
22 time, Mr. Falk, not letting him cite the statute.

23 MR. FALK: Sure. But Your Honor---

24 THE COURT: Yeah.

25 MR. FALK: ---he's got to prove that he's a

PRE-TRIAL PROCEEDINGS/MOTIONS

1 sexually violent predator.

2 THE COURT: Okay..

3 MR. FALK: You're gonna read that definition as
4 part of your charge, and you're gonna, you know, what,
5 what it means to be a sexually violent predator. I
6 don't know why the leg -- that's -- they basically
7 codified the legislative history saying why we put this
8 on the books. I mean you certainly wouldn't be
9 charging that kind of language in a criminal case. I
10 mean, you would read the statute, but not --

11 THE COURT: Can we avoid that in some way? Can we
12 just avoid it as---

13 MR. BOGLE: I can paraphrase it without reading it
14 verbatim.

15 THE COURT: How about you paraphrase it? I mean
16 what I would be upset or concerned about is the word
17 extremely dangerous.. I mean mentally abnormal, I think
18 -- how about we just paraphrase it somehow---

19 MR. BOGLE: Okay.

20 THE COURT: ---and we don't use extremely. Okay.
21 So, I think that's granted to some extent.

22 MR. FALK: I don't want the jury to think that my
23 client is gonna be eligible -- well, it's the annual
24 review.

25 THE COURT: Right..

PRE-TRIAL PROCEEDINGS/MOTIONS

1 MR. FALK: I think, just like we can't talk about
2 this, he can be committed for life or something like
3 that, also knowing that he can maybe get out next year
4 is also not fair. I mean, I think the reality is the
5 average turnaround time is probably at least five
6 years.

7 THE COURT: Okay.

8 MR. FALK: And so him -- I'm afraid that will get
9 the jury thinking well, maybe he'll just go for a year.
10 So, I don't think it's fair for the jury, cause that's
11 not part of what they have to prove.

12 THE COURT: Okay. I think we talked about that
13 back in chambers. I think the only way you mention
14 that is that the doctor, that's -- when she lists the
15 things that she does---

16 MR. FALK: Correct.

17 THE COURT: ---one of them is an annual review.
18 But I don't know how the jury would know that that
19 would be an annual review for sexually violent
20 predators. It could be for anyone.

21 MR. BOGLE: I think what she'll probably say was
22 she -- among -- I'll have her list the type of
23 evaluation she does for sexual predator, then sexual
24 violations in general.

25 THE COURT: Okay.

PRE-TRIAL PROCEEDINGS/MOTIONS

1 MR. BOGLE: She'll mention pre-commitments such as
2 this. She's mentioned annual reviews for people
3 already committed.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. BOGLE: And then she'll go down the list.

6 THE COURT: Okay.

7 MR. BOGLE: So that---

8 MR. FALK: Does she have to say already committed?
9 Why doesn't she just say annual reviews? I think
10 that's vague. Maybe they won't -- okay. All right.
11 I'm just---

12 MR. BOGLE: I like---

13 THE COURT: I understand. I just don't think the
14 jury's even gonna catch that.

15 MR. FALK: Okay.

16 THE COURT: Okay.

17 MR. FALK: All right. This next one is a little
18 bit more substantive.

19 THE COURT: Yes.

20 MR. FALK: And it deals with the Hare -- the CLR
21 test. Hare is a gentleman who developed the test.

22 THE COURT: Right.

23 MR. FALK: And there's two issues. One is a --
24 one is sort of going to more of a Council motion about
25 the Hare.

PRE-TRIAL PROCEEDINGS/MOTIONS

1 THE COURT: Uh-huh. (Affirmative).

2 MR. FALK: But it is, according to Hare, it's a
3 measure of psychopathy, which I think is an extremely
4 charged term. I do not believe that that is part of
5 her diagnosis nor do I think that psychopathy is listed
6 as a DSM diagnosis. So---

7 THE COURT: What is psychopathy? Someone help me
8 out.

9 MR. BOGLE: I got to get my witness on the stand
10 to kind of clarify this cause I'm not the expert.
11 Basically---

12 THE COURT: Okay. I don't want to hear the
13 lawyer's version of it.

14 MR. FALK: I think it's---

15 THE COURT: I want to hear the doctor.

16 MR. BOGLE: All right. He's been diagnosed with
17 antisocial personality disorder.

18 THE COURT: Okay.

19 MR. BOGLE: Which is documented criminal history
20 prior to age 15 that just goes on and on and on and on.

21 THE COURT: Okay.

22 MR. BOGLE: It's basically disregard for the rules
23 of others.

24 THE COURT: Okay.

25 MR. BOGLE: The question is there's a significant

PRE-TRIAL PROCEEDINGS/MOTIONS

1. number of people who are -- have those diagnosis, but
2. they are also psychopaths. And so it's more like an
3. adjective describing then an independent diagnosis.

4. Let me put Dr.---

5. THE COURT: So -- but -- just so I understand, the
6. doctor has not made a diagnosis of him having
7. psychopathy, correct?

8. MR. BOGLE: It's not a -- it's not a diagnosis,
9. correct?

10. DR. SWAN: It's not a diagnosis, but he does have
11. it.

12. THE COURT: Okay. I need you to testify.

13. MR. BOGLE: Yeah.

14. THE COURT: I need to hear the expert.

15. MR. FALK: This is gonna be a full -- because then
16. I can ask her questions about my next motion.

17. THE COURT: Absolutely. If, if that's okay, yeah.

18. MR. BOGLE: So, this is gonna be just about---

19. THE COURT: And just your next motion is as to the
20. second one, which was the---

21. MR. BOGLE: Psychopathy.

22. MR. FALK: No, no. I mean the next motion.

23. THE COURT: I know. It's the Static-99. Is that
24. what you're talking about?

25. MR. FALK: No. And then there's also the two-page

PRE-TRIAL PROCEEDINGS/MOTIONS

1 one about the Hare test also.

2 MR. BOGLE: Right now we're doing the Hare, right?

3 THE COURT: I thought we were talking about the
4 Hare test right now.

5 MR. FALK: No, what I was trying to say, I think
6 there's two things. I think there's a 404, 403, kind
7 of 402 relevancy issue about being able to use the word
8 psychopath.

9 THE COURT: Okay.

10 MR. FALK: But that also I would want to challenge
11 her credentials for administering and opining about the
12 Hare.

13 THE COURT: Got it. Okay.

14 MR. BOGLE: I got it.

15 THE COURT: Okay. Let's swear her in please.

16 Thereupon,

17 DR. AMY SWAN

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BOGLE:

22 Q Okay. Dr. Swan, is it -- for the record, your
23 full name.

24 A Amy C. Swan. That's S-W-A-N.

25 Q Let me go through this thing quickly. You're a

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 licensed forensic psychologist, correct?

2 A Well, I'm a licensed clinical psychologist.

3 Q Clinical psychologist.

4 A Forensic is just a different variant of that.

5 Q Okay. And, by forensic, we mean interaction with
6 the legal system with psychology?

7 A Yes.

8 Q Okay. And you live in the State of Florida?

9 A Yes, I do.

10 Q But you have a contract with the Department of
11 Mental Health to do these type evaluations, is that right?

12 A Yes, I do.

13 Q Both precommitment, like this one, and annual
14 reviews for guys already committed?

15 A That is correct.

16 Q Okay. Have you had specialized training and
17 experience beyond -- in the field of forensic assessment of
18 sex offenders beyond just your doctorate degrees?

19 A I have. I've had 960 hours in -- regarding sex
20 offenders, and 59 courses or 300 hours of those were in
21 assessing the risks that a sex offender would commit another
22 sexual offense.

23 Q Okay. Have you provided seminars and workshops on
24 this stuff, this specialty?

25 A I have.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Have you diagnosed people with paraphilias,
2 deviant sexual behaviors for getting to sexually violent
3 predators both in Florida and elsewhere?

4 A Yes, in Florida, Missouri, Iowa, and South
5 Carolina.

6 Q What states are you licensed to practice
7 psychology in?

8 A Missouri, Florida, and South Carolina.

9 Q Okay. And as far as memberships and
10 organizations?

11 A I am a -- I was appointed to the Board of
12 Psychology by the Governor of Florida. I served on that
13 board for ten years, and then I was appointed to -- as
14 chairman of the probable cause committee. I did that for
15 five years, and then I took a break for a year, and I was
16 recently reappointed in November. I'm also American -- a
17 member of the American Psychological Association, the
18 Association for the Treatment of Sexual Abusers, which is a
19 large international organization devoted to the study and
20 research of sex offenders. I'm a member of the Florida
21 Chapter. I'm a member of the International Association of
22 Forensic Nurses, and all -- the Association of State and
23 Provential Psychology Boards, and the Sex, Sex Offender
24 Civil Commitment Program Network.

25 Q Now, do you have experience working directly with

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 sex offenders and for how long?

2 A I have worked with sex offenders for approximately
3 30 years.

4 Q Okay. How about how have you assessed sex
5 offenders in fields other than sexually violent predator
6 cases?

7 A Yes, I have.

8 Q Okay. About how many sex offenders, for all
9 different types of reasons, have you assessed in these 30
10 years?

11 A Well, I have assessed 1,016 sexually violent --
12 potentially sexually violent predators, and in excess of 500
13 other types of sex offender evaluations.

14 Q And have you, on occasion, been hired by the
15 defense to evaluate somebody in a sexually violent predator
16 case?

17 A Yes, I'm routinely hired by the defense in
18 Florida.

19 Q Okay. Now, what types of assessments have you
20 done with regard to sex offenders?

21 A I have done annual reviews. I have done
22 precommitment evaluations. I've done sentencing
23 evaluations. I have done criminal cases. So, I do
24 psychosexuals for the courts, and I also do child
25 pornography evaluations.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Okay. With regard to sexually violent predator
2 cases, were you hired as the first psychologist at the
3 Florida Civil Commitment Center?

4 A I was.

5 Q Okay. And you began doing evaluations there, is
6 that right?

7 A Well, I actually -- I evaluated this -- the
8 sexually violent predators that were detained there.

9 Q Uh-huh. (Affirmative).

10 A And then I left the next year, and began doing
11 independent evaluations.

12 Q Okay. And have you previously recognized -- been
13 recognized as an expert witness by the Circuit Courts of
14 South Carolina and Florida with regard to forensic
15 psychology in sexually violent predator cases?

16 A Yes, I have, and also in Missouri.

17 Q And about how many times total?

18 A I do not know specifically with regards to
19 sexually violent predator -- well, with regards to sexually
20 violent predators, it's been close to 300 now, and probably
21 a little over 35 times in South Carolina.

22 Q Okay. We'd like to move to have her recognized as
23 an expert witness in the field of forensic psychology, Your
24 Honor.

25 THE COURT: Do you want to ask her anything?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 MR. FALK: I have no questions about that.

2 THE COURT: Thank you.

3 MR. FALK: I am specifically talking about this
4 one area.

5 THE COURT: Okay. Well, let's just get to the one
6 area? Can we get there? Is that okay?

7 MR. FALK: That's what I think makes sense.

8 THE COURT: Is that okay? Can we just get to the
9 one area we're talking about.

10 MR. BOGLE: Go straight there. Now, we're talking
11 about the Hare test, right?

12 A Yes.

13 Q The PC -- it's called PCL-R?

14 A Yes.

15 Q Now, regarding that, what is the PCL-R assessment?

16 A It is a psychological test that is normed and
17 standardized, and it assesses psychopathy.

18 Q Okay. Let's back up for a second. For this
19 particular guy, you were, you were ordered by the Court to
20 evaluate Dameon Brown, correct?

21 A Yes.

22 Q And what diagnosis did you come up -- would you
23 arrive at -- would you -- what mental abnormalities and
24 personality disorder did you diagnose Mr. Brown with?

25 A I diagnosed him with exhibitionistic disorder,

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 other specified paraphilic disorder, hebephilia, and also
2 antisocial personality disorder.

3 Q So, two mental abnormal -- two mental abnor --
4 mental abnormalities, and one personality disorder?

5 A That is correct.

6 Q Okay. Now, as far as psychopathy or being a
7 psychopath, is that an independent diagnosis?

8 A It is not a diagnosis. It is a construct that we
9 use in psychology. And what -- the way it works is that
10 about 75 to 80 percent of men who are incarcerated in
11 prisons have antisocial personality disorder, which is a
12 persistent, repetitive pattern of the violation of the
13 rights of others and social norms. About 20 to 25 percent
14 of those with antisocial personality disorder have
15 essentially a supercharged version of that, and it is very
16 pervasive, and they do not have the normal internal
17 conscience that guides them as most people do. And they
18 typically believe that whatever they want is just fine, and
19 they don't care who they hurt to get it.

20 THE COURT: Is there a way to -- because we don't
21 talk about the common known term of a psychopath, and
22 people talk about that as being something as a label
23 almost. Is there any way to talk about what you're
24 saying without using the word psychopath because you
25 kind of did it for me, and, and you said super charged.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 THE WITNESS: Yes.

2 THE COURT: And that made sense to me. Is there
3 any way to speak of it other than to call someone a
4 term of psychopath?

5 THE WITNESS: No.

6 THE COURT: There isn't?

7 THE WITNESS: There's not.

8 THE COURT: Okay.

9 THE WITNESS: Because you can't adequately convey
10 what this person is without that term.

11 THE COURT: Okay.

12 Q Going back to the actual test itself, can you
13 explain how it works, the PCL-R?

14 A Yes.

15 Q It's an assessment of psychopathy, is that
16 correct?

17 A Yes.

18 Q Developed in the '80s by a Dr. Robert Hare?

19 A Yes, the original concept of psychopathy developed
20 in the 1940s.

21 Q Okay.

22 A There was a gentleman -- a doctor, Cleckley, and, in
23 the '70s, he wrote a book, the Mask of Sanity, and many of
24 the characteristics that he described of psychopathy are
25 incorporated into the version that we have today.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Okay. How does it work? You administer---

2 A Okay.

3 Q How do you, how do you make this -- how do you
4 make this determination? How does it work?

5 A The Psychopathy Checklist Revised is a 20-item
6 scale for the assessment of psychopathy, and it's used in
7 clinical and research settings. And it uses a
8 semi-structured interview, and you also need file review and
9 collateral information. And it measures the personality
10 traits and behaviors related to the concept of psychopathy.
11 The assessment provides two domains. One is called Factor
12 1, and that is the inner-personal---

13 MR. FALK: Your Honor, may I---

14 THE COURT: Yes.

15 MR. FALK: Could we adjust her mike cause I'm
16 having a hard time hearing.

17 THE WITNESS: Oh.

18 THE COURT: Yes.

19 THE WITNESS: I don't even have it in front of me.
20 I'm sorry.

21 THE COURT REPORTER: I don't think it's on, Norm.

22 THE WITNESS: It's on green. So---

23 THE BAILIFF: It's on. Yeah, it's on.

24 THE WITNESS: Okay.

25 THE BAILIFF: You need to keep it fairly close to

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 you.

2 THE WITNESS: Okay. Can you hear now?

3 THE COURT: Thank you.

4 MR. FALK: A little better.

5 Q Okay. So, there are two domains. The first one
6 is inner-personal affective, and the second one is lifestyle
7 antisocial. And it's -- those two domains are broken down
8 into four facets. Factor -- Facet 1 is inner-personal.
9 Facet 2 is affective. Facet 3 is lifestyle. And Facet 4 is
10 antisocial.

11 Q Now, in the materials you prepared for me, there's
12 a reference to the concept of psychopathy.

13 A Yes.

14 Q There's a reference to Barrios in 1996. Cleckley
15 in 1979. That's the Cleckley you talked about a minute ago?

16 A Yes, it is.

17 Q Okay. Okay. So, why is it important for experts
18 like you to conduct this assessment in the context of a
19 sexually violent predator case?

20 A Okay. The importance is that psychopathy plus
21 sexual deviance has been found to predict sexual recidivism.

22 THE COURT: Okay.

23 A And the Psychopathy Checklist Revised is the most
24 widely used assessment tool for psychopathy, and it has been
25 described as state of the art, and a standard of practice

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 instrument. So, that's why we use this particular
2 instrument above all the other ones that are available out
3 there. There has been research on this instrument for
4 approximately 30 years, if not more. The first version was
5 -- came out in 1991, and based on new research and
6 additional information, the revised or the second edition
7 was issued in 2003.

8 Now, numerous researchers have found that the
9 Psychopathy Checklist Revised has an important role in the
10 assessment of candidates for civil commitment, and---

11 Q Why is that?

12 A Because psychopathy plus sexual deviance is such a
13 strong predictor of whether an individual will commit
14 another sexual crime after they've received a sanction.

15 Q So, if he's got the sexual deviance of the other
16 specified paraphilic disorder, hebephilia, and the sexual
17 deviance of the exhibition disorder, as well as the
18 personality disorder of antisocial, having factors
19 indicating psychopathy, does that like a double whammy so to
20 speak?

21 A It is---

22 Q As research---

23 A ---a double whammy.

24 Q Has research indicated that that kind of thing,
25 coupled with the other, the combination of this increases

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 the likelihood to reoffend?

2 A Absolutely. And there was a study that sort of
3 teased out how it works. Hilderbrand, Ryder, and Vogel
4 found that the recidivism rate for individuals who had high
5 psychopathy plus sexual deviance was 71 percent. For
6 individuals with high psychopathy, but no sexual deviance,
7 it was 25 percent.

8 Q All right. It's 25 percent of what?

9 A Of sex off -- of, of individuals in general.

10 Q Okay.

11 A Okay.

12 Q Okay.

13 A For low psychopathy plus sexual deviance, the
14 recidivism rate was 30 percent. And for low psychopathy,
15 and no sexual deviance, the recidivism rate was 18 percent.

16 Q So, I take it this thing has been peer reviewed?

17 A Absolutely. I---

18 Q For years?

19 A I have a bibliography of 644 articles including a
20 high percentage of peer reviewed articles and journals --

21 Q Uh-huh. (Affirmative).

22 A -- and I personally have over three hundred
23 articles and books on psychopathy just because that's been
24 an area of interest of mine.

25 Q Have you, in this context of precommitment or even

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 an annual review, have you done this test on people before?

2 A Repeatedly, yes.

3 Q And have you testified about it in the courts of
4 in the Circuit Courts or Superior Courts, whatever
5 they're called in Florida before, about this test and the
6 score you got on it?

7 A Absolutely.

8 Q Have you been recognized, within your expertise,
9 by the Courts to give this test and testify about it?

10 A That is correct.

11 Q Any idea, any idea how many times this has
12 happened?

13 A No, I don't use the Psychopathy Checklist on every
14 individual.

15 Q Uh-huh. (Affirmative).

16 A If I go into an interview, and the person has no
17 criminal history, and there's no indication at all that they
18 would have antisocial personality disorder, then I wouldn't
19 administer this instrument because clearly it's unlikely
20 that they'd be a psychopath.

21 Q Okay.

22 A But if they have a strong criminal history, and I
23 think there's a possibility, then I do administer the
24 instrument.

25 Q And in this particular case involving Mr. Brown,

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 he had a strong criminal history going back to a -- prior to
2 age 15, even much younger than that, correct?

3 A Age 13, yes.

4 Q Age 13. And so was there enough indicators there,
5 based on his criminal history and him heading toward a
6 diagnosis of antisocial personality disorder to make you
7 take that extra step, and have the---

8 A That -- yes.

9 Q Excuse me. Administer the PCL test?

10 A Yes.

11 Q Now, there's been some talk about how the website
12 for this test that says that two doctors are supposed to do
13 it, and then average their scores together. What, what do
14 you have to say -- are you familiar with that?

15 A Yes, that doesn't really happen in clinical
16 practice, but what happens is this. When I was trained on
17 the psychopathy checklist the first time, it was a four-day
18 training, and, at the end of that training, they gave us
19 vignettes. And in order to be certified, we had to score
20 those vignettes and send them in. And, if we passed,
21 essentially --

22 Q Uh-huh. (Affirmative).

23 A -- then we were, were certified.

24 Q Okay.

25 A I received an additional training just a few years

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 ago just to update my skills because this is an important
2 part of what I do. And, in that training, we paired up with
3 another psychologist, and we scored them independently, and
4 then checked our scores to ensure that we were, you know,
5 within a good range of each other.

6 Q So, that was a function of training?

7 A Yes. Now, what happens, in Florida, is that we
8 have two state evaluators on every case.

9 Q Okay.

10 A And if there's a discrepancy in our PCL -- our
11 scores, then, prior to trial, we have to meet and, you know,
12 figure out where the discrepancy, and come to an agreement
13 about what the appropriate score would be.

14 Q So, the practice in Florida, where much of your
15 practice has been, is to have two doctors for the state in
16 every sexually violent predator case?

17 A That is correct.

18 Q And they're both running this test, if they see
19 the circumstances appropriate, they're both running the PCL
20 test, and they get together and see if there's any
21 discrepancies between the two?

22 A Absolutely.

23 Q Okay. Now, the PCL-R we call it, it doesn't --
24 does it, by itself, predict sexual offense -- reoffending?

25 A It does not, but, in combination with sexual

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 deviance, then it is a strong predictor.

2 Q Okay. Why do you continue to use it---

3 A Well, it can---

4 Q ---or why do use it in certain cases?

5 A Well, it -- first of all, you mentioned there'd
6 been some criticism about the---

7 Q Uh-huh. (Affirmative) ..

8 A ---PCL-R. And, as I said, it -- standing alone,
9 it doesn't predict sexual recidivism, and it does not
10 consistently related to penile plethysmographic measures a
11 deviant sexual arousal.

12 Q Okay.

13 A They're two separate things.

14 Q Okay.

15 A However, when you combine them, it results in a,
16 finding that can indicate that the person is of a
17 particularly high rate of reoffending.

18 Q Now, in this case, we don't have penile
19 plethysmograph or PPG. Don't have one in this case.

20 A No, we do not.

21 Q Okay. Why do you think that the PCL is of
22 assistance in this case?

23 A Okay. Well, the PCL-R has many strengths. It
24 uses risk factors that have been empirically derived, and
25 that means the only factors on the test have been gleaned

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 from research about psychopathy. And it has explicit rules
2 for scoring the factors, and then combining them into a
3 total psychopathy score. It has explicit coding rules. It
4 has a cutoff of what is a psychopath, and what's not a
5 psychopath. And although some scoring decisions do require
6 some judgment, the evaluator who has -- who appropriately
7 conducts these assessments and has the proper training can
8 arrive at an accurate score that reduces bias.

9 Q And you have administered this test before?

10 A Yes.

11 Q Many times?

12 A Yes.

13 Q You've been -- you've testified about it on the
14 witness stand in Florida many times?

15 A And Missouri.

16 Q And Missouri. Not yet in South Carolina until
17 now?

18 A Well, no, I've---

19 Q Or have you?

20 A I believe I've testified about the PCR in Florida
21 -- in South Carolina---

22 Q In South Carolina.

23 A ---yes.

24 Q Okay. I got -- I wasn't sure. I was gonna ask
25 you that.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A Yes.

2 Q So, you have testified at -- about the use of this
3 test, this score, in sexually violent predator cases in
4 South Carolina?

5 A Yes.

6 Q Okay. And what are the quality control methods
7 used about the PCL-R?

8 A The quality control methods are that the scoring
9 rules are explicitly detailed in a 222-page manual, which
10 I'm holding right here. It -- the -- there it is. There
11 have been inter rater reliability studies, and that's, as I
12 explained to you, comparing two evaluators and making sure
13 that they get a score that's within a certain acceptable
14 range. Every psychological test has to demonstrate inter
15 relator -- inter rater reliability or it's not an acceptable
16 test. The test has been revised over time as research has
17 provided more information. The revision in 2003 was because
18 so much more research had been done on psychopathy, and
19 those studies were incorporated into the test.

20 Q And this has to do with the more -- they realized
21 more factors contributed to this?

22 A That's correct.

23 Q Okay.

24 A So, those are the quality control measures in
25 general. For me, personally, I've attended trainings on the

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 PCL-R. As I've mentioned---

2 Q Uh-huh. (Affirmative).

3 A ---I've had to score vignettes. I have attended
4 numerous trainings on the PCL-R at the Association for the
5 Treatment of Sexual Abusers.

6 Q Now, let me stop you right here on that. The
7 ATSA, Association for Treatment of Sexual Offenders --
8 Sexual Abusers.

9 A Yes.

10 Q They have a protocol, do they not, for evaluating
11 guys like Mr. Brown?

12 A That is correct.

13 Q And is the PCL one of the things listed on that
14 protocol?

15 A Yes.

16 Q Doesn't mean you have to use it every time.

17 A No.

18 Q But it's one of the options available---

19 A Yes.

20 Q ---if the diagnosis like antisocial is pointing
21 that way?

22 A That's correct..

23 Q Is that kind of what happened here?

24 A Yes, it is.

25 Q You mentioned in the materials you give me about

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 possessing a number of research articles about psychopathy
2 as you've collected over the last 20 years or so.

3 A Yes.

4 Q And you score all things according to what's in
5 the manual, is that right?

6 A Absolutely.

7 Q Okay.

8 A And what's important is you don't rely on your
9 memory. Each, each item has an item description.

10 THE COURT: Uh-huh. (Affirmative).

11 A It tells you what sources of information you
12 should look for, and it tells you how to score it, and then
13 it shows you the scoring criteria. So --

14 THE COURT: Let me ask you, Dr. Swan, is there a
15 group of forensic psychologists that do not, doctors,
16 that don't believe in this test?

17 THE WITNESS: I have not found any that, in my
18 personal experience, that don't believe in it. I have
19 some who've never been trained. So they don't
20 administer it.

21 THE COURT: And I understand that.

22 THE WITNESS: Yeah.

23 THE COURT: Are there any articles or are there
24 any, you know, peer reviews or anything that says, is
25 that, listen, we don't like this test, we don't think

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 that it's a good predictor because of whatever?

2 THE WITNESS: I have not seen any of those because
3 the evidence is so strong that it's a good predictor
4 combined with sexual deviance.

5 THE COURT: Okay. So, I'm sure you understand.
6 So, when we talk about the penile plethysmography
7 test---

8 THE WITNESS: Yes.

9 THE COURT: ---there are people who say---

10 THE WITNESS: Who---

11 THE COURT: ---that that is not---

12 THE WITNESS: Absolutely.

13 THE COURT: Right. Is that something that we get
14 in this test or not really?

15 THE WITNESS: I have not been exposed to that in
16 my experience, and I've been doing this evaluating or
17 working with sex offenders for 30 years.

18 THE COURT: Thirty years. Okay. All right.

19 BY MR. BOGLE::

20 Q Is it safe to say the seminars you went to about
21 this, if there's a lot of criticism out there in the
22 community, the psychological community, it's gonna be
23 brought up at the seminar like that, isn't it?

24 A Absolutely.

25 Q Because that's what happens in these things.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A That's, that's correct.

2 Q Pros and cons, but not here? It hasn't
3 happened---

4 A I have not---

5 Q Admittedly, the issues with the PPG, we've talked
6 about it at prior hearings---

7 A Yes.

8 Q But that hasn't -- that kind of criticism,
9 documented criticism, has not been coming up in this?

10 A That is correct. The, the most -- the criticism
11 that comes up most frequently is that they, they've done
12 studies, and they found that evaluators for the defense
13 arrive at lower scores than evaluators for the State. And
14 the only thing I can say about that is that, if you
15 consistently read the manual---

16 Q Uh-huh. (Affirmative).

17 A ---and use these item descriptions in every single
18 case to guide your score, you should receive an accurate
19 score.

20 Q Okay. Is the PCL consistent with recognized
21 scientific laws and procedures?

22 A It is. It was developed in a manner consistent
23 with specific scientific laws and procedures. The PCL-R
24 factors were empirically derived, which means that the
25 factors found to correlate with psychopathy in the research

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 were utilized to formulate the instrument, which was then
2 subjected to validation. And what I mean by validations is
3 they, they compare the psychopathy checklist to other
4 psychological tests that are -- that assist similar
5 constructs. For example, on the MMPI-2, there's a Scale 4
6 that is called psychopathic deviant. So, they want to make
7 sure that this test conforms with other testing measures.
8 And then, after it's been validated, then they do
9 cross-validations where they use the test on different
10 populations to determine if they -- it -- if you achieve the
11 same results in those populations.

12 Q Now, in this particular case, after -- as I gather
13 your testimony, Doctor, after seeing all the criminal
14 history going back to age you said 13 on Mr. Brown, you felt
15 it appropriate to administer the PCL?

16 A Yes.

17 Q Is he a psychopathy or a psychopath was part of
18 his -- was a descriptor or an adjective to go with his
19 antisocial personality disorder, is that---

20 A That is correct.

21 Q You keep calling it a construct. I'm not sure
22 what that means..

23 A That means that it is, it is something that we use
24 in psychology that is not a diagnosis, but it's a definite
25 pattern of behavior that is reliable and can be assessed.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q So, in this case, was the PCL part of the basis
2 for your opinion?

3 A Yes, it was.

4 Q Okay. Is this a, is this a test that's commonly
5 relied upon by experts in your field?

6 A Yes, it is.

7 Q And, in this particular case, was it the sole
8 basis of your opinion?

9 A No, it was not.

10 Q Would it have been professionally acceptable to
11 base -- the sole basis of your opinion just in this one
12 test?

13 A No, it would not. It's one piece of a
14 comprehensive evaluation.

15 Q Okay. And to do this method, to get this
16 assessment, you did an interview regarding the training on
17 the, the training -- did you conduct an interview including
18 -- interview provided for in training for the PCR, interview
19 with Mr. Brown?

20 A Yes.

21 Q Okay.

22 A There's a---

23 Q And this covers domains?

24 A Yes, there's an interview that is recommended by
25 the developers of the PCL-R, and it includes school

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 adjustment, work history, career goals, finances, health,
2 family life, sexual behavior, relationships, drug use,
3 childhood, and adolescent, and adult antisocial behavior.

4 Q Okay. And then you score these per the courting
5 manual -- coding manual?

6 A Yes.

7 Q And let the record reflect a minute ago you were
8 showing the Judge some parts of the coding manual, is that
9 correct?

10 A Yes.

11 Q Okay. And did you check your addition when you
12 total the scores?

13 A Absolutely.

14 Q Did you use the current coding tools and normative
15 data as recommended by the most recent developers of the
16 PCL?

17 A Absolutely. And it's all included in the manual.

18 Q Okay. So, I guess the -- what I'm going to, the
19 bottom line is, the guy's got antisocial personality
20 disorder. That's been diagnosed by you.

21 A Yes.

22 Q He's got the mental abnormalities I mentioned ago.

23 A Yes.

24 Q For lack of a better word, is this guy a
25 psychopath?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A Yes.

2 Q And why is that?

3 A He is a psychopath because, on this instrument,
4 there's a cutoff score. Now, the cutoff score for research
5 is 25, but we're not in research. We're in a clinical
6 setting or---

7 Q Uh-huh. (Affirmative).

8 A ---quasi clinical setting. And so the cutoff is
9 at a 30, and he scored a 34. So, that's beyond the cutoff.

10 Q Okay. So, if this were just clinical research,
11 the cutoff would be, I think, 25.

12 A Yes.

13 Q But -- and here it's -- but because a person's
14 liberty is at stake, and we're in a sexually violent
15 predator case, the cutoff is raised. It's 30.

16 A That's correct.

17 Q And he scored a 34?

18 A Yes.

19 THE COURT: Let me ask you a question. So, I hear
20 you and I understand everything. Up unto the point
21 where -- why do you have to ask the question of is he a
22 psychopath? I mean what is, what is the necessity of
23 that? Because it's such a loaded term. I understand
24 that that's what he is according to you, but my
25 question is -- I think -- and I know you want to ask

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 more questions, but everything up unto that point, I
2 mean I -- she says that it's been peer reviewed.
3 Obviously she's been trained in it, but you may have
4 other questions. I know you don't necessarily think
5 so, but what I hear from her testimony, why is it
6 necessary to go to the last step of saying so, is he,
7 in fact, a psychopath?

8 MR. BOGLE: Well, Judge, I don't make these things
9 up. I mean she does the research, and if that's what
10 he is, it's what he is. I mean that's a question we
11 might be asking Mr. Brown. I think what you're saying
12 is another way to get this across without saying--

13 THE COURT: You did up until the last sentence. I
14 mean---

15 MR. BOGLE: Well---

16 THE WITNESS: Well---

17 THE COURT: She testified to it.

18 THE WITNESS: The name of the test is the
19 Psychopathy Checklist Revised, and I can't get around
20 that.

21 THE COURT: I have no problem with that. I think
22 it's words like psychopathy that people have a problem
23 with. It's like, when we walk into a courtroom, we
24 have, you know, problems with words like gangs, and
25 certain things are just such loaded common terms.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 nowadays --

2 THE WITNESS: Uh-huh. (Affirmative).

3 THE COURT: -- that -- you know, let's go ahead
4 and let Mr. Falk ask some questions.

5 CROSS EXAMINATION

6 BY MR. FALK:

7 Q Just to clarify. So, psychopathy is not a mental
8 abnormality; is that correct?

9 A It is not.

10 Q Is it a personality defect?

11 A It is not. Well, it's a personality defect,
12 absolutely.

13 Q Now -- excuse me. Is it a personality disorder?

14 A It is not a personality disorder. In the, in the
15 DSM-5, under antisocial personality disorder, it says that
16 sometimes psychopathy is used synonymously with antisocial
17 social personality disorder.

18 Q Okay. So, it's related to that. Now what are you
19 saying? Are those the same thing?

20 A No, they're not.

21 Q Well, how could they be used synonymously if
22 they're not the same thing?

23 A Well, the DSM says that, sometimes, you will find
24 that people use the two synonymously, but they're, they're
25 totally different constructs.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 Q Okay. So, other than that, is psychopathy used in
2 this book?

3 A Yes. Well---

4 Q And where?

5 A It, it does -- it's not a specific disorder.

6 Q Okay.

7 A But it is referenced in that book.

8 Q Okay. And of -- the only diagnostic criteria for
9 the psychopathy result from the Hare, the Hare PCL-R?

10 A There are other tests available, but this is the
11 one that's been around the longest, and which has the most
12 research including peer reviewed research.

13 Q I had an opportunity to review your CV the last
14 time, but you show anything on your CV as far as PCL-R
15 training was in 2003. Is there something since then?

16 A I believe -- well, I've had two trainings.

17 Q One in 1999?

18 A That is correct, yes.

19 Q And then in 2003?

20 A Yes.

21 Q So, your last training in this was 15 years ago,
22 is that correct?

23 A That's correct.

24 Q Okay. You talked about inter -- inter rater
25 reliability.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 A Yes.

2 Q And that is -- that is some -- because there has
3 been some -- well, you said yourself that---

4 A Yes.

5 Q ---definitive -- and, of course, the way you
6 framed it was that defense witnesses always score people
7 lower than State witnesses?

8 A I did not say always. I said that---

9 Q Well, frequently.

10 A ---in that particular study, that one study, they
11 found that the defense experts had scored it lower than the
12 State experts.

13 Q Or the State's experts scored higher than the
14 defense?

15 A Well, that's, that's an option too.

16 Q Sure. So, what are the -- how does -- I'm unable
17 to see any of the questions, but there are 20 criteria, is
18 that correct?

19 A Yes.

20 Q And -- well, let me back up before I get there.
21 When did you evaluate him?

22 A You know, I didn't---

23 Q Did you bring your report?

24 A I didn't bring my report up on the witness stand.

25 Q May I hand it to you?

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 A Okay. So, I evaluated him on March 15th, 2017.

2 Q And then you generated a report like May 30th?

3 A May 30th, I did.

4 Q Okay. And when did you evaluate him for this
5 test?

6 A On March 13th, 2017. Now, technically, you can do
7 it from a record review. That's the way the test is
8 designed. But I always like to ask the specific questions
9 recommended in the manual to ensure that you cover all
10 aspects.

11 Q You evaluated him one time, is that correct?

12 A One time, yes. That's---

13 Q And an---

14 A That's part of my evaluation.

15 Q Right. And then, in May, why did you not generate
16 a Hare PCL-R scoring?

17 A I found an error in the report, and, when I went
18 back to review my records, I realized that I had the
19 information necessary to score it, and, apparently, I just
20 neglected. I think that what happened is that the deadline
21 for getting the report was coming up, and I neglected to put
22 it in that first report. But, when I got the extension,
23 then I went back and did it.

24 Q So, was it your testimony that you went back and
25 looked at it or that it was -- always existed and just

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 forgot to put it in the report?

2 A It always existed because I did the interview on
3 March 15th, and I did the assessment for the Psychopathy
4 Checklist Revised then. And I did not put it in the May
5 30th report, I overlooked it, and I did put it in the July
6 5th.

7 Q All right. So, there are 20 criteria, is that
8 correct?

9 A Uh-huh. (Indicating affirmatively.)

10 Q One of the criteria is -- for example, the first
11 one is glibness/superficial charm.

12 A That is correct.

13 Q Okay. How do you ask that question?

14 A Well, there are a series of questions, and part of
15 it is observation. If the individual is glib, voluable
16 (sic) -- verbally facile.

17 Q So, those are -- you're making judgments?

18 A Well, we do make judgments, but it's based on the
19 criteria that are listed.

20 Q Whether or not he's being glib at the time, that
21 is your judgment, is that not correct?

22 A That is correct.

23 Q And I guess I'm trying to draw a comparison to the
24 Static-99. Now, that's another type of risk assessment
25 test, is that correct?

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 A That is.

2 Q And those are straightforward answers. Either the
3 person has three prior convictions or he doesn't, is that
4 correct?

5 A Well, that's -- it comes strictly from the file
6 review. The only items that you can use on that test are --
7 it's not a psychological test. But, on that instrument, on
8 Items 2 and 10, you can get self-report, but most of them
9 come strictly from the records.

10 Q My question is, is there any interpretation in, in
11 grading or scoring somebody with the Static-99?

12 A Well, certainly there's some judgment in there,
13 but, if you're appropriately trained, then you're applying
14 the information in the manual. That reduces bias and gives
15 you an accurate score.

16 Q What question did you ask for you to determine --
17 'cause you gave him a one for maybe on glibness and
18 superficial charm.

19 A Yes, the scoring is zero. The item does not apply
20 to this individual, and a one, the item applies to a certain
21 extent, but not---

22 Q Okay.

23 A -- to the degree required. And then a two is yes,
24 they've got it.

25 Q Okay. But my question was, what question did you

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 ask him for you to give him a maybe for glibness and
2 superficial charm?

3 A You know, I, I have to---

4 Q Could you please?

5 A Yeah.

6 (Whereupon, a discussion
7 concerning a different case with
8 with different lawyers was
9 held.)

10 THE COURT: All right. You can step down.

11 THE COURT: We've got a ways to go on this, don't
12 we?

13 MR. FALK: Yes, we do.

14 THE COURT: Okay. I assumed as much. All right.
15 Do y'all mind, can we go---

16 MR. FALK: Not at all.

17 THE COURT: ---ahead and take a -- let's break in
18 this right now while she's gathering that information.

19 MR. FALK: Sure.

20 THE COURT: And with that said, do you-all want to
21 go grab some food? I mean I'm, I'm happy to give you a
22 lunch break or whatever you need as well. I know you
23 probably have to also feed Mr. Brown.

24 MR. FALK: I'm more concerned about Mr. Brown.

25 THE COURT: Absolutely. So, do y'all want to just

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 take an hour in this case, and that will give you time
2 to feed him? And is that okay with you-all? Is that
3 acceptable for you too?

4 MR. BOGLE: That's fine.

5 MR. FALK: Thank you.

6 THE COURT: Is that okay?

7 MR. FALK: Thank you, Your Honor.

8 THE COURT: Absolutely. Okay. Okay. Is that
9 okay? Mr. Falk, you okay?

10 MR. FALK: Yes.

11 THE COURT: Mr. Bogle?

12 MR. BOGLE: Yes, Judge.

13 THE COURT: All right. Everyone get a bite to
14 eat.

15 (Lunch recess.)

16 THE COURT: Do you want to keep going with her, go
17 to the other one, or let Mr. Falk now?

18 MR. BOGLE: I think that they should be separate.
19 If that's okay with the Court. I did finish my direct
20 examination about the Hare, and he was going to
21 cross-examine her.

22 CROSS EXAMINATION (Continued)

23 BY MR. FALK:

24 Q Dr. Swan, I think what I did ask you was what
25 specific questions did you ask him in order for you to

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.

FALK

1 evaluate him on that scale of glibness?

2 A So, Item 1, that's an observational thing. So,
3 they're no specific questions. It's what you observe. For
4 example, if he is a clever conversationalist, if he has a
5 quick come back, you know, if you confront him with one
6 thing, and just, without any issue at all, he just goes into
7 a different explanation. And what I saw with Mr. Brown is
8 that he has a macho presentation, and a macho presentation
9 is just a general criminal presentation. And people with
10 that presentation get a score of one, according to the rule
11 book.

12 Q Okay. Let me just maybe back up a little bit.
13 So, the questions that you are asking, they are not --
14 you're not eliciting a yes/no response, is that correct?

15 A No.

16 Q And you're not eliciting---

17 A Well, some of them are, but not generally.

18 Q Are all the questions you're asking, are you
19 eliciting qualitative -- quantitative responses like one,
20 two, three, or four?

21 A No.

22 Q Okay. Is it fair to say that these are open-ended
23 questions that you're asking?

24 A Yes.

25 Q And so is it fair to say that there's some room

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.

FALK

1 for interpreting his results, his responses?

2 A That is correct.

3 Q Okay. Need for stimulation, is that something
4 that you -- that is another one of the criteria. That is
5 need -- I'm sorry. Number 3, need for
6 stimulation/promptness to boredom?

7 A Yes.

8 Q What questions are you asking there? Is that an
9 observation you're making or is there --

10 A Well, it's, it's both. Because what happens is
11 you take down individual response, but, for example, often,
12 in these situations, they don't tell you the truth or they
13 have a perception about themselves that's not accurate. And
14 so you take their response, and then you review every piece,
15 piece of collateral information, like how he behaved in
16 prison, that sort of thing, and what he said about his
17 crimes, and you meld them all together. So, for each
18 answer, they're like three or four distinct parts that you
19 want to do to arrive at your score.

20 Q Okay. Thank you. I think I was asking you about
21 need for stimulation.

22 A Uh-huh. (Affirmative).

23 Q So, what -- can you share with us what you were
24 observing?

25 A Yes. Well, that is individuals who have a varied

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 criminal history, drug use, that type of thing, we ask them
2 questions about living on the edge, taking risks. Now, Mr.
3 Brown -- let's see where I've got his responses here. Let
4 me see. Number 3. So, I asked him, are you easily bored?
5 Do you like living in the fast lane? You do every -- any --
6 ever do things that are scary or dangerous just for the
7 thrill of it? Do you like to take risks? Do you find
8 school work, work, long term relationships boring?

9 Q Dr. Swan, if I can -- are those specific questions
10 you asked him?

11 A Those are specific questions.

12 Q Okay.

13 A Do you usually quit things that are boring? Why
14 have you changed jobs? Like did you get fired? And why
15 have your relationships ended? So, those are the types of
16 things you consider. Then you compare all the information
17 about prison, and what he's told you about his crimes.

18 Q So, how would you then distinguish between giving
19 him a one or a two? You gave him a two on that.

20 A I did. In his case, when you have that kind of
21 criminal versatility and his acknowledgment that---

22 THE COURT: What does criminal versatility mean?

23 THE WITNESS: That means, like, for example, he
24 might have a pedophile that only molests children, and
25 he doesn't have any other kind of crime.

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 THE COURT: Okay.

2 THE WITNESS: But he has every kind of crime. So,
3 when you see that kind of criminal versatility, drug
4 use, you know, that kind of--

5 Q Well, are you overlapping criteria because that's
6 another one, isn't it? Isn't that Number 20?

7 A Criminal versatility is, but it's part of this one
8 because those type of people have a proneness to boredom.
9 They do things just for the heck of it cause it's exciting.
10 They're risk takers.

11 Q But are there specific criteria that help you make
12 the decision in his case why he got a one there versus a
13 two?

14 A Yes, and these are the criteria. Item 3 describes
15 an individual who demonstrates a chronic and excessive need
16 for novel and exciting stimulation, and unusual proneness to
17 boredom. He will usually express a strong interest in
18 taking chances, living life in the fast lane or on the edge,
19 being where the action is, and doing things that are
20 exciting, risky, or challenging. He may try and use many
21 types of drug. He frequently complains that school, work,
22 and longterm relationships are boring or tedious. He may
23 comment that he has itchy feet, needs to be on the go, and
24 can't imagine working at the same job for any length of tie.
25 He will often refuse to attempt or will readily quit any

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 tasks that he finds routine, monotonous, or uninteresting.

2 THE COURT: Okay. Just so I understand, correct
3 me if I'm wrong -- how old is Mr. Brown?

4 MR. FALK: Forty.

5 THE COURT: Forty. So, is it -- correct me if I'm
6 also wrong, he was incarcerated or been incarcerated
7 since when?

8 MR. BROWN: 1999.

9 THE COURT: Since 1999. How does any of that
10 apply to him when he's been in prison? And I do
11 understand some of it may be a part of prison life.
12 But we're talking about 1999. So, the man's been in
13 prison almost 20---

14 MR. BROWN: Nineteen and a half.

15 THE COURT: Almost 20 years. He's 40-years old.
16 He's been in prison since 20. So, how does a lot of
17 that just absolutely just flat out not apply to this
18 man?

19 THE WITNESS: Well, this is a lifelong history,
20 because psychopathy---

21 THE COURT: Right.

22 THE WITNESS: ---is a lifelong history. Many of
23 the criteria apply to, like, before the age of 15.
24 Now, in his case, he continued getting in trouble in---

25 THE COURT: Prison, is what you're saying.

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 THE WITNESS: ---in prison. He had like 120
2 disciplinary infractions.

3 THE COURT: Okay.

4 THE WITNESS: And he was convicted of 80 of them.
5 And so you see the same pattern in prison. So, that
6 applies to him.

7 THE COURT: Okay..

8 Q Specifically, with respect to my client, how does
9 he live on the edge? What is -- what was his response to
10 living on the edge?

11 A Well, he denied that he did it, but that's why you
12 have to look at other pieces of information because---

13 Q And then what did you find?

14 MR. BOGLE: Objection. May she be allowed to
15 finish her answer?

16 THE COURT: And I think, I think what Mr. Falk's
17 getting to, and what I'm trying to get to, we need to
18 talk specifically about this man. And somehow it --
19 because you're asking her questions about specifically
20 as to why he didn't get a two versus a one on that
21 issue, and I think we need to kind of get to that---

22 MR. FALK: That's right.

23 THE COURT: ---as it applies to him.

24 THE WITNESS: Okay. Let's see.

25 MR. BOGLE: Judge, while she's looking, can I

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 just---

2 THE COURT: Sure.

3 MR. BOGLE: --put something on the record, and I
4 apologize for taking your time---

5 THE COURT: No, sir.

6 MR. BOGLE: ---for taking the time to do it. In
7 this situation, normally, if I'm having something
8 challenged, I expect a defense expert to take the stand
9 and say---

10 THE COURT: Right.

11 MR. BOGLE: ---if the PPG's, for example, allowed
12 and he doesn't work or something like that---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. BOGLE: ---Then I can elicit a response. We
15 don't have that here.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. BOGLE: And as far as what State v. Council or
18 State v. Jones hearing requires, the four matters about
19 protecting published against peer reviewed, prior,
20 prior application to the type of evidence in this case,
21 the quality control methods, and the consistency of the
22 method.

23 THE COURT: I understand all of that. I think
24 he's welcome to ask those questions, and I think he can
25 also too, one of my understanding was, was he also was

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.

FALK

1 challenging her qualifications to be able to testify as
2 well---

3 MR. FALK: And that's what I'm---

4 THE COURT: ---which is what he's getting to. I,
5 I think, I think he's able to do that. I think one of
6 the ways you do it is to question what her results were
7 and the basis for her results. Correct me if I'm
8 wrong, I -- I thought you were going.

9 MR. FALK: That's where I'm, that's where I'm
10 trying to go.

11 MR. BOGLE: Thank you, Judge. I just wanted to---

12 THE COURT: Okay.

13 MR. BOGLE: ---see where we were going.

14 A Okay. So, some of the things that I look at is
15 living on the edge and, for example, when you're in prison,
16 you're supposed to follow the rules. And, you know, if you
17 get cited for some behavior in here, if you keep doing it,
18 then that tells me that you like to take that risk. And,
19 for example, he was found to be in possession of marijuana,
20 cocaine, and heroin in prison. And so he---

21 THE COURT: Multiple times?

22 THE WITNESS: Yes. He denied that -- he, he told
23 me -- let me see. He denied that he drank excessively
24 or used drugs excessively, and yet the fact that he is
25 taking the risk of doing those things in the Department

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 of Corrections shows that he likes to live on the edge,
2 and take chances. And so---

3 Q That's not exactly skydiving or --

4 A That's correct.

5 Q Okay.

6 THE COURT: I think that she means not following
7 the rules is what I understand --

8 THE WITNESS: Yes.

9 THE COURT: -- of that environment.

10 A Well, and, and knowing that these things are wrong
11 and still taking the chance of doing it when he knows he's
12 gonna get caught---

13 THE COURT: In the population.

14 THE WITNESS: In confinement, yeah.

15 THE COURT: Right?

16 Q Okay. But I -- and, and, again, what I'm trying
17 to get at is you told us the criteria, and gave him a two.

18 A Yes.

19 Q Now, I want to know what kind of model you
20 followed that wasn't a one, and that it was a two?

21 A Okay. Hold on just one second.

22 Q Or is this really a judgment call?

23 A Well, for example, he said that he didn't do well
24 in school because he couldn't -- he was bored and he
25 couldn't pay attention. He said that -- let me see. And

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.

FALK

1 then he was engaged in fights in school. One incident.
2 Another person was stabbed. So, you have to look at their
3 whole life history. His employment history, he said that he
4 didn't work long at Bi-Lo because he quit. He worked at a
5 couple of jobs. Then he started selling drugs, which is a
6 high risk behavior, and let's see. He was fired a bunch of
7 times for being late or not coming to work. In his
8 relationship history, the longest he ever lived with someone
9 was like four or five months.

10 Q Well, isn't that a separate---

11 A That's the part, why did your relationships end --

12 Q Okay.

13 A -- due to boredom. The substance use history we
14 already looked at. And so you have to look at every aspect
15 of their life, and then arrive at a decision if he meets
16 that or not.

17 Q Okay. How was your decision to go from a one to a
18 two?

19 A A one to a two. Because his criminal history, his
20 work history, his relationship history all indicated that he
21 got bored with those things, and didn't continue them in a
22 manner that most people would.

23 Q Is the book giving you guidelines as to how you go
24 from a one to a two there?

25 A It says -- let's see. Like number one, yes. This

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 item applies for -- to a certain extent, but not to the
2 degree that is required for a score of two. And that's in
3 some respects, but without two exceptions or doubts to
4 warrant a two.

5 Q So, how did you measure the degree, or is that
6 your judgment?

7 A That's my judgment.

8 Q Perfect. That's what I---

9 A Based on my training.

10 Q Okay. That's what I wanted to hear. Thank you.
11 What's your error rate?

12 A Well, the standard error of measurement---

13 Q Excuse me. What is your error rate?

14 A Well, there's no way to measure that.

15 Q Why not?

16 A You do that in research.

17 Q Why can't you measure your error rate?

18 A Because it's a statistical process, and you can't
19 do that.

20 Q Well, how do we know that your evaluation was
21 accurate?

22 A Well, you either accept my training or not.

23 Q The last training you had in this was 15 years
24 ago?

25 A That's correct. But I do it every single day, and

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.

FALK

1 I have been to so many workshops at AXSA on the---

2 Q Okay.

3 A ---PCL that I can't count.

4 THE COURT: Can I ask a question? Hold on a
5 second. That goes to weight. Not admissibility.

6 MR. FALK: No, that---

7 THE COURT: So---

8 MR. FALK: No, it -- Your Honor, I'm really trying
9 to follow the Court decision in Chavis.

10 THE COURT: Okay.

11 MR. FALK: And I think this very similar to the---

12 THE COURT: What's that?

13 MR. FALK: -- RATAAC protocol.

14 THE COURT: Okay. Go ahead.

15 Q Dr. Swan, has your score ever been peer reviewed?

16 A Well, it's peer reviewed every time I go to trial
17 in Florida because then the two raters, the two state
18 experts, get together if there are any discrepancies.
19 Typically, the scores are pretty close.

20 Q Do you have any data on that?

21 A I don't.

22 Q Okay. What type of quality control measures do
23 you follow?

24 A Well, the quality control measures that I follow
25 are that I review the code book every single time I do a

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.

FALK

1 scoring. I follow the rules. The instrument itself is, you
2 know, based in research.

3 Q That's the instrument. But the quality control
4 that you are pre -- you are generating accurate results?

5 A Yes.

6 Q What quality control measure do you use for that?

7 A Okay. Well, I've attended trainings. I go to
8 continuing education things repeatedly and persistently. I
9 review my research articles and books, which I have 300. I
10 score all the items according to the scoring rules. I
11 consult the---

12 Q But you---

13 A ---coding manual on each item.

14 Q You would admit that it requires judgment to score
15 according to the scoring books; is that not right?

16 A Well, some of them require judgment. The other
17 ones are pretty clear cut.

18 Q Sure. But glibness, glibness or superficial
19 charm, grandiose, sense of self-worth, conning and
20 manipulative, those are judgment calls basically, aren't
21 they?

22 A Well, no, there are rules for that. For example,
23 grandiose sense of self-worth. The questions that I ask are
24 what things do you like about yourself. Do you find others
25 stupid or boring? Do others respect you? And that -- those

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.

FALK

1 kind of questions are important because he's been in prison
2 most of his life, and, if he says those people respect him,
3 then that's pretty narcissist. Rate yourself on a scale of
4 zero to ten, and he said seven to eight out of ten despite
5 the fact that he's committed significant crimes, and been in
6 prison all his life.

7 Q But -- okay. Let's talk about that specifically.
8 What does that mean? So, he gave himself a seven to eight.

9 A Yes.

10 Q And what does the scoring rules say about whether
11 or not it's a seven to eight?

12 A Well, the scoring rules don't tell you exactly
13 what -- if a guy says a six, it's this. If a guy says a
14 three, it's that. But anyone who has the criminal history
15 that Mr. Brown has, and has -- rates himself a seven or
16 eight out of ten, that's a misperception. And so, when I
17 look at all of these questions, I ask them at least ten
18 questions on each item, and then I review the records from
19 DOC, and his -- the history that he provided me with.

20 Q Okay. Thank you.

21 A And you'll notice on number, like number four,
22 pathological lying, that's a zero, and that's because he's
23 not a pathological liar. He simply lies instrumentally to
24 get himself out of trouble, and that's a different concept
25 than pathological lying. So, I gave him a zero on that.

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 Q Okay. What is the predictive reliability of this
2 test?

3 A There's no such thing as predictive reliability.

4 Q Well, don't they measure -- what does "area under
5 the curve" mean?

6 A Okay. The area under the curve indicates that---

7 Q What is it a measure of? What is it a measure of?

8 A It measures how accurate this is.

9 Q Okay.

10 A And so let me find the area under the curve for
11 this. There's a standard area of measurement of three. Let
12 me see if I can find that.

13 Q I think I used the term predictive reliability.
14 But the term's predictive validity, right?

15 A Well, yes, predictive validity, and that is
16 assessed. You have the validity where they compare it to
17 other tests that measure similar concepts, and then you have
18 cross-validation or cross-validity in which they give the
19 test to different populations, and then see if it measures
20 what it's supposed to measure. Now, reliability is whether
21 you get the same results upon repeated administrations.

22 Q I used the wrong term.

23 A Yes.

24 Q Because I want to know how valid is the response
25 that you get from this as a way to predict the accuracy of

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.

FALK

1 the conclusion that you're drawing, right?

2 A Well---

3 Q Cause you're, you're drawing a conclusion that
4 he's a psych-- sociopath. Psychopath.

5 A Psychopath.

6 Q Okay. And you're using it based on this testing
7 instrument?

8 A Yes.

9 Q How, how -- what is the predictive validity of the
10 testing instrument that you used?

11 A Okay. There's no such thing as predictive
12 validity, validity, and I guess I'm not sure what you're
13 getting at because---

14 Q I can show you---

15 A Okay.

16 Q ---the article.

17 MR. BOGLE: I don't mind you showing it to her. I
18 haven't seen it before. My concern is, as Your Honor
19 knows, you can go to the Internet and type in bad
20 things about the PPL, and probably find a dozen
21 articles.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. BOGLE: So, I don't think this is really valid
24 cross-examination, just pulling things off the Internet
25 and asking her about it. Particularly if she hasn't

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.

FALK

1 seen the article or read it before.

2 MR. FALK: She, she's saying there's no such thing
3 as predictive validity of the test, and I'm trying to
4 show her a Law Review article -- I mean a, a scholarly
5 article where they discuss the area under the curve as
6 a measure of predictive---

7 THE WITNESS: Well---

8 MR. FALK: ---validity of the test.

9 A Okay. The Static-99R does have predictive
10 validity because there's an area under the curve. So, in
11 this type of test, it was formulated using item response
12 theory, which is a different process. So, I did not see
13 anywhere in this -- the manual where it has area under the
14 curve, and I believe that that's because it's using item
15 response theory rather than area under the curve.

16 Q Is there any type of, of score to show you how
17 reliable this test is or how good of a measure of
18 psychopathy this test is?

19 A Let me just check this one. Well, there's all
20 sorts of research that provides convergent and discriminate
21 evidence that the -- works in different populations, but the
22 thing that you're asking me for I don't, I just don't see in
23 here, and I believe it's because of the different method of
24 compilation.

25 Q You had testified one of the problems I think that

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 you acknowledged was inter rater -- what was your term,
2 inter rater reliability or---

3 A No, that's not one of the problems at all.

4 Q Did you use that term, inter rater?

5 A I used inter rater reliability, but the inter
6 rater reliability on this instrument are good.

7 Q What does that measure?

8 A The inter rater reliability measures the fact that
9 different examiners giving this -- giving the same
10 information will arrive at a similar conclusion.

11 Q Okay. And what is it for this test?

12 A Let me see if I can find that.

13 Q And I think you testified earlier that, if
14 somebody has a particular bias, that may influence their
15 scoring?

16 A Okay. The inter-rater reliability is -- the
17 inter rater reliability is .76 --

18 Q And so---

19 A -- on some items. And let's see. The total
20 correlations. So, the total correlations are, by different
21 raters, are .90, .85, .86, .76, .88, .79, .78, and .86.

22 Q What is that from? Is that from Hare?

23 A That's different samples.

24 Q And is that published by Hare?

25 A Well, it is in the manual, but it comes from

CROSS EXAMINATION CONTINUED OF DR. AMY SWAN BY MR.
FALK

1 different studies.

2 Q Okay.

3 MR. FALK: Your Honor, I think I've made my
4 record.

5 MR. BOGLE: One question, if I may.

6 THE COURT: Certainly.

7 REDIRECT EXAMINATION

8 BY MR. BOGLE:

9 Q When he was asking you about quality control, I
10 just want to make sure, when you're administering this test
11 each time on a new person, you go to the manual and review
12 it before you start your questions, right?

13 A Absolutely. Well---

14 Q You don't rely on memory?

15 A I already have my questions written out. I've
16 made it part of my interview form.

17 Q Okay.

18 A But when I start to score it, then I go to the
19 manual. And when I come -- when I do one item, this test
20 takes forever to score, and when I do one item, I have to go
21 back through all of the information that I've been provided
22 to see if his version of things matches with what I find in
23 the records.

24 Q And the way to do this is set forth in the manual
25 developed for the administration of this, this test or this

REDIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 examination?

2 A That is correct.

3 Q Correct? Not, not your memory, but in the manual?

4 A Not my memory.

5 Q Thank you.

6 THE COURT: Okay. So now do we need to go as to
7 the Static-99? Is that --

8 MR. BOGLE: That's the next thing unless you want
9 to, you know, you want to look at the evidence?

10 THE COURT: Do you want to make argument on the
11 last one or what would you like to do, Mr. Falk?

12 MR. FALK: Well, I'd like to make argument on this
13 one.

14 THE COURT: All right. Let's do that one.

15 MR. FALK: Okay. And, Your Honor, I really was
16 trying to fashion this cross-examination based on State
17 versus Chavis, which is 771 S.E.2d 336. That's a South
18 Carolina Supreme Court case. It was concerning a
19 forensic interviewer, and where the Court determined in
20 Chavis is we should be following the White model, which
21 is basically the qualifications of the expert. Under
22 White, it's two threshold determination must be made
23 first in qualifications of the expert must be
24 sufficient; and, second, there must be a determination
25 that the excerpt -- expert's testimony will be

REDIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 reliable.

2 Now, in Chavis, as I, as I understand, this lady
3 probably gave 500 forensic interviews, and she followed
4 the R-A-T-A-C protocol to a tee every time except the
5 Court said that there was no proof, there was no proof
6 whatsoever that she was making accurate interviews
7 because there was no peer review of her results.

8 In fact, Dr. Swan is the breathalyzer test, and it
9 takes in data, and it comes up with a conclusion.
10 She's the one that is compiling everything. And,
11 without a means of re-calibrating this equipment, the
12 last time she had training on the test was in 2003. My
13 point is -- and she's already testified that it's,
14 it's -- I mean she said it's -- she found that defense
15 witnesses always score lower than State witnesses.
16 But, of course, the corollary is State witnesses always
17 higher -- score higher than defense witnesses. I mean
18 that is under admission advocating a bias based on your
19 perspective, whether or not you are representing the
20 State or the defendant.

21 But without anybody else telling us that she's
22 making accurate conclusions, it's not -- I mean,
23 this is a -- it, it gives the appearance of some kind
24 of scientific precision, but there is no basis for
25 saying that she is accurate. We already -- you heard

REDIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 how much judgment is used. This is not like the
2 Static-99 where you get a point whether or not you have
3 a related victim. You get a point whether or not you
4 had victims of both sexes, et cetera. I mean that's
5 pretty straightforward. Yes, no questions or questions
6 that require quantitative responses.

7 These are open-ended questions. They get
8 open-ended responses, if that's the right term, and she
9 has to use her judgment in the degree to which he said
10 this means it's this or that. And she said that some
11 of these criteria are based on her observation.

12 Litmus, superficial charm, grandiose self worth,
13 conning and manipulative. This is a judgment test, and
14 I mean she can testify that she thinks he's cocky. She
15 can testify that she thinks he's manipulative, but
16 to -- in order to dress up her testimony saying well,
17 under this test, that means he's a psychopath, unless
18 we know that her testing is accurate, has been peer
19 reviewed, it's just too speculative.

20 THE COURT: Mr. Bogle.

21 MR. BOGLE: If I may, Your Honor, and, again, I
22 apologize for not being able to present the kind of
23 response that I did in the Static, but, when I get a
24 motion five days before trial, and a weekend
25 in-between. But, in any event, if you look at the

REDIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Council Jones' standards, will this thing assist the
2 trier of fact. The psychology and psychiatry is
3 something that jurors know nothing about. It's gonna
4 help them interpret what they hear.

5 Is the expert witness qualified? I think she is
6 without a doubt. There was no objection to her
7 qualifications, and is the underlying science reliable.

8 Now, there's been testimony that has not been
9 challenged about the matter being published or reviewed
10 peer review hundreds of times. Prior applications, the
11 type of evidence you want in this case. She's done it
12 in South Carolina. She's also done it without many
13 times in Florida, and without objection prior to today
14 in South Carolina.

15 She's talked about the quality control methods.
16 And the fourth and final thing under Jones Council is
17 the consistency of the method would recognize
18 scientific laws and procedures. I guess the important
19 thing I'm hearing is every time she goes down one of
20 these questions and gets an answer, he gives a
21 response. She's prepared a number of questions for
22 him. That's not based on her memory or her desire or
23 her bias or her, her suspicion. It's based on what the
24 manual tells her to do, and the manual's been in effect
25 for a number of years.

REDIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 And so she develops those questions, asks the
2 thing, asks him the questions, and then gets a response
3 that fits on the schedule.

4 Now, there's only three things on here. There's
5 no, maybe, and yes. And depending on the type of
6 response he gets, she's then got to go back on each
7 question, check the mammoth records she's gotten of his
8 convictions, his lifetime of criminal history, his
9 numerable misconducts, including sexual misconduct
10 while in prison, and make -- and then, then score that
11 item.

12 So, I guess my point is the quality control
13 methods under Council and Jones have been met, and I
14 think the bulk of the questions I'm hearing, almost
15 every question I'm hearing, goes to weight of the
16 evidence. And that's what these questions -- these
17 cross-examination questions appear to be to me.

18 But I think as far as the Jones and Council
19 requirement, we've met that burden, and I would submit
20 to you that it's one of many things, and part of an
21 overall evaluation that she did, and consistent with
22 the IAPSO, the Association of Previous Sex Offender
23 guidelines she's a member of, and, as IAPSO, it should
24 come into evidence having satisfied those criteria.
25 Again, I think the objections more go to the weight

REDIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 than they do the actual test itself.

2 MR. FALK: If I just -- what line? This is, what,
3 339 out of Chavis. Evidence of mere procedural
4 consistency does not ensure reliability without some
5 evidence demonstrating that the individual expert is
6 able to draw reliable results under the procedures of
7 which he or she is consistently applying. Again, I, I
8 think that's the piece that's missing, and is a piece
9 that -- a piece that was missing in Chavis. That's why
10 the testimony wasn't admissible.

11 MR. BOGLE: Wasn't Chavis the case involving
12 (inaudible).

13 MR. FALK: Yeah, that protocol.

14 MR. BOGLE: Yeah, which is apples and oranges.

15 MR. FALK: No, it's not -- no. No.

16 MR. BOGLE: Woa. Woa.

17 THE COURT: Chavis is a forensic interviewer case.

18 MR. BOGLE: Yeah, forensic interviewer case.

19 THE COURT: As I understand that---

20 MR. BOGLE: You know, about giving weight and
21 credibility to a child victim.

22 MR. FALK: Woa. Woa. Woa.

23 MR. BOGLE: That's not what we're here about
24 today. Had I known that---

25 MR. FALK: Your Honor?

REDIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 MR. BOGLE: Had I been cited that case in this
2 motion I'd have a separate memo of law that addresses
3 that. It's an apples and oranges situation.

4 THE COURT: Okay. And let me ask you this on the
5 record.

6 MR. FALK: I'm just saying I don't think it's
7 apples and oranges because it's the same type of data
8 gathering. It's from open-ended interviewing process.
9 She said it's an open-ended interviewing process that,
10 that she interprets the results from.

11 THE COURT: Okay. Well, respectfully, I disagree
12 with you on that. I find the records on testimony as
13 to PPLR test is, number one, reliable, and I certainly
14 do find her qualified. I don't think that it's the
15 same thing as in the Chavis case. So, I'll allow her
16 to testify to it.

17 MR. BOGLE: Okay. Thank you, Your Honor.

18 THE COURT: All right. Let's go to the Static-99
19 test.

20 MR. FALK: Sorry. Well---

21 MR. BOGLE: Could I have a, with all due respect,
22 Your Honor, could I have a two-minute break---

23 THE COURT: Sure.

24 MR. BOGLE: ---before we get to the next part?

25 THE COURT: Of course. Of course. Let's just

REDIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 take two minutes.

2 (BREAK)

3 THE COURT: All right. We're back to you don't
4 like the word psychopath. I mean psychopathy, I don't
5 think has the same native connotation as psychopath.
6 At least, in my opinion. I think psychopathy, I don't
7 know. You still don't want her using the word
8 psychopath. I understand the common meaning of it for
9 people may cause a problem. I am not gonna say to her
10 that she cannot say that he's a psychopath, but I think
11 it's one of those we're not gonna beat a dead horse.
12 We don't need to continually say that. I don't know
13 what that would be, but I'm also not gonna tie her
14 hands by saying we're gonna have a mistrial if for some
15 reason she says he's a psychopath, because I do not
16 want her searching for words. We'll put it that way.
17 And I'm gonna -- if she has to look for words. I just
18 say avoid it if that's possible. All right.

19 MR. BOGLE: Thank you, Your Honor.

20 THE COURT: Okay. All right. Let's talk about
21 the Static-99. The---

22 MR. BOGLE: I've got a return---

23 THE COURT: My understanding it's been used.

24 MR. BOGLE: I've got a return that I filed on that
25 one. You've got that.

REDIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 THE COURT: Okay. I've heard all that, but hasn't
2 the Static-99 been used for how many years?

3 MR. FALK: I have two questions about it.

4 THE COURT: Okay. Well, just let me know -- let's
5 just get to your two questions, and if I -- I think we
6 really are going a long way. So, go ahead and ask your
7 questions.

8 RE-CROSS EXAMINATION

9 BY MR. FALK:

10 Q What's the predictive validity of the Static-99?

11 A Well, this is the Static-99R.

12 Q All right. Yes.

13 A And the predictive validity is .70.

14 Q Okay. And, and, qualitatively, what is that?
15 Isn't that fair?

16 A Well, we prefer .8 to one. Of course, nothing's
17 ever one. The Static-99 has only moderate correlation with
18 sexual -- with predicting sexual re-offense. And that's why
19 the authors of the instrument have a copy of it and they say
20 it doesn't cover all known sources of risk for sexual
21 re-offense, and therefore, the prudent examiner will
22 consider other sources of risks. And that's why we do the
23 dynamic risk factors.

24 Q A .5, if he'd gotten a .5, that's no better than a
25 coin toss, is that not?

RECROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 A .5 is no better than a coin toss, that's correct.

2 Q Okay. .6 to .59, I guess, what is that, poor
3 correlation?

4 A Yes.

5 Q And seven to is---

6 A Seven to eight is like moderate.

7 Q Okay.

8 A And that's one of the weaknesses of the Static-99R
9 is that it only has moderate correlation, and that's why you
10 can't base your entire assessment on that one instrument.

11 Q Okay.

12 MR. FALK: I have no further questions.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. BOGLE:

15 Q Just for the record, Dr. Swan, the Static-99R
16 that's a revised version that dates back to about 2009ish?

17 A 2009.

18 Q Okay. And, more recently, in 2016, they upgraded
19 something. Was it the coding manual?

20 A It was the coding rules to make it more consistent
21 with other types of risk assessment, and also to update
22 items because, for example, back in 1999 we didn't have
23 sexting, and we didn't have, you know, Internet crimes,
24 soliciting children, and also they had to provide examples
25 of all that so we would know how to score the individual

FURTHER REDIRECT EXAMINATION OF DR. AMY SWAN BY MR.
BOGLE

1 items.

2 Q Okay. So, the -- and prior to the 99R, it was
3 called the Static-99?

4 A Yes, it was.

5 Q And that goes back how far?

6 A Well, the, the first instrument was developed in
7 1996, and that was the RRASOR, and it was developed from the
8 same research that the Static-99 was. But, initially it was
9 a four-question instrument, and then in 1999 they increased
10 it to a ten-item instrument.

11 Q And the 99 became the 99R for revised I guess?

12 A Yes, in 1999 they updated the research because
13 some of the samples were really, really old, and, going back
14 to -- like the '50s, '60s, '70s, and we know that criminal
15 behavior is decreasing, and sex offending is decreasing too.
16 And so it would be unfair to have those old research studies
17 that overestimate risks for the time that we're in now.

18 Q Now, regarding the Static-99R, the current
19 version, why is it important for experts like you to conduct
20 this assessment in the context of a precommitment case like
21 the one involving Mr. Brown?

22 A Well, this is the best instrument that we have
23 because it's, it's considered the most reliable actuarial
24 instrument. Now, actuarial instruments are far more
25 accurate at assessing risks than any other type of -- you

FURTHER REDIRECT EXAMINATION OF DR. AMY SWAN BY MR.
BOGLE

1 have structured professional judgment, and also unguided
2 judgment. And those are not as good as the actuarial.

3 Q And, as I understand it, some 94 or 95 percent of
4 the evaluators like you use it either most of the time or
5 all of the time in doing these type evaluations, is that
6 correct?

7 A In fact -- yes. In fact, in my contract in
8 Florida I am mandated to use it if it's appropriate.

9 Q Uh-huh. (Affirmative).

10 A For example, if I had a child -- an adolescent
11 that committed all his crimes prior to the age of 15---

12 Q Right.

13 A ---I can't use the Static-99.

14 Q Uh-huh. (Affirmative).

15 A So, as long as I'm working with adult males I have
16 to use it.

17 Q It's required in Florida?

18 A It's required in Florida as part of the -- my
19 contract.

20 Q Is that a matter of contract or a matter of state
21 law, just out of curiosity?

22 A Well, there's no state law that mandates it.

23 Q Okay.

24 A But as part of our contract with the state
25 government of Florida, we're required to use it.

FURTHER REDIRECT EXAMINATION OF DR. AMY SWAN BY MR.
BOGLE

1 Q And you already testified about moderate
2 predictive accuracy?

3 A Yes.

4 Q We've covered that. But why do you continue to
5 use it?

6 A Well, I continue to use it because it provides
7 important information. There is -- it has many strengths.
8 It uses empirical risk factors, and those are risk factors
9 that have been derived from the research. And these are
10 risk factors that have been demonstrated in the research to
11 be correlated with an increased risk of sexual re-offense.
12 And all of the Static is based on the fact that you commit a
13 sexual crime, you get a sanction, and most people don't
14 commit another sexual crime. Reoffending is actually
15 pretty, pretty rare.

16 Q Uh-huh. (Affirmative).

17 A So, if you receive a sanction, and you go out and
18 commit another crime, then the theory is either you're
19 antisocial personality is so strong that you just take what
20 you want when you want it and you don't care about who you
21 hurt, or you have a sexual disorder that compels you to
22 engage in that behavior.

23 Q Okay. Has the Static-99R been subject to peer
24 review and publication?

25 A Absolutely.

FURTHER REDIRECT EXAMINATION OF DR. AMY SWAN BY MR.

BOGLE

1 Q Numerous times?

2 A Numerous times.

3 Q I think you've mentioned in a conversation with me
4 that's been in excess of 64 validation studies?

5 A Yes, there have been.

6 Q Scholarly, scholarly articles about it as well?

7 A Yes. There are thousands of scholarly articles
8 about it.

9 Q Now, what about the quality control, control
10 methods used? Is this a specific manual you have to go by
11 in scoring this thing?

12 A Yes. Actually, I have a 94-page manual to score
13 ten items. And so it's really complex. And because of the
14 new coding rules, I personally have to check the coding
15 rules every single time I do an assessment because many
16 things have changed, and I have not committed that whole
17 94-page manual to memory. So, it -- it's a process that
18 takes some time. There are specific guidelines and rules on
19 how to code the factors. There are guidelines on how to
20 convey the results. There have been inter rater reliability
21 studies. The tests has been revised over time as research
22 has provided more information on different factors.

23 Q And these are static unchangeable factors about a
24 person?

25 A Yes.

FURTHER REDIRECT EXAMINATION OF DR. AMY SWAN BY MR.
BOGLE

1 Q Although his age may change, and that may affect
2 him?

3 A The Static-99 only codes historical data.

4 Q Uh-huh. (Affirmative).

5 A So, the only thing that will change on the
6 Static-99 is, if you get older, your score will decrease.

7 Q Uh-huh. (Affirmative).

8 A And if you commit another sexual crime, your score
9 will increase. And those are the only two things that
10 change.

11 Q And you have had training on this about how many
12 times?

13 A I have had 59 courses on the Static-99 and
14 Static-99R, and that accounts for approximately 300 hours of
15 training.

16 Q And you also have your scores checked by other
17 evaluators to ensure accuracy in how you do it?

18 A Yes.

19 Q Okay. And you mentioned earlier, the scoring
20 system, the coding book, was updated just a couple of years
21 ago?

22 A Yes.

23 Q Okay.

24 A I, I might add, as part of my contract with the
25 sexually violent predator program in Florida --

FURTHER REDIRECT EXAMINATION OF DR. AMY SWAN BY MR.
BOGLE

1 Q Uh-huh. (Affirmative).

2 A -- we have trainings on Static-9 -- 99 every
3 single year that we're mandated to attend.

4 Q So -- and I take it, I gather, from your prior
5 testimony, there's been prior application of this scoring
6 instrument to cases of this nature?

7 A Yes.

8 Q Ever since about, at least, 2009 or -- 2009 you've
9 testified about it?

10 A Yes.

11 Q And is -- it's been your review that the
12 Department of Mental Health psychologist employed here who
13 live here in South Carolina also use it in all their tests?

14 A Yes.

15 Q Prior to that, it was the RRASOR?

16 A Well, yeah, prior to that was the Static-99.

17 Q And then the RRASOR?

18 A And then the RRASOR came before that.

19 Q I think RRASOR's an acronym spelled R-R-A-S-O-R?

20 A Rapid---

21 Q Rapid something.

22 A ---Risk Assessment. I don't know. I forgot it
23 because I haven't used it in all those years, but --.

24 Q So, it's been used in these types of cases over
25 and over again?

FURTHER REDIRECT EXAMINATION OF DR. AMY SWAN BY MR.
BOGLE

1 A Yes.

2 Q Okay.

3 A And it's the most used instrument in sexually
4 violent predator cases.

5 Q And what about the quality control methods used to
6 ensure reliability?

7 A Okay. I, I just explained those.

8 Q Uh-huh. (Indicating affirmatively.)

9 A And, in every single case, you have to consult the
10 Static-99 workbook. There's a manual, and then there are
11 the coding rules.

12 Q Uh-huh. (Affirmative).

13 A And then you have an evaluator's workbook, and you
14 have to consult each one for scoring the test because the
15 different tables that you have to utilize in order to score
16 the test correctly.

17 Q Has the Static-99 also been developed in a manner
18 consistent with scientific laws and procedure?

19 A Absolutely. It's empirically driven.

20 Q And what we're talking about is a study of
21 thousands of sex offenders who've reoffended, and looking
22 for factors they have in common?

23 A Yes.

24 Q Okay.

25 A The original sample had close to -- had 28,000

FURTHER REDIRECT EXAMINATION OF DR. AMY SWAN BY MR.
BOGLE

1 individuals in it.

2 Q And it's been published and peer reviewed many
3 times?

4 A Yes.

5 Q Okay.

6 MR. BOGLE: Your Honor, that's all I have right
7 now. Please answer any questions the Judge may have,
8 or counsel may have.

9 THE COURT: Go ahead.

10 FURTHER RE-CROSS EXAMINATION

11 BY MR. FALK:

12 Q It measures if somebody's likely to reoffend, is
13 that correct?

14 A No, that's one of the weaknesses of the Static-99.
15 I can't say to you Mr. Brown is going to reoffend based on
16 the Static-99R. What I can say to you is that offenders who
17 had characteristics similar to Mr. Brown's reoffended at a
18 rate of --

19 Q It does not measure whether or not he has a mental
20 abnormality or personality disorder that causes him to?

21 A It does not.

22 Q Okay. So, it doesn't really measure his ability
23 to -- volitional control, does it?

24 A It does not.

25 Q Because some sex offenders, pedophiles, have

FURTHER RECROSS EXAMINATION OF DR. AMY SWAN BY MR.

FALK

1 somewhat of a need?

2 A Well, I have never found any -- well, let me put
3 it this way. I've found two sex offenders who absolutely
4 had zero volitional control, and they had been in accidents
5 and were brain damaged. Any other offender that I've
6 evaluated has some degree of volitional control. It's just
7 a matter of whether their volitional control is enough to
8 stop them from reoffending. And if you have someone that
9 persistently reoffends after a sanction, then they have
10 impaired volitional control.

11 Q Is there a statistical difference between somebody
12 who gets a six and somebody who gets an eight?

13 A Yes. And let me tell you what it is. So, on the
14 percentile rank, someone who gets an eight is in the
15 eight -- is in the 99.1 percentile, and someone who gets a
16 six is in the 94.2 percentile.

17 MR. FALK: Okay. Thank you. No further
18 questions.

19 THE COURT: Okay. All right. Well, respectfully,
20 not only is she qualified, but I think that it's fairly
21 accepted. The Static-99 has been used. It's been
22 repeatedly used. I think she can testify to it as part
23 of her evaluation.

24 MR. BOGLE: Thank you, Your Honor.

25 THE COURT: Anything else?

COLLOQUY

1 MR. FALK: Yes, Your Honor, while she's up here.

2 THE COURT: Okay.

3 MR. BOGLE: Your first motion?

4 MR. FALK: Yes.

5 MR. BOGLE: Item 3, Item 4?

6 MR. FALK: I had it a second ago.

7 MR. BOGLE: Item 4.

8 MR. FALK: Three and four, yeah.

9 MR. BOGLE: You had---

10 MR. FALK: Your Honor, if I can have -- if I can
11 introduce that.

12 MR. BOGLE: Judge, would you like -- Dr. Swan, do
13 you have -- this is not on the record.

14 (Off-the-record discussion held.)

15 MR. FALK: Your Honor, on my last statement?

16 THE COURT: Absolutely.

17 MR. FALK: There are two items with regards to his
18 prison disciplinary history, which I believe that Judge
19 Swan -- that Dr. Swan is gonna testify to.

20 THE COURT: Okay.

21 MR. FALK: And I appreciate the fact that, under
22 some of the case law and all this, you know, she's
23 entitled to base it on her opinion. However, on these
24 two particular instances, I believe that the evidence
25 more in-depth may be so suspect that it's not reliable

COLLOQUY

1 for her to draw a conclusion on, and that regards that
2 on -- she -- in her report, she testified that on July
3 5th, 2017, Mr. Brown tested positive for THC, cocaine,
4 and heroin.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. FALK: And I believe that she is looking --
7 that, in reaching that conclusion, she looked at one of
8 the screens that I got from -- that were filed with --
9 along with his prison disciplinary history.

10 THE COURT: Okay.

11 MR. FALK: I'll show this to the Court.

12 MR. BOGLE: What's the date, July the who?

13 MR. FALK: It's July 7th.

14 MR. BOGLE: I'm looking for it.

15 MR. FALK: It's the one here. I supplied to the
16 Court.

17 MR. BOGLE: One of these.

18 MR. FALK: No, it's here.

19 MR. BOGLE: Repetition?

20 MR. FALK: Yeah, it's one, two, three, four --
21 probably the sixth thing in his disciplinary history.
22 I think you have -- and the order that they were -- I
23 gave them to you.

24 MR. BOGLE: Yeah, I've got my petition. You got a
25 date of when it happened?

COLLOQUY

1 MR. FALK: Well, that's the -- part of the
2 problem.

3 MR. BOGLE: See, I've got, I've -- looks like
4 this. It goes on and on.

5 MR. FALK: You're looking for something like that.
6 Could I -- just to make sure that---

7 THE COURT: Sure.

8 (Pause.)

9 FURTHER RE-CROSS EXAMINATION (CONTINUED)

10 BY MR. FALK:

11 Q Dr. Swan, do you recall that part of your report?

12 A Yes, sir.

13 Q And---

14 A What was the date? 8/11/11?

15 Q No, I think that you testified that on July 5th,
16 2017.

17 A No, July 5th was the date of my report.

18 Q I'm sorry. You're right. Yeah, 8/11.

19 A Okay. Yes, I have that.

20 Q Okay. Your Honor, can I approach the witness?

21 THE COURT: Yeah.

22 MR. BOGLE: Yes, I believe this is on the
23 narrative. The previous page had the conviction, and
24 this is the narrative.

25 MR. FALK: Uh-huh. (Affirmative).

FURTHER RECROSS EXAMINATION CONTINUED OF DR. AMY
SWAN BY MR. FALK

1 MR. BOGLE: And the above date he did such and
2 such.

3 MR. FALK: No, this, this is the page that shows
4 the conviction. The other thing shows the charge.

5 MR. BOGLE: Right. Right. Right.

6 Q I got that out of the (inaudible), and I'm
7 assuming that's what you looked at.

8 A Yes.

9 Q Okay. So, could you -- would you mind reading
10 that?

11 A Yes, on the above date and time, inmate did
12 possess narcotic, marijuana or unauthorized drug, in the
13 amount of quantity, which cannot be purchased in the
14 canteen, and has not been authorized by the institution on
15 hand. On the above date and time, the inmate was
16 administered the FDA random drug test given by the drug
17 testing officer. The results of the test indicated positive
18 for---

19 Q Let me just interpret you if I could?

20 A Yes.

21 Q That first sentence reads, on the above date and
22 time, and then the -- and then it says inmate. Then there's
23 a parenthetical where you put name and number, is that
24 correct?

25 A Right..

FURTHER RECROSS EXAMINATION CONTINUED OF DR. AMY
SWAN BY MR. FALK

1 Q And his name or number is not in that, is that
2 correct?

3 A That is correct.

4 Q And then it goes on, and then, in that second
5 paragraph, on the above date and time, inmate, and then
6 there's a parenthetical for name and number, and it's not
7 filled out, is that correct?

8 A That is correct, and it gives an example of THC.

9 Q Right. It says tested -- that the test indicated
10 positive for parenthetical, and then it says name of drug,
11 I.e. THC, cocaine, and heroin.

12 A Yes, that is my mistake because I read the example
13 as him.

14 Q And -- yeah.

15 A It does not say what drug, but it does say he
16 refused to submit to a drug test.

17 Q But there is no indication that he tested positive
18 for cocaine, THC, or---

19 A That's correct.

20 Q Okay.

21 A That's my mistake. Thank you.

22 Q And the other thing that I wanted to talk to you
23 about is the --

24 MR. BOGLE: Is this another prison?

25 MR. FALK: This is --

FURTHER RECROSS EXAMINATION CONTINUED OF DR. AMY
SWAN BY MR. FALK

1 MR. BOGLE: You got a date?

2 MR. FALK: This is this summer. I mean I copied
3 this right in the order that they were in the MPT.

4 MR. BOGLE: I got it in the petition. 128.

5 MR. FALK: Yeah.

6 MR. BOGLE: Sexual misconduct?

7 MR. FALK: Right.

8 MR. BOGLE: Yeah, convicted. Okay.

9 BY MR. FALK

10 Q I'm going to show you one of the screens from the

11 --

12 A Okay.

13 Q And I'm, I'm talking about this one right here.

14 A Okay. Let me just read that.

15 Q I've got my --

16 A This one---

17 Q I'm talking about that first sexual misconduct
18 charge.

19 A Yes, that was 1/8/13.

20 Q Can you find the narrative summary for that?

21 A 1/8 -- oh, hearing date, 1/28/13. So, what the
22 records were, according to SCDC records, Mr. Brown was
23 convicted of a major disciplinary infraction for sexual
24 misconduct, but no description of the event was included.

25 Q Okay. Thank you.

FURTHER RECROSS EXAMINATION CONTINUED OF DR. AMY
SWAN BY MR. FALK

1 A Here's this one for you also.

2 Q So, what is the significance of that conviction if
3 you don't have the underlying facts?

4 A Well, in this case, it doesn't have any impact at
5 all because, even if you have one disciplinary infraction
6 for masturbating, it still counts as the index offense.

7 Q Okay.

8 A And he's got multiple. So, I can take that off
9 since there's no -- I mean no---

10 Q There's been no---

11 A ---description, but he was convicted for it.

12 Q Yes. He could -- we don't know whether or not it
13 was masturbating or some other type of sexual misconduct, is
14 that correct?

15 A Well, there was an item in the information that
16 indicated that he was alleged to have raped someone, but
17 it -- there was nothing -- no conviction noted or anything
18 like that. So, I don't know what this particular event is.

19 Q Okay.

20 MR. FALK: Your Honor, regarding the first one, I
21 believe maybe Dr. Swan agrees with me that there is
22 no -- that he was convicted -- that he ever tested
23 positive for cocaine, THC, or whatever.

24 THE WITNESS: Yes, that is correct.

25 MR. FALK: And that, Your Honor, I would argue

COLLOQUY

1 that you're still the gatekeeper. There's 402, 403,
2 404 as far as what's relevant, and I'm not sure how
3 relevant it would be if we don't know what the
4 underlying facts are for this sexual misconduct charge,
5 this one -- this last charge, this one in 2013. So, if
6 she doesn't need that for her opinion, we would ask
7 that it be excluded.

8 MR. BOGLE: We get these records from the
9 Department of Corrections, and pass them on to defense
10 counsel and to her. I mean it goes to weight. They
11 have a record showing he was convicted of something
12 involving sexual. We don't know what it is. He has a
13 bunch of others that are documented. I think this goes
14 more toward the weight than it does to admissibility.
15 She'll acknowledge on cross the record keeping
16 apparently was inaccurate.

17 THE WITNESS: Well, I think it's important that he
18 was convicted of sexual misconduct. I, I can't explain
19 what sexual misconduct that was. Typically, they get
20 him for assault if there's no barrier between the
21 individual and the female officer that they're
22 masturbating to. And they typically get like a sexual
23 misconduct if there's some sort of barrier like they're
24 looking from their room into the control booth or
25 something.

COLLOQUY

1 MR. FALK: We are speculating on what it is about.
2 I'm more concerned that it's a sexual misconduct charge
3 on the thirteen -- on the -- in 2013 when he hadn't had
4 any other ones prior to the probably six years before
5 that. I mean I -- my concern is the weight you're
6 gonna draw from the fact that it is a charge that she
7 doesn't know what happened in 2013, and the jury is
8 gonna draw one type of conclusion from that versus we
9 will acknowledge that he had charges back in 2005, six,
10 and seven for masturbating, but---

11 THE COURT: He's gonna deny this charge? Is that
12 what it is?

13 MR. FALK: He's gonna deny that it's masturbating,
14 yes, Your Honor.

15 THE COURT: Well, it -- I, I don't know how to
16 describe it other than I guess you have to say -- I
17 guess to describe what sexual misconduct is, but --

18 MR. FALK: Okay.

19 THE COURT: I mean I -- the problem, I guess, is
20 this. If he takes the stand and he testifies it didn't
21 happen. I mean what didn't happen. Then I think she
22 can say that there --

23 MR. BOGLE: There's a record of it basically.

24 MR. FALK: This record -- I'm just saying this
25 is---

COLLOQUY

1 THE COURT: It's a detail. I understand that.
2 And we just don't know what exactly are the facts of
3 the incident underlying the case.

4 MR. FALK: Right. And so, obviously, I'm just
5 saying that there's -- how relevant to her analysis can
6 it be if for something for which she has no details.

7 THE COURT: Well, I think she can say. I think
8 she can testify that while it is a conviction, she took
9 it for that, and that only.

10 MR. FALK: Okay.

11 THE COURT: And not -- you know, she didn't assume
12 it was, I guess, in her analysis, it was a rape or
13 something, you know, above and beyond that.

14 THE WITNESS: Yeah.

15 THE COURT: You took it for the least you possibly
16 could for what it is, correct?

17 THE WITNESS: Right.

18 MR. FALK: Okay.

19 THE COURT: I think that's fair.

20 MR. FALK: Yes, Your Honor.

21 THE COURT: Anything else on that?

22 MR. FALK: No.

23 THE COURT: All right. Tomorrow morning, 9:30,
24 you-all be here. I'm sorry. I'm sorry. The jury's
25 coming back at 9:30. So, are we okay to start at --

COLLOQUY

1 you can be here by 9:15?

2 MR. BOGLE: Sure.

3 THE COURT: I know you're just coming from across
4 the street.

5 MR. BOGLE: It's not far.

6 THE COURT: If that works for you-all, that's
7 fine. If that is okay for you as well?

8 THE WITNESS: Yes.

9 THE COURT: She's gonna be your only witness. So,
10 I'm assuming she's going up first, correct?

11 MR. BOGLE: Right.

12 THE COURT: Okay.

13 MR. BOGLE: Opening arguments and then she's up.

14 THE COURT: Okay.

15 MR. BOGLE: And you've got a standard opening you
16 would use. One of the brand new judges asked me to do
17 an opening statement for him, and I did one. I don't
18 know if I send one to you. I don't think I needed to
19 because you've done this before.

20 THE COURT: Okay.

21 MR. BOGLE: Somebody did.

22 THE COURT: Okay. So, he wanted you to do an
23 opening statement?

24 MR. BOGLE: He wanted, he wanted -- he asked if we
25 could put together, me and the defense, an opening

COLLOQUY

1 statement to describe to the jury, before the case gets
2 started what kind of case this was, and what to expect.

3 THE COURT: I believe it's just general. Kind of
4 what I opened today.

5 MR. BOGLE: You've already---

6 THE COURT: This requires you to listen. This is
7 what this is. And I think a jury needs to know that
8 because there's a common misconception that this is
9 perhaps a criminal trial, and, in some ways, I think
10 they need to understand it.

11 MR. BOGLE: Right.

12 THE COURT: So, my general is gonna be my typical
13 general thing all that. And then I'm gonna talk about
14 you have to weigh the credibility of witnesses. You
15 know, your typical.

16 MR. BOGLE: Now, what we're gonna do today---

17 THE COURT: Yeah.

18 MR. BOGLE: ---if we can?

19 THE COURT: Sure.

20 MR. BOGLE: Go ahead and mark, for introduction,
21 the four -- the three convictions we're talking about.

22 THE COURT: Okay.

23 MR. BOGLE: But we can cut her loose now, can't
24 we?

25 THE COURT: Yes.

COLLOQUY

1 MR. BOGLE: Okay.

2 THE COURT: Dr. Swan -- is that okay with you?

3 MR. FALK: Oh, absolutely.

4 THE COURT: Dr. Shaw, you may be excused.

5 THE WITNESS: Well, thank you.

6 MR. BOGLE: Swan. Swan. Swan.

7 THE COURT: Swan. I don't know why I want to call

8 you Dr. Shaw.

9 (Pause.)

10 MR. FALK: These were these exhibits. I was
11 hoping the Court could mark them with Court's Exhibit?

12 THE COURT: Absolutely. Give them to Mona and
13 make them Court's exhibits.

14 MR. BOGLE: That's your motions?

15 MR. FALK: Those are my -- the three motions, yes.

16 MR. BOGLE: All of them one exhibit? One Court
17 exhibit?

18 MR. FALK: That's fine with me.

19 THE COURT: That's fine.

20 MR. FALK: I just want them in the record.

21 THE COURT: Those are all in.

22 MR. FALK: Yeah.

23 THE COURT: Okay.

24 MR. BOGLE: There were basically one, two, three,
25 weren't they?

COLLOQUY

1 MR. FALK: Yeah, I mean they're kind of---

2 MR. BOGLE: Hare, Static, and general.

3 MR. FALK: And general, right.

4 THE COURT: Just standard 1, 2, 3, that's fine, or
5 whatever numbers they are in Court's Exhibits. Okay.

6 *(Whereupon, Court's Exhibit No(s) 1-3 marked for*
7 *identification and received in evidence.)*

8 MR. FALK: Thank you, Your Honor.

9 MR. BOGLE: Judge?

10 THE COURT: All right. Anything else, gentlemen,
11 I can do for you?

12 MR. BOGLE: Nothing I can think of.

13 (Proceedings adjourned for the day, to be
14 continued on 10-16-2018.)

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COLLOQUY

1 10-16-2018 PROCEEDINGS

2 THE COURT: Good morning, ladies and gentlemen of
3 the jury, I will let the clerk swear you in and then I
4 will make opening comments and the attorneys will make
5 brief opening comments. Am I correct?

6 MR. BOGLE: Yes, Your Honor.

7 (Whereupon, the jury was sworn.)

8 THE COURT: You may be seated. Ladies and
9 gentlemen, the State has brought this case under the
10 sexually violent predator law of State of South
11 Carolina. The State seeks the commitment of Mr. Brown,
12 the Respondent, for long term control care and
13 treatment in a facility.

14 Ladies and gentlemen, I want to make sure that you
15 understand this is not a criminal proceeding seeking
16 incarceration, rather it is a proceeding seeking civil
17 commitment in this matter. I want to explain the
18 procedure of what we are doing here, ladies and
19 gentlemen, so you can better understand what is going
20 on.

21 Please understand that you have been selected as
22 fair and impartial jurors, whose purpose it is to
23 determine the facts. You the jury are the sole judges
24 of all facts in this case. And if at any time I make
25 any comment regarding the facts of this case, you must

OPENING COMMENTS BY THE JUDGE

1 disregard it. And as jurors you must determine the
2 facts of this case from the testimony that you are
3 going to hear coming from the witness stand, as well as
4 any other evidence that is presented.

5 Ladies and gentlemen, please understand that you
6 should not be influenced by any opinions or statements
7 that you may have heard outside of this courtroom. And
8 it is especially important that you perform your duty
9 of determining the facts diligently and
10 conscientiously, because ordinarily there's no way to
11 correct an erroneous determination of the facts by a
12 jury.

13 Ladies and gentlemen, the same law that makes you
14 the judges of the facts makes me the judge of the law.
15 Again, over the lunch hour, if we break and y'all
16 happen to see something, please do not read it, watch
17 it, listen to it in any way, shape, or form. Now,
18 ladies and gentlemen, the attorney for the State, in
19 just a moment, is gonna make what's called an opening
20 statement. And then Mr. Falk, on behalf of the
21 Respondent, Mr. Brown, is also gonna make an opening
22 statement.

23 I want to tell you lawyers, or tell you, as a
24 jury, that what these lawyers tell you in their opening
25 statements is not evidence in the case. Again, it's

OPENING COMMENTS BY THE JUDGE

1 their argument or their contention as to what they
2 believe the issues are. I remind you, again, the
3 evidence comes from the witness stand as well as other
4 evidence introduced. I also want you to understand
5 that, from time to time, you're gonna hear something --
6 the lawyers say something like, Your Honor, there's a
7 matter of law we need to take up. I may wave them up
8 here. We may have a conference just here off of mike
9 while you're here in the courtroom, or I may even send
10 you back to the jury room. I want you to understand
11 something. I'm not hiding anything from you.

12 Oftentimes, when I have to rule as a matter of
13 law, whether or not certain testimony is admitted, I
14 may make a comment on the facts of the case. And if --
15 I would never want anything I do to influence you in
16 your determination of the facts, so out of an abundance
17 of caution, we just do it outside of your presence.

18 Now, in deciding whether to believe a witness in
19 this case, you have the right to consider whether a
20 witness has an interest in the outcome of the trial,
21 whether the witness is prejudiced towards either the
22 State or the Respondent, and you can look at the
23 opportunities that witness has to have seen and heard
24 the events about which they're testifying, and you can
25 also look at the way the witness acts on the witness

OPENING COMMENTS BY THE JUDGE

1 stand. You have the right to consider anything that is
2 in the record that will help you evaluate the testimony
3 of a specific witness, ladies and gentlemen.

4 So, to that end, I ask that you pay close
5 attention so you can accurately remember the testimony
6 at the end of the trial when you begin your
7 deliberations.

8 Also, someone has inquired and, obviously, you
9 have received pens and notepads in this case. I want
10 to remind you, ladies and gentlemen, that those notes
11 are for you, and they're not to necessarily be shared
12 with each other. As we come and go from the case
13 during the day, you're gonna leave the notes in your
14 pad or in your seat. When the case is over, and --
15 well, during deliberations, you're gonna be permitted
16 to take them back to the jury room. And I just want to
17 remind you that some people are better note takers than
18 others. I don't want you to rely on someone's notes
19 just because they took notes over your own individual
20 memory.

21 Also, ladies and gentlemen, you are absolutely not
22 required to take notes. If you are not a note taker,
23 don't take notes, ladies and gentlemen. If you'll just
24 leave your pads where they are.

25 All right. So, with that said, we're gonna be --

OPENING COMMENTS BY THE JUDGE

1 go ahead and begin the trial of this case.

2 Anything from the State?

3 MR. BOGLE: Not at this time, Judge.

4 THE COURT: Anything from the Respondent?

5 MR. FALK: May I approach just briefly?

6 THE COURT: Certainly.

7 (Off-the-record discussion held.)

8 THE COURT: Ladies and gentlemen, I also want to
9 make a comment in regard to something I said yesterday.
10 This is a civil trial, as I told you. Civil trials are
11 typically in cases -- they're, more often, breach of
12 contract cases, or automobile accidents, or slip and
13 falls. This case is a bit different, ladies and
14 gentlemen, and these cases are not ones that can be
15 settled.

16 So, as I referenced to you yesterday that my
17 roster started with 20 cases, it started with 20 cases
18 of all different types of civil cases. But I want you
19 to understand that, on a sexually violent predator
20 civil commitment action, these are not cases that
21 anyone can settle. No one has the power to do that.
22 So, I just wanted to make sure that you don't hold it
23 against these attorneys or anyone else that the case
24 wasn't resolved because they simply cannot be resolved.
25 They are cases we absolutely have to try.

OPENING COMMENTS BY THE JUDGE

1 All right. The whole idea is that we give them to
2 a jury to determine actually whether or not the State
3 has met its burden.

4 All right. So, I just want to make sure you
5 understand that.

6 Okay. So, at this time, we'll go ahead and begin
7 the trial of this case.

8 OPENING STATEMENT BY THE STATE

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

11 THE COURT: Yes, sir.

12 MR. BOGLE: Mr. Falk.

13 We met yesterday. Again, my name is Jim Bogle.
14 I'm with the Attorney General's Office in Columbia.

15 Sometimes people wonder why it's us, and not say
16 the Solicitor's office or the county attorney here in
17 Beaufort, and the reason is, when they passed this law,
18 they gave the responsibility of presenting all these
19 cases statewide to our office. There's two of us.
20 Christopher Morrow and I have the state divided in
21 half, and on the Beaufort cases around the state, and
22 I've got the Fourteenth Circuit including Beaufort
23 County. That's why it's us.

24 The next thing. I would like to thank you from
25 taking your time from whatever you'd like to be doing

OPENING STATEMENT BY THE STATE

1 besides this in doing your job for Mr. Brown, the
2 County of Beaufort, and the State of South Carolina.
3 It's very important that you're here doing what you're
4 doing cause your job, like the Judge says, is gonna be
5 to listen to what comes off that witness stand, and
6 look at the documents introduced into evidence, and
7 make a decision as to what the facts are.

8 Now, when you told your friends and neighbors,
9 Hey, I got pulled for jury duty, it's civil court, I
10 imagine a lot of them probably did a comment like,
11 Well, you're probably gonna hear a medical malpractice
12 case or an automobile wreck or something like that.
13 Well, not so.

14 In 1998, the General Assembly passed a law called
15 the Sexually Violent Predator Act, and what they said
16 in that law was they made a conclusion that there's
17 some people out there who are so dangerous that prison
18 is not -- will not fix them, and that civil commitment
19 in Probate Court will not fix them, and you have to
20 have a separate proceeding, and that's what they have
21 this law. This is a civil commitment process.

22 Now, Mr. Brown, Dameon Brown, the guy on trial,
23 trial here today, he has committed some sexual
24 offenses, and you'll hear about them later on. He
25 served his time for that. That's over with, and so,

OPENING STATEMENT BY THE STATE

1 right now, what the State is trying to do, what we're
2 trying to do, is civilly commit him for what's called
3 longterm control, care, and treatment.

4 Now, when they passed this law, here's what they
5 said. They said that, for this to happen, the State
6 has to prove two things. Number one, has Mr. Brown
7 been convicted of what's called a sexually violent
8 crime, and there's 16 different crimes listed in the
9 statute that are sexually violent. Well, he's got
10 three.

11 He was convicted of criminal sexual conduct with a
12 minor in the first degree, and this happened in Hampton
13 County. And then, more recently, he was convicted of
14 criminal sexual conduct with a minor in the second
15 degree, and this happened here in Beaufort County.
16 We're talking a boy, and two girls were the victims.
17 The ages were five for the boy, about 13 or so for the
18 girls. So, that's his victim. So, the first thing is
19 has he been convicted of a sexually violent crimes, and
20 we have that, and you'll hear about that later on.

21 The next question though, has he -- does he have a
22 mental abnormality or a personality disorder that he
23 cannot control that makes him likely to commit these
24 crimes again if he gets loose unless he's confined for
25 treatment. And that's the real question here.

OPENING STATEMENT BY THE STATE

1. At a hearing several months ago, one of the judges
2. here in Beaufort County appointed Doctor Amy Swan.
3. She's sitting over there. She has a contract with the
4. Department of Mental Health. She's a licensed
5. psychologist here in South Carolina. As it turns out,
6. she lives in Florida. She's also licensed there. And
7. she has a contract with the Department of Mental Health
8. to do these types of evaluations, what we call a
9. Precommitment Evaluation, to look at the guy, look at
10. his records, talk to him, evaluate and see if he does
11. have a mental abnormality. And, if he does have one,
12. it's the kind he can control or cannot control. So,
13. her job is to evaluate Mr. Brown.

14. Okay. She gets paid a fee for doing this. So,
15. she has a contract with the State Department of Mental
16. Health, but her fee is a flat fee. It doesn't
17. matter -- it doesn't -- it makes no difference if she
18. says the guy is a predator or he's not. So, you're
19. gonna hear from her later on.

20. Now, normally in a civil case or even in a
21. criminal case, witnesses can only testify about things
22. they derived from their senses, things they hear,
23. things they see, thing they smell. Like I saw the
24. light turn red. I heard the gun go off. I saw the man
25. holding the knife. Things like that. They can't give

OPENING STATEMENT BY THE STATE

1 opinions. But if a person has the training and
2 expertise that can assist you in making your decision
3 about the facts, they can be qualified as an expert
4 witness, and Dr. Swan has that kind of training. So,
5 she'll be qualified as an expert witness by the Court I
6 believe, and she'll be allowed to give an opinion. And
7 her opinion is gonna be that yes, he's been convicted
8 of the right kind of crime, and, yes, he's got two
9 mental abnormalities and a personality disorder that he
10 cannot control.

11 So, that's what the case is about. That's what we
12 have to prove. Now, normally in a civil case one side,
13 say an auto wreck case, has to prove their case by
14 what's called preponderance of the evidence. Take
15 51 percent.

16 In this case, a man's liberty is at stake. Okay.
17 He's either gonna go home when this trial's over or be
18 confined for treatment. So, the General Assembly
19 placed a higher burden on the State. We have to prove
20 our case beyond a reasonable doubt. And the Judge will
21 explain to you, at the end of the trial, exactly what
22 that means, what, what beyond a reasonable doubt means.

23 So, keep that in mind. We've got to prove the
24 case by that burden. We have to establish the crime,
25 and the mental abnormality. In this case we also have

OPENING STATEMENT BY THE STATE

1 a personality disorder. So, the important thing is
2 listen to everything you hear, keep a completely open
3 mind until the case is all over with and you hear the
4 law of the Judge and begin your deliberations.

5 Thank you.

6 Your Honor.

7 OPENING STATEMENT BY THE PETITIONER

8 MR. FALK: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. FALK: Mr. Bogle.

11 Ladies and gentlemen of the jury, my name is Jim
12 Falk. I have a contract also with the State of South
13 Carolina, and I represent the people who are charged in
14 the sexually violent predator case, and I do it in
15 South Carolina. And that's why I'm here today.

16 Y'all are here today because this is a very
17 serious case. I mean this is a case that will probably
18 last just today, and it is extremely serious. And,
19 again, as Mr. Bogle alluded to the fact that your
20 decision today is gonna be whether or not my client is
21 gonna go home or whether or not he's gonna go to a
22 secure facility. So, really, your decision here today
23 is whether or not -- it's, it's serious because, from
24 my client's point of view, it's gonna feel like an
25 additional sentence. He's already spent 20 years in

OPENING STATEMENT BY THE PETITIONER

1. prison, but it's gonna feel like we're just adding on
2. to a sentence because he's not gonna be able to see his
3. family everyday. He's not gonna be able to do as he
4. please. He's not going to some mental hospital. I
5. mean, he's going to a secure facility.

6. Now, the only expert that -- the only witness I
7. anticipate the State's gonna call is gonna be their
8. expert, and she has evaluated my client, and she's
9. gonna give her opinion. But the way this system works
10. is that this is not -- the decision whether or not to
11. commit my client is really not the expert's decision.
12. It's your all's decision.

13. So, you're gonna have an opportunity to think
14. about the expert's opinion. And while you're thinking
15. about the expert's opinion, I want you to keep some
16. things in mind. You know, is there any reason to think
17. that this expert is particularly biased. Is this
18. expert somebody who is, I guess, State's expert or is
19. this sort of a neutral observer. And you also can
20. consider whether or not her diagnosis really makes
21. sense here, and whether it really rings true.

22. And, remember, my client, there's no question my
23. client has a criminal side. My client has done time.
24. My client has done about 20 years. He was sentenced.
25. He was twenty -- he was a 23 year old boy when he

OPENING STATEMENT BY THE PETITIONER

1 received his sentence. On the day he received his
2 sentence, he already had 32 months in prison awaiting a
3 trial when he pled guilty. So, I guess that sentence
4 was in 2001, and he's been in prison since that time.

5 So, as a 23 year old boy that pled guilty to
6 charges -- to something that he did when he was 19.
7 Today he's a 40 year old man that came out of prison,
8 and that's part of the decision I want you to think.
9 Is, is Doctor -- is the State's expert talking about
10 who he was 20 years ago or who he is now. Those are
11 the things I want you-all to consider.

12 Also, he has committed a crime, and, you know,
13 it's a lot -- it's easy to say normal people don't
14 commit crimes. You got to be a little bit crazy to
15 have committed a crime, but that's not really what
16 we're talking about here.

17 What we're talking about is whether or not that he
18 has a mental diagnosis that makes him, like drive him,
19 takes away his volitional control over his behavior,
20 and drives him to commit crimes. And, without making
21 it sound too simplistic or silly, there's an analogy I
22 want you to maybe keep in mind while you're listening
23 to this. Now, at times, I'm sure, you know, somebody
24 might go into the local gas station, and they might
25 steal a package of Nips, a candy bar, something like

OPENING STATEMENT BY THE PETITIONER

1 that.

2 Now, what's the motivation behind that crime? Was
3 that, was that person hungry? Did he just not have any
4 money with them? Do they really like chocolate? Those
5 are, those are motivations behind crime that are
6 criminal. But there's another kind of motivation
7 because some people really enjoy or really have a thing
8 about stealing stuff, and it's the act of stealing.
9 It's kleptomania that is driving their actions. And
10 that's kind of what we're talking about here.

11 Did he just commit crimes cause he was a young
12 kid? He's 19 doing stupid stuff. Very serious but
13 stupid stuff or what -- is there something wrong with
14 his brain, the way he's wired, that drives him to
15 commit these crimes. I want you-all to think about
16 that cause if it was just this 19-year old kid being a
17 bad 19-year old kid, that's one thing. But I don't
18 think that's a basis for conviction in this case. But
19 it's only if he's got some kind of mental marking, has
20 a problem that drives him to commit the crimes.

21 Was he just hungry for a chocolate bar or was he
22 some kind of kleptomaniac for doing -- got some kind of
23 pleasure out of stealing because the guys who just get
24 pleasure out of stealing or commit crimes for criminal
25 reasons, the criminal justice system takes care of

OPENING STATEMENT BY THE PETITIONER

1 them. That's why, you know, you've heard there are
2 two-strike laws. You commit crimes, if you do
3 something, you know you're gonna go away for, for life
4 or something like that.

5 The criminal justice system takes care of those
6 kind of people. You're trying to decide whether or not
7 this is a mental health issue that you -- that we're
8 asking the jury to step in. I think that once you've
9 had a chance to evaluate the testimony you will see
10 that it might be a good snapshot of who he was 20 years
11 ago, but it's not a good snapshot of who he is today.
12 That he's not the same person he was 20 years ago, and
13 that today he's not a sexually violent predator.

14 Just because he committed a sexually violent crime
15 doesn't make him a sexually violent predator. Okay.
16 The State's gonna have to convince you that extra
17 piece, that there's something about the way he was
18 wired that causes him to lose his volition or control
19 and commit acts of violence, sexual violence.
20 Actually, the State's got to prove it. And it's gonna
21 be easy. I mean, and we'll, we'll consent to saying
22 that he committed crimes, sexually violent crimes, in
23 the past, but that does not mean he's a sexually
24 violent predator.

25 I think once you-all have had a chance to consider

OPENING STATEMENT BY THE PETITIONER

1 this testimony, and reflect on it, and if you-all
2 can -- I mean it's really hard, in cases like this,
3 cause you're gonna hear about crimes against children.
4 And some people have strong opinions about that, just,
5 you know, that's just unacceptable. And you-all may
6 feel compelled or moved or whatever to try and punish
7 him some more. But that's not what your job is today.

8 Y'all have a duty to apply the facts as you see
9 them to the law as it's instructed by the Judge, and I
10 believe that you thought -- after you -- I believe, at
11 the end of the day, if you thoughtfully consider that,
12 you will find that my client is not a sexually violent
13 predator.

14 Thank you for your time and your attention.

15 MR. BOGLE: May it please the Court?

16 The State would call Dr. Amy Swan.

17 THE COURT: Come on forward, Dr. Swan. Please let
18 her swear you, Dr. Swan.

19 THE WITNESS: Yeah.

20 Thereupon,

21 DR. AMY SWAN

22 was called as a witness, having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 BY MR. BOGLE:

2 Q Okay. Good morning, Dr. Swan.

3 A Okay. Good morning.

4 Q See if I can hear you all the way over here.

5 A Okay. Is that good?

6 Q No problem.

7 A Okay.

8 Q Would you, for the---

9 A I'll make sure I talk right into it.

10 Q Right. Just, for the record, state your full name
11 and county of residence or where you live.

12 A It's Amy C. Swan, and I live in Fort Lauderdale,
13 Florida.

14 Q Okay. What is your occupation?

15 A I am a forensic psychologist.

16 Q And what advanced de -- how long have you worked
17 in that capacity?

18 A I have worked as a forensic psychologist for 20
19 years.

20 Q What advanced degrees do you possess?

21 A I have a Bachelor's Degree in Nursing that I
22 earned in 1987. I have a Master's in Clinical Psychology
23 that I earned in 1993. And I have a Doctorate in Clinical
24 Psychology that I earned in 1997.

25 Q What is -- basically, what is the study of

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 psychology?

2 A The study of psychology is the study of the mind
3 and behavior.

4 Q And when we talk about the word forensic along
5 with the word psychology, what are we meaning there?
6 Foren -- when I use the word forensic psychology, what am I
7 saying there?

8 A Well, forensic psychology is the application of
9 clinical psychology to cases involved in the legal system.

10 Q And, Doctor, are you a member of any professional
11 organizations related to your -- what you do for a living?

12 A Yes, I was appointed to the Board of Psychology by
13 the governor of Florida, and that is the part of the
14 government that regulates the practice of psychology. I
15 served in that position for ten years, and then, after my
16 full board service, I was appointed the chairman of the
17 probable cause committee, and, on that committee, we
18 evaluate all the complaints that come in to the, the Board
19 to determine if probable cause exists to pass them on
20 further for a decision. I served as chairman for five
21 years, and then I took a break for a year, and I was
22 reappointed in November of 2017.

23 Q Now, have you -- does your work have you
24 conducting evaluations of sex offenders? Not just
25 predators, but all kinds of sex offenders?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A Yes, it does.

2 Q What type of sex offender evaluations have you
3 done?

4 A Well, I do precommitment evaluations such as the
5 one that we're here today for. I do annual reviews to
6 determine if the person is ready for release. I do
7 sentencing evaluations after a person has been convicted to
8 determine what kind of sentence they get. I do criminal
9 cases, child pornography cases, and licensing boards. In
10 Florida in the cases where a licensed individual has engaged
11 in inappropriate sexual behavior, then they call me in to do
12 an evaluation and to see if the person's practice needs to
13 be limited in any way so that they can continue practice or
14 if the offense was so severe that they can no longer
15 practice.

16 Q Now, you're licensed to practice psychology in
17 what states?

18 A I'm licensed in Florida, South Carolina, and
19 Missouri.

20 Q And do you have a contract with the South Carolina
21 State Department of Mental Health to do evaluations up here?

22 A Yes, I do.

23 Q And that would include evaluations such as this
24 one?

25 A Yes.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Precommitment evaluations?

2 A Yes.

3 Q Are you paid by the State, through that contract,
4 to do this?

5 A Yes, I am.

6 Q Does your pay vary on whether or not you believe a
7 person meets the criteria as a sexually violent predator or
8 a person does not meet the criteria?

9 A It does not. I get the same fee whatsoever, and
10 actually, I pay all of my own expenses as part of those
11 contracts. So, I would be better off recommending that
12 everyone be released because then I wouldn't have to pay for
13 travel and hotel rooms to come to the trial. But, that
14 being said, I get the same fee no matter what my decision
15 is.

16 Q Now, what is your background with regard to
17 sexually violent predator cases like the one we have here
18 today?

19 A Well, I first began working with sexually violent
20 predators in 1999. I was hired as the first psychologist at
21 the Florida Civil Commitment Center to provide treatment to
22 people detained under the Florida law.

23 Q So, Florida's got a sexually violent predator law
24 kind of like we do?

25 A Yes, it's very similar.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Okay. Okay. And have you previously been
2 recognized as an expert witness by the Courts of South
3 Carolina -- well, by Courts, in general, as a forensic
4 psychologist?

5 A Yes, I've been recognized as an expert well over a
6 thousand times.

7 Q And, again, which states have you testified in as
8 an expert?

9 A Florida, South Carolina, Missouri, and also Iowa.

10 Q Okay. And what about South Carolina? Have you
11 been recognized, prior to today, as an expert witness in the
12 field of forensic psychology for these types of cases,
13 sexually violent predator cases in South Carolina?

14 A Yes, I have, over 35 times in South Carolina.
15 About 293 times in any sexually violent predator case.

16 MR. BOGLE: Your Honor, at this time, we would
17 like to offer Dr. Amy Swan as an expert witness in the
18 field of forensic psychology for this case.

19 MR. FALK: Subject to my earlier objection.

20 THE COURT: Subject to a prior objection.

21 Ladies and gentlemen, in this case, Dr. Swan is
22 being qualified as an expert witness in the area of
23 forensic psychology. That allows her to give her
24 opinion, and the reasons for her opinions. And that,
25 of course, is for you to use as compared to other

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 evidence in this case.

2 MR. BOGLE: Thank you, Your Honor.

3 THE COURT: Thank you.

4 BY MR. BOGLE:

5 Q Now, Dr. Swan, again, how long have you been a
6 practicing psychologist?

7 A Twenty years.

8 Q Now, you are licensed by a board, be it South
9 Carolina or Florida?

10 A That's correct.

11 Q Okay. Have you ever, in that 20 years, been
12 disciplined by the licensing board, the people that give you
13 your license to practice psychology?

14 A No, I have not.

15 Q Okay. Have you ever been disciplined from a
16 voluntary organization that you happen to be a member of?

17 A I have, one time, in 2014.

18 Q 2014. So, four years ago. And what was the name
19 of that organization?

20 A It was the Association for the Treatment of Sexual
21 Abusers.

22 Q And is it required to be a member of that to be a
23 licensed psychologist?

24 A Well, many disciplines are involved in that
25 organization. It's the largest international organization

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 devoted to the study and research of sex offenders.

2 Q So, in 20 years of practice, you've been, you've
3 been disciplined once by a voluntary organization?

4 A Yes.

5 Q And what was the problem?

6 A Well, let me just first say that if you are
7 disciplined by a licensing board, it means that you've
8 broken the law with regard to psychology. If you're
9 disciplined by a voluntary organization, it means that
10 you've broken one of their guidelines. And, in this
11 particular case I was cited for using an outdated interview,
12 and placing too much weight on it in my testimony.

13 Q And this is one case in Florida, right--

14 A One case.

15 Q ---when this all happened? Okay. And why did you
16 use that interview in it -- at, at all?

17 A It was commonly used in Florida, and it provided
18 some good information.

19 Q Okay. As a result of this happening, this
20 voluntary organization, ATSA, or the Association for
21 Treatment of Sex Abusers, what penalty did they impose on
22 you?

23 A They told me to stop using the interview, and to
24 submit two reports for review to ensure that I was not using
25 the interview. And I completed that, and I continued to be

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 a member in good standing of that organization.

2 Q So, now, if they would of -- if it had been a
3 serious infraction, would they have kicked you out?

4 A Yes, I could have potentially been kicked out of
5 the organization if they considered it a serious infraction.

6 Q Okay. But that didn't happen?

7 A It did not happen.

8 Q You're still a member?

9 A Yes.

10 Q Okay. And it wasn't a complaint to a licensing
11 board that gives you a license to practice psychology?

12 A No, it was not.

13 Q Okay. Now, Doctor, let's talk about the case in
14 question, about Mr. Brown. How did you get -- excuse me.
15 How did you get involved in -- with Dameon Brown's case?

16 A I was appointed by the Court to evaluate
17 Mr. Brown.

18 Q Okay. And what type of evaluation were you
19 appointed to do?

20 A I was appointed to do a precommitment evaluation.

21 Q And the precommitment, the context of a
22 precommitment evaluation, what are you looking for? What
23 are you trying to find out?

24 A First of all, I am looking to see if the person's
25 been convicted of a sexually violent offense as defined in a

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 statute, and then I'm looking to see if he has a mental
2 abnormality or personality disorder that makes him likely to
3 commit future acts of sexual violence if not confined in a
4 secure facility for care or control and treatment.

5 Q Okay. Now, could you please describe briefly for
6 the jury your protocol, your step-by-step method in doing
7 evaluations like this, like the one you did on Mr. Brown?

8 A Yes. One of the initial -- initially is that I
9 get all the information about the individual from the person
10 who referred him to me, and, in this case, it was -- I got
11 the information from the Attorney General's Office.

12 And I review the records before I go to the
13 facility to evaluate the individual. And I conduct an
14 interview, if the person agrees, and that includes basically
15 everything that's happened from the time he was born until
16 the time he's sitting in front of me. And that includes his
17 early history, his family of origin, his education,
18 occupation, relationship history, legal history, including
19 his sexual crimes, information about his criminal history,
20 his medical history, his substance abuse history, and his
21 sexual history.

22 Q So, you're gonna have in front of you copies of
23 records relating to his convictions?

24 A Yes.

25 Q Like witness statements, arrest warrants, that

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 kind of stuff?

2 A Yes.

3 Q Indictments---

4 A Absolutely.

5 Q ---sentencing sheets, his records from Department
6 of Corrections?

7 A Yes.

8 Q Okay. All that kind of stuff?

9 A Yes.

10 Q Now, is this the kind of information that is
11 typically and reasonably relied upon by experts in your
12 field?

13 A Yes, it is.

14 Q Did you also interview Mr. Brown pursuant to your,
15 your, your case---

16 A Yes.

17 Q ---your job?

18 A Yes, I did.

19 Q Okay. And about when did that happen and for how
20 long?

21 A That occurred on March 15th, 2017, for three and
22 one quarter hours.

23 Q Okay. And did you consider and rely upon this
24 documentary information you talked about a minute ago,
25 together with interviewing Mr. Brown, and scoring him on any

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 tests that you used; did you consider all of that in
2 rendering your opinion in this matter?

3 A Yes, I did.

4 Q Okay. Can you explain to a jury how a person's
5 past sexual offense behavior relates to future sexual
6 offense behavior?

7 A Yes. The best predictor of future behavior is
8 past behavior. And what we mean by that is if a person is
9 arrested or convicted for a sexual crime, then each time he
10 does it again his risk for another sexual crime increases.
11 In Mr. Brown's case he was arrested in 1991 for touching
12 girls on their butts. That should have functioned as a
13 wake-up call for him that he could not do that, but it
14 didn't because he was arrested again for touching girls on
15 their butts on November 4th, 1992, and November 19th, 1992.

16 Now, his first charges were dismissed, but he
17 didn't learn his lesson, and, this time, he was charged with
18 two counts of assault and battery, and disorderly conduct
19 for touching the girls on their butts. He was adjudicated
20 delinquent and committed to the Birchwood 2 Campus for sex
21 offender treatment.

22 Q Now, if I can stop you for one second, when you
23 say adju -- when you say adjudicated delinquent, that would
24 have been in the Family Court, right?

25 A Yes, absolutely.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Okay.

2 A Not the criminal court.

3 Q Well, the fact that -- well, criminal case, but in
4 Family Court?

5 A That's correct.

6 Q Cause they call them adjudications there?

7 A Yes.

8 Q All right.

9 A If you're under the age of 18, they find that if,
10 if you commit a crime, they typically find that you're
11 delinquent, and send you to a program of sometime to try to
12 fix that criminal behavior.

13 Q So, the phrase adjudicated delinquent, in Family
14 Court context, is like being convicted in Circuit Court?

15 A Yes, it is.

16 Q So, that happened to him?

17 A Yes.

18 Q And, then, what happens after that?

19 A Well, after he got out of that treatment, between
20 February 1st of '95 and March 17th of '95, he sexually
21 assaulted a 13-year old girl, and gave her a venereal
22 disease. So, he didn't let -- learn his lesson from that
23 first -- those first two episodes. Then, on June 21st,
24 1995, he anally raped a five-year old boy. He was sent to
25 prison under the Youthful Offender Act for not, not more

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 than six years. And that didn't work either. He did not
2 learn his lesson. So, on April 6th, 1999, he raped another
3 13-year old. And so this time he was sent to prison for 20
4 years.

5 Q Okay. So, you talked about wake-up call---

6 A Yes.

7 Q ---a minute ago. What do you mean by that?

8 A What I mean is that a reasonable person, the first
9 time he got caught, caught touching girls' butts and
10 arrested, he would say to himself, man, I didn't like that.
11 I don't think that I'm gonna do that any more. But
12 Mr. Brown didn't say that, and he kept getting arrested, and
13 he'd been arrested five times for sexual crimes.

14 MR. BOGLE: If I may approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 MR. BOGLE: Well, let me back up and ask you one
18 other -- why is it important for you to review and
19 consider this type of information in rendering an
20 opinion about whether or not Mr. Brown is a sexually
21 violent predator under our law?

22 A Well, I have -- in, in terms of the statute, I
23 have to determine, if he's convicted of a sexually violent
24 offense. So, I need to review all the records. And then I
25 need to determine if he has a mental abnormality or

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 personality disorder that might -- makes him likely to
2 commit sex crimes.

3 MR. BOGLE: Okay. If I may approach to the
4 witness, Your Honor.

5 BY MR. BOGLE:

6 Q Dr. Swan, I'm gonna hand you what's been premarked
7 as State's Exhibit 1. It's a certified copy from Hampton
8 County on the sentencing sheet, the guilty plea, and the
9 indictment on case Number 1995-GS-25-136. Is this the
10 document of conviction that you've seen before? Have you
11 seen these documents before?

12 A Yes, I have. I relied on these documents when I
13 made -- when I arrived at my opinion.

14 Q Okay. And did you review them as part of your
15 evaluation?

16 A Yes, I did.

17 Q And are these the type of things typically relied
18 upon by experts in your field?

19 A Yes, it is.

20 Q Okay. Now, on this particular case, is it
21 necessary to review the underlying details of what happened
22 to the victim, the underlying details of the crime, in
23 rendering your opinion?

24 A It is.

25 Q Why is that?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A First of all, I need to determine if he has a
2 mental abnormality or personality disorder. And so if
3 someone continually engages in sexual behavior, I need to
4 see that pattern to determine if he actually has a sexual
5 disorder or if he's just a criminal, and, as part of this
6 criminal repertoire, he engages in sexual assault.

7 Q Okay. Well, let's talk about this one right here.

8 A Okay.

9 Q What are the underlying details behind this crime
10 that you found significant?

11 A Okay. So, in this case, this involved a 13-year
12 old girl, and, according to the police report, between
13 February 1st, 1995, and March 17th, 1995, Mr. Brown
14 willfully and unlawfully engaged in criminal sexual conduct
15 with a minor, and, in the first degree, and, in that he
16 sexually assaulted a 13-year old female, and he used
17 aggravated force to accomplish the sexual assault.

18 Q Okay.

19 A As a result of the sexual assault, the 13-year old
20 girl contracted a venereal disease.

21 Q Now, as part of this, what did Mr. -- as part of
22 your research on this case, what did Mr. Brown have to say
23 of these offenses, this offense during your interview?

24 A Mr. Brown told me that he knew that there were
25 lies involved in this, and he really just went along with

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 whatever had happened in the case because he'd already done
2 seven months in the county jail. He said that he was at his
3 cousin's house, and because his cousin or because his cousin
4 and the mother of the victim were really close, and he said
5 that he was 16 when it happened. And he said that there was
6 no penetration. Just kissing and hugging. And he didn't
7 know why they said that he penetrated her, and he doesn't
8 know why they said that she got a venereal disease because
9 he didn't have one. He said that we tried to have sex. Not
10 that he used aggravated force to rape this 13-year old.

11 He said that he was just over at his cousin's
12 house, and she would be there. And he didn't understand how
13 he could be charged with first degree criminal sexual
14 conduct because there was no oral sex, and no penetration,
15 and they weren't even completely naked.

16 Q Okay. But in this -- in the documents that you're
17 looking at, that's a guilty plea?

18 A Yes, it is.

19 Q And you've seen guilty pleas happen, have you not?

20 A Yes.

21 Q And the guy gets up in front of the judge, and
22 admits he did the crime, right---

23 A Yes.

24 Q ---for a guilty plea to go forward?

25 A He swears under oath.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 MR. FALK: Objection, Your Honor. Speculation.

2 THE COURT: Okay.

3 MR. BOGLE: I think she can testify as her
4 experience---

5 THE COURT: Okay. I specifically --

6 MR. BOGLE: ---in watching guilty pleas in
7 general.

8 THE COURT: Okay. But I think we're talking
9 specifically. I don't know---

10 BY MR. BOGLE:

11 Q Well, let me ask you this: Have you seen guilty
12 pleas come down? ..

13 A Yes.

14 Q Okay. In a typical guilty plea, not necessarily
15 in this one, does the person have to admit to the crime?

16 A Yes, the Judge typically asks are you pleading
17 guilty to this crime because you are guilty.

18 Q Okay. And this is a guilty plea right here?

19 A Yes.

20 Q Okay. And criminal sexual conduct in the first
21 degree, as described under South Carolina law, requires
22 penetration, does it not?

23 A Yes it does.

24 MR. BOGLE: Your Honor, at this time, we move to
25 introduce into evidence State's Exhibit 1, the

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 conviction from Hampton County for CSC with a minor in
2 the first or criminal sexual conduct with a minor in
3 the first degree.

4 MR. FALK: No objection.

5 THE COURT: Without objection, it's in evidence.

6 *(Whereupon, State's Exhibit No(s) 1 marked for*
7 *identification and received in evidence.)*

8 BY MR. BOGLE:

9 Q Okay. Now, I'd like to show you what's been
10 premarked as State's Exhibit 2, another indictment and
11 sentencing sheet also out of Hampton County. Number
12 1995-GS-25-0295. Are these documents you've seen before?

13 A Yes, they are.

14 Q Okay. So, this is another, another conviction for
15 criminal sexual conduct in the first degree, correct?

16 A That is correct.

17 Q And you've got the sentencing sheet, the guilty
18 plea, the indictment itself, which involves a sexual battery
19 on a boy, **Minor 1**, at the age of five?

20 A That's correct.

21 Q Okay. Now, is this something that is necessary
22 for you to review in doing this kind of work?

23 A Yes.

24 Q And this is -- is this -- is reviewing a
25 conviction like this something typically done by experts in

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 your field?

2 A Yes.

3 Q Okay. What are the underlying facts that you
4 found necessary in reaching your diagnosis about Mr. Brown
5 that you found from this case which has been marked as
6 State's Exhibit No. 2?

7 A Yes. According to the police reports, Mr. Brown
8 anally raped a five-year old male.

9 Q Okay. So, we have a switch in sexes of his
10 victims now. Girl first. Now a boy.

11 A That's correct.

12 Q Is that significant as we're working through this?

13 A Yes, it is, and---

14 Q Okay. Why is that?

15 A It indicates that he has a broader pool of
16 victims. For example, there are individuals who only
17 sexually assault females, and some who sexually assault
18 males. But if you assault both sexes, then you have a
19 larger pool of victims that could be harmed.

20 Q Does that increase your risk to reoffend?

21 A It does.

22 Q Okay. Now, that's what happened in the case. You
23 talked to Mr. Brown. What's his version?

24 A Mr. Brown said that this five-year old male was
25 his cousin, and he said that there was no penetration, that

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 it was just touchy, feeling stuff, and he said the other
2 case was the same thing, just touchy, feeling stuff. And he
3 said the boy started acting differently, and his mother
4 noticed, and that his mother and her friend came and picked
5 him up in a car and said, What have you been doing with
6 **Minor 1**. He would say -- he said he was 17 in the, in the --
7 at the time, and they took him to the police department, and
8 he admitted that he assaulted the boy. But he denied that
9 there was penetration. He said that he just touched his
10 butt and penis, and he did not ejaculate.

11 Q So, but this too is a guilty plea --

12 A Yes.

13 Q -- to criminal sexual conduct with a minor in the
14 first degree?

15 A Yes.

16 Q And, under South Carolina law, to be guilty of
17 that, there's got to be some kind of penetration of the
18 other -- of the victim, correct?

19 A That is correct.

20 Q Okay. Now, we move, at this time, to introduce
21 into evidence State's Exhibit 2, Your Honor.

22 MR. FALK: No objection.

23 THE COURT: Without objection, it's in evidence.

24 *(Whereupon, State's Exhibit No(s). 2 marked for*
25 *identification and received in evidence.)*

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 BY MR. BOGLE

2 Q Also in Hampton County. What are we seeing here
3 though? We've got two crimes, 13-year old girl, five-year
4 old boy, what are you seeing right now starting to develop
5 on Mr. Brown?

6 A He's taking advantage of minors.

7 Q What about the fact that he's in denial about
8 something that he plead guilty to?

9 A Well, absolutely. He minimized and denied all of
10 his crimes, and that's significant.

11 Q Okay. And I'd like to show you right now a
12 certified copy of a case out of Beaufort County,
13 1999-GS-07-634, a conviction for criminal sexual conduct in
14 the second degree here in Beaufort County.

15 A Yes.

16 Q And the sentencing date is 1999.

17 A Yes.

18 Q Have you seen these before?

19 A Yes, I have.

20 Q Okay. Now, for this particular indictment, did
21 this case later get -- he pleaded guilty, correct?

22 A Yes.

23 Q Did the case later get overturned in some fashion?

24 A It did.

25 Q Okay.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A And what happened, when the case got overturned,
2 there was a probable cause issue. The case was re -- he
3 was -- the case was retried under a different case number,
4 and he was, again, found guilty of criminal sexual conduct
5 with a minor second degree.

6 Q Okay. Let me have that one back right now. So,
7 this is 1999. He pleads guilty right here?

8 A Yes.

9 Q And this would of been something you would of
10 reviewed, right?

11 A Yes.

12 Q And this case got overturned in some fashion,
13 correct?

14 A Yes.

15 Q And then he comes back to Beaufort County, and,
16 again, I would like to approach you and hand you State's
17 Exhibit No. 3.

18 A Okay.

19 Q Indictment, Beaufort County, Number
20 2001-GS-07-2408.

21 A Yes.

22 Q Okay. Have you looked at these documents as part
23 of your work?

24 A I have.

25 Q Is this something typically relied upon by experts

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 in your field?

2 A Yes, it is.

3 Q So, is this a reindictment on the same girl, the
4 same crime in the 1999 thing?

5 A Yes, it is.

6 Q And in this particular case, he comes to court and
7 pleads guilty to criminal sexual conduct with a minor in the
8 second degree, right?

9 A Yes, and he receives a sentence of 20 years.

10 Q And the sentencing date on the lower right-hand
11 corner is when?

12 A December 10th, 2001.

13 Q Okay.

14 MR. BOGLE: Your Honor, we move to introduce into
15 evidence as State's Exhibit No. 3 of a copy of the
16 Beaufort conviction from December 10, 2001.

17 MR. FALK: No objection.

18 THE COURT: Without objection, it's in evidence.

19 *(Whereupon, State's Exhibit No(s). 3 marked for*
20 *identification and received in evidence.)*

21 BY MR. BOGLE

22 Q Now, let's talk about this. What underlying
23 details did you -- now, this was a guilty plea, correct?

24 A Yes.

25 Q It says pleads at the top, right? Let's see.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Yes. What underlying details about this crime did you find
2 significant to share with the jury?

3 A Okay. According to the police report, Minor 2, a
4 13-year old female, was sexually assaulted by two men on May
5 6th, 1999, as she was walking through a path between the
6 Bi-Lo Food Store and Pope Avenue. And what occurred was
7 that one of the men, Mr. Brown, had forcible sexual
8 intercourse with her at knife point.

9 On this particular day, as she walked over to
10 the Bi-Lo, she took a path that was a shortcut towards her
11 home, and, as she walked through there, there were two
12 males, and one of the males grabbed her from behind and
13 started kissing her on her neck and mouth. This was not
14 Mr. Brown. She told the male to stop and he did, and she
15 realized that she dropped her pager on the ground. And so
16 she started looking for it. Both of the men helped her look
17 for her pager. The man who had hugged and kissed her had to
18 go to work at Bi-Lo and he left. And she and Mr. Brown
19 continued looking for the pager.

20 So, after several minutes, she began walking
21 toward Pope Avenue on the path, and Mr. Brown followed her,
22 and he grabbed her from behind, threatened to kill her with
23 a knife if she screamed, pulled down her pants, and began to
24 have forcible sexual intercourse with her. He initially
25 went from the back, and then he turned her over, and he

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 resumed intercourse in the front. He forced her to perform
2 oral sex on him, and she pleaded with him to let her go, and
3 eventually he did. She indicated that she knew Mr. Brown
4 because he lived in the same apartment complex. She was
5 taken to the emergency room, a rape kit was completed, and
6 during the forensic examination sperm were present, and she
7 positively identified Mr. Brown from a photo line-up.

8 Q So, he was someone she knew from the neighborhood?

9 A Yes.

10 Q But didn't know the name?

11 A Didn't know his name.

12 Q Okay. And then she identified him from the photo
13 line-up, and then what else?

14 A And what had, what had actually occurred was that
15 Mr. Brown had found her pager, but he didn't want her to
16 leave because he had other intentions. And so he hid the
17 pager in his sock so that she couldn't find it, and,
18 therefore, she was detained longer than necessary so that he
19 could sexually assault her.

20 Q Okay. So, this is what happened in the case?

21 A Yes.

22 Q He pleads guilty to this?

23 A Yes.

24 Q Right? I guess, twice. The first time gets
25 overturned. He comes back, pleads guilty in 2001, and goes

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 away for 20 years?

2 A Yes.

3 Q Okay. Now, you interview him about this?

4 A Yes.

5 Q Is this type of conviction typically relied upon
6 by experts in your field?

7 A Yes, it is.

8 Q And you looked at these documents as part of your
9 research about Mr. Brown?

10 A Yes.

11 Q What did he say to you about this?

12 A He said that he knew her because he had seen her
13 in the neighborhood, and she lived in the same apartment
14 complex. And he said that the night that, that, that the
15 incident occurred he was standing with another guy that
16 worked at Bi-Lo, and she was standing beside the, the pay
17 phone, and she asked him if she -- he could get her some
18 beer. And he said that he and the other man were about to
19 go down the path and smoke, and she asked can I come with
20 you. When they got back there, each of the men tried to get
21 the other one to leave because they wanted to sexually
22 assault her. Finally, the guy from the Bi-Lo left. And he
23 said that when she dropped her pager and he found it he
24 stuck it in her -- in his sock so that she wouldn't know.
25 And after the other man left, he started touching her, and

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 asked her for sex and she said no. And he said that he
2 asked her again, and she did not say no. And he said you
3 know how people say no, but they really mean yes. So, he
4 said she may have had sex with me because she was
5 intimidated, but all that stuff about killing her, no, I
6 didn't say that.

7 He said that he did not perceive this as a
8 rape at the time, but, after the fact, he agreed that it was
9 a rape. He said he did not have a knife, but he did have a
10 box cutter. But he said he didn't use it to threaten to
11 kill her, and he said that when he tried to unbutton her
12 pants she grabbed him and tried to stop him. But he went
13 ahead and engaged in oral and vaginal sex with her.

14 Q So, he's telling you, when people say no, they
15 really mean yes?

16 A Yes.

17 Q Okay. Move to introduce this, I'm not sure if I
18 did, as State's Exhibit No. 3. Did we do that?

19 Okay. sorry. What are you seeing here, Dr. Swan,
20 going on here? This starts when he's 13 or so.

21 A Yes.

22 Q What kind of -- are you seeing a pattern of
23 behavior here that causes you concern?

24 A Yes.

25 Q What are you seeing?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A Well, at 13 he began touching girls on their
2 butts. At 14, he continued and was arrested. He continued
3 to engage, engage in inappropriate sexual behavior. So, he
4 was sanctioned by being committed to a treatment facility
5 but it didn't work because, as soon as he got out, he
6 reoffended three more times. So, you would think that that
7 would stop him, and he'd say, Boy, I've learned my lesson
8 now. I got sentenced to 20 years in prison, but it didn't.

9 While he was in the Department of Corrections
10 he was convicted of eight disciplinary infractions for
11 targeting female officers and masturbating publicly to them.
12 So, this is considered a sexual crime because, if he did
13 that on the outside, he would have been arrested. So, on
14 the inside, he's continuing to engage in nonconsensual
15 sexual behavior because these correctional officers didn't
16 want to see his penis.

17 He was also found to be in possession of
18 pornography, which is prohibited in the South Carolina
19 Department of Corrections. So, that tells us that he either
20 willfully or does not control his behavior or he's unable to
21 control his behavior.

22 Q And, in the Department of Corrections, you're
23 being watched -- you're a prisoner. You're being watched
24 24/7?

25 A Yes, there are cameras everywhere. There are

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 officers everywhere. So, the fact that you're engaging in
2 inappropriate sexual behavior, a behavior that would be a
3 crime if he engaged in it in the community, that's very
4 significant.

5 Q Now, did you rely solely upon his past criminal
6 history in making your ultimate decision?

7 A I did not.

8 Q Would it be professionally acceptable to do so?

9 A No.

10 Q Okay. Now, you've talked about his criminal
11 history. He's got -- does he have a significant -- what --
12 I'm sorry. Let me back up to something. What about his
13 overall criminal history did you find necessary or find
14 determinative in making your opinion about him? And before
15 I go on to that, let me ask you one other question. In
16 doing this kind of work, is it necessary to look at crimes
17 that were charged, arrested, but not necessarily convicted?

18 A That is correct.

19 Q And why is that?

20 A Well, the research indicated that even being
21 arrested for a sexual crime, even if you're not convicted,
22 increases your risk for another sexual crime.

23 Q Okay. So, going back to the question I asked
24 about the relying on past criminal history by itself, you
25 say don't do that; what about his overall criminal history

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 did you find significant?

2 A There were five things that were significant about
3 his criminal history. First of all, he had a significant
4 history -- criminal history apart from his sexual crimes.
5 So, there are two pathways to committing a sexual crime.
6 One is having deviant sexual preference for a sexual
7 disorder, and that could lead you to commit sexual crimes.
8 Another one is having Antisocial Personality Disorder, which
9 is a criminal history, and that could also lead you to
10 commit sexual crimes. But if you have both pathways, as Mr.
11 Brown does, then it increases your ability for sexual
12 crimes. It's a double whammy, so to speak, because you have
13 both pathways to committing a sexual crime.

14 The second thing is that he committed a
15 sexual crime, he received a sanction, and he continued to
16 reoffend four more times after that initial sanction.
17 Typically, what that means is that the individual has a
18 preference for deviant sex. For example, sex with minors
19 that leads them to engage in repeated acts of sexual
20 violence against minors.

21 Thirdly, Mr. Brown reoffended less than a
22 year after his first sexual crime, which shows that he did
23 not learn his lesson. As I said, you would reasonably think
24 that he'd say I didn't like being arrested, I'm not gonna do
25 that again, but that didn't happen with Mr. Crime -- with

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Mr. Brown because he's driven by sexual deviance.

2 The fourth thing is that Mr. Brown reoffended
3 while he was on parole, and individuals who violate
4 probation or parole are six times more likely to reoffend.
5 If -- so, if he can't control, control his sexual behavior
6 while he is on parole and being monitored closely, then he
7 cannot control his sexual behavior.

8 And, lastly, Mr. Brown was convicted of
9 nonsexual violence, and what we mean by that is a violent
10 offense apart from the sexual crime. And there are two
11 types. One is in-depth sexual violence -- nonsexual
12 violent. So, that would be at the time of his most recent
13 sexual offense, and then there's prior nonsexual violence.
14 So, Mr. Brown was convicted of assault and battery, and
15 research shows that convictions for nonsexual violence
16 increase his risk for rape and other sexual crimes. _____

17 Q He's also got a previous conviction for a robbery
18 of some sort?

19 A Armed robbery, yes.

20 Q Okay.

21 A That is also considered nonsexual violence.

22 Q And that's a, again, a predictive factor for
23 future sexual crimes?

24 A It's a---

25 Q Research---

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A A predictor -- a predictive factor for rape, and
2 other sexual crimes.

3 Q Okay. Now, you've talked about his misconduct in
4 prison. You've covered that a few minutes ago.

5 A Yes.

6 Q A lot of that was sexual misconduct, correct?

7 A Yes, it was.

8 Q Did he have a lot of violence for stuff other than
9 sexual misconduct?

10 A Yes, he was written up 180 times for misconduct,
11 and 80 of those he was convicted of. So, that's a
12 significant disciplinary history in the Department of
13 Corrections.

14 Q Now, is it important, in cases like this, to see
15 if a guy like Mr. Brown has ever had some kind of sex
16 offender treatment in the past?

17 A It's very important because if someone who has had
18 sexual treatment in the past, they might not meet criteria
19 now because they would of had treatment that have -- so that
20 they would of learned not to commit other sexual crimes, and
21 we wouldn't even be here today if that was the case.

22 Q In looking through the Department of Corrections'
23 records about Mr. Brown's stays there, did you find evidence
24 that he had taken sex offender treatment offered by the
25 Department of Corrections?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A Well, first, let me say that, after that first
2 crime that he was adjudicated delinquent for touching the
3 girls on the butt, he was sent to an adolescent sex offender
4 treatment center, but he did not complete it, and the
5 research indicates that terminating treatment prior to
6 completion increases your risk for another sexual crime.

7 Q Okay. So, penalty is---

8 A So---

9 Q ---adjudicated in the Family Court?

10 A Yes.

11 Q Okay. What about the Department of Corrections,
12 the sex offender treatment that they may offer there?

13 A Yes, Mr. Brown received sex offender treatment in
14 the Department of Corrections between November of 2013 and
15 September of 2014. However, sex offender treatment in the
16 Department of Corrections is lacking the intensity necessary
17 to curtail someone as sexually deviant as Mr. Brown.

18 MR. FALK: Objection, Your Honor. Speculation.

19 BY MR. BOGLE:

20 Q Is this based upon your review of the -- how they
21 do the treatment out there?

22 A Yes, it is.

23 Q Okay. So, you've talked to people out there. You
24 review the type of treatment they offer, the Department of
25 Corrections?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A Yes.

2 Q And based on that review and your information
3 there, is the type of treatment he gets at the Department of
4 Corrections sufficient for a person like Mr. Brown?

5 A No.

6 THE COURT: You may go ahead.

7 A Oh. No, it's not. The treatment in the
8 Department of Corrections is primary, I believe, psycho
9 educational. That and what it does, it prepares an
10 individual for sex---

11 Q Get closer to the mike.

12 A Okay.

13 Q I'm having trouble.

14 A It prepares the individual for substantial sexual
15 offender treatment, which takes years, not the six months to
16 a year that they receive in the Department of Corrections.

17 Q Okay. And his responses in the current
18 evaluation, did you ask him whether or not he thinks he
19 needs sex offender treatment?

20 A Yes, he did not believe he needed it. He thought
21 that he'd be just fine and he wouldn't commit any more
22 sexual crimes. But, to me, that indicates that there's no
23 reason to believe that he's any different than when he was
24 committing his sexual crimes in the community. He has not
25 learned enough to prevent re-offense.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Okay. Now, after collecting all this information,
2 interviewing Mr. Brown, looking at him, the things he's
3 done, the crimes we've introduced into evidence, and review
4 of the records, the things we've talked about so far today,
5 have you been able to diagnose Mr. Brown with a relevant
6 mental abnormality?

7 A I have. I diagnosed him with two mental
8 abnormalities.

9 Q Okay. What are they?

10 A Okay. So, the technical term for sexual deviance,
11 in psychology, is a paraphilia, and Para means other, and
12 philia means love. So, basically, it is a deviant sexual
13 preference. So, I diagnosed Mr. Brown with other specified
14 paraphilic disorder, and the qualifier is hebephilia, and I
15 also diagnosed him with Exhibitionist Disorder, sexually
16 aroused by exposing genitals to physically mature
17 individuals.

18 Q Okay. Now, let's take them in backwards order.
19 The Exhibitionist Disorder, is that based on the constant
20 crimes he had in prison for exposing himself to prison
21 guards?

22 A Yes, it is. And the technical definition states
23 that, over a six-month period, the person must demonstrate
24 sexually arousing fantasies, urges, or behaviors involving
25 exposing his genitals to individuals who do not want to see

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 his penis. So, non-consensually.

2 Q And most of these times were for masturbating in
3 front of female guards?

4 A Yes, and it specifies that it has to be at least a
5 six-month period. Mr. Brown has at least a six-year
6 pattern. He also received a disciplinary infraction for
7 sexual misconduct in 2013. It---

8 MR. FALK: Objection, Your Honor.

9 THE COURT: Yes, sir.

10 MR. FALK: Yes, this is my earlier objection.

11 THE COURT: Oh, okay. We need to go past that.

12 BY MR. BOGLE

13 Q Okay. So, he's got at least almost six years
14 worth of sexual things, exposing himself to people at the
15 prison?

16 A Yes.

17 Q Okay. Now, you mentioned another thing called
18 other specified paraphilic disorder, hebephilia. Okay.
19 What does that mean?

20 A Okay. So, other specified paraphilic disorder
21 means that, in the DSM-5, which is the Diagnostic and
22 Statistical Manual 5, it's a nine hundred page book that
23 tells us every sexual -- every mental health disorder that
24 you could possibly have, and the criteria for diagnosing it.
25 So --

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Is this kind of the guidebook for psychologists
2 and psychiatrists in diagnosing mental abnormality?

3 A Yes, it is.

4 Q Of all types, including sexual?

5 A Yes.

6 Q Okay. I'm sorry to interrupt you. Please go
7 ahead.

8 A So, under the sexual disorders section, the
9 paraphilia section, there are eight disorders that are
10 specifically delineated, and those are the ones that are
11 most common that we have the most research about. However,
12 there are 547 paraphilic disorders or deviant sexual
13 preferences that have been identified. So, the other 539
14 that are not specifically delineated fall under other
15 specified paraphilic disorder, and then you put the
16 qualifier that tells what kind of disorder it is. So, in
17 this case, I diagnosed him with hebephilia, which is sexual
18 arousal to young individuals, minors, who have not yet
19 developed full sexual, secondary sexual characteristics.
20 Typically the age range is 11 to 14 that fall into this
21 group.

22 Q Okay. So, he's got a crime in Hampton County for
23 a young girl that falls within that age pattern, right? We
24 talked about that.

25 A Yes.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q And he's also got the crime here in Beaufort
2 County for another young girl about the same age, about 13
3 or so---

4 A Yes.

5 Q ---that falls within that category?

6 A Yes.

7 Q Okay. So, if I pick up the Diagnostic and
8 Statistical Manual, the DSM it's called for short, if I pick
9 up that book and look for the word hebephilia in it, I'm not
10 gonna find it, right?

11 A That's correct.

12 Q But I'll find the other specified paraphilic
13 disorder category, which includes hundreds of other
14 disorders which just aren't in the book?

15 A That's correct.

16 Q But these disorders, they have been -- have they
17 been researched?

18 A Yes.

19 Q Okay. And so, now, is it important, in cases like
20 this, to look at other evaluations done on the same guy by
21 other professionals?

22 A Absolutely.

23 Q Did you find a competency to stand trial
24 evaluation done on Mr. Brown some time ago?

25 A Yes, I did.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q And one of the things they talked about in there
2 was pedophilia?

3 A Yes.

4 Q Okay. Now, what is pedophilic disorder or
5 pedophilia?

6 A So, pedophilic disorder is a disorder that occurs
7 over at least six months in which the person demonstrates
8 sexually arousal, fantasies, urges, or behaviors involving
9 prepubescent children. Those are children typically under
10 the age of 13 who have not yet developed secondary sexual
11 characteristics. So, because I saw that information in that
12 report, I considered a diagnosis of pedophilic disorder for
13 Mr. Brown. However, he had the one five-year old male
14 victim, but he didn't have any other prepubescent victims.
15 And, therefore, I couldn't establish the six-month pattern.
16 So, I determine that he did not meet criteria for that
17 disorder.

18 Q Okay. Well, you looked for it, and couldn't find
19 it?

20 A Yes.

21 Q Okay. So, what we have here is the exhibitionist
22 disorder?

23 A Yes.

24 Q And we have the other specified pedophilic
25 disorder characterized as hebephilia?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A Yes.

2 Q The sex with the really young girls --

3 A Yes.

4 Q -- who are past puberty, but just really young
5 girls?

6 A Yes.

7 Q Okay.

8 A I also considered the diagnosis of Frotteuristic
9 Disorder, and Frotteuristic Disorder is where an individual
10 rubs their genitals on an anonymous person or grabs the
11 butts of girls. However, those first two crimes for
12 grabbing the butts of girls, he was 13 and 14 years old, and
13 there was no indication that that pattern continued into
14 adulthood. And so I did not diagnosis him with
15 Frotteuristic Disorder.

16 Q Okay. Now, so, we've got the two mental
17 abnormalities. Did you also diagnosis him with a
18 personality disorder?

19 A Yes.

20 Q And what is that?

21 A A personality disorder is -- means that an
22 individual's manner of relating to the world is different
23 than other people. It's out of step with the way most
24 people conduct their lives, and, in this regard, I diagnosed
25 Mr. Brown with antisocial personality disorder. An

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 antisocial personality disorder is a disregard for and a
2 violation of the rights of others, and social norms such as
3 laws prohibiting certain behaviors.

4 Q And, to get there, you have to go back to conduct
5 prior to age 15, right?

6 A Yes.

7 Q Criminal conduct prior to age 15?

8 A Yes.

9 Q Which you have?

10 A Yes. In order to diagnose someone with antisocial
11 personality disorder, they have to have a pattern of what we
12 call conduct disorder prior to the age of 15. And, in this
13 regard, Mr. Brown was skipping school by the age of 12 or
14 13. He was stealing candy and bicycles by the age of 12 or
15 13. He was engaging in vandalism by the age of 14 or 15.
16 He repeated the sixth grade because he got in trouble and
17 was kicked out of school. He began using alcohol at 14. He
18 began smoking marijuana at 12 to 13. He began fighting at
19 12 to 13. He slapped a teacher and the records from some of
20 his institutional settings indicated that, as a young child,
21 he engaged in the fire setting and cruelty to animals. So,
22 that's a pretty significant history of conduct just sort of
23 prior to the age of 15.

24 Q Okay. And then, since then, you've got this
25 reckless conduct dis -- reckless conduct or disregard for

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 the safety of others in his criminal history since then?

2 A Yes, there is---

3 Q Okay.

4 A There are eight features of antisocial social
5 personality disorder, and this is failure to con, to conform
6 to social norms with respect to lawful behavior, and we know
7 that he has been arrested many times, deceitfulness,
8 impulsivity or failure to plan ahead, irritability and
9 aggressive, reckless disregard for the safety of self and
10 others, consistent irresponsibility, lack of remorse. And
11 in order to receive this diagnosis the individual must be 18
12 and have a prior conduct disorder prior to the age of 15.

13 Q Okay. Now, in your report, you also noted that
14 Mr. Brown, I think the word was, prototypical psycho pathy
15 or something like that?

16 A Yes..

17 Q All right.

18 MR. FALK: Objection.

19 Q Did you---

20 THE COURT: Okay. Let me see the attorneys really
21 quickly.

22 MR. BOGLE: Yeah.

23 THE COURT: We need a break. Ladies and
24 gentlemen, I was waiting until they were done with
25 direct, but I think now is a great time to take a

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 break. Leave your pads in your seats, ladies and
2 gentlemen, with your pen. Do not discuss this case.
3 It wouldn't be appropriate to do so. Refresh
4 yourselves. Get a drink. We'll come right back.
5 Ladies and gentlemen, I anticipate running till one
6 o'clock today just to let you know when we will break
7 for lunch. Okay. So, that's just for scheduling
8 purposes. All right. Thank you. Y'all go. Do not
9 discuss the case with each other.

10 (The jury exits the courtroom at 11:00 a.m.)

11 THE COURT: Just for the record really quickly
12 before the break, we talked about that. I understand
13 use of the word psychopathy. I heard, coming out of
14 his mouth, the word psychopath. You made your
15 objection, Mr. Falk. We talked about this. Because
16 it's such a literal term, even though I understand it's
17 a clinical term, and it is your diagnosis, we were
18 gonna try to keep that to a minimum is what we all had
19 agreed in. I said that, if the word comes out, I was
20 I'm not gonna declare a mistrial because, again, it is
21 a true diagnosis. But we were not going to beat a dead
22 horse I believe is the word about that.

23 MR. BOGLE: Yeah.

24 THE COURT: So, we need to stay away from that, if
25 possible.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 MR. BOGLE: Yeah, I've mispronounced the word.

2 THE COURT: Right.

3 MR. BOGLE: I said psycho pathy, and it's
4 psychopathy.

5 THE COURT: And, again, we're just gonna call it
6 that---

7 MR. BOGLE: I apologize for that.

8 THE COURT: ---but it is actually a fact, and,
9 again, to the extent you need it to give her opinion,
10 of course, she can testify to that, but, other than
11 that, we don't need to use a loaded term for the jury.

12 MR. BOGLE: What---

13 THE COURT: Okay.

14 MR. BOGLE: What I was going to do was ask her,
15 since you're finding antisocial, did that make you look
16 further to see whether or not he had any indication of
17 psychopathy, and found that he did, and you can list
18 the cri, the criteria you found, inner-personal things,
19 behavioral lifestyle.

20 THE COURT: She can say all that.

21 MR. BOGLE: If she does, just not using the word.

22 THE COURT: Again, it's the loaded term that is
23 difficult to keep from hearing as a phrase on T.V.

24 MR. BOGLE: She'll say---

25 THE COURT: And I definitely understand that.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 MR. BOGLE: So, she'll say those things, but
2 without using the word psychopath, and I guess I'll
3 call it psychopathy.

4 THE COURT: All right.

5 MR. BOGLE: I apologize.

6 THE COURT: Okay. Well, I'm confident Dr. Swan
7 knows what she's doing.

8 MR. BOGLE: Okay.

9 THE COURT: So, it's just as long as we don't open
10 the door.

11 MR. BOGLE: Yes.

12 THE COURT: Okay.

13 THE WITNESS: Okay.

14 THE COURT: For the rest of us who are not
15 doctors, or at least not of psychology.

16 MR. BOGLE: Thank you, Your Honor.

17 THE COURT: Okay. Thank you.

18 MR. FALK: Your Honor?

19 THE COURT: I appreciate it, Dr. Swan. I -- she
20 understands.

21 MR. FALK: Your Honor?

22 THE COURT: Yeah.

23 MR. FALK: Just a minute. You've already ruled on
24 my motion.

25 THE COURT: Yeah.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 MR. FALK: But I did not make the record that I
2 moved for a mistrial, and that you denied it.

3 THE COURT: Thank you. I appreciate it. Noted
4 for the record, I've denied it. Again, I don't see how
5 we avoid the diagnosis. We're just gonna try very hard
6 to stay away from it. Okay.

7 MR. FALK: But, again, Your Honor, my point would
8 be -- my concern here is just that Mr. Bogle bringing
9 up the word psychopath I thought they were gonna leave
10 it to her saying it one time. That's why I think it's
11 different from the pretrial ruling.

12 THE COURT: Okay. And I think it's covered for
13 the record, but, again, that's why I stopped when he
14 said it, and, again, it's noted for the record. We're
15 just not gonna have her repeat it. You can make your
16 motion again if it continues --

17 MR. FALK: Thank you.

18 THE COURT -- and is repetitive.

19 Okay. Doctor, you are more than welcome to step
20 down and refresh yourself over the break. Just don't
21 discuss your testimony with anyone.

22 THE WITNESS: Sure.

23 THE COURT: We're gonna take ten minutes. Okay,
24 y'all. How much longer do you have with Dr. Swan?

25 MR. BOGLE: We're nearing -- what I'm gonna do is

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 I'm gonna cover the psychopathy features that he has,
2 and then I'm gonna go into the stabbing in '99, and
3 then, after that, I'll ask the conclusion questions.
4 So, I would say about 20 more minutes.

5 THE COURT: Okay. How long -- do you have any
6 idea of how long your cross is gonna be on her?

7 MR. FALK: As long as his direct.

8 THE COURT: And that's fine. I just wanted to
9 have an idea---

10 MR. FALK: Well---

11 THE COURT: ---of what I'm doing for lunch, and do
12 we believe -- do you -- who -- how many witnesses do
13 you think you're putting up?

14 MR. FALK: I'm gonna put up my client.

15 THE COURT: Right.

16 MR. FALK: And I would suspect that will take
17 maybe 20 minutes.

18 THE COURT: Okay.

19 MR. FALK: However long Mr. Bogle will be, and we
20 have some fact witnesses here. One primary who might
21 be the same amount of time.

22 THE COURT: Okay.

23 MR. FALK: We'll get done after lunch. What I
24 kind of want to know is are we gonna break after the
25 direct for the cross or the lunch, or are you gonna try

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 and do the---

2 THE COURT: No, I would like to try -- I mean it's
3 only eleven o'clock right now.

4 MR. FALK: Okay.

5 THE COURT: I mean as far as---

6 MR. FALK: That's fine.

7 THE COURT: ---Dr. Swan is concerned, no, I'd like
8 to finish with Dr. Swan if we could before lunch.

9 MR. FALK: Thank you.

10 THE COURT: So, we can push that a little bit.

11 THE WITNESS: I would be thrilled too because I
12 have a trial in Miami tomorrow, and that's an
13 eight-hour drive today.

14 THE COURT: Driving.

15 THE WITNESS: Yes.

16 THE COURT: Oh, my goodness.

17 THE WITNESS: Yes.

18 THE COURT: Okay. We're gonna try really hard to
19 get---

20 THE WITNESS: Okay.

21 THE COURT: ---you out of here.

22 THE WITNESS: Thank you.

23 THE COURT: Okay. No problem. All right.

24 (Whereupon, a brief recess was taken.)

25 THE COURT: All right. Just to let you all know,

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 we are ordering the jury some sandwiches for the --
2 just to make -- just to make sure we can finish up Dr.
3 Swan before lunch. That way we can get it to the jury
4 a little more quickly. Try to get you out of here so
5 you can get to Miami. All right. Okay. Let's go
6 ahead and bring the jury in.

7 (The jury enters the courtroom.)

8 THE BAILIFF: Ready for the jury, Your Honor?

9 THE COURT: Yes, sir.

10 THE BAILIFF: The jury's in the courtroom, Your
11 Honor.

12 MR. BOGLE: Thank you, Your Honor.

13 BY MR. BOGLE:

14 Q Dr. Swan, let's kind of pick up where we left off.
15 You were going through the criteria for antisocial
16 personality disorder. After evaluating Mr. Brown up to this
17 point, did you look further?

18 A Yes, I did.

19 Q What, what did you look into?

20 A About 75 to 80 percent of the inmates in prison
21 have antisocial personality disorder because antisocial
22 personality just sort of -- it's a criminal lifestyle. So,
23 you would expect that a large proportion of individuals who
24 are in prison have that. However, there's a subset, about
25 20 to 25 percent of those, with antisocial personality

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 disorder have an extremely severe form of antisocial
2 personality disorder that we designate as psychopathy. And
3 it is essentially a supercharged version of antisocial
4 personality disorder.

5 Q What are the features of that that you found
6 relating to Mr. Brown?

7 A So, there are three categories of features.
8 There's the inner-personal, and these individuals with
9 psychopathy are coldhearted and callous. They're egos --
10 egocentric. They exculpate others. They are grandiose, and
11 they're manipulative.

12 The second category is emotional. And these
13 individuals have a fundamental incapacity for true love or
14 true friendship. They lack empathy, and they lack genuine
15 guilt, and remorse to such a degree that it's appalling to
16 most of society. They're selfish. They have shallow
17 emotions. And the third category, the behavioral lifestyle,
18 they're deceitful, and many are pathological liars. They
19 fail to fulfill social obligations and responsibilities.
20 They're impulsive. They readily violate laws and social
21 norms. They are sensation seeking, and they're unstable.
22 Now, Mr. Brown has many of those features, and on the
23 testing, he was designated with prototypical psychopathy,
24 and basically---

25 MR. FALK: Objection, Your Honor.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A ---what that means is that---

2 THE COURT: Subject to your prior objection.

3 MR. FALK: Yes.

4 THE COURT: Subject to your prior objection you
5 can continue, Dr. Swan.

6 A What that means is that he takes what he wants
7 when he wants it, and that includes sex, and his conscious
8 is not developed like we would expect. So, he doesn't care
9 who he hurts. It's all about him getting what he wants, and
10 he does not have any regard for the rights of others.

11 Q In these types of cases, do you also try to
12 measure a person's risk to reoffend?

13 A I do.

14 Q What type of risk factors do you look at?

15 A They're two types of risk factors. We look at
16 static risk factors, and those are historical risk factors
17 that do not change. For example, each time he commits a
18 sexual crime, his risk increases. So, of the ten items on a
19 measure of static risks, eight of them don't change at all.
20 And then we have dynamic risk factors, and these are
21 changeable risk factors. And these are the ones that we
22 target in treatment to help the individual so that he
23 doesn't commit more sexual crimes.

24 Q Did you score Mr. Brown on something called a
25 Static-99R?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 THE COURT: Subject to your prior objection---

2 MR. FALK: Thank you.

3 THE COURT: ---it's noted. You may continue,

4 Dr. Swan.

5 A I did.

6 Q What---

7 A The Static---

8 Q What is the Static-99R?

9 A The Static-99 is an actuarial in, instrument that
10 we use to assess risks. And the two important static risk
11 factors on that instrument are sexual deviance, and
12 antisocial orientation.

13 Q Now, if I may interrupt though, when you say
14 actuarial instrument, what do you mean in plain English?
15 What -- can you give us an example that we can relate to --
16 that we had encounter in our ordinary lives that might
17 explain how the Static-99R works?

18 A Yes. So, an actuarial instrument is based on
19 research similar to the actuarial tables that they use in
20 the insurance industry. For example, young males under the
21 age of 25 are, are more likely to be involved in an
22 automobile accident, and every time they have an accident,
23 their risk for another one increases. So, their premiums
24 increase, and that's the way these actuarial instruments
25 work. Each time that an individual is arrested or convicted

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 of a sexual crime, their risk increases for another crime,
2 and the more stringent the measures we need to implement to
3 control that behavior.

4 Q So, you scored Mr. -- now, the actual -- the
5 Static-99R is based on studies of thousands of sex
6 offenders---

7 A The---

8 Q ---in multiple countries?

9 A Yes, the initial research was based on 30,000 or
10 actually 28,000 sex offenders, and the more recent ones draw
11 from many different countries..

12 Q And these are sex offenders who reoffend?

13 A Yes.

14 Q Okay. And was the guidebook for doing this thing
15 updated fairly recently?

16 A Yes, the coding rules for the Static-99R was
17 updated in 2016 to incorporate some of the more recent
18 crimes like sexting, and crimes involving the Internet that
19 were not included in the old manual that was developed in
20 1999.

21 Q So, when scoring Mr. Brown on the Static-99R,
22 you've explained what -- and it's something used by experts
23 in your field?

24 A Yes, it is. It is the most widely used risk
25 assessment instrument for sexual offenders.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Okay. Now, can it absolutely predict that
2 Mr. Brown's gonna reoffend sexually?

3 A It cannot. Although this is considered the state
4 of the art in risk prediction, we cannot say Mr. Brown is
5 going to reoffend. What the instrument tells us is that
6 individuals in the research sample who had characteristics
7 like Mr. Brown reoffended at a certain rate.

8 Q Okay. Just like my -- if I have a 24-year old
9 son, my insurance company can't guarantee he's gonna have an
10 accident?

11 A That's correct.

12 Q But they know, from thousands of others, that he's
13 likely to, and so I pay higher premiums?

14 A That is correct.

15 Q What score did Mr. Brown get on the Static-99R?

16 A So, Mr. Brown scored a -- an eight on the
17 Static-99, and the scores range from minus three to 12. But
18 anything six and above is considered to be high risk, and
19 the new designation for that is well above average risk.

20 Q Okay. And does that tell you something about his
21 likelihood to be arrested or charged with a sexual crime in
22 say the next five-years?

23 A It does. And the Static tells us probabilities
24 that an individual will be arrested or convicted of another
25 sexual crime in five-years. So, Mr. Brown scored in the

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 ninety-ninth percentile, and what that means is that, out of
2 every one hundred sexual offenders, Mr. Brown is more risky
3 than 98.5 of them. Only three-tenths of 1 percent were
4 higher than then Mr. Brown. Now, they also give us a
5 relative risk, and the average sex offender scores a two on
6 the Static-99R, but Mr. Brown scored an eight. And so his
7 risk would be 7 point -- 7.32 times higher than the risk of
8 the typical offender.

9 Q Now, do actuarial things, like the Static 99, do
10 they underestimate the risk to reoffend?

11 A They do.

12 Q What does the research indicate about that?

13 A Okay. The research indicates that, to be arrested
14 or convicted of a sexual crime, less than 10 percent of sex
15 offenders are arrested or convicted of a sexual crime. So,
16 that -- the statute wants us to determine if someone has a
17 mental abnormality, a personality disorder that makes them
18 likely to commit future sexual crimes during their whole
19 life. But what the Static 99 tells us is that -- well, that
20 what will be or that, whether he'll be arrested or convicted
21 in five-years, and let me say that over because I think I
22 got it wrong. The statutes want us to determine if he will
23 commit a sexual crime in his lifetime, but the Static-99R
24 tells us whether he will be arrested or convicted in
25 five-years. And less than 10 percent of sexual crimes

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 results in a conviction. So, you can see that's an
2 underestimate. So, Mr. Brown is 40 years old now, and he
3 could have at least 20 more years to sexually offend because
4 the average sex offender stops offending at 60.

5 Q And is this Static-99R, is that the sole thing you
6 rest your opinion on?

7 A No. As I said, these are static factors. So, the
8 only way Mr. Brown could change his score is by getting
9 older because, as he ages, he'll lose points because sex
10 offenders don't tend to commit sexual crimes in their older
11 ages as they do in younger ages. So -- but we consider
12 dynamic risk factors that are changeable. So, we
13 incorporate all aspects of factors that contribute to
14 reoffending.

15 Q What dynamic risk factor did you find existed for
16 Mr. Brown in your evaluation?

17 A Okay. So, the first one is sexualized violence.
18 Sexual violence described an -- describes an interest in
19 coercive sex, and we know that Mr. Brown clearly
20 demonstrated that because he sexually assaulted one male
21 child and five female child -- children. He has multiple
22 paraphillias from multiple sexual disorders. So, if he has
23 two or more, that increases his risk for another sexual
24 crime. He has offensive supportive attitude, and what that
25 means is that he minimizes, and denies his crimes. He said

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 there was no penetration involved even though there clearly
2 was. So, that places him at risk for another sexual crime
3 because, if he doesn't understand the gravity of his sexual
4 offenses, and he minimizes them, then he's likely to commit
5 more offenses.

6 The next one is lack of emotionally intimate
7 relationships with adults, and that involves individuals who
8 don't have stable long-term relationships or whose
9 relationships involve conflict or infidelity. Excuse me
10 just a minute. Let me get some water.

11 Q You got enough up there?

12 A Uh-huh. (Affirmative).

13 Q Okay.

14 A So, Mr. Brown never had a relationship that lasted
15 more than five months. He had 60 partners, sexual partners,
16 but, most of them, a, a large percentage, were one-night
17 stands, and he never lived with anyone for more than five
18 months. So, lifestyle impulsiveness means low self-control,
19 chronic instability in employment and housing irresponsible
20 decisions. So, this is a major determinant of criminal
21 behavior. Mr. Brown was unable to comply with his parole.
22 He quit jobs without having another one lined up. He was
23 fired many times. So, he clearly made irresponsible
24 decisions. He used alcohol and drugs. The next one is poor
25 problem solving, and this means deficits in recognizing the

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 problems that he has, not being able to see cause and effect
2 like, if I sexually assault another person, I'm going to go
3 to prison. And difficulty in generating a suitably wide
4 number of options so that he can choose an appropriate
5 personal behavior. And it's very clear that he lacked
6 consequential thinking, and failed to learn from experience.

7 Resistance to rules of supervision means a
8 defiant attitude for authority, and a history of
9 oppositional behavior. Back at the time that he was in sex
10 offender treatment at the age of 13, they said that he had
11 problems with authority, and he had oppositional behavior.
12 And it continued up until the Department of Corrections,
13 when he kept getting disciplinary infractions. So, that has
14 not changed over time. Negative in -- social influences
15 involves a criminal peer group, and, in fact, Mr. Brown has
16 clearly been involved with individuals who commit crimes.

17 And lack of concerns for others. Callousness
18 means that he doesn't have the appropriate feelings for
19 other people. He takes advantage of them, and clearly you
20 can see from his attitudes toward the victims of his crime
21 that he was concerned more with what happened to him than
22 the harm he caused his victims. And the last one is
23 dysfunctional coping, and that's defined as the way sexual
24 offenders manage negative emotions such as anger, or
25 anxiety, rejection, and humiliation, and they can cope

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 either by externalizing behaviors, which Mr. Brown did, and
2 also through sexualized behaviors, assaulting other people.

3 Q So, are these dynamic risk factors, along with the
4 scoring on the Static-99R, are these things, together, also
5 part of your reasons for your opinion about him?

6 A That is correct. That's all aspects of his risks.

7 Q Why is it important to look at what the static,
8 unchangeable history, and the dynamic changeable thing? Why
9 are both important?

10 A It wouldn't be fair to hold someone to just the
11 Static-99R factors because there's no way they can get a
12 lower score except by getting older. But if the person has
13 had treatment, and they are able to target and change these
14 dynamic risk factors, even though their static score is
15 high, they would not be at risk any longer.

16 Q Now, Dr. Swan, based upon your evaluation of
17 Mr. Brown, meeting and talking with the guy, the scoring you
18 did on the Static-99R, the other research that you did, that
19 prototypical thing you were talking about earlier, and the
20 dynamic risk factors that you've identified on him, do you
21 have an opinion, to a reasonable degree of psychological
22 certainty, again, does Mr. Brown suffer from mental
23 abnormalities?

24 A Yes, he does. Other specified paraphilic
25 disorder, hebephilia, and exhibitionistic disorder.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q In addition to those, does he suffer from a
2 personality disorder?

3 A Antisocial personality disorder, and he also has
4 prototypical psychopathy. That is important because
5 psychopathy, in combination with sexual deviance, increases
6 risk for sexual re-offense.

7 Q Do you also have an opinion, again, to a
8 reasonable degree of psychological certainty, do these
9 diagnoses, and things you've talked about just now, do they
10 cause Mr. Brown serious difficulty in controlling his
11 behavior and make him dangerous?

12 A Yes, they do because, clearly, if you were able to
13 control your behavior or willing to control your behavior,
14 you would have learned your lesson the first time he got
15 arrested. But Mr. Brown kept doing the same thing over and
16 over and over. So, he didn't learn from experience, which
17 either demonstrates that he's not willing to control his
18 behavior or he's not able to.

19 Q Do you also have an opinion, again, to a
20 reasonable degree of psychological certainty, as to whether
21 these diagnoses you've talked about, the things that are
22 wrong with Mr. Brown, do they affect his emotional or
23 volitional capacity so that he is predisposed to commit
24 future sexually violent offenses?

25 A Yes.

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 Q Do you also have an opinion, again, to a
2 reasonable degree of psychological certainty, as to whether
3 Mr. Brown thus has the propensity to be dangerous and commit
4 future sexually violent offenses?

5 A Yes.

6 Q Do you also have an opinion as to whether or not
7 this propensity, is it of such a degree, and, again, to a
8 reasonable degree of psychological certainty, this
9 propensity to commit crimes of sexual violence in the
10 future, is it of such a degree that it poses a menace to the
11 health and safety of others?

12 A Yes, it is.

13 Q Do you also have an opinion, and, again, to a
14 reasonable degree of psychological certainty, that Mr.
15 Brown's diagnoses, together with the criminal convictions
16 we've talked about, make him likely to engage in acts of
17 sexual violence unless he's confined in a secure facility
18 for long control, care, and treatment?

19 A Yes.

20 Q And, finally, do you have an opinion, again, to a
21 reasonable degree of psychological certainty, as to whether
22 Mr. Dameon Montrell Brown meets the criteria to be found a
23 sexually violent predator in this particular case?

24 A Yes.

25 Q Now, have you looked into the kind of supervision

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 that he may be facing if he gets let go? Like does he have
2 anything hanging over his head from Probation and Parole?

3 A Yes. As far as Probation and Parole, he will be
4 on community supervision until August 20th, 2019. But here
5 we are into October. And so that is less than a year. And
6 that is not nearly enough to control Mr. Brown's deviant
7 sexual behavior.

8 Q Now, under that type of community supervision,
9 would he be required to go to some kind of outpatient sex
10 offender treatment?

11 A He could potentially. The problem with that is
12 that outpatient sex offender treatment usually lasts for one
13 and a half hours per week. And that is not the intensity
14 that's necessary for such a prolific offender as Mr. Brown.
15 The kind of treatment that we're talking about, they have
16 sex offender treatment for six hours a week, and they have
17 all sorts of other groups---

18 MR. FALK: Objection, Your Honor. I'm not sure
19 that I know the basis for this testimony here.

20 THE COURT: I do not either. She's got to be able
21 to verify it for us.

22 Q The company that administers the sex offender
23 treatment, under the supervision of the Department of Mental
24 Health in South Carolina, it's something called Correct
25 Care, is that right?

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 A That is correct.

2 THE COURT: Okay. Just for this moment.

3 MR. BOGLE: Cause---

4 THE COURT: We've talked about this beforehand.

5 MR. BOGLE: Yeah.

6 THE COURT: Obviously, she does not direct any
7 treatment. She knows generally what's done. So, I
8 think she can testify to generally what is potentially
9 done or considered, but, again, she doesn't---

10 MR. BOGLE: Okay. Let me---

11 THE COURT: ---direct treatment.

12 MR. BOGLE: Let me rephrase the question---

13 THE COURT: Okay.

14 MR. BOGLE: ---and just kind of wrap this thing
15 up.

16 Q I guess what I'm asking is, is outpatient
17 treatment okay for this guy, or does he need to be confined
18 for treatment?

19 A He needs to be confined for treatment. I have
20 done outpatient treatment, and I have also worked at a civil
21 commitment center providing treatment. And, therefore, I
22 can tell you the difference between outpatient treatment and
23 treatment at a civil commitment center.

24 Q Okay. If this guy is -- is this -- is this
25 person -- is Mr. Brown's level of dangerous, the menace we

DIRECT EXAMINATION OF DR. AMY SWAN BY MR. BOGLE

1 talked about to society a few minutes ago, is it of such a
2 degree that he needs to be confined for treatment?

3 A Yes.

4 MR. BOGLE: Thank you. Please answer any question
5 counsel may have or the Court may have.

6 CROSS EXAMINATION

7 BY MR. FALK:

8 Q Dr. Swan, can you hear me if I---

9 A Yes.

10 Q Ask questions from here---

11 A Yes.

12 Q ---and just all my stuff is here.

13 A Yes.

14 Q Let's just sort of go back to the beginning here.
15 How much of your practice is -- you talked about -- you have
16 a degree in clinical psychology?

17 A I do.

18 Q Is that correct? And what does clinical
19 psychology mean?

20 A Clinical psychology means dealing with mental
21 health issues, intellectual disability, behavioral therapy.
22 It includes a wide range. So, most people have some sort of
23 little specialty.

24 Q So, clinical, then, you meet with people -- I
25 mean, a clinical psychologists, do they typically have

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 patients that they see over a long period of time?

2 A Yes, I did therapy with sex offenders, and non-sex
3 offenders, just people who had difficulty with problems of
4 living, until 2005. Now, I don't -- I, I have a couple of
5 hang-on patients that have been with me for a long time.
6 So, I still see a couple of patients, but, generally, I do
7 evaluations. So, I would say about 90 percent of my
8 practice is involved with sexually violent predators, and
9 about 10 percent is therapy, custody evaluations, those
10 types of things, child abuse evaluations.

11 Q Okay. Thank you. So, the 90 percent of your
12 practice, that is your forensic practice; is that correct?

13 A That is correct.

14 Q And that's all that's really anticipation and
15 expectation that, ultimately, you're giving a report to a
16 court or testifying like you are today; is that correct?

17 A Right. And I think I misstated that.
18 Ninety percent is sex offenders. I do child pornography,
19 evaluations. I do psychosexuals for the Court. So, I do a
20 whole range of evaluations with sex offenders. Not all of
21 them are civil commitment.

22 Q But it's all -- I mean you, basically, since 2004,
23 you've been a professional witness?

24 A Well, since 2005, I have been involved with
25 evaluations of sex offenders.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 Q And so most of your compensation, since 2005, has
2 been as a professional witness in one form or another?

3 MR. BOGLE: Object to the form of the question.

4 BY MR. FALK

5 Q Do you get compensated from your practice as a
6 forensic expert?

7 A Yes, I do.

8 Q And has that been the bulk of your compensation
9 since 2005? Is that what you've received as a, as a
10 forensic expert?

11 A Yes, many of the cases I'm involved with, I don't
12 go to court. Like the psychosexual evaluations, the custody
13 evaluations, the child abuse evaluations, a lot of times
14 those don't go to court. So, I don't actually testify about
15 the cases.

16 Q But your reports are being used?

17 A My reports are being utilized, yes.

18 Q So, since 2005, you haven't been seeing patients
19 other than your hang-arounders; is that correct?

20 A That is correct.

21 Q Okay. Now, you say you have a contract with the
22 State of South Carolina?

23 A I do.

24 Q And can you tell me a little bit about that? Was
25 that -- how did that work? Did you -- did they contract you

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 to do 20 evaluations, or was it open-ended?

2 A They have a budget, and I don't know what that
3 budget is. But, before they assign me evaluations, they
4 always check the budget. So, I don't have a clue. But I
5 started doing evaluations in South Carolina because the
6 director of our civil commitment center in Florida
7 previously worked under the Sexually Violent Predator Act in
8 South Carolina, and she was aware that I was licensed in
9 South Carolina. And so she recommended me to the Department
10 of Mental Health.

11 MR. FALK: Your Honor, may I approach for a
12 moment?

13 THE COURT: You may.

14 (Off-the-record discussion held.)

15 THE COURT: You can continue, sir.

16 BY MR. FALK

17 Q So, you were retained. The State hired you?

18 A That is---

19 Q When they hired you, did they tell you how many
20 you were hired to do?

21 A They did not.

22 Q Okay. And---

23 A Oh, let me change that. The first years -- the
24 first couple of years, I was retained to do like a hundred.

25 Q I'm only talking about precommitment evaluations.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 A Oh, okay. The first couple of years I didn't do
2 precommitment evaluations. That was only beginning in like
3 2015 when they had a backlog.

4 Q Okay. And so when you started doing precommitment
5 evaluations, did they say we're gonna hire you to do five,
6 or was it open-ended?

7 A I think they had a number in mind, but they didn't
8 share that with me. But I, I think it ended up being 20
9 that I did.

10 Q Okay.

11 A So --.

12 Q And so how much did you get paid by the State's
13 fund? Did you say \$4,000?

14 A I get \$4,000---

15 Q And that in---

16 A ---for each one.

17 Q And that includes your expense?

18 A And that includes traveling from Florida, hotels,
19 meals, that sort of thing.

20 Q Expenses?

21 A Yes.

22 Q So, how many have you done, precommitment
23 evaluations, in South Carolina?

24 A The last time I counted it was 28 from 2015 to
25 2017 because I have not done one this year.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 Q How many of those -- in how many of those 28
2 precommitment evaluations did you recommended, yes, saying
3 that the person needed to be committed?

4 A I don't know. Since the last time you asked me, I
5 counted, and I don't know now.

6 Q Can I help you refresh your memory? So, do you
7 recall doing evaluations for Joshua Flowers?

8 A Yes.

9 Q Was that a commitment?

10 A Yes.

11 Q Do you recall one for Bradford Rollins, Charles
12 Rollins?

13 A Yes.

14 Q That was a commitment?

15 A Yes.

16 Q Do you recall one for Wake Hunt?

17 A Yes.

18 Q That was a commitment? Timothy Schaffer.

19 THE COURT: She needed to answer the question.

20 I'm sorry.

21 MR. FALK: I'm sorry.

22 THE COURT: It might of just been me. I might of
23 just missed it.

24

25 BY MR. FALK

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

- 1 Q So, we have Hunt, yes? Timothy---
- 2 A Yes.
- 3 Q ---Schaffer, yes?
- 4 A Yes.
- 5 Q Jimmy Ray Philliac (phonetic)?
- 6 A Yes.
- 7 Q Frederick Reeves?
- 8 A Yes.
- 9 Q Michael Caldwell?
- 10 A Yes.
- 11 Q Kenneth Martin?
- 12 A Yes.
- 13 Q Frederick -- Franklyn Saunders?
- 14 A Yes.
- 15 Q Mikah Bilton?
- 16 A Say that again.
- 17 Q Mikan Bilton?
- 18 A Yes.
- 19 Q Robbie Collings?
- 20 A Yes.
- 21 Q John Henry Dorsey?
- 22 A Yes.
- 23 Q Joe Mack Brown?
- 24 A Yes.
- 25 Q Michael Kaminski?

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 A Yes.

2 Q You also remember doing one for a Herman Archie?

3 A I do.

4 Q Was that a yes?

5 A I think so. I don't recall.

6 Q Anthony Tucker?

7 A Yes.

8 Q Franklin Mosier?

9 A Yes.

10 Q And when you say yes, those are all, you recall
11 them, and also that they were commitments?

12 A Yes.

13 Q Okay. Edward Willis?

14 A Yes./

15 Q Leonard Jenkins?

16 A Yes.

17 Q Samerson Jestin?

18 A Yes.

19 Q Okay. So, that's about 21 or so?

20 A Uh-huh. (Indicating affirmatively.) Overall, my
21 rate of -- that I recommend commitment 60 percent of the
22 time, and I say no 40 percent. But it's important to note
23 that I only get these individuals after they've been
24 screened, and the lower risk individuals have been screened
25 out.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 Q Can you -- do you recall a name when you did not
2 recommend commitment?

3 A There are about seven or eight of them, and I do
4 not recall the names. I've done a 1016 of these
5 evaluations. So --

6 Q I'm just talking about in South Carolina under
7 your contract with the State.

8 A Yes, I do not remember.

9 MR. FALK: If I could have a moment please?

10 THE COURT: Okay.

11 (Pause.)

12 BY MR. FALK

13 Q Now, you had talked a little bit about this
14 disciplinary action that you were involved with.

15 A Yes.

16 Q What -- is that what you called it, the thing with
17 the -- when you were -- received some type of sanctions for
18 lack of a better word?

19 A Yes.

20 Q Okay. That was in 2014?

21 A That is correct.

22 Q Okay. And I'm curious, you used -- I think, when
23 you were explaining that, you said you were using a commonly
24 used -- well, what do you call it, a test?

25 A Well, it was -- well, it was not a test. A

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 psychological test has all kind of statistical properties
2 attached. This was a relapse prevention interview, and it
3 was just -- it was a tool to assess what that individual has
4 learned in treatment.

5 Q But you said that it was commonly used?

6 A Very commonly used in Florida.

7 Q But it was also outdated?

8 A Well, the, the ethical panel believed that it was
9 outdated, but it was very much used in Florida.

10 Q So, I mean were people commonly using, in Florida,
11 commonly using an outdated program or --

12 A Well, this is the thing. So, the relapse
13 prevention model sex offender treatment was found not to
14 work. So, the theory behind that treatment was found not to
15 be good, and this interview was part of that theory. But it
16 provided good information about what someone's learned in
17 treatment. So, even though the theory of treatment was
18 found not to work, the interview itself provided
19 information, and many of the evaluators used it until, of
20 course, I got sanctioned, and then they all stopped using
21 it.

22 Q Now, when you did this as best -- this -- as part
23 of your sort of file review here, fact finding?

24 A Yes.

25 Q So, you looked at documentation that was provided

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 to you from the State; is that correct?

2 A That's correct.

3 Q Now, as part of that, did you talk to any of the
4 detectives who investigated any of these cases against
5 Mr. Brown?

6 A No.

7 Q Did you talk to any of the solicitors who were
8 involved in these cases?

9 A No, my job is not as an investigator. It's
10 strictly an evaluator, and I use information in the records.
11 I always contact the Department of Probation and Parole to
12 see what ongoing supervision an individual has. But that is
13 the extent of my contact with people involved in the cases
14 unless there's an issue that I need specifically to talk to
15 a victim or one of the lawyers.

16 Q Is it not important to have a strong factual
17 understanding of the, you know, the underlying circumstances
18 here before you reach your evaluation?

19 A Well, it is, but I get that in the records. And,
20 as I said, it's not my job to reinvestigate the crimes.
21 He's been convicted, and that is my starting point.

22 Q Did you talk to anybody about the plea
23 negotiations in these cases?

24 A I did not. Except Mr. Brown.

25 Q Right. And he said that he was pleading guilty,

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 but that he didn't do it, but he was pleading guilty? He
2 didn't, he didn't fully---

3 A Yeah, and that's what he said.

4 Q And do you have any information to think that was
5 not true?

6 A Well, the information that I received indicated
7 that he pled guilty to offenses involving penetration, and
8 even though he said that he didn't do any acts of
9 penetration.

10 Q So, were you sort of forced to assume that that is
11 the facts in this case?

12 A Well, if an individual has been convicted of a
13 sexually violent offense, I don't reinvestigate it. I
14 accept that conviction, and that's where my job starts. If
15 he didn't have that conviction, I wouldn't be involved
16 anyway. But, once he's been convicted, either by taking a
17 plea or being convicted by a jury, then I assume that the
18 facts that are presented are correct, and that's where I
19 begin to work.

20 Q You do a lot of these cases, right, and you're in
21 court a lot? Is that not correct?

22 A I am.

23 Q Is it never your understanding -- or people accept
24 plea deals?

25 A Yes, people accept plea deals all of the time,

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 but, often it's a, a plea of no contest where they don't
2 admit that they're guilty. But, in this case, Mr. Brown
3 pled guilty to all of his offenses.

4 Q Okay. But is it still -- so, it's your
5 understanding that the only time that people will accept a
6 plea deal is when they plead no contest?

7 A Well, not necessarily. I have heard people
8 indicate that they took the plea because they were gonna get
9 life in prison or 25 years in prison.

10 Q Okay.

11 A It's hard for me to understand that, but I guess,
12 at times, that might occur.

13 Q But can't that be an important factual element
14 here, because you're basing part of your conclusions here on
15 the underlying facts in the -- to which -- of the crimes
16 that he's alleged to have, have pled guilty to, right?

17 A That's correct.

18 Q But if those facts, in fact, did not occur, then
19 is it a problem with your evaluation?

20 A No, he was convicted of those crimes, and the
21 statute says that he must have been convicted of a sexually
22 violent offense. And so that's where my work begins.

23 Q Yes. Right. And, and you certainly are admitting
24 that he pled guilty to the sexually violent predator, and I
25 did not object to the admission of the exhibits here. But

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 my question is, you're drawing some of your conclusions
2 based on the facts that were alleged in the police reports,
3 et cetera; is that not correct?

4 A Absolutely.

5 MR. BOGLE: Your Honor, I think asked and
6 answered.

7 THE COURT: Okay. I, I think it is.

8 MR. FALK: Okay.

9 THE COURT: I think you've gotten it.

10 BY MR. FALK:

11 Q But that, that's not -- this hasn't been -- did
12 you know anything about the sex -- I think your term was
13 secondary sexual characteristics?

14 A Yes.

15 Q Do you know anything about the secondary sexual
16 characteristics of those two teen-age girls?

17 A I don't.

18 Q Okay. Did you talk to Sylvia Roberts?

19 A Not in this particular case because I had
20 sufficient records in -- of her records in the treat -- in
21 the material that he attended treatment.

22 Q Okay. So, what do you know about the treatment
23 at, at the sex offending treatment program that's offered
24 that Sylvia Roberts offered, and that he completed?

25 A Well, it, it is run by Sylvia Roberts, and I've

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 spoken with her on many occasions, and she seems to do a
2 really good job. However, it's not the type of sex offender
3 treatment that you would get at the civil commitment center.
4 They just don't have the resources for that kind of
5 intensive treatment.

6 Q Did you have an opportunity to review her
7 treatment records?

8 A I reviewed the summary of the treatment records
9 that were provided.

10 MR. FALK: May I approach the witness?

11 THE COURT: You may.

12 BY MR. FALK

13 Q If you could just sort of familiarize yourself
14 with those and see if those are the records that you were
15 looking at.

16 A I received a summary. Let me just take a moment
17 to look, look at this. So many of these records are just
18 about his mental health issues. He did receive sex offender
19 treatment as I noted.

20 Q I'm -- just let me just before -- and I'll let you
21 answer your question. But so, what, what are you looking at
22 there? What does it appear to you to be? Those records,
23 what do they appear to be?

24 A These are the typical records from the South
25 Carolina Department of Corrections, Ms. Robert's groups.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 Q Okay. Were they provided to you?

2 A A summary of these were provided.

3 Q Okay.

4 A She filled out a form.

5 Q Okay. But would that not be the type of
6 information that would be important to you about the
7 specifics of the treatment that he received?

8 A Yes, but she provided a summary.

9 Q Well, did the -- what did the summary show as the
10 completion?

11 A The summary showed -- let me find it in here.

12 Q If I can come back up there just to grab my
13 records back?

14 A Okay. He received treatment from November of 2013
15 until September of 2014. He did well in the group setting.
16 He came to treatment or he was referred to treatment because
17 of the Prison Rape Elimination Act because he had allegedly
18 sexually assaulted another inmate, and that's how he ended
19 up going to treatment, and it said that he did well in the
20 group setting. But, as I noted, good sex offender treatment
21 takes years, and this was one year. And he was not able to
22 participate for a long period of time because he was in the
23 special management unit.

24 Q But he's still receiving treatment while he was in
25 the unit, was he not?

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 A Yes.

2 Q So, he didn't -- he did not have a lapse in his
3 treatment, isn't that correct?

4 A Pardon?

5 Q He did not have a lapse in his treatment, and he
6 was receiving treatment while he was in the SHU, is that not
7 correct?

8 A Well, they, according to the director, while he
9 was in the special management unit, he was able to receive
10 the sex offender treatment for that year.

11 Q Okay.

12 A November of 2013 until September of 2014.

13 Q Okay. So, what do you know about the subjects
14 that they covered during that treatment program?

15 A Well, Sylvia Roberts gave me like a course
16 syllabus.

17 Q And what did it say?

18 A And part of it is anger management. Part of it is
19 cognitive distortions. Part of it is -- they, they do not
20 really go deeply into detail about the offenses, and like
21 making disclosure, and then making the connections about
22 where they develop their attitudes that caused them to
23 sexually assault others.

24 Q Dr. Swan, where -- what is the basis for that
25 testimony there?

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 A Based on the information that I received from
2 Sylvia Roberts.

3 Q So, you're saying that they did not go into --
4 they did not have a disclosure as part of the treatment?

5 A They do have a disclosure, but it's not the
6 comprehensive disclosure assisted by other testing that
7 would ensure truthfulness.

8 Q And don't they -- do they not talk about relapse
9 prevention programs as part of that treatment?

10 A They do. That is one of the topics that they
11 discuss.

12 Q And did they not talk about what their triggers
13 are?

14 A They do.

15 Q And did they not talk about victim empathy?

16 A Yes. Many of the things that they do involve
17 watching videotapes. Watching a videotape is very different
18 than doing assignments, and working on that area of
19 treatment.

20 Q So, do you have any knowledge whether or not there
21 were assignments as part of the treatment that he
22 participated in?

23 A Well, certainly there are assignments. They're
24 just not as comprehensive as they get in substantial sex
25 offender treatment.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 Q So, how long does substantial sex offender
2 treatment last?

3 A It depends on the individual, but typically three
4 to five-years.

5 Q If it depends on the particular individual, how do
6 we know that the year that he had was not enough?

7 A Okay. Based on my evaluation, he did not know the
8 things that someone would know if they had had substantial
9 sex offender treatment. For example, I asked him why he
10 committed those offenses, he didn't know. When I asked him
11 what would keep him from reoffending in the future, he just
12 told me that he would avoid, you know, minors. That's a
13 good strategy, but it has to be a lot more comprehensive
14 than just avoiding them because, if you go in the grocery
15 store, there are minors there.

16 Q Do you have any firsthand knowledge about the type
17 of treatment that is being conducted at correct Care?

18 MR. BOGLE: Your Honor, may we approach?

19 THE COURT: You may.

20 (Conference.)

21 THE COURT: Ladies and gentlemen, I'll also tell
22 you, for scheduling purposes, the bailiffs are bringing
23 you-all in sandwiches for lunch so we can take a
24 brief break. I hope that's acceptable to you-all
25 just to keep things moving. Okay.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 MR. FALK: Have you observed any of the -- I'm
2 sorry. Are you ready?

3 THE COURT: Please.

4 BY MR. FALK:

5 Q Have you observed any of the sex offender
6 treatment that happens in the program in Columbia?

7 A I have not actually been involved with the
8 treatment in Columbia because Correct Care only recently
9 took over. I have been involved with Correct Care in
10 Florida because they run our program in Florida for the last
11 12 years.

12 Q Let me sort of move on from this. You said -- one
13 of your diagnose was exhibitionism?

14 A Yes.

15 Q Now -- and you said that would be a crime on the
16 outside, is that correct?

17 A Yes.

18 Q Is that a sexually violent crime?

19 A It's not listed as a sexually violent offense for
20 the State of South Carolina, but for individuals who work
21 with sex offenders it's a nonconsensual act and the
22 Static-99R that we use considers that. For example, if they
23 expose their penis in prison, that's the most recent sexual
24 offense. So, it is an important fact.

25 Q All right. If there's a -- if his only risk is to

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 commit a crime of, well, exposing himself, would that be a
2 crime of sexual violence?

3 A For me---

4 Q No, under the---

5 THE COURT: Okay. Dr. Swan, you have to answer
6 yes or no---

7 THE WITNESS: Okay.

8 THE COURT: And then you can explain your answer
9 all you want.

10 BY MR. FALK

11 Q In South Carolina, would exhibition -- public
12 exhibition is or whatever you're saying, would that be a
13 crime of sexual violence in South Carolina?

14 MR. BOGLE: And that's been asked and answered,
15 Your Honor, just now.

16 THE COURT: You can answer it.

17 A Okay. No, it's not on the list of sexually
18 violent offenses, but from individuals who evaluate and
19 treat sex offenders, it is a nonconsensual sexual crime, and
20 it counts for us.

21 Q Now, you said that that was deviant behavior, is
22 that correct?

23 A It is.

24 Q What was the arousal factor there? The fact that
25 he was exposing himself or the object that he was looking

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 at?

2 A It can be a combination of both. Typically the
3 individuals who expose their penis to nonconsensual victims,
4 are aroused by the look on an individual's face, the look of
5 surprise.

6 Q But you didn't talk to any of the prison guards,
7 did you?

8 A I did not because I had records showing that he
9 was convicted of those offenses.

10 Q Pedophilia is one of your diagnose, is that not
11 correct?

12 A Yes, it is.

13 Q And how common is that in sort of the population
14 of people who are thought---

15 A It---

16 Q ---to be sexually violent predators? How come it
17 is pedophilia?

18 A Well, there's a subset of individuals who are
19 aroused to minor children, and they target those between the
20 ages of 11 and 14.

21 Q Okay. But that's not in the DSM-5; is that
22 correct?

23 A Well, it's is not in the DSM-5 under the
24 delineated ones, but it does fall under the DSM other
25 specified paraphilic behavior, which would be one of the 539

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 sexually deviant areas that are not listed individually.

2 Q But now you had said that the ones that are
3 delineated, those are the more common ones; is that not
4 correct?

5 A Well, that's correct.

6 Q That was your testimony, was it not?

7 A Yes.

8 Q Okay.

9 A Yes.

10 Q You are also aware that there was -- they provide
11 examples of other specified paraphilic disorders in the
12 DSM-5, is that correct?

13 A They do. They have a few examples, but they don't
14 include all 539.

15 Q But would they not follow the same logic of
16 putting the ones that are more common?

17 A I'm not sure what the logic is. They do give
18 examples of the different disorders.

19 Q Because they do give some rather unusual ones; is
20 that not correct?

21 A Yeah.

22 Q Is that---

23 A Sexual arousal to animals.

24 Q Animals, obscene phone calls?

25 A Yes.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 Q But why is an -- why is an attraction to a --
2 cause he's not a pedophile; is that correct?

3 A He is not a pedophile.

4 Q And an attraction to a 13-year old girl is not a
5 pedophile, is that correct?

6 A That's correct.

7 Q Why is it a mental disease?

8 A It's a mental -- it's a sexual deviant disorder
9 because most adults don't want to have sex with children who
10 are between the ages of 11 and 14.

11 Q Do you have any evidence that he has a current
12 attraction to girls who are teen-age girls 11 to 14?

13 A The sexual disorders are long-term chronic
14 disorders. They don't go away merely with the passage of
15 time. If you have a sexual disorder at 17, you'll still
16 have it at 70. The only thing that changes is the amount of
17 the time that you spend fantasizing about that target group
18 and masturbating to it.

19 Q Is there not a difference between a 40-year old
20 man attracted to an 11 to 14-year old girl and a 19-year old
21 man attracted to a 13-year old girl?

22 A Absolutely. There's a difference.

23 Q What is the difference?

24 A But the difference -- well, obviously, if you have
25 a 40-year old man who's sexually assaulting 11 to 14-year

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 old children, that's pretty significant. But Mr. Brown was
2 an adult, and it's still deviant to target 13-year old girls
3 when you're 19.

4 Q Do you have any proof or any type of studies or
5 any type of articles that would show that a 19-year old
6 attracted to a 13-year old is gonna continue on when he's
7 40, and still be attracted to a 13-year old?

8 A Well, the research indicates, as I just stated,
9 that the paraphilias are long-term chronic disease --
10 disorder, and they don't go away with the passage of time
11 without intervention.

12 Q But isn't there a difference between the 19 -- the
13 20 years between a 19-year old and a 40-year old, and 20
14 years from a 40 year old to a 60 year old?

15 A There is. But it is still deviant to -- for an
16 adult man to have sex with a 13-year old girl. Especially
17 nonconsensual sex.

18 Q Cause actually the only evidence that you have of
19 his sexual arousal now, which is sort of the targets, would
20 be conduct while he was at SCDC; is that not correct?

21 A Well, that -- if they can't engage in their
22 preferred acts in the -- because they're not in the
23 community, they do the next best thing. And he was engaging
24 in nonconsensual sexual act in the Department of
25 Corrections.

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 Q And it was -- do you have any information what the
2 pornography was that he was looking at?

3 A It was adult pornography. I don't give that much
4 weight to that. The only weight it has is that it's
5 prohibited in the Department of Corrections. So, it was a
6 violation of the rules, but there was no indication that it
7 involved minors. It was adult pornography.

8 Q And it goes without saying that the female prison
9 guards weren't thirteen years old?

10 A That's correct.

11 Q We were talking about his risk factors, and you
12 considered the fact that he quit treatment; is that correct?

13 A Yes.

14 Q But he was 14 when he quit treatment, is that not
15 correct?

16 A That is correct.

17 Q And does statistics, with the data that you looked
18 at, did it make a distinction between a 40-year old quitting
19 treatment and a 14-year old boy quitting treatment?

20 A It did not, but that does not carry as much weight
21 as some of the other risk factors because, in fact, he was
22 14.

23 Q So, you -- and his violation, while under
24 supervision, he was also, what, 19?

25 A That's correct. But he was an adult, and that

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 counts.

2 Q Are all 19-year old men the same level of
3 maturity?

4 A No, they're not.

5 Q But, as far as you're counting them, you have to
6 count them all as if they are adults?

7 A Well, I count it because the research says that
8 it's a significant factor.

9 Q So, three times in your testimony you said that he
10 was charged for touching a girl's fanny, I guess, or some---

11 A Yes.

12 Q Okay. And that case was dismissed, was it not?

13 A The first one was dismissed. The second one, he
14 was convicted and sentenced to a youthful offender sentence
15 at the same time as his other crime in 1995.

16 Q But you don't know whether or not he actually
17 touched any -- a child at 13, do you?

18 A Well, he was convicted of it.

19 Q No, the charge was dismissed.

20 A Well, the 13 -- when he was 13, I don't know what
21 happened. He was arrested, but not convicted. When he was
22 14, he was arrested for doing the same thing, and he was
23 convicted.

24 Q Cause the three times during your testimony you
25 said that he did it the first time, that he didn't learn his

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 lesson, and then he did it a second time, is that---

2 A That's correct.

3 Q But you don't -- and you're assuming then that he
4 did it the first time, but you have no basis for that, is
5 that correct?

6 A Well, he was arrested for it, and we look at
7 arrests and convictions. So, even being arrested for a
8 sexual crime, even if you're not convicted, increases your
9 risk for another sexual crime.

10 Q Okay. You base part of your opinion on the
11 Static-99, is that not correct?

12 A Yes, it's one piece of a comprehensive evaluation.

13 Q And that -- what -- how does a Static-99 consider
14 whether or not somebody's received sex offender treatment?

15 A It does not, and that's why you look at the
16 dynamic risk factors, because you would expect those to
17 change if he had had substantial treatment. And because he
18 didn't have substantial treatment, those risk factors are
19 still there.

20 Q The Static-99 also does not factor into somebody
21 serving a prison sentence, is that correct? A period of
22 incarceration does not factor into the risk factors?

23 A It does not.

24 Q Okay. So, the fact that somebody has spent 20
25 years in prison versus somebody who spent three years in

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 prison, that makes no difference in your mind?

2 A Not on the Static-99R it does not.

3 Q How about your opinion?

4 A Well, my opinion is that the mere passage of time
5 in prison does no diminish sexual deviance.

6 Q And, from your point, you don't care if that
7 passage of time occurs from ages of 19 to 40 or 40 to 60?

8 A Well, while he was in the Department of
9 Corrections he was engaging in deviant nonconsensual sex
10 just like he was in the community. It took a different form
11 because he couldn't get his preferred victims.

12 Q How good of a measure is the Static-99R? Is there
13 studies of its predictive -- validity?

14 A There are. The Static-99R is considered to be the
15 best risk assessment instrument there is for sexual
16 offenders. However, that being said, it only has moderate
17 correlation with sexual re-offense. And so that's why you
18 consider other factors, external to the Static-99, such as
19 the dynamic risk factors, because it just doesn't cover all
20 of the risk factors that could be related to an individual
21 committing new sex crime.

22 Q But I thought your testimony was that it is the
23 state of the art?

24 A Well, it is considered state of the art in risk
25 assessment instruments, but that doesn't mean it doesn't

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 have some weaknesses.

2 MR. FALK: One moment, Your Honor.

3 (Pause.)

4 MR. FALK: Your Honor, we have no further
5 questions

6 THE COURT: Any redirect, Mr. Bogle?

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

8 THE COURT: Any objection to Dr. Swan being
9 excused from anyone?

10 MR. BOGLE: We would ask that she be used now.

11 MR. FALK: No objection.

12 MR. BOGLE: Your Honor, at this time the State
13 would rest.

14 THE COURT: Ladies and gentlemen, at this time the
15 State rested their case. There is a matter of law I
16 need to take up with the attorneys. What I plan on
17 doing is continuing until your lunch gets here. So,
18 that's just to let you know, as soon as the sandwiches
19 are here, we'll go ahead and take a break.

20 All right. But right now we are gonna take a
21 break as well. I'm gonna send you back to your jury
22 room. Do not discuss the case. It would not be
23 appropriate to do so. Be right back with you. Okay.
24 Thank you.

25 (The jury exits the courtroom at 12:40 p.m.)

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 THE BAILIFF: The jury is clear, Your Honor.

2 THE COURT: Thank you. Okay. I, I think, if you
3 want to go ahead and make motions, I think that's fine.

4 MR. FALK: Yes, Your Honor.

5 THE COURT: All right.

6 MR. FALK: I'd make my motion for a directed
7 verdict. She's basing her testimony on the Static-99,
8 which is a state of the art test, which is only
9 moderately predictive. Had this been the -- if this
10 was a case where the burden of proof was by the
11 preponderance of the evidence, I think that'd be
12 acceptable. But since they will be proving it beyond a
13 reasonable doubt, I think the testing instrument, which
14 is only moderately predictive, is insufficient proof.
15 I do not think that she has provided any proof because
16 her definition -- her -- Your Honor, if I may.
17 The issue here today is whether or not, today, my
18 client is a sexually violent predator. She's basing it
19 on the definition of a diagnosis of hebephilia, and she
20 has provided no evidence, in the last 20 years, of any
21 type of sexual attraction to a 13-year old girl or a
22 postpubescent. Well, whatever, whatever the, the young
23 girls -- non ped -- I'm not even sure of the term.
24 Preadolescent children, you know. Ones that had -- who
25 were beginning to have sexual, or sexual

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 characteristics. I think that was her terminology, and
2 I'm not saying that there's been no proof in the last
3 20 years of any type of interest in that type of sexual
4 behavior. What she has provided was a snapshot of who
5 a 19-year old boy was. Not who this 40-year old man is
6 that we're talking about today.

7 As, as far as disciplinary conduct, I have a -- I
8 just have a hard time putting much faith in how people
9 have to survive when they're in, in the Department of
10 Corrections.

11 THE COURT: Thank you. Mr. Bogle.

12 MR. BOGLE: Your Honor, we would just respond
13 that, viewing a directed motion, motion in the light
14 most favorable to the nonmoving party, the State has
15 established conclusively that he's been convicted of
16 sexually violent crimes where, where we have
17 established that exist the two mental abnormalities,
18 and a personality disorder. And there's been testimony
19 that he's of such a degree that he poses menace to
20 health and society that he cannot control his behavior.

21 Now, the fact that he's been away for 20 years,
22 it's her testimony that, in the absence of young girls,
23 he's expressed his deviance by exhibitionism. His only
24 option. No 13-year old girls in prison.

25 But aside from all that, we think that to make a

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 directed verdict right now, we have presented,
2 presented sufficient information for the case to go
3 forward. Thank you.

4 THE COURT: I do think that, taken in the light in
5 favor -- most favorable to the State, that she has
6 shown, obviously, the prior convictions for a sexually
7 violent offense, and that she testified, Dr. Swan
8 testified, that he had two mental abnormal -- abnormal
9 personality disorders. So, you have, at least, maybe
10 one or two witnesses. Am I correct, Mr. Falk?

11 MR. FALK: My client plus two other witnesses.

12 THE COURT: Perfect.

13 MR. FALK: So, three at the tops.

14 THE COURT: You want to go ahead and take -- let's
15 take, I don't know, ten minutes or so right now, which
16 take a break, and then we'll come back, and we'll put,
17 at least, your first witness up. However you would
18 like to. And I say we just keep going with this jury
19 until their food gets here. I'm not gonna make it a
20 natural break, but, if we go too long to something, you
21 know, maybe we'll break on, you know, a re -- a cross
22 or a direct. I just wanted -- you said about 20
23 minutes roughly for your client, and that shouldn't be
24 a problem. I have no idea how long your cross will be,
25 but I think we're in good shape or if you put another

CROSS EXAMINATION OF DR. AMY SWAN BY MR. FALK

1 family member up or someone, that's fine. Okay.

2 MR. FALK: Okay.

3 THE COURT: So, let's just go ahead -- let --
4 let's just, if you don't mind, if we could take maybe
5 just five minutes, and that may well be a little closer
6 to our one o'clock. All right. Let's take five
7 minutes, everyone to refresh themselves, and then come
8 on back. Okay.

9 (Break)

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

11 (The jury enters the courtroom at 12:55 p.m.)

12 THE BAILIFF: The jury's in the courtroom, Your
13 Honor.

14 THE COURT: Thank you.

15 MR. FALK: At this time, Respondent would call
16 Melody Rubio to the stand.

17 THE COURT: Come on forward, Ms. Rubio, to be
18 sworn please.

19 THE BAILIFF: Right up here, ma'am. Right up
20 here.

21 THE WITNESS: Over here?

22 THE BAILIFF: Right up here. Right there.

23 Thereupon,

24 MELANIE CORA RUBIO

25 was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. FALK:

4 Q Would you please state your name and spell your
5 last name for the record.

6 A Yes, my name is Melanie Cora Rubio. Last name
7 R-U-B-I-O.

8 Q And how do you know Dameon Brown?

9 A I know the family, and have known them since
10 approximately 1996, 1997.

11 Q Okay. And do you live here in South Carolina?

12 A I do.

13 Q Whereabouts?

14 A I live---

15 Q Here in the Lowcountry or---

16 A I live in Rose Hill Plantation in Bluffton, South
17 Carolina.

18 Q Okay. And have you become acquainted with -- in,
19 in addition to knowing the family, have you become sort of
20 specifically acquainted with Dameon Brown?

21 A I have. In the late '90s, when I met the family,
22 Dameon was considerably younger than me. So, I would say my
23 rapport was more so with his older brothers. As time went
24 on, and he was incarcerated, I reached out to him via
25 letters, and as a support system. And we became very

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 strong, and very linked through the letters, and the, you
2 know, trying to be a inspiration and support system to him.

3 Q Over what period of time? I mean, how frequently
4 would you communicate?

5 A Oh, at -- through letters, at least three times a
6 week. On the phone, every single day anywhere between ten
7 minutes to as long as -- to as, as much as two hours per
8 day.

9 Q On the phone?

10 A Yes.

11 Q Okay. Are you married?

12 A I am not. I'm widowed.

13 Q Okay. And do you have children?

14 A I do.

15 Q What ages are your children?

16 A I have triplets, who are 13 years old.

17 Q Do you work?

18 A I am not working per se, but I do -- I am, I am
19 college educated, and I, I am bilingual in six different
20 languages, and I do prepare documents in several different
21 languages for legal purposes in any kind of services that
22 may be needed in that way. I freelance that way.

23 Q So, is the money that you earn from being a
24 translator, is that, that your sole basis of income or do
25 you have other assets?

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 A I have other assets. I'd like to give credit to
2 my father for sitting me down at a young age and teaching me
3 the value of credit, money, and how to invest and -- into --
4 very much into real estate and property.

5 Q So, do you own your own home and---

6 A I own---

7 Q ---still---

8 A ---my own home.

9 Q Okay. Is your relationship, is there a -- have
10 you had any conversations with Mr. Brown as to where he
11 would live if he were released?

12 A Yes.

13 Q And where is that?

14 A I -- of course, I would -- everything that would
15 take place would have to be according to law, the law.

16 Q Right.

17 A I, I, I do have several different, different
18 options that I could make happen if one didn't work or what
19 have you. I would prefer him to be present in my home that
20 I currently live in now with my mother and two of my
21 triplets. My third triplet, who is a male, is severely
22 autistic, and he is as good as gold, but not to get into a
23 big, you know, long story, in -- autistic children have a
24 tendency to go into types of -- kind of like tantrums that
25 are very different from your average "bratty tantrum" and

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 they are very powerful. And it does take a man to be able
2 to control and subdue a 13-year old boy because of the fact
3 that he is super strong, and although I am strong myself, I
4 can't do it myself. So, the idea purpose would not only be
5 because I love him, he is considered part of my family at
6 this point. My children love him, and, and I love his
7 extended family, et cetera, I think he would be a
8 complete -- I know he would be beneficial to my son and for
9 the fact that he would be able to help subdue him when
10 needed, and he just needs that father figure that my
11 children were deprived of when their father was killed.

12 Q Okay. So, you said that you have two girls and a
13 boy?

14 A Yes, sir.

15 Q You've, you've been here through all the
16 testimony, have you not?

17 A Yes, sir.

18 Q And you know that he was charged with -- he pled
19 guilty to sexually assaulting a 13-year old girl, is that
20 correct?

21 A Yes.

22 Q So, does that---

23 A I'm aware of that.

24 Q ---give you any concerns about having him in your
25 household?

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 A Honestly, my children are my world, and nothing
2 comes before them. I have not one, one, not one iota of a
3 doubt or any, any kind of mistrust with my children being in
4 the presence of Mr. Brown not in any way or form. I have no
5 doubts whatsoever.

6 Q So, you have been corresponding with him, whether
7 it's by phone or by letters, for ten years?

8 A Yes.

9 Q Okay. And, in those ten years, is there any --
10 did you get any kind of indication that he has an attraction
11 to young teen-age girls?

12 A No, on the contrary -- to be honest with you, it's
13 logical that a woman such as myself would be very, very
14 interested, and wanting to know how deep that goes because,
15 you know, this is my feelings involved and everything. So,
16 I have not been shy. I have not beaten around the book --
17 by -- beaten around the bush. I've been very honest with
18 him and gone into complete detail, asked him questions as to
19 where he -- his feelings lie as far as, you know, children
20 and what has transpired. I do not so much want to air dirty
21 secrets, but I can tell you that Dameon is a victim of what
22 somebody else has done to him.

23 Q Okay.

24 A And I, I, I, I, I, I trust him with my life and my
25 children's life. Absolutely.

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 Q And do you want him living in your home more --
2 it's not just a friendship interest. There's more romantic
3 or---

4 A Absolutely. I've grown to -- I'm not -- without
5 being arrogant, between my, my success in life, my
6 education, my, my ability to push myself to become a
7 successful, honest, good person, like I said, without being
8 arrogant, I do feel that I have a very large array of men
9 that I could probably choose to have in my life, and I
10 choose this man.

11 Q And you said you have a college -- where did you
12 go to college?

13 A I went to -- I got my Bachelor's Degree at
14 Youngstown University, and my Master's at Ohio State
15 University.

16 Q Okay. And the Master's is in what?

17 A Spanish.

18 Q Okay. So, you're not really looking to him for
19 any type of financial support?

20 A Absolutely not.

21 Q Okay. One moment, Your Honor.

22 (Pause.)

23 Q If he were to go the -- have you done any research
24 about outpatient treatment?

25 A I have.

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 Q And what did you find?

2 A What I have found is I would like -- what I wanted
3 to do was to show whoever it would be -- whoever is
4 concerned, that I wanted to make sure that he is going to be
5 getting every single thing that he needs to be as successful
6 as he can. And so what I have done, along with my mother,
7 we have gone ahead and we have made provisions ahead of time
8 to make sure that we have a plan of action. Not to wait
9 till the last minute. The plan of action that we took is A,
10 I contacted a man named Dr. Martin of Martin Psychiatric--

11 Q In Columbia?

12 A ---Services in Columbia because he is one of, of,
13 of several people that does do the sexual treatment,
14 offender treatment, and I wanted to make sure I had this in
15 motion and a plan in action before, you know, before -- if,
16 if, by the grace of God, he is allowed to go ahead free
17 today, I want to make sure that, you know, that, that we
18 could show you that we are very serious about having things
19 already in action. I also contacted Mr. Christopher
20 Anderson to help me set me in a right direction. He is a --
21 works for Parole Probation Department.

22 Q In Columbia?

23 A I, I am willing to pay even out of pocket whatever
24 it takes to get him to get the best of the best, you know.

25 Q Well, let's talk about his -- that this treatment,

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 this outpatient treatment, it's not gonna be paid by the
2 State. It's not gonna be paid by Medicaid and Medicare or
3 private insurance.

4 A You're right.

5 Q Do you have the financial wherewithal?

6 A Yes.

7 Q Do you have the money?

8 A Yes.

9 Q Okay.

10 A And I would also like to make it known that I,
11 myself, have been a member of the Lowcountry
12 Nondenominational Church for 15 plus years, and I found
13 that, in prior to all of this, in my personal life, the
14 church, my church has been a very, very pivotal -- they've
15 been very, very, very pivotal in helping me, you know, get
16 through the hard times with my, my husband, with my
17 triplets, my autistic -- the diagnosis of my autistic child.
18 And I also feel that Dameon would benefit from this church.
19 I like the fact the church is nondenominational. So, we see
20 every beautiful color. We see every beautiful nationality.
21 We see -- it's, it's, it's a very, very united type
22 congregation and fellowship. I just want to make sure I
23 have that in mind for him too.

24 Q Do you have an idea what the expense of the
25 treatment might be?

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 A I'm looking somewhere in maybe the -- anywhere
2 from \$1,500 to \$5,000 range.

3 Q Okay. If it was twice that, would that be
4 something that you would be able to manage?

5 A Yes.

6 Q And Dr. Martin is in Columbia?

7 A Yes.

8 Q How's he gonna get to treatment?

9 A We will be making the trip up there faithfully.

10 Q Okay. I'm not sure where -- you said that it's in
11 Bluffton, where you live?

12 A Where I live in, yes, it's in Bluffton.

13 Q If---

14 A But, like I said, I, I -- I'd like to -- I would
15 like to give him one hundred percent every single --
16 anything that is available to him to help him to succeed. I
17 also feel that he also -- I feel that he would -- I think
18 that, because of what has happened to him being a victim
19 himself, I encourage him and I think that it's very, very
20 necessary to stop this chain of events. And I feel it's
21 very necessary that he get counseling on his own to deal
22 with what has happened to him, and make sense of what has
23 happened to him. Somebody has got to stop the chain of
24 events, and I want to do whatever it takes possible to give
25 him every tool possible to be a successful, productive

DIRECT EXAMINATION OF MELANIE CORA RUBIO BY MR. FALK

1 member of this society because this is a very good person.
2 He made some mistakes, and he did have some terrible things
3 happen, but in my -- my God has always taught me that it is
4 never too late, and today is the first day of the rest of
5 your life.

6 Q And you heard every moment of Dr. Swan's
7 testimony, is that correct?

8 A I did, yes.

9 Q And did you find out anything different about him
10 that you didn't already know?

11 A No, I heard -- he was -- as this one thing I can
12 tell---

13 Q I mean as far as the facts.

14 A Yes, the facts. Not---

15 Q Not her opinion. Not her opinions. Just the
16 facts.

17 A No, not the opinions -- he told me -- he was --
18 and I was very, very, very happy to know that I didn't
19 exactly like to hear some of the things I heard. But guess
20 what? I -- one thing I can honestly say about him is he is
21 always been one hundred percent honest with me, even when it
22 was hurtful, and that, to me, is huge.

23 MR. FALK: No further questions.

24 THE COURT: Cross-examination.

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

CROSS EXAMINATION OF MELANIE CORA RUBIO BY MR. BOGLE

1 CROSS EXAMINATION

2 BY MR. BOGLE:

3 Q Good afternoon, Ms. Rubio.

4 A Good afternoon.

5 Q So, the guilty pleas that happened way back when
6 in Hampton County, you would not would of -- you would not
7 have been in court for those, would you?

8 A Referring to which --?

9 Q All right. When Mr. Brown pleaded guilty to
10 criminal sexual conduct on two occasions on the same day in
11 Hampton County back in 1996, you were not there?

12 A I was not there.

13 Q Okay.

14 A I did know about them via his brother, Shannon,
15 but I was not present, no.

16 Q And when he pleaded guilty here in Beaufort County
17 in 1999, the case that got overturned, he later pleaded
18 guilty in 2001, were you present for those guilty pleas?

19 A Was not present, but was -- but was informed on
20 that day of everything that went down.

21 Q Okay. Okay. So, you were not here to hear him
22 admit guilt to the Judge during any of his guilty pleas,
23 correct?

24 A I didn't hear it from his mouth, no, sir.

25 Q Okay. Okay. And as I -- I was trying to count

CROSS EXAMINATION OF MELANIE CORA RUBIO BY MR. BOGLE

1 when -- you've known the family for a long time, back in the
2 late '90s or something like that, and you reached out to him
3 when he was in prison about ten years ago. Is that -- is
4 that the right number?

5 A Yes.

6 Q Okay. So, that'd be about say 2008, 2009, around
7 then?

8 A 2010ish, yeah.

9 Q 2010ish. Okay. And this was by phone calls and
10 letters?

11 A Both, yes, sir.

12 Q Okay. And have you, have you been to visit him at
13 the prison?

14 A Up with -- up in, in Columbia?

15 Q Wherever he is. Wherever he's been.

16 A No, I couldn't because I had three babies.

17 Q Okay.

18 A And I was all alone, but I, I -- since he's been
19 in Beaufort County, I visited him almost every single week.

20 Q Okay. So, when he was serving his 20-year prison
21 term at a South Carolina prison, you were not able to visit
22 him there. While he's been sitting here in Beaufort County
23 awaiting this trial, that's closer by, you've been able to
24 visit him since he's arrived here?

25 A Yes, sir.

CROSS EXAMINATION OF MELANIE CORA RUBIO BY MR. BOGLE

1 Q Okay. And the, the prison where he was in
2 Columbia was at least 120 miles away, roughly, from
3 Bluffton; would you say?

4 A Yes.

5 Q Okay. About the same distance to Dr. Martin's
6 office. About 120 miles from Bluffton to Dr. Martin's
7 office in Columbia?

8 A Yes, sir.

9 Q Okay. Now, you mentioned a minute ago that the
10 plan would be, hopefully, for him to live with you, your
11 mom, and two of the triplets?

12 A Yes, sir.

13 Q Where is the third triplet going to live?

14 A The third triplet is, because of his, his---

15 Q The boy.

16 A ---severe Autism, right now, I have him in a
17 autistic academy just for temporary purposes because he is
18 nonverbal.

19 Q Uh-huh. (Affirmative).

20 A And I want him to be able to speak and to learn
21 some life, you know, goals and choices so that he can maybe
22 eventually assimilate into a group home.

23 Q Is that location where the little boy's being --
24 staying right now, is that in this county or is it somewhere
25 else?

CROSS EXAMINATION OF MELANIE CORA RUBIO BY MR. BOGLE

1 A It's in Elgin.

2 Q Elgin?

3 A Yes.

4 Q That's up near Columbia?

5 A Yes, sir.

6 Q Okay. Okay. So, it would be you, your mom,

7 Mr. Brown, and the two little girls?

8 A Yes, sir.

9 Q Okay. Have you spoken to Sylvia Roberts at the
10 Department of Corrections about the type of sex offender
11 treatment he took there, and what he might have learned from
12 them?

13 A Um.

14 Q Have you called her and talked to her?

15 A I can't say I have, no.

16 Q Okay.

17 MR. BOGLE: Nothing further. Thank you, Your
18 Honor.

19 THE COURT: Okay. Anything further, Mr. Falk?

20 MR. FALK: No redirect.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Yes, sir, thank you. You may step
24 down. I'm sorry, ma'am.

25 THE WITNESS: That's okay.

CROSS EXAMINATION OF MELANIE CORA RUBIO BY MR. BOGLE

1 THE COURT: Their lunch is here. Okay. Perfect.

2 All right.

3 THE WITNESS: I think I knocked your little thing

4 off here.

5 THE COURT: No worries. It keeps coming off. It

6 wasn't you.

7 THE WITNESS: It wasn't me.

8 THE COURT: It wasn't you. It's been coming off

9 for years.

10 THE WITNESS: Okay. I'm gonna set it right here.

11 THE COURT: Perfect.

12 THE WITNESS: All right.

13 THE COURT: All right. Ladies and gentlemen, it's

14 my understanding that the sandwiches are back there.

15 So, Mr. Foreperson, what I'm gonna ask you-all to do is

16 grab a bite to eat, and I am going to ask you then to

17 knock back on the jury room door when you're finished

18 eating, and then we'll go ahead and continue. Okay. I

19 need to remind you, do not discuss this case. It would

20 be inappropriate to do so. Put your pads in your

21 seats, ladies and gentlemen, and we'll be back with

22 you. Okay. Thank you.

23 (The jury exits the courtroom.)

24 THE BAILIFF: The jury's clear, Your Honor.

25 THE COURT: Thank you. All right, y'all. You

CROSS EXAMINATION OF MELANIE CORA RUBIO BY MR. BOGLE

1 want to go ahead and take a what, 30 minutes, 30
2 minutes or so.

3 MR. BOGLE: For the jury---

4 THE COURT: If someone wants to run out and grab
5 something, as you know, there's -- can't do it. I, I
6 want this jury to keep going. Let me tell you. So,
7 you-all go grab something, come on back, and we'll be
8 with you. Okay. Thank you. Sorry y'all. As soon as
9 this jury is ready, I want to keep going. We want to
10 finish today. Okay.

11 (Recess taken.)

12 THE BAILIFF: Ready, Your Honor?

13 THE COURT: Yes, sir.

14 THE BAILIFF: The jury's in the courtroom, Your
15 Honor.

16 THE COURT: Thank you. All right. Welcome back,
17 ladies and gentlemen. I know it's a bit cold in here.
18 I'm so sorry. I always tell juries, the only thing I
19 can't control is the temperature in the courtrooms.
20 So, unfortunately, but some of you had brought some
21 coats. That's great. If you need a blanket, ask Tom.
22 He will bring you one. All right. Mr. Falk, if you'd
23 like to call your next witness.

24 MR. FALK: We'll call Dameon Brown to the stand.

25 THE COURT: Come on forward, Mr. Brown, to be

CROSS EXAMINATION OF MELANIE CORA RUBIO BY MR. BOGLE

1 sworn.

2 Thereupon,

3 DAMEON BROWN

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 THE CLERK: Will you please state your name for
7 the record.

8 THE WITNESS: Dameon Brown.

9 THE COURT: All right. Come on around, Mr. Brown,
10 right here.

11 DIRECT EXAMINATION

12 BY MR. FALK:

13 Q You ready, Mr. Brown?

14 A Yeah.

15 Q Okay. You might have to speak up a little bit.

16 A All right. All right.

17 Q Okay. How long have you been in the Department of
18 Corrections?

19 A I been in the Department of Corrections, before I
20 got here, 18 years and four months.

21 Q Eighteen years and four months?

22 A Yes, sir.

23 Q Because, when you pled guilty in 2001, it showed
24 that you had 34 months of credit for time served?

25 A Well, I was -- I went to prison in '99.

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 Q Okay.

2 A I pled guilty in '99, 1999.

3 Q Gotcha.

4 A And the case had to be overturned for a technical
5 error.

6 Q Okay.

7 A So, I came back in 2001, and the only thing we did
8 then was just go back through the motions again, and I just
9 re, repeated by my plea, plea --

10 Q Gotcha.

11 A -- to the charges.

12 THE COURT: Okay. Sorry. It's as loud as it will
13 go. I'm just gonna ask him to speak as loud as he can.
14 Okay. Thank you, Mr. Brown.

15 THE WITNESS: All right.

16 THE COURT: Okay.

17 THE WITNESS: All right.

18 THE COURT: And you can adjust that microphone too
19 if you want to, sir---

20 THE WITNESS: All right.

21 THE COURT: ---if that helps you at all.

22 THE WITNESS: All right.

23 THE COURT: Okay.

24 THE WITNESS: All right. I got you.

25 Q All right. So, you've been -- so, how old were

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 you when you went to the Department of Corrections?

2 A I just turned 21.

3 Q Okay. And so, tell me, who were you then? I mean
4 are you the same person you are -- how have you -- how are
5 you different from 2001 or 1999 till today?

6 A I mean I learned a lot. I mean --

7 Q Well, let's talk about that. What, what did you
8 learn while you were in corrections? Did you take any
9 classes while you were there?

10 A Yeah, I took, I took the sex offender treatment
11 class, and then took anger management class about -- I went
12 to regular school, and got my GED.

13 Q You got your GED while you were in there?

14 A Yes.

15 Q And tell me about the sex offender treatment
16 class? How many days a week would that meet?

17 A Twice. It usually, it usually like one day, but
18 sometimes she do it twice for like two hours, two and a half
19 hours --

20 Q Okay.

21 A -- each time.

22 Q What kind of stuff did y'all talk about?

23 A A lot. The main things we talked about was like
24 accepting responsibility for our actions, and like our plans
25 for the future. Like relapse prevention, victim empathy,

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 admitting, you know, admitting to, to, you know, what you
2 really actually did --

3 Q Right.

4 A -- you know.

5 Q And do you recall ever getting a grade in that
6 class or was there any kind of test that you took?

7 A Yeah. Yeah, I took---

8 Q Did you pass?

9 A ---a lot of tests. Yeah, I passed every last one
10 of them.

11 Q Okay. And what were those tests like?

12 A Hard. Like cause and like it really involved like
13 personal stuff. They ask you a lot of personal questions.
14 Stuff that you ain't never told nobody, and you have to
15 answer questions dealing with that.

16 Q And did you -- was there like homework or was
17 there projects---

18 A Yes.

19 Q ---that y'all did in between classes?

20 A Yeah, we had homework almost, almost every time.

21 Q Okay. And there were other people in the class
22 with you, is that right?

23 A Yes, it was two others.

24 Q Okay. And so you had to admit what you've done in
25 front of other people, is that right?

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 A Yes.

2 Q Did a problem happen a little -- along the way?

3 A Yeah.

4 Q Why don't, why don't you talk to me a little bit
5 about that?

6 A Well, it had -- they had an inmate in there, in
7 the class who was going back to the unit talking about this.
8 You can talk in the vent -- in the air vents.

9 Q Uh-huh. (Affirmative).

10 A Going back to the, the unit talking about stuff
11 that we talked about that's suppose to be confidential in
12 the class in the vent to other inmates trying this -- trying
13 to make himself seem like he wasn't as bad off as we was.
14 Like, you know, they did this right here, but I didn't.

15 Q Uh-huh. (Affirmative).

16 A And so I brought it to the attention of the, the
17 teacher of the class that the confidentiality was being
18 broken by this individual. And it kind of made it hard for
19 people to want to sit and talk around somebody they know was
20 doing that because, you know, confidentiality was like a --
21 that was like the first rule.

22 Q Did you have concerns about being in the
23 population and having people know some of the sexual
24 offenses?

25 A I did.

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 Q Like what?

2 A I felt like I had -- because, you know, people
3 look at people with that type of criminal history I had
4 dealing with sexual offenses, the people look at me like --
5 the way people look at people like with those type of
6 offenses as, as bad people. So, I, I had to be around
7 people that had access to cell phones. They can look you up
8 and see what you were in jail for, and I had to be carefully
9 really.

10 Q So, now, you had picked up a fair amount of
11 disciplinary infractions while you're in there?

12 A Yes, I did.

13 Q A lot of them were for stuff like not being where
14 you're supposed to be or back talking to corrections
15 officers?

16 A Yes.

17 Q Why would you do that?

18 A Well, when I first went to prison, I had 20 years,
19 right? I had the attitude of I got 20 years, I don't care.
20 I -- you know, I just was showing out, and a lot of the
21 stuff I did was, was, was -- they was, they was really like
22 stupid.

23 Q And there were some offenses where -- you heard
24 Dr. -- you obviously were here when Dr. Swan testified, and
25 some of the exposing yourselves to some of the female prison

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 guards?

2 A Yes.

3 Q What was behind that?

4 A Well, it was a -- that's like a thing, you know.
5 I ain't saying that it's, it's, it's, it's, it's good or
6 nothing. It's bad. No way -- either way you look at it.
7 You know, it was just something I did, and, at one point in
8 time, I woke up and I'm like, you know, that's stupid. Why
9 you, why you keep doing it? You know what I'm saying? Look
10 at your charges you in prison for. I had no idea none of
11 this was gonna happen when I was doing all that.

12 Q Okay.

13 A When I was doing this, I had no idea about this
14 situation right here coming up cause I had no knowledge of
15 it. But, you know, had I known, you never know. Maybe I
16 still would of did it, you know, but, at the same time, I
17 woke up, and realize, you know, that what I was doing, you
18 know, was stupid, you know, in my situation. I need to do
19 better. So, from that point on, I never did it no more.

20 Q So, who were you running around with when you were
21 19 before you went to prison?

22 A Like my cousins people I grew up with.

23 Q There was a group of people in here earlier. Who
24 was -- I, I think they're at lunch right now though. Who
25 was, who was in here today?

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 A My two brothers, my aunt, and my cousin.

2 Q Okay. Have you been in contact with them since
3 you were incarcerated?

4 A Yeah.

5 Q What kind of communication do you have with them?

6 A Regularly. I talk to them regularly.

7 Q Okay. How did you come to meeting Melanie Rubio?

8 A Well, I already knew her, but I really like --
9 like she was, she was much older than me back then. But
10 like, you know, my brother knew her. You know, they was
11 friends, and then we just start -- you know, she reached out
12 to me about ten years ago. Probably about eight, nine, ten
13 years ago, somewhere in the range. She reached out to me
14 and I was surprised, you know, to hear from her. And, you
15 know, we started writing back and forth. And then when
16 things started getting serious between us, like a
17 friendship, a bond building or whatever, that's when the
18 topic of my incarceration, and my reason for being
19 incarcerated came up.

20 I had never had a conversation with somebody
21 outside, or inside really cause I wasn't telling -- going
22 around telling people in prison why I'm in jail, but I never
23 had a conversation with somebody on a personal level about
24 my charges and my past, even before coming to prison this
25 time, the charges I had before that. So, you know, she

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 asked me, you know, questions, and I felt like -- I, I
2 dodged them at first. You know, I dodged them at first
3 cause I was like, you know, she, she trying to find out why
4 I'm in jail. She want to know some details. I'm dodging
5 these questions.

6 So, eventually, I'm building up the courage
7 enough to tell her because I knew that she had feelings for
8 me, and I had feelings for her. And we was talking about
9 having a future together. So, I had to tell her, you know,
10 exactly what I did or exactly what happened.

11 Q What -- prior to getting in -- prior to 2001,
12 1999, what, what kind of relationship did you have with your
13 dad?

14 A My dad, my dad died when I was six.

15 Q Okay. How did he die?

16 A Car wreck.

17 Q Okay. And so who was living in the house with you
18 when you were growing up?

19 A Me, my mom, my brother, Alvin, one of them ones
20 that's in here today.

21 Q Alvin was here?

22 A Yeah, him. My other two brothers, they lived with
23 us, but like they used to always be gone all the time. So,
24 it was just me -- just me, Alvin, and my mom constantly in
25 the house all the time.

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 Q Yeah. Where's your mom now?

2 A She passed away in 2010 from cancer.

3 Q Okay. So, where are you gonna go if you're
4 released today?

5 A Well, before me and Melanie discussed the plans
6 being, you know, she spoke about earlier, I had reached out
7 to the chaplain of the institution that I was at to
8 contact -- to get in contact with some halfway houses in
9 Columbia, and my intention was to go to a halfway house in
10 Columbia cause Dr. Swan had recommended Dr. Martin to me as
11 a means of a treatment plan or whatever.

12 So, my plan was to get, get, you know, get in
13 the halfway house in Columbia, and be around that area where
14 I could go to the, you know, counseling or whatever. But,
15 you know, since me and her discussed the plans that, you
16 know, we came up with or whatever, I guess I'm, I'm -- you
17 know, my plan would be to go to Bluffton.

18 Q So, why are you looking for treatment?

19 A Well, you know, I had some issues I -- on my own,
20 you know, that I'm dealing with, you know, from -- you know,
21 my past experiences before I ever committed a crime or
22 anything, and I wanted to deal with that because I felt like
23 that was like the foundation of everything that happened
24 after that. So, I felt like, for me to go and get
25 treatment, you know, I had to, to bring all this stuff out.

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 See, I never told nobody, not even my mother or nothing, I
2 never told anybody nothing -- about nothing that happened to
3 me other than Melanie. She the only one know.

4 And my reasons for that is cause I was, I was
5 holding all that stuff in, and I had nobody to talk to about
6 it. So, when I -- you know, when me and her got to talking
7 and I got to feeling comfortable enough around her to be
8 able to tell her these -- to be able to tell somebody these
9 things, she was the only person I could turn to at that
10 time. So, I feel like the treatment would be, not only for
11 the crimes that I've been accused of and convicted of or
12 whatever, but it would be for the stuff that I went through
13 as a child that probably led up to these crimes.

14 Q What kind of stuff? I mean without---

15 A Well, I been molested.

16 Q Okay. How old were you?

17 A I was 11..

18 Q Okay. Now, you made a comment that when I was --
19 these crimes that I was accused of were when I was a kid.
20 Let's talk about that. You pled guilty, is that right.

21 A Yes, I did.

22 Q What, what was your in your mind there? Why did
23 you plead guilty?

24 A Okay. At the time when I went to court on the
25 1995 convictions---

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 Q And how old were you at that time?

2 A I was 17.

3 Q Okay.

4 A All right. I had two criminal sexual conduct, and
5 assault and battery high and aggravated nature. I caught
6 the assault and battery high and aggravated nature in the,
7 in, in, in the jail.

8 Q Okay.

9 A Okay. I hadn't been in jail for the two criminal
10 sexual conducts maybe a few months. I can't remember
11 when -- how, how long, but I was offered a plea deal for all
12 three charges, a one to six. I go in to plead guilty, going
13 to give you one to six for each charge, run it concurrent.
14 I had already had seven months credit.

15 Q Uh-huh. (Affirmative.)

16 A So, I went ahead and took it.

17 Q That was, that was your YOA sentence?

18 A That was a YOA sentence.

19 Q And just so -- I'm not sure the jury knows.

20 That's a Youthful Offender Act?

21 A Youthful Offender Act, yes.

22 Q Okay.

23 A And, according to the way they was doing things
24 back then, seven months -- you had to do 13. If you had a
25 violent crime, you do 13 months. If you had a nonviolent

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 crime, you do ten months at first, and then you get parole.
2 So, being that I already had seven months, I went ahead and
3 took it because I wouldn't of had nothing but few months
4 left---

5 Q I got you.

6 A ---to go home. But I was facing, for each
7 criminal sexual conduct, was 30 years. Plus the, the
8 assault and battery high and aggravated nature was maybe 15,
9 20, something like that. So, I went ahead and took it even
10 though I could of challenged it, you know. But that's like
11 saying -- in that situation, it's like saying, you know, you
12 broke in a house. You broke in the house, but you didn't
13 steal everything. Yeah, I did something, but I didn't do
14 what they accused me of. But, for, for them to offer me a
15 one to six I feel like, man, I had to take that rather than
16 try -- risk going to trial for both of these charges plus
17 this other one I just caught, and getting a whole truckload
18 of time, and not even challenge it. Now it's coming back to
19 bite me, you know, but --

20 Q So, when you went in and pled guilty that day, did
21 the Judge -- did somebody read to the Judge what you were
22 accused of?

23 A Yeah.

24 Q And did the Judge -- what did the Judge ask
25 you whether or not --

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 A He asked me was I guilty, and he asked them was it
2 a negotiated plea.

3 Q Uh-huh. (Affirmative).

4 A They said yeah. He asked me was I pleading guilty
5 of my own freewill. I told him yes.

6 Q Okay.

7 A But that's just stuff you say. If you taking a
8 plea deal, you don't go into what the -- you don't go into
9 like the specifics of the case or whatever. You really just
10 saying, yeah, I'm, I'm -- you just really going through the
11 motions of saying I accept this plea.

12 Q And you admitted that you did something?

13 A Yeah.

14 Q Okay. And then how old were you when you picked
15 up the charges with the two teen-age girls?

16 A The first one was '95. So, I was 17. —

17 Q Okay.

18 A And the second one was '99.

19 Q Okay. And that's when you got a 20-year sentence?

20 A Yes.

21 Q And so, how did that -- how did that happen?

22 What -- when you -- you pled guilty again. Were you made
23 some type of plea offer?

24 A No. Well, being that I had two priors, they could
25 of gave me a life sentence because under the Three Strike

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 Law or whatever. So, that was like floating around, and I
2 really would like an open plea. I got the max for the
3 charge. It was like zero to 20.

4 Q Uh-huh. (Affirmative).

5 A Pleading guilty, and hopefully the Judge give you
6 anything between zero and 20, less than 20, whatever. So, I
7 went ahead and took an open plea, and I ended up getting 20
8 years. I got the max. Came back again in 2001 after my
9 case got overturned, the same deal. I didn't try to -- I
10 mean I would of liked to have, you know, got a lesser
11 sentence, but I didn't, I didn't -- I could of sat back and
12 waited, and, you know, hopefully got a plea deal and that.
13 So, I'm just like, you know, I'm already in prison. I'm
14 just back here for this court thing. So, just go ahead and
15 give me back -- you know, let's go. That's what happened.

16 Q Now, Judge -- Dr. Swan says that you've got an
17 unnatural attraction to young, young girls 13 to 11 years
18 old. Is that true?

19 A No, sir.

20 Q What types of attraction do you have?

21 A I mean, I mean women. I mean, you know. I mean
22 it's obvious I want a woman. I mean, I mean I -- like when
23 me and her started talking or whatever or getting serious or
24 whatever, you know, I didn't have nobody as far as a woman,
25 you know, companion like in my life. But -- and she came

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 through, and like -- I just like kind of got back into that
2 because, at first, you know, before -- when all this
3 nonsense was going on with the, the, the disciplinaries and
4 all that, she wasn't, you know, she wasn't in my life. But
5 once -- what she did, it was during the time when I had --
6 trying -- trying -- started trying to make a transition.

7 Q Did you tell her anything during that -- how long
8 did she talk to you for that interview?

9 A Like three, three and a half hours.

10 Q In those three and a half hours, did you tell her
11 anything that you still had an attraction to --?

12 A No. No, sir.

13 Q Did she ask you about what your fantasies were?

14 A Yeah.

15 Q And not any response -- this had anything to do
16 with 13-year old girls, isn't that right?

17 A No, sir.

18 Q Okay. Now, there also -- let me do another thing.
19 You were getting some type of sex offender treatment when
20 you were about 14, is that right?

21 A Well, yeah. Yeah.

22 Q Why don't you tell me a little bit about that?

23 A All right. My sentence -- I had a sentence of
24 four to seven months, right? And, you know, I, I went for
25 touching, touching the girl on her butt in school or

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 whatever, right? And I was placed in a sex offender dorm,
2 but, in that class, you know, it's like nobody really took
3 it serious, you know. I was 14, you know. You had people
4 in there who had way worse of charges than I had, and they
5 wasn't even taking it serious. And not saying I didn't want
6 to participate. It's just that it wasn't, it wasn't holding
7 my attention because I felt like the other -- the people
8 that was in there was worse, was worse -- had worser
9 situations than me. I was just in there for touching a girl
10 on her butt.

11 Q What were the ages of the --

12 A They was like between -- anywhere from 12 to 16.

13 Q That was a dorm at Department of Juvenile Justice,
14 right?

15 A Juvenile Justice, yeah.

16 Q Yeah. Okay.

17 A Birchwood.

18 Q So, you didn't complete the treatment then?

19 A No. Well, actually I went home.

20 Q Uh-huh. (Indicating affirmatively.)

21 A Well, I had four to seven months, but I got out,
22 you know. The class is like 12 to 18 months. I went home
23 and was supposed to complete the class on the street,
24 complete the treatment on the street.

25 Q Yeah.

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 A But the lady who was doing the class, it was like
2 her own little -- her own little establishment. And that --
3 the class actually closed down. I mean the place, the place.
4 actually closed down.

5 Q Okay. If you're on the street tomorrow, are you
6 gonna see Dr. Martin?

7 A Of course.

8 Q And you're gonna be with Ms. Rubio?

9 A Yes.

10 Q You know that she's got two 13-year old girls in
11 that house?

12 A I understand that. That was the main thing. I
13 told her -- I was scared for her to -- that she needed to
14 let you know that, you know. That was something she needed
15 to bring to your attention because I didn't want people to
16 think that they would be letting me go into that that type
17 of environment not knowing. And then had, you know, let --
18 really like giving they own, they own opportunity to decide
19 whether, you know---

20 Q Uh-huh. (Affirmative.)

21 A ---that'll be, you know right. That's why I told
22 her to bring that to your attention.

23 Q And you're gonna see -- and you've got community
24 service?

25 A Yeah, I got community supervision for two years.

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 Q And what's your understanding of what you have to
2 do there?

3 A Well, the agent came to see me last year when I
4 first got here explaining that I had to come to his office
5 immediately. He did some paperwork here, but he explained
6 to me, like, you got to go to sex offender treatment. You
7 got to wear an ankle monitor for six months, and, you know,
8 you got to pay the money or whatever, get a job or whatever,
9 and he would have everything set up as far as housing and
10 all of that if I need it.

11 Q Just kind of I see that your family's back here
12 from lunch. Just, general, who, who do we have back here?
13 Do you have brothers?

14 A Yeah. Well, in the first row, that's my cousin,
15 Valerie.

16 Q Okay.

17 A And my Aunt Sheila, and my brother Alvin. And, in
18 the back row there, is my brother, Shannon.

19 Q Okay. And those are people who have -- have
20 they -- and they've communicated with you while you were in
21 custody?

22 A Yeah.

23 Q And they know what you -- what your criminal
24 record was, right?

25 A Yeah.

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 Q What are you gonna do for money?

2 A Well, I'm gonna have to get a job, you know.

3 Q What kind of skills?

4 A That's the thing, right? I mean I did a little
5 work in prison and stuff, but, you know, I had some stuff I
6 was doing before I went to prison, you know, as far as
7 working. I mean there's so many jobs like in that area, you
8 know, for me to just get out and just say what I'm gonna do
9 as far as like immediate plans, right? But me and Melanie
10 had made plans to start a business.

11 Q What is that business?

12 A Well, she, she already had a beauty salon and
13 barbershop or whatever. She already had that established in
14 one -- at one time, but she was thinking about like opening
15 another one and starting that. But I had made plans to go
16 to cosmetology school in Bluffton to learn, you know---

17 Q To become a barber?

18 A ---to get the trade, yeah.

19 Q Yeah.

20 A And we got -- that was, that was like a plan. See
21 my immediate plan was just to get a job and just to start
22 earning some money, you know. But, you know, that was like
23 somewhere like right -- not immediate, but right, right
24 behind that once I got established with some type of income,
25 and then we move on to that, but --.

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 Q So, have you done any landscaping, any kind of
2 construction work?

3 A Yeah, I did construction work.

4 Q What kind of stuff?

5 A Well, like I had a job one time. I was a
6 carpenter's helper like everything you needed up top, I had
7 to take it or I, you know, bring it to them. I had stuff --
8 I had to clean up stuff when they tore buildings down. I
9 had to go clean the debris up and all that. I had jobs
10 working at restaurants. I had -- you know, I was the cook
11 in several different restaurants. I was -- worked in
12 grocery stores. I worked at hotels doing maintenance work.

13 Q How's your health? How's your back?

14 A Huh?

15 Q How's your health?

16 A My back---

17 Q How's your back?

18 A My back's straight. It's straight.

19 Q Okay. What you're talking about is physical
20 stuff?

21 A Oh, yeah. Oh, yeah. I'm in good shape as far as
22 physical..

23 Q Okay. One moment on.

24 (Pause.)

25 MR. FALK: I have no more questions. Thank you.

DIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 THE COURT: Mr. Bogle.

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

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. BOGLE:

7 Q So, from my notes here, you were about 21 when you
8 entered the Department of Corrections?

9 A Yes, sir.

10 Q And you're 40 now. You talked about the classes
11 you took at the Department of Corrections, and you mentioned
12 the word, I wrote it down, about accepting responsibility
13 for your crime.

14 A Yes.

15 Q Is that -- is that the same as admitting guilt
16 that you did these things?

17 A No.

18 Q Not similar---

19 A And not in that case cause it was, it was a plea,
20 plea bargain. It wasn't like they got me up in there and
21 they said did you do that -- did you do this specifically.

22 Q Okay.

23 A I mean it's like is you gonna accept this plea.

24 Q Well, during the plea bargain, the first -- and
25 you're standing up here in front of -- like about where I am

CROSS EXAMINATION OF DAMEON BROWN BY MR. BOGLE

1 or over there.

2 A All right.

3 Q And the Judge asks -- they tell -- tell the, tell
4 the Judge what crime it's gonna be.

5 A All right.

6 Q And then the Judge asks you a series of questions
7 to make sure you're pleading freely and voluntarily. No
8 one's forced you to plead guilty. Haven't been offered
9 anything or anything like that, right?

10 A Yes.

11 Q And then the Judge turns to the prosecutor, and
12 the prosecutor reads the indictment or what the charges are.
13 And the whole time you're doing this you're under oath,
14 right?

15 A Yeah.

16 Q And then the, then the, then the Judge turns to
17 you and says have you heard what he just said you did. Is
18 that what happened? Are you guilty of those things? And
19 you have to say yes, right?

20 A (Inaudible.)

21 Q During those pleas, you said yes, right?

22 A Yeah, because I was accepting a plea.

23 Q Okay.

24 A It wasn't because I was guilty.

25 Q So, you said yes to the Judge when---

CROSS EXAMINATION OF DAMEON BROWN BY MR. BOGLE

1 A Yeah, I did.

2 Q When the Judge turned to you and said did you do
3 these things---

4 A You didn't ask me that---

5 Q ---in Hampton County and Beaufort County---

6 A He didn't ask me that specifically did you do it.
7 He just saying you, you know, pleading guilty of your own
8 free will and all that.

9 Q No, but after the prosecutor then read what the
10 facts were, what had happened, and the Judge turned to you,
11 and said well, is that what happened? Is that what you did?
12 And you had to say yes, didn't you?

13 A Yeah.

14 Q Okay. And you were under oath then, right?

15 A Yes.

16 Q So, are you trying to tell us right now that it
17 was okay to lie to a Judge back then?

18 A I mean if you consider it lying. If you consider
19 it lying because I was offered a, a plea in exchange---

20 Q Well---

21 A ---for a lesser sentence, then that's what
22 happened.

23 Q So, if the Judge asked you, after hearing what the
24 indictment says, and the Judge asked you did you do that,
25 and you said yes, and now you're saying no, I didn't really

CROSS EXAMINATION OF DAMEON BROWN BY MR. BOGLE

1 do that, which time's the truth?

2 A Now is the truth.

3 Q Now's the truth.

4 A I'm saying I, I said that back then because I was,
5 I was accepting a plea.

6 Q Okay. Because in this guilty plea, in this
7 indictment right here, it says, unlawfully engage in
8 criminal sexual conduct in the first degree in that Dameon
9 Brown engaged in a sexual battery with **Minor 3** somebody, and
10 did use aggravated force to accomplish the sexual battery,
11 and that said **Minor 3** was 13, and then the boy was five in the
12 other one. I don't need to read that one, do I?

13 A Huh-uh.

14 Q Okay. When you were in prison, and began a
15 relationship with Ms. Rubio, you said she reached out to you
16 about eight or nine years ago?

17 A Yes.

18 Q So, that'd be about 2009, 2010?

19 A Somewhere around in there.

20 Q Around then?

21 A Somewhere around in there.

22 Q And it was letters at first, and then became
23 telephone calls?

24 A Yeah.

25 Q Okay. Was she able to come -- did she ever come

CROSS EXAMINATION OF DAMEON BROWN BY MR. BOGLE

1 visit you at the prison you're in up in Columbia?

2 A I wasn't in Columbia.

3 Q Where were you?

4 A I was -- in 2000 -- at that time, I was Tyger
5 River.

6 Q What -- what's that near, Spartanburg?

7 A Spartanburg County.

8 Q Okay. Did she travel to visit you at any of the
9 prisons you were at until you got in the jail down here
10 awaiting this trial? She said she didn't.

11 A We, we didn't, we didn't -- she came and visit me
12 at here.

13 Q Yeah. Yeah.

14 A Yeah.

15 Q And she -- would you agree with her that she never
16 did visit you while you were in the prison, Department of
17 Corrections?

18 A From the time we was communicating, no.

19 Q Okay. Okay. But she has visited you since you
20 got released from prison, and been sitting in jail---

21 A Really, yeah.

22 Q ---for this trial---

23 A Yeah.

24 Q ---cause the jail's right here in Beaufort?

25 A Yeah.

CROSS EXAMINATION OF DAMEON BROWN BY MR. BOGLE

1 Q Okay. And Dr. Martin, this Dr. Martin you're
2 talking about is in Columbia, and Columbia's about 120 miles
3 away, right?

4 A Yes.

5 Q And your source---

6 A But I would---

7 Q And your source of transportation would be
8 Ms. Rubio or somebody in her family; is that right?

9 A Yes.

10 MR. BOGLE: That's all, Judge.

11 THE COURT: Anything further?

12 REDIRECT EXAMINATION

13 BY MR. FALK:

14 Q You originally testified that your plan was to
15 move to a safe house -- a halfway house in Columbia, is that
16 right?

17 A Yeah.

18 Q And that was so you could be close to Dr. Martin?

19 A Yes.

20 Q Okay. And now your, your plan is to stay down
21 here in Bluffton?

22 A Uh-huh.. (Affirmative)..

23 Q But that you've got transportation to see
24 Dr. Martin?

25 A Yes.

REDIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 MR. FALK: No further questions.

2 THE COURT: Anything further, Mr. Bogle?

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

4 THE COURT: You may step down, Mr. Brown.

5 THE WITNESS: All right.

6 THE COURT: And thank you, sir.

7 THE WITNESS: You welcome, Your Honor.

8 MR. FALK: May I talk to my client for a moment?

9 THE COURT: Of course.

10 (Pause.)

11 MR. FALK: Your Honor, Respondent rests.

12 THE COURT: Ladies and gentlemen, at this time,
13 the Respondent rests their case. There's a matter of
14 law I need to take up with the attorneys. What we have
15 left to do in this case is closing arguments from the
16 lawyers, and I'm gonna charge you on the law that's
17 applicable to it, and we'll send it to you for your
18 deliberation. Ladies and gentlemen, though, I do have
19 to do some things with the attorneys before that.
20 Again, do not discuss this case. It wouldn't be
21 appropriate to do so at this time. We will be back
22 with you shortly. You can leave your pads right in
23 your seats once again. Okay. Thank you. Grab a cup
24 of coffee, whatever you need.

25 (Jury out.)

REDIRECT EXAMINATION OF DAMEON BROWN BY MR. FALK

1 THE BAILIFF: The jury's clear, Your Honor.

2 THE COURT: Are there any motions?

3 MR. FALK: We would renew our motions for directed
4 verdict.

5 THE COURT: Thank you. Respectfully, based on the
6 same ruling I gave before, viewing the evidence in the
7 light most favorable to the State, I just think it's a
8 jury issue. So, we will give it to them.

9 Gentlemen, I want to go over just very quickly and
10 go through what I'm gonna charge in this case. If
11 there's anything special, Mr. Bogle, I've looked at
12 your charges. Yours are a little longer than probably
13 mine are. But I'm gonna go through and charge the jury
14 finder of fact. I'm the Judge of law. I did like the
15 argument of counsel that you put in that says that it's
16 just argument.

17 MR. BOGLE: That came from Judge Newman's trial of
18 the Slager in the cop that shot the guy in Charleston.

19 THE COURT: Right.

20 MR. BOGLE: That's where, that's where that came
21 from.

22 THE COURT: Yeah, I like it.. I'm gonna charge
23 direct and circumstantial evidence, expert witnesses,
24 credibility of witnesses, obviously the burden of proof
25 is by a reasonable doubt. I explained that to them in

MOTIONS ARGUED

1 detail. And then, also, I explain to them the
2 requirements that the State must prove beyond a
3 reasonable doubt as to whether or not the State has
4 proven that Mr. Brown is a sexually violent predator.
5 I define, of course, mental abnormality or abnormality,
6 excuse me. I define acts of sexually violent. It's
7 pretty much standard.

8 I tell them that they're gonna have a copy of the
9 charge in the jury room, and I talk to them about their
10 notes, and what -- they are to go back there, and it
11 must be unanimous, fair and impartial, and Julia has a
12 verdict form. So, I'll give it to y'all. Take a look
13 at it.

14 MR. FALK: Is there language about that he's gonna
15 go to a mental facility or secure facility or what---

16 THE COURT: I say a secure facility, but it's
17 obviously -- the portion where it used to say -- I
18 just, he is committed to a secure treatment facility.

19 MR. FALK: Okay.

20 THE COURT: And that's it. It's not controlled by
21 the Department of Mental Health anymore. So, that's
22 what I say.

23 MR. BOGLE: And the part involving sexually
24 violent predator, and I'm looking at Page 13 of mine,
25 when you talk about the elements that the State must

MOTIONS ARGUED

1 prove beyond a reasonable doubt --

2 THE COURT: Uh-huh. (Affirmative).

3 MR. BOGLE: -- the first one being that he's been
4 convicted of a sexually violent offense, and I assume
5 you will charge that criminal sexual conduct, criminal
6 sexual conduct with a minor in the first degree--

7 THE COURT: Yeah.

8 MR. BOGLE: ---and criminal sexual conduct with a
9 minor in the second degree are sexually violent
10 offenses.

11 THE COURT: Yep.

12 MR. BOGLE: And then the rest of -- and then it
13 goes to mental abnormality.

14 THE COURT: Yeah.

15 MR. BOGLE: The inherent -- the two elements--

16 THE COURT: Yeah.

17 MR. BOGLE: ---about serious difficulty.

18 THE COURT: Got it. Got all of that.

19 MR. BOGLE: Thank you.

20 THE COURT: Okay. Y'all okay?

21 MR. BOGLE: The verdict form is up here?

22 THE COURT: Take a look at the verdict form.

23 MR. BOGLE: It looks familiar.

24 THE COURT: Okay.

25 MR. FALK: And the State is going to close in

MOTIONS ARGUED

1 full, I do it, and then he, he rebuts anything new.

2 MR. BOGLE: That's my understanding.

3 THE COURT: Right. You put up evidence.

4 Obviously, it doesn't, it doesn't matter. It's not a
5 criminal case any way, but in a criminal case he does
6 carry the burden by a reasonable doubt. So, yeah. So,
7 yeah, he's gonna be relatively short. We don't want
8 closing arguments to be longer than the trial was. All
9 right. I'm gonna give you about five minutes. Y'all
10 take a quick five minutes, gather yourself, and we'll
11 come back, and go ahead and wrap it up. Okay. Thank
12 you all. I appreciate it.

13 (Break)

14 THE COURT: Is there any exception to the charge
15 from the State?

16 MR. BOGLE: Not as you, not as you explained it,
17 Your Honor. It sounds like it covers everything.

18 THE COURT: Okay. And the verdict form is fine,
19 is that correct?

20 MR. BOGLE: Yes.

21 THE COURT: From the Respondent.

22 MR. FALK: No.

23 THE COURT: Thank you. All right. You-all ready
24 to go?

25 MR. BOGLE: Yes.

MOTIONS ARGUED

1 MR. FALK: Yes, ma'am.

2 THE COURT: You okay? Let's bring the jury in.

3 (The jury enters the courtroom at 2:39 p.m.)

4 THE BAILIFF: Ready for the jury, Your Honor?

5 THE COURT: Welcome back, ladies and gentlemen.

6 At this time, what you're going to hear is the closing
7 arguments from the attorneys. I'm gonna charge you on
8 the law that's applicable to this case, and we're gonna
9 give it to you to deliberate.

10 All right. So, if you'd give your attention to
11 Mr. Bogle.

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

14 THE COURT: Yes, sir.

15 CLOSING ARGUMENT BY THE STATE

16 MR. BOGLE: Mr. Falk. Again, thank you on behalf
17 of the State, Beaufort County, of course, Mr. Brown.
18 You've done your job. Now, here's where the hard work
19 starts. We're at the point right now where you've
20 heard all the testimony that's gonna be submitted from
21 that witness chair right there. You'll also have it
22 back in the jury room, the exhibits which were
23 introduced into evidence, and what they consist of are
24 three indictments and sentencing sheets for three
25 sexually violent crimes that Mr. Brown's been convicted

CLOSING ARGUMENT BY THE STATE

1 of. You'll have these back in the jury room.

2 Now, like we talked about at the beginning, when
3 they passed this law, they were talking about a certain
4 type of person called a sexually violent predator, and
5 they're certain things that the State has to prove to
6 you beyond a reasonable doubt. Again, the Judge will
7 tell you what that means. I would suggest that if
8 you're firmly convinced of something, you're convinced
9 of something beyond a reasonable doubt.

10 So, what do we have?

11 Number one, we have to prove has he convicted,
12 been convicted of a sexually violent crime. Yeah,
13 three of them right there. Criminal sexual conduct
14 with a minor in the first degree involving a 13-year
15 old girl in Hampton County, and a five-year old boy in
16 Hampton County. And then criminal sexual conduct with
17 a minor in the second degree involving a 13-year old
18 girl here in Beaufort County. That's the criminal --
19 that's the sexually violent convictions you've got
20 there.

21 The next thing is mental abnormality or
22 personality disorder and causing serious difficulty
23 controlling the behavior such that he's likely to
24 commit a crime of sexual violence in the future unless
25 he's confined for treatment. And what do we have

CLOSING ARGUMENT BY THE STATE

1 there?

2 Dr. Swan was appointed by the Court at a previous
3 proceeding to evaluate the guy, to look at him, look at
4 the convictions, look at all records and try and figure
5 out what the diagnosis is if there is one. And she has
6 a contract with the Department of Mental Health. They
7 were behind at one time. They hired her to help catch
8 up the backlog. She gets paid a flat fee. Out of that
9 fee comes her work, her interview, examining the
10 documents, traveling up here, traveling back, staying
11 in a hotel, whatever's involved, and the fee doesn't
12 matter. If she says yeah, he's a predator, same fee.
13 Says no, he's not, same fee. It doesn't matter. But
14 that's how it works.

15 She has a contract with the Department of Mental
16 Health to do this kind of job. So, she looked at
17 everything and what did she come up with?

18 First off, she found mental abnormality, a sexual
19 deviancy that she said was of the exhibitionist
20 disorder. This is primary the result of misconduct in
21 the prison.

22 The next thing she found was what's called other
23 specified paraphiliac, which means deviant, disorder,
24 hebephilia. And that's a technical term for a deviant
25 attraction to young girls, not prepubescent, but after

CLOSING ARGUMENT BY THE STATE

1 puberty, but still fairly young. She's talking 11 to
2 13-year old girls. And it's important to know that the
3 crimes he was convicted of, particularly involving the
4 two 13-year old girls. Don't think that this is a
5 situation with a 19-year old had the hots for a 13-year
6 old guy. This is plain old teenage sex.

7 This was forcible sexual intercourse. This was
8 rape. Okay. This wasn't just two kids having sex.
9 This was rape.

10 Remember the comment when a person says no, they
11 usually mean yes. That's what he told Dr. Swan when
12 she was talking about the situation involving the most
13 recent crimes in interviewing. When a person says no,
14 they mean yes. And, to me, that's kind of a symptom of
15 the entire problem we have here because, the next thing
16 she found, was a personality disorder, antisocial
17 personality disorder, a total disregard for just the
18 rules and regulations that society has to live by as
19 shown by his repeated criminal acts starting when he
20 was 13 or so, some not even sexual.

21 Then the sexual touching the girls on the butt.
22 One was dismissed. One he got convicted of. He got
23 sent to the Department of Juvenile Justice, and he's
24 barely out of there, and he's getting in trouble here
25 with a 13-year old. That conviction gets overturned by

CLOSING ARGUMENT BY THE STATE

1 a post-conviction or something like that. He comes
2 back and pleads guilty to it again, and then he gets
3 the 20 years.

4 Now, what I've found interesting is, there was
5 testimony from him, I think he acknowledged this, and
6 too from Dr. Swan. What happens in a guilty plea? The
7 Judge asks a series of questions to make sure that the
8 defendant is pleading guilty freely, not being forced
9 to, not being pressured, not being promised something.
10 And, then, the prosecutor reads out what happened, and
11 you can read it in the indictment right there.

12 Then the Judge turns to the defendant and says,
13 essentially, is that what you did cause there has to be
14 a factual basis, got to be a crime that the guy's got
15 to admit to for a guilty plea to be accepted. And
16 that's what happened.

17 Now, Mr. -- he takes the stand, and he says, well,
18 I wasn't really guilty of that. Ms. Rubio described
19 him as a victim of some sort. I'm not exactly sure
20 what that means. So, he's saying I'm not guilty of
21 those things.

22 Well, he's under oath before the Judge when he
23 pleaded guilty. He's under oath today. You got to
24 decide which to believe.

25 Now, Dr. Swan diagnosed the two mental

CLOSING ARGUMENT BY THE STATE

1 abnormalities with a personality disorder. And bear in
2 mind, like we said earlier, as an expert witness, as
3 qualified under her training and expertise, and the
4 number of cases she's done of this type, she was
5 qualified to be an expert and give an opinion, which,
6 normally, a witness can't do. Normally a witness can
7 just talk about things they see, things they smell,
8 things they hear. But, with certain training and
9 education, they can be qualified as an expert.

10 Now, at the same time, you are the ultimate
11 finders of fact. You've got to decide what happened
12 here, and that means you can decide whatever
13 credibility you want to for any reason. You can
14 believe everything a witness says. You can believe
15 none of it or anything in-between. And that rule
16 applies to ordinary witnesses like Mr. Brown. It
17 applies to experts like Dr. Swan. You've got to decide
18 how much of what to believe, and look at the motive,
19 the bias, the hidden meaning, what are they trying to
20 get across to you, is there some reason -- some meaning
21 behind it that would affect their credibility.
22 Credibility means believability, and that's your job.
23 You've heard the testimony. You decide what is
24 accurate.

25 Now, so, what we've got here, we've got the two

CLOSING ARGUMENT BY THE STATE

1 young girls. We've got the five year old boy. We have
2 Ms. Rubio, apparently, developed a relationship with
3 him about nine or ten years ago when he was in prison.

4 Now, they talk about having sex offender treatment
5 arranged 120 miles away in Columbia at Dr. Martin's
6 office. But, you know, when he was in prison 20 miles
7 away in Beaufort, she didn't visit him then. Now she's
8 gonna drive him back and forth to see Dr. Martin.
9 Maybe that will work out. I don't know. It's your
10 call on that. You have to decide.

11 So, we got the crimes. We got the mental
12 abnormalities, two of them. We have antisocial, and
13 the other deviant factors of the antisocial she talked
14 about which make him even worse. The combination it's
15 on -- it's called a double whammy having both of them.

16 That's the case, and, again, the burden of proof
17 is beyond a reasonable doubt, and I would submit to you
18 that having heard everything you have, look at the
19 witnesses. Look at these exhibits. Read what he did.
20 Then I think you'll be justified in returning a verdict
21 for the State. Thank you.

22 CLOSING ARGUMENT BY MR. FALK

23 MR. FALK: May it please the Court.

24 THE COURT: Yes, sir.

25 MR. FALK: Mr. Bogle.

CLOSING ARGUMENT BY MR. FALK

1 Well, there's a scene in a movie that is one of my
2 favorite. I'm sure y'all have seen it. I don't know
3 if you like the same scene as much as I do.

4 Can you hear me?

5 MR. FALK: Okay. Well, there's a scene in a movie
6 that I like. I don't know if y'all -- everybody's seen
7 the movie Casablanca. You know something about the
8 movie Casablanca. Well, there's a scene in there where
9 the chief of police (inaudible) is gonna shut down the
10 Ritz Bar. You know, the Casablanca's bar. He's gonna
11 shut it down. And Humphrey Bogart says, Why are you
12 shutting it down? And the, and the policeman says, I'm
13 shocked, I'm shocked to find out that there's gambling
14 going on here. And, right when he says that, the guy
15 (inaudible) hands guy with the money, but the guy is
16 faining like he's shocked.

17 And the State's argument is a little bit like
18 that, that they're saying that they're shocked, that
19 they're surprised that somebody's 17-year old kid is
20 gonna come in and take the benefit of a guilty plea.
21 He's 17. He was looking at possibly 30 years, and he
22 was looking at a sentence significantly less than that.
23 Six years and credit for time served, and it's
24 (inaudible).

25 Now, you're trying to sort of hold that against

CLOSING ARGUMENT BY MR. FALK

1 him that he's -- you know, that he was accepting this
2 guilty plea. Yeah, he admitted to having done
3 something, but he didn't necessarily the extent of
4 what, you know, that was said that he had done. But he
5 knows he did something to those two girls. He knows he
6 did something to the boy. He did some time for it.

7 That's all that this is here. Whether or not it
8 was to the extent of what he was charged with, he took,
9 he took a guilty plea in that case. And there's
10 nothing wrong with that. It's understandable why
11 somebody would take that, and there's no reason to sort
12 of try and impugn his integrity, integrity up here, and
13 saying that he's, you know, lying then, telling the
14 truth now, and vice versa. He did what is reasonable
15 to assume that somebody's gonna do.

16 Now, the Court -- the issue here today is whether
17 or not there's reasonable doubt, and reasonable doubt
18 sort of exists in this case because, again, we're
19 making the decision that's really going to affect his
20 liberty. It's gonna affect where he's gonna go to
21 sleep tonight, tomorrow night, and for a period of time
22 in the future.

23 Dr. Swan said, you know, sometimes it takes three
24 to five years to get this treatment. So, this is a
25 serious, this is a serious decision that y'all have to

CLOSING ARGUMENT BY MR. FALK

1 make, and that's why your standard here is reasonable
2 doubt.

3 Now -- and, I want to sort of point out some areas
4 where I think reasonable doubt is sort of lurking in
5 the State's case. And I want to start with this
6 diagnosis, the mental abnormality that you had. He
7 said that he suffers from hebephilia, which is part --
8 which is some type of unnatural sexual attraction to 11
9 to 13-year old girls.

10 What I found interesting though is here's the
11 book, here's the Bible, and the word hebephilia, this
12 attraction to 13 to -- 11 to 13-year old girls, there's
13 nothing in this book. This is the manual, what we've
14 been talking about. It's not in this book. You have
15 to wonder or not, whether or not it really is something
16 the entire medical community is going to recognize.
17 She had said that some of the ones that were listed in
18 the book that were sort of set out in detail were in
19 there because those are the more common ones.

20 And then I asked her about this other page, 705
21 here, where they sort of give examples of something
22 that's called the other specified paraphilic disorder.
23 And they have some pretty bizarre examples here that
24 they list here, you know, people have some unusual
25 attractions to, to corpses, to animals. I mean just

CLOSING ARGUMENT BY MR. FALK

1 really weird stuff. But then didn't put hebephilia,
2 this, what Dr. Swan was talking about, this attraction
3 to 11 to 13 cause that's not listed there, and maybe
4 that isn't really a thing.

5 I mean there's no question that my client is, is
6 not a pedophile, and there's not an unnatural sexual
7 attraction to, you know, little tiny girls. And even
8 if that is something that existed with him when he was
9 19, I don't care who he was when he was 19. What we're
10 talking about today, today, at this time, at five till
11 3:00, whether or not he's a sexually violent predator.

12 Now, what evidence did Dr. Swan give you that he
13 still has this attraction to 11 to 13-year old girls.
14 I submit there was none. I mean there was something
15 that a 19-year old boy was interested in, but he's a
16 40-year old man now. Does that make sense to you that
17 he's still gonna carry that with him, and, if he did,
18 wouldn't there be some type of evidence of it going
19 along the way. There was no -- there was just no
20 evidence -- there's no current evidence that he -- that
21 still exists. He certainly didn't talk to -- in this
22 three and a half hours, he didn't tell her he had
23 fantasies about that. I mean there's just not --
24 there's no reason to think, and, Dr. Swan, I mean, I
25 asked her, I asked her the question two or three times.

CLOSING ARGUMENT BY MR. FALK

1 Isn't there a difference between a 40-year old man
2 being interested in a 13-year old girl, and a 19-year
3 old boy being interested in a 13-year old girl. And
4 then -- you know, she sort of acknowledged that yeah,
5 there was a little bit of difference.

6 But still, I mean there was -- I would submit
7 there's a -- what does it -- what makes sense to you,
8 A 19-year old's attraction versus a 40-year old man.
9 Do you really think that still exists? I submit
10 there's absolutely no evidence that the State relied on
11 that he had any interest in 13-year old girls.

12 The other sexual -- the other diagnosis of a
13 mental abnormality she said was exhibitionism. Now,
14 I'm, I'm -- don't doubt that a lot of that kind of
15 stuff goes on when people are in custody, and when
16 they're in there for 20 years. I mean I, I get that,
17 that kind of stuff is going on in there.

18 But she also said, when I asked her, I -- you
19 know, cause she said she had to look at that public
20 masturbation. She had to look at that. It's something
21 that she's got to consider because that would be a
22 crime on the outside, but she also admits that that's
23 not a sexually violent crime.

24 Your job here today is whether or not he poses a
25 risk to commit, to commit the crime of sexual violence

CLOSING ARGUMENT BY MR. FALK

1 in the future. I, I, I don't think there's any
2 evidence that he's gonna do that in the future, but I'm
3 telling you that that's not a sexually violent crime.
4 So, that's really not even on y'all's radar this
5 afternoon.

6 Then she said he's got a personality. In fact, he
7 has something that she called antisocial personality
8 disorder. She also said that's the same -- that
9 80 percent of the population is a -- I think that was
10 her, her stats. She said about 80 percent of the
11 prison population is diagnosed with antisocial
12 personality disorder. It's the criminal lifestyle.

13 When he was a kid, he had a criminal lifestyle..
14 But, again, that's what I was kind of talking to you at
15 the beginning. There's people who commit crimes, and
16 then there's people with a mental condition that makes
17 them want to commit crimes. I'd submit he was a young
18 kid. He was growing up in a household without a
19 father. His mother was probably doing the best she
20 could. He had an older brother. Probably a wild --
21 that's probably -- when he was younger. And he had a
22 bunch of stuff, and he did bad stuff. He admitted
23 taking responsibility. He did 20 years for the bad
24 stuff that he's done.

25 So, I've got -- I think there's some things that

CLOSING ARGUMENT BY MR. FALK

1 you need to think about when you go back there about
2 whether or not this is the diagnosis that you think
3 justifies sending him to the -- to be civilly
4 committed.

5 And the other place where I want you to look to
6 see if maybe there's room for doubt is consider her
7 opinion based on the extent of her investigation in
8 this case. Let's look at our facts -- the factual
9 inquiry that she went through. She did not talk to any
10 of the victims. She didn't talk to these prison
11 guards. She didn't talk to Sylvia Roberts about his
12 case specifically. She didn't talk to the solicitor,
13 any of the victims, the lawyers who depend -- I mean
14 she didn't know anything about the plea deals or
15 anything else. She said that wasn't my job.

16 So, she's not -- she wants to assume all those
17 facts cause she has to sort of build her diagnosis on
18 these facts. But she's maybe not as worried whether or
19 not those facts actually occurred. But she didn't --
20 she wasn't really -- she didn't look -- I mean, if
21 you're doing this kind of diagnosis, and you're doing
22 a -- you want to do a thorough inquiry, and you knew
23 that he had gotten sex offender treatment while he was
24 in the Department of Corrections, it's odd for me that
25 she -- she would of just relied on a summary that she

CLOSING ARGUMENT BY MR. FALK

1 gave Sylvia Roberts provided to him, which said that he
2 passed the course. I mean, he passed sex offender
3 treatment as offered by the South Carolina Department
4 of Corrections, but she doesn't think that it was good
5 enough.

6 I don't know why she doesn't think it was good
7 enough. I don't know if she's stood -- sat in any of
8 those classes. I guess she's got a summary. She
9 looked at a syllabus, and she doesn't think that's
10 enough.

11 The other thing that she is not at all concerned
12 about is just the passage of time alone. Now, I
13 have -- just think for yourself. Do you think that if
14 you were 19-years old, and you spent 20 years in
15 prison, if you came out and those, and those -- or
16 whatever it was, I'm not fumbling with the numbers, you
17 know, the extent of the time, the 18 and a half years.
18 You think you'd be a different person when you came out
19 of prison, especially if it's when you were 19 going in
20 and 40 coming out.

21 She doesn't care really about the passage of time
22 because, really, none of her diagnosis is really
23 looking at who he is today versus who he was when he
24 went into prison with the difference being he did
25 commit a significant amount of -- he had a bunch of

CLOSING ARGUMENT BY MR. FALK

1 disciplinary infractions while he was in prison. And
2 if that's enough to keep him in for sex offender
3 treatment going forward, that's really gonna be
4 you-all's decision.

5 But what's interesting is you saw -- I mean you
6 saw -- you heard him. I mean, I believe we can just
7 quit right now and just ask you to just -- you heard
8 him testify. I think you got some kind of sense of who
9 the person is, and you have to decide what you want to
10 do in this case.

11 Dr. Swan, there's no question she said that most
12 of her practice, since 2004, has been really a
13 professional witness. She's a State's witness. She
14 might of been independent. She may be said to be
15 independent, but she's, you know, employed by the
16 State. She got \$4,000 for this case. She did, you
17 know, 4,000 times 28 cases. She found the person -- I
18 mean, every case I've had with Dr. Swan, those are the
19 ones that I read to her when I was going through that
20 little blue, that blue folder, going through those.
21 Those are all the ones that I've had with Dr. Swan.
22 I've never seen an opinion that Dr. Swan provided where
23 she said that somebody didn't meet the criteria for
24 commitment.

25 I don't know if Dr. Swan -- I'm think -- well,

CLOSING ARGUMENT BY MR. FALK

1 obviously, I'm not -- we're not imputing any evil
2 motives to her. I think that Dr. Swan just spent so
3 much time as a State's witness that, at some point, I
4 guess it's like that statement that, you know, when
5 you're a hammer everything looks like a nail. I mean,
6 whoever she sees, she thinks that they're a sexually
7 violent predator.

8 The other thing that I -- where I have the biggest
9 doubt is that it's really easy to look at the diagnosis
10 that Dr. Swan gave, and try and assume that that's the
11 same kind of diagnosis that you would get from a
12 medical doctor doing a medical -- you know, but the
13 difference is the kind of testing that medical doctors
14 rely on, which is the kind of testing that she's relied
15 on here. She used what is called the Static-99 test.
16 And she said it was a state of the art test, and that
17 it was moderately predictive.

18 Now, I've got a scar down the middle of my sternum
19 right here. It's about 7-inches long. And it's
20 because I went into a doctor one time and I was
21 complaining about some numbness in my arm, and the
22 doctor gave me a test. And I stepped on the treadmill,
23 and then he showed me this sort of irregular heartbeat
24 pattern on the treadmill. And then he said, you know
25 that that could mean this. And then we took another

CLOSING ARGUMENT BY MR. FALK

1 test. And I laid on a table, and they injected some
2 dye into my arm. And then I went through an MRI. And
3 then when that got back he could show me how the blood
4 was going through my heart. That was another kind of
5 test that I could see.

6 And then after that the doctor said, Well, what
7 you really ought to do is you ought to get what is
8 called a catheterization where they put an incision
9 right here that went up my arm, and -- or a heart
10 catheterization. I don't know if any of y'all have had
11 that. But where they go in. And I figured, well,
12 they're gonna just put one of these little stints in to
13 open up one of my blood vessels and I'll be fine.

14 After that test, then the doctor said, Oh, no we
15 got in there and looked and he said you've got -- I
16 think I had six what they call coronary artery
17 blockages. And, at that time, when I had all of those
18 tests that I thought were reliable, where the guy could
19 show me the results, then I felt that I had
20 accomplished -- I had no more doubt that it was -- made
21 sense for them to cut open my sternum and perform open
22 heart surgery. That's the kind of doubt that I think
23 that you-all ought to be -- what we ought to be talking
24 about here.

25 That's beyond a reasonable doubt. I'm not sure

CLOSING ARGUMENT BY MR. FALK

1 that a test that is moderately predictive is a test
2 that you're gonna want to make that same type of
3 important decision in his life about.

4 I submit that he's not the same person that he was
5 when he committed the crime, when he went to prison.
6 HE is a forty year old man. My wife is here with me,
7 and it made me think about what they read when we got
8 married. You know, there is that passage from
9 Corinthians that said, When I was a man -- when I was a
10 boy, I thought like a boy I talked like a boy and I
11 reasoned reached like a boy, but now I'm a man. And I
12 think that's what I'm talking about here, he's a man
13 now. He was a boy then. He did boyish things then.
14 He's -- he understands where he was and who he is now.
15 And he's not not that same person.

16 What are his assets going forward? Why can we be
17 comfortable that it's gonna be okay to let him out?

18 Well, he's got a willingness to, to go to
19 treatment. He was willing to move to the halfway house
20 in Columbia so he could be near to the treatment, but
21 then his sort of life changed and he was able to meet
22 up with Ms. Rubio. But he's gonna go to treatment.
23 So, you've got that willingness. He understands. He
24 wants treatment. You know, you heard him talk about
25 this -- some other stuff in his background. And he

CLOSING ARGUMENT BY MR. FALK

1 thinks he would benefit from treatment.

2 So, he's gonna get treatment. He's got a place to
3 live. He's got really sort of a means of some
4 financial support. He's got the love of a good woman.
5 He's got the support of his family who have been here
6 this whole time listening to his testimony. And he's
7 got the maturity of a 40-year old man.

8 I think once you-all give some serious thought,
9 because as Mr. Bogle said, you're gonna be able to
10 consider all of Dr. Swan's testimony. You can, you can
11 accept all of it. You can accept none of it. You can
12 accept some of it. But it is not Dr. Swan's job to
13 determine whether or not he gets committed to the
14 sexually violent predator program. It's you-all's job
15 to make that determination.

16 Before you can make that serious decision about
17 him, you need to be convinced beyond a reasonable
18 doubt. I think when you think back about some of the
19 problems with Dr. Swan's testimony, the fact that she
20 is a State's witness, you know, does that diagnosis
21 make sense. I think that there's plenty of doubt in
22 this case. I think you're gonna have to come back and
23 find that he is not a sexually violent predator. Thank
24 you.

25 FINAL CLOSING ARGUMENT BY THE STATE

FINAL CLOSING ARGUMENT BY THE STATE

1 MR. BOGLE: If I may, Your Honor?

2 I'll touch on two things that were not brought out
3 when I spoke to you earlier.

4 First, Dr. Swan is a professional witness. She
5 said about 60 percent of the time when she's handed a
6 case like this she's found the guy needs to be
7 committed. She's also said that -- if you think about
8 this, she's getting paid a certain amount by the
9 Department of Mental Health to decide the case,
10 wouldn't it be easier and more financially rewarding to
11 her to say, No, he's not and just keep the money and
12 not have to worry about traveling to Beaufort or
13 Columbia or Charleston or wherever and testifying from
14 Florida.

15 Also, regarding Static-99 and the medical diag --
16 the medical analogy that Mr. Falk did. I wish there
17 was a way to x-ray Mr. Brown's brain and say, look,
18 right there, that's the thing that's gonna make him
19 reoffend. It doesn't work that way. This is the field
20 of psychology, and Dr. Swan is the expert.

21 The Static-99R is something used based on
22 thousands of sex offenders. If they have these traits,
23 they're likely to reoffend. And, in this case, people
24 with the traits that Mr. Brown had fell in the 99
25 percentile likely to reoffend. That's what that test

FINAL CLOSING ARGUMENT BY THE STATE

1 is.

2 Thank you. Your Honor.

3 THE COURT: Thank you.

4 JURY CHARGE

5 THE COURT: Mister Foreperson and Members of the
6 Jury, you have heard the evidence and arguments of both
7 parties. I will now explain to you the law which
8 applies to this case.

9 The State has brought this case under the Sexually
10 Violent Predator Law of South Carolina. The State seeks
11 the civil commitment of Dameon Montrell Brown, the
12 Respondent, for long-term control, care and treatment
13 in a secure facility. This is not a criminal proceeding
14 seeking incarceration, but rather is a proceeding
15 seeking civil commitment.

16 The state of South Carolina alleges or claims that
17 the respondent, Dameon Brown, is a sexually violent
18 predator under the law. Respondent denies that he is a
19 sexually violent predator, and the burden of proof is
20 therefore on the State to prove by evidence sufficient
21 to satisfy each of you beyond a reasonable doubt that
22 Mr. Brown is a sexually violent predator. If the State
23 is unable to meet that burden of proof as to one or
24 more of the elements of this claim, the Respondent is
25 entitled to a finding that he is not a sexually violent

JURY CHARGE

1 predator.

2 Ladies and gentlemen, I want to make sure that you
3 understand that Mr. Brown is not accused of committing
4 a crime in this proceeding. As you heard from the
5 testimony, he did have previous charges for which he
6 was sentenced by the Court. The Respondent has now
7 completed his sentence for those charges, and the State
8 is now alleging that Mr. Brown is a sexually violent
9 predator. The State has the burden of proof in this
10 case, and must prove its case beyond a reasonable
11 doubt. If you find that the State has not met this
12 burden, Respondent will be released. If you find that
13 the State has met its burden of proof, and find that
14 the respondent is a sexually violent predator, he will
15 not be released, but will be committed to a secure
16 treatment facility.

17 Under our Constitution and Code of Laws, only you,
18 the Jury, can make the findings of fact in this case.
19 I am not permitted to tell you how I feel about the
20 evidence which has been presented, and throughout this
21 trial, I have intended to be fair and impartial toward
22 each of the parties involved.

23 Ladies and Gentlemen, to determine the facts in
24 this case, you will have to evaluate the credibility,
25 or believability, of witnesses. I have already

JURY CHARGE

1 discussed with you some of the things you may consider
2 as you decide whether or not to believe a witness'
3 testimony about a particular matter.

4 You can believe as much or as little of each
5 witness' testimony as you think proper. You may
6 believe the testimony of a single witness against that
7 of many witnesses, or just the opposite. You may
8 believe a part of a witness's testimony and disbelieve
9 the rest. You should not decide the case merely by
10 counting the number of witnesses presented by each
11 side.

12 While argument of counsel is a beneficial part of
13 every trial, you should remember that the statements
14 made by counsel are not evidence. In presenting
15 arguments, counsel often refer to the evidence.
16 However, you should base your verdict on the evidence
17 as you remember it. Therefore, if there are any
18 conflicts between the recollection of counsel about the
19 evidence and your own recollection, you should rely
20 upon your own understanding of the evidence.

21 Evidence may be direct or circumstantial. Direct
22 evidence is testimony by a witness about what the
23 witness personally saw, heard or did. Circumstantial
24 evidence is indirect evidence, that is, it is proof of
25 one or more facts from which one can find another fact.

JURY CHARGE

1 You are to consider both direct and circumstantial
2 evidence. The law permits you to give equal weight to
3 both, but it is for you to decide how much weight to
4 give any evidence. .

5 Normally, a person cannot give opinion testimony.
6 Normally, when a person testifies they must testify as
7 to what they either saw, heard, or sensed by smell, or
8 something of that nature. However, there is an
9 exception when someone is qualified because of
10 education or experience. They are permitted to give
11 their opinion in certain areas if the Court qualifies
12 them that way. That does not mean that you must accept
13 the opinion, but it is evidence for you to use in any
14 way you see fit.

15 Ladies and gentlemen of the jury, it is your duty
16 to determine the credibility of witnesses who have
17 testified in this case. Credibility simply means
18 believability. It becomes your duty as jurors to
19 analyze and to evaluate the evidence and determine
20 which evidence convinces you of its truth.

21 In determining the believability of witnesses who
22 have testified in this case, you may believe one
23 witness over several witnesses or several witnesses
24 over one witness. You may believe a part of the
25 testimony of a witness and reject the remaining part of

JURY CHARGE

1. the testimony of that same witness. You may believe
2. the testimony of a witness in its entirety or reject
3. the testimony of a witness in its entirety. You may
4. consider whether any witness has exhibited to you any
5. interest, bias, prejudice, or other motive in this
6. case. You may also consider the appearance and manner
7. of a witness while on the witness stand.

8. The same Constitution and Laws which designate and
9. make you the finders of the facts also make me the
10. instructor of the law. You must accept the law as I
11. give it to you. If I am wrong, there is another place
12. and time for that error to be considered, and if
13. necessary, corrected. But for now, you must accept
14. the law as I give it to you. This means that you
15. should not be concerned with what you may think the law
16. should be, but only with what I charge you that the law
17. is.

18. Ladies and gentlemen, in most civil cases tried in
19. the court of common pleas, the burden of proving a
20. claim is by the preponderance, or greater weight, of
21. the evidence. However, in this type of case under this
22. particular statute, the State's burden is greater than
23. that: here it must be beyond a reasonable doubt.

24. As already stated to you, the State has the burden
25. of proof. Under the law of this State, according to

JURY CHARGE

1 the sexually violent predator statute, the State must
2 prove its case to the standard of proof beyond a
3 reasonable doubt. If the State fails to meet this high
4 burden, then you must find that Mr. Brown is not a
5 sexually violent predator.

6 What is a reasonable doubt in the law? Proof
7 beyond a reasonable doubt is proof that leaves you
8 firmly convinced that respondent is a sexually violent
9 predator.

10 Ladies and gentlemen, there are very few things in
11 this world that we know with absolute certainty, and in
12 this type of case the law does not require proof that
13 overcomes every possible doubt. If based on your
14 consideration of the evidence, you are firmly convinced
15 that Mr. Brown is a sexually violent predator then you
16 must return a verdict for the state.

17 If, on the other hand, you think there is a real
18 possibility that he is not a sexually violent predator,
19 you must give him the benefit of the doubt and return a
20 verdict for the respondent. Reasonable doubt may arise
21 from evidence that is in this case or from the lack of
22 evidence in this case. It is up to you, the jury, to
23 determine whether or not a reasonable doubt exists in
24 this case.

25 The elements which the State must prove beyond a

JURY CHARGE

1 reasonable doubt are that the Respondent has been
2 convicted of a sexually violent offense. I charge you
3 that criminal sexual conduct with a minor in the first
4 degree, and criminally sexual conduct with a minor in
5 the second degree are sexually violent offenses.

6 And, two, that the Respondent suffers from a
7 mental abnormality or personality disorder that makes
8 him likely to engage in acts of sexual violence if not
9 confined in a secure facility for long-term control,
10 care, and treatment.

11 Inherent in these two elements is that the State
12 must prove the requirement that the Respondent's mental
13 abnormality or personality disorder causes him "serious
14 difficulty in controlling his behavior."

15 In other words, the State must prove beyond a
16 reasonable doubt that the individual it seeks to commit
17 suffers from a mental illness which he cannot
18 sufficiently control without the structure and care
19 provided by a mental health facility, rendering him
20 otherwise likely to commit a dangerous act.

21 In order for you to better understand the elements
22 of the state's cause of action, I am going to define
23 for you some of the terms that I have just used.

24 "Mental abnormality" means a mental condition
25 affecting a person's emotional or volitional capacity

JURY CHARGE

1 that predisposes the person to commit sexually violent
2 offenses. This mental abnormality or personality
3 disorder must cause Mr. Brown serious difficulty in
4 controlling his behavior.

5 "Likely to engage in acts of sexual violence"
6 means the person's propensity to commit acts of sexual
7 violence is of such a degree as to pose a menace to the
8 health and safety of others so that he is dangerous to
9 others.

10 Again, I remind you that the burden of proof is on
11 the State to prove to your satisfaction beyond a
12 reasonable doubt that the Respondent has been convicted
13 of a sexually violent offense as I have instructed you,
14 and also suffers from a mental abnormality or
15 personality disorder that makes him likely to engage in
16 acts of sexual violence if not confined in a secure
17 facility for long-term control, care, and treatment.

18 If the State carries its burden of proof and
19 convinces you beyond a reasonable doubt as to each of
20 the two elements of its cause of action, it is entitled
21 to a finding that Mr. Brown is a sexually violent
22 predator. If the State does not meet that burden of
23 proof as to one or both of these elements, the
24 Respondent is entitled to a finding that he is not a
25 sexually violent predator.

JURY CHARGE

1 I will give you each a copy of these instructions
2 in written form. During your deliberations, you may
3 refer to the instructions to guide your
4 decision-making. You must consider the instructions
5 as a whole and not follow some and ignore others.
6 Please return the instructions to the court at the time
7 your verdict is rendered.

8 I have permitted you to take notes during the
9 trial of this case. Your notes should be used only as
10 aids to your memory and should not be allowed to take
11 precedence over your independent memory of facts. The
12 notes are only for each juror's personal use in
13 refreshing recollection of the evidence. When in
14 deliberations at the end of the case, do not rely on
15 the recollection of a juror who took notes about the
16 testimony of a witness solely because the juror took
17 notes. You should not be unduly influenced by the
18 notes of other jurors. As we all know, notes can be
19 wrong. Notes are not entitled to any greater weight
20 than each juror's memory of the evidence. Those jurors
21 who do not take notes should rely on their independent
22 recollection of the evidence and should not be
23 influenced by the fact that another juror has taken
24 notes. Keep in mind that every word spoken in the
25 courtroom is recorded verbatim and can be replayed for

JURY CHARGE

1 you during deliberations if necessary.

2 Mister Foreperson, ladies and gentlemen of the
3 Jury, as you retire to begin your deliberation, I wish
4 to express the hope that each of you will be mindful of
5 the importance of your responsibility here today. You
6 are not called upon to serve as jurors very often, and
7 the proper performance of the duty requires each of you
8 to reach the height of freeing your mind of all
9 improper influences.

10 Please do not get the idea that I am trying to
11 intimate to you how I might think you should decide
12 this case. As I have already told you, under the laws
13 of the State of South Carolina, you, the Jury, are the
14 sole judge of all questions of fact. It would be
15 highly improper for me to influence you in the
16 performance of that duty.

17 As the presiding Officer of this Court, I am
18 vitally concerned that whatever verdict you find will
19 be the result of your going into the jury room and
20 confining your consideration to the evidence and the
21 law that you have heard in this courtroom, weighing it
22 fairly and impartially, as I have every confidence that
23 you will.

24 Everyone is entitled to justice in this case, both
25 the State and the Respondent. You owe no support or

JURY CHARGE

1 sympathy to anyone.

2 Remember, your verdict must be unanimous. I will
3 now explain the verdict form and possible verdicts.
4 Please do not begin deliberating until I tell you to do
5 so.

6 (The jury exits the courtroom.)

7 THE COURT: Any exceptions or the additions from
8 the State?

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

10 THE COURT: From the defense?

11 MR. FALK: No, Your Honor.

12 THE COURT: Thank you. I think that we only have
13 the convictions that are going to go back?

14 MR. BOGLE: That is correct. There's three of
15 them.

16 THE COURT: I'll put the verdict form on top.
17 We'll be at ease until we hear back from them.

18 MR. FALK: We will pull the alternates?

19 THE COURT: Of course we will. When we take it in
20 and drop it off, we will bring them back.

21 (Alternates released by the Court.)

22 (Jury begins deliberating.)

23 THE COURT: All right. The jury has asked, Please
24 define the long-term facility in which he could be sent
25 to and please define long term. Exactly what we all

QUESTION OF THE JURY

1 said they would ask. You all tell me your position on
2 these. Why don't we tell the jury the truth, exactly
3 what these are? But I can't -- and I'm also a firm
4 believer in death penalty cases, the same thing, you
5 telling people what it is they are talking about. I
6 mean, it just seems like that is a better way to get an
7 informed opinion. What is y'all's position?

8 MR. BOGLE: I think they have heard what they are
9 going to hear. I am not sure that you can answer those
10 questions.

11 THE COURT: I just don't think that that's fair
12 for the jury. I did say once, I will tell you this, in
13 my charge, it wasn't written in it, I actually read in
14 it, I think I said long term, and I said lock down
15 facility. I don't know if you caught that, but I did
16 that, because I truly think that they should know that
17 is what this is. Because this is not just a mental
18 hospital where people can come and go. Again, it is
19 not even a mental hospital. This is a prison with a
20 wing that we are going to call a mental hospital coming
21 in another three weeks or so. But let's call it what
22 it is.

23 MR. BOGLE: For the next few weeks, then it will
24 be a giant stand-alone facility.

25 THE COURT: It is still prison. I mean, we all

QUESTION OF THE JURY

1 know that, it is prison and I don't see any reason to
2 call it anything other than what it is, so tell me how
3 we are going to answer this.

4 MR. BOGLE: Would you mind repeating the question,
5 please?

6 THE COURT: "Please define the long-term facility
7 in which he would be sent to."

8 I think that we should just say that it would be a
9 lock down facility. I mean, I truly believe that we
10 should tell the truth when in fact it is.

11 MR. BOGLE: There was no testimony to that effect.
12 I think that you are adding -- you are adding facts to
13 the record that aren't there.

14 THE COURT: I don't think that it's facts, these
15 are not facts that you are adding to the record. It is
16 actually the reality and the charge of what in fact it
17 is. And I think the jury is entitled to know. It is
18 what they are concerned about and what they should be
19 concerned about. I mean, it is the flip side of
20 saying, you know, don't let him out because, you know,
21 he has all of these prior scary offenses. And I don't
22 mean to be glib, but this is really the reality of how
23 these people look at this as a juror. And I think the
24 flip side should be, they should know. I mean --

25 MR. BOGLE: Secure facility is in the record, and

QUESTION OF THE JURY

1 that is what it is. Any description beyond that --

2 THE COURT: It is not in the record. It is not in
3 the record. There's nothing in the record that
4 describes a secure facility.

5 MR. BOGLE: No, no, but we have used that term,
6 secure facility, for long-term care, control and
7 treatment. And that is what it is.

8 THE COURT: I would like to answer by saying it is
9 a lock down, like I said already in my charge. It is a
10 lock down -- we could say a lock down mental health
11 facility. I mean, you know, I just, I believe in being
12 truthful to jurors, they should know what in the world
13 they are deciding because this is too important.

14 MR. BOGLE: I agree but.

15 THE COURT: And then it says, Please define long
16 term. That is going to be our next hurdle. Because,
17 while he has the right to an annual review every year .

18
19 MR. BOGLE: That kind of came out only in the
20 sense that when Dr. Swan was listing the things that
21 she does she mentioned annual review for guys that have
22 already been commitment as to when they should get out.
23 Or something to that effect.

24 MR. FALK: No. She said, my recollection of the
25 testimony was she was comparing it to the year that he

QUESTION OF THE JURY

1 got of sex offender treatment, and she said that it
2 takes three to five years.

3 MR. BOGLE: Total treatment, she did say that..

4 THE COURT: No question. This jury wants to know
5 if he's going to be locked up indefinitely, I can tell
6 you that right now. That is the question that they are
7 asking, and they want to know where he is going to be
8 locked up. I mean, in layman's terms, that is
9 literally what they want to know.

10 MR. BOGLE: And I have had that question asked 15
11 times.

12 THE COURT: Right.

13 MR. BOGLE: And the response, the State's position
14 is, and what I have seen responses from other judges
15 is, they are asking for facts that are not in the
16 record, they have heard everything that they are going
17 to hear.

18 MR. FALK: Can't you instruct them on the law, and
19 it is the law that they stay there until they can
20 establish probable cause and he can come out.

21 MR. BOGLE: That is an annual review hearing.
22 This is not an annual review trial. That is totally --
23 you mean about them being out on a petition to release
24 at any time or the department release them at such time
25 that their mental abnormality so changes. That is

QUESTION OF THE JURY

1. apples and oranges what we are doing here.

2. MR. FALK: That is an exact response to the
3. questions.

4. MR. BOGLE: No, but I just think she -- I think
5. that you run the risk of adding facts to the record
6. which aren't in evidence.

7. MR. FALK: But I am saying if she's instructing --
8. if she is advising the jury what the law is, she's not
9. adding.

10. MR. BOGLE: Parts of the law don't apply.

11. THE COURT: I can tell you, from now on whenever I
12. try another one of these cases, and I have done a total
13. of I think three since I have been on the Bench for 12
14. years, I'm going to make someone ask them what is a
15. long-term facility and how long is this for and what
16. does long term mean. Because I think the jury should
17. be entitled to it, I think they should know exactly
18. what they are doing. They need to understand the
19. repercussions of it, they really do.

20. MR. BOGLE: I understand. But the reality is, we
21. don't know. I have seen guys get out in two, I have
22. seen guys still there after ten.

23. THE COURT: I mean, I could say, as far as define
24. long term, just we can't define it. We can't tell you
25. what time -- you know, amount of time that is. Because

QUESTION OF THE JURY

1 you can't. I mean, I could just say it is on a case by
2 case basis. I mean, I could say something like that.
3 Because that is truthfully what it is, although that is
4 not in evidence. But you also did hear her testify his
5 treatment --

6 MR. FALK: No, she said something about, each case
7 is different, so that sounds like it is case by case.

8 THE COURT: Between three and five.

9 Okay. What it really -- let's talk about what it
10 really is, or at least it's going to be in three weeks,
11 which is what he's going to end up being at, it is a
12 lock down prison facility just for mental health
13 inmates and for people -- I mean, for people under --

14 MR. FALK: Under this law.

15 THE COURT: -- under this law. And I mean, that
16 is what it is. So, why can't we say that is what it
17 is, because that is the truth.

18 MR. BOGLE: Because that is exactly what it's not.
19 It is a mental health facility, it is not a prison.
20 Everything -- every step that they have taken since the
21 day that it was created 20 years ago, it was isolated
22 from the prison. Now, it's at a prison facility, yes,
23 but it's sealed off from the prison. The word prison
24 suggests incarceration or punishment, and that is not
25 what we are doing here.

QUESTION OF THE JURY

1 THE COURT: It is a locked down facility that he
2 can't get out that he's forced to comply with the
3 treatment plan.

4 MR. BOGLE: Which is a secure facility in
5 evidence.

6 THE COURT: We are just going to go ahead and
7 fundamentally disagree on what it is and whether or not
8 it's prison, so I can tell you that right now. So, we
9 won't even go there. I just propose that we say, when
10 it says, Please define the long-term facility in which
11 he could be sent to, I can say that it is a lock down,
12 long term mental health facility for people who have
13 been convicted under the Sexually Violent Predator Act.
14 I mean, I could -- that is what I could say as to that
15 question. Okay.

16 And then, Please define long term. And the only
17 way that I think that you can say it is that it's on a
18 case by case basis. I mean, how else do you testify?
19 I mean, how else do you tell them?

20 MR. FALK: I think that the term is indeterminate.

21 THE COURT: Indeterminate, so do you just want me
22 to write that down here?

23 MR. BOGLE: Indeterminate is not in the statute.
24 It is not in -- it is not in the evidence, it is not in
25 the statute. I understand what you are trying to do.

QUESTION OF THE JURY

1. THE COURT: They can hold them as -- they can hold
2. him indeterminately. So, even if it doesn't say it in
3. the statute, that is what it can do and that is what
4. they have the power to do, so it is indeterminate.

5. One of two things, I can either bring them out
6. there and tell them that or I can just write the answer
7. underneath, which? Either way.

8. MR. FALK: I think if you are going to write it,
9. can we just hear it one last time?

10. THE COURT: You can see it again. I will just say
11. when it says, Please define the long term facility
12. which he could be sent to. I mean, it is a lock down
13. mental health facility. I would just say, housing only
14. persons committed under the sexually violent predator
15. act. Okay?

16. MR. FALK: I am okay with that.

17. THE COURT: Sexually violent predator act. And
18. then, Please define long term. It is -- you know, the
19. time that they are in this facility is indeterminate
20. and decided on a case by case basis. I mean I know
21. that I'm saying the same thing two different ways, but
22. somehow I feel the need to do that because they are
23. already asking the question. So, what do you think?

24. MR. FALK: We would have no objection.

25. MR. BOGLE: Again, we think that you run the risk

QUESTION OF THE JURY

1 of adding facts to what's already been testified to.
2 And to further define, I think that is adding something
3 that is not in the record, Judge.

4 THE COURT: Okay. Well, I don't think that jury
5 confusion is a good idea either so. What I have
6 written down. AS to the first question I have said,
7 Lock down mental health facility housing only persons
8 committed under the sexually violent predator act. And
9 the second question is, Please define long term. An
10 indeterminate, decided on a case by case basis. Okay?

11 So, I know that you still object to both of those.
12 What is the basis for your objection again, just for
13 appeals purpose?

14 MR. BOGLE: You are adding facts to the record
15 that are not in evidence.

16 THE COURT: Okay. You are okay with it Mr. Falk?

17 MR. FALK: Yes, I am okay.

18 (Written answer goes back to the jury.)

19 (Deliberations continue by the jury.)

20 (The verdict was reached at 4:07 p.m.)

21 THE COURT: The jury has reached a verdict. I
22 want to remind you that, regardless of what it is, I
23 want y'all to remain calm. Okay. Let's bring them in.

24 (The jury enters the courtroom at 4:08 p.m.)

25 THE COURT: Welcome back, ladies and gentlemen. I

VERDICT

1 understand that the jury has reached a verdict. Is
2 that correct, Mr. Foreman?

3 THE WITNESS: We have, Your Honor.

4 THE COURT: Please hand it to the bailiff. Thank
5 you.

6 (Pause.)

7 THE COURT: In the matter of the care and
8 treatment of Dameon Montrell Brown, case number
9 2017CP-07-00038. Has the Petitioner, State of South
10 Carolina, proved beyond a reasonable doubt that Dameon
11 Montrell Brown is a sexually violent predator under the
12 State of South Carolina Sexually Violent Predator Act?
13 We the jury answered the question as follows: Yes,
14 Dameon Montrel Brown is a sexually violent predator.
15 Signed by our foreperson and dated.

16 Ladies and gentlemen of the jury, if this is your
17 verdict, would you please indicate by raising your
18 right hand?

19 (All jurors raise their right hand.)

20 THE COURT: Thank you. Is there anything that
21 further needs to be done with this jury? Do you want
22 them individually polled, Mr. Falk?

23 MR. FALK: No, Your Honor.

24 THE COURT: Anything further from the State?

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

VERDICT

1 THE COURT: Thank you. These are difficult cases,
2 I appreciate it. You have more than earned your
3 exemption for the next three years from jury duty.
4 Again, we want to thank you. We are going to go ahead
5 and excuse you for the remainder of the week. At this
6 time you are permitted to talk about the case when you
7 go home. If you choose to, you are allowed to. And
8 sometimes the attorneys may want to know what you
9 thought about certain evidence. You are not required
10 to talk to anyone, ladies and gentlemen, if anyone
11 calls you or talks to you. It wouldn't be anyone other
12 than the attorneys or, you know, potentially a
13 paralegal or someone that works with them. Again, if
14 you are not interested in talking, you can just let
15 them know.

16 Again, we want to thank you. And we will go ahead
17 and excuse you and make sure that you get to your cars.
18 All right. Thank you.

19 (The jury exits the courtroom.)

20 THE COURT: All right. Do you want to renew your
21 motions?

22 MR. FALK: I renew my motions and request ten days
23 to file any other motions.

24 THE COURT: Of course.

25 MR. BOGLE: May I approach, Your Honor?

VERDICT

1 THE COURT: Do you have a commitment form?

2 MR. BOGLE: I do.

3 THE COURT: Okay.

4 MR. BOGLE: Judge, I'll be filing that and giving
5 a filed copy to whoever is here from the detention
6 center. Don't leave yet guys. And I'll give them
7 instructions who to call at the Department of Mental
8 Health and set up a delivery time. It is my
9 understanding that Correct Care takes people on
10 Tuesdays and Thursdays. So, with luck he could be down
11 there on Thursday, but again that's not my call. You
12 have to call ahead and set up a time, you can't just
13 drive down.

14 THE COURT: All right. Mr. Brown, good luck to
15 you sir.

16 MR. BROWN: Thank you, Your Honor.

17 THE COURT: All right. Anything else?

18 (No response.)

19 THE COURT: Thank you.

20 (Whereupon, the proceeding was concluded.)

21

22

23

24

25

VERDICT

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

10 DATED this 5th day of March, 2019.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

14

(850) 893-6662

mmanley@sccourts.org

15

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25

SENTENCE

STATE OF SOUTH CAROLINA

CASE #: 956525-0136

COUNTY OF Hampton

The defendant, Brown; Dameron

is committed to the

State DEpartment of Corrections/County for a term of

Y0A-5C

months/years and/or to pay a fine of \$ _____; provided

upon the service of _____ months/years and/or payment

of \$ _____, plus pay/waive costs and assessments as

applicable, the balance suspended with probation for _____

months/years.

Restitution

For physical injury \$ _____

Yes/No

Property Damage \$ _____

To be paid _____

To clerks for _____ **

Other conditions _____

Date: 1/10/96SolaceP. Henry McKellaPresiding Judge
Hampton

*Cost and assessments

Non-waivable \$ _____

Not waived \$ _____

Total \$ _____

Clerk of Court

** Pay to Victim's Compensation Fund if subrogated.

SCCA Form 217 (3/86)

A TRUE COPY
 ALICE J. NORTON
 CLERK OF COURT FOR
 HAMPTON COUNTY, S.C.
 DATE 1-11-96



At a Court of General Sessions, convened on September 11, 1995
the Grand Jurors of Hampton County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR
FIRST DEGREE (16-3-655)

That Dameon Brown did in Hampton County on or about February 01, 1995,
willfully and unlawfully engage in criminal sexual conduct in the first degree
in that Dameon Brown engaged in a sexual battery with [Minor 3], and did use
aggravated force to accomplish such sexual battery, and that the said [Minor 3]
[redacted] was of the age of 13 years old.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

Randolph Munday, III

A TRUE COPY
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 9-11-95

WITNESSES

Bart Chassereau

C Johnson

ARREST WARRANT #:

E110178

Arrested on April 06, 1995

ACTION OF GRAND JURY

True Bill

Foreman:

Joseph M. Keen
Grand Jury

VERDICT

Foreman:

Petit Jury

Date: _____

DOCKET #: 95GS25-0136

THE STATE OF SOUTH CAROLINA
County of HamptonCOURT OF GENERAL SESSIONS
Term: September, 1995

THE STATE

vs.

J Dameon Brown
*eval.**P.D. - Keane*

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

FIRST DEGREE (16-3-655)

A TRUE COPY
of the
minutes of the
COURT OF
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
4-19-95

SENTENCE

STATE OF SOUTH CAROLINA

CASE #: 956925-0295

COUNTY OF Hampton

The defendant; Brown; Darnell, is committed to the State Department of Corrections/County for a term of 4015C months/years and/or to pay a fine of \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution

For physical injury \$ _____

☒ Yes/No

Property Damage \$ _____

To be paid

\$ 2,029.00

To clerk for _____

Other conditions _____

Date

1/16/96

folsee

P. Henry McKellar
Presiding Judge
Hampton

*Cost and assessments

Non waivable \$ _____

Not waived \$ _____

Total \$ _____

Clerk of Court

** Pay to Victim's Compensation Fund if subrogated.

SCCA Form 217 (3/86)

A TRUE COPY
CLERK OF COURT FOR
HAMPTON COUNTY, SC
DATE 1-19-96

STATE'S
EXHIBIT

2

PENGAD 800-631-6363

STATE OF SOUTH CAROLINA)

COUNTY OF Hampton)

IN THE COURT OF GENERAL SESSIONS

THE STATE

) CASE #: 956525-0295

vs.

) CHARGE: 0139

Brown; Dameon
Defendant) CRIMINAL SEXUAL CONDUCT WITH MINOR
) FIRST DEGREE (16-3-655)PLEA WAIVING GRAND JURY PRESENTMENT

The prisoner, Brown; Dameon, is put to the bar and arraigned and upon his arraignment pleads guilty to the charge of _____ as charged and consents to so plead without the within indictment being submitted to the Grand Jury and a true bill returned thereon, and specifically waives his right to have the said indictment submitted to a grand jury before he enters the said plea.

CLERK OF COURT
GENERAL SESSIONS

DEFENDANT

DATE _____

PLEA OF GUILTY

The prisoner, Brown; Dameon, is put to the bar and arraigned and upon his arraignment pleads guilty as charged to _____ In the within indictment and consents for said plea to be entered on record against him.

Virginia P. Porter
CLERK OF COURT
GENERAL SESSIONS

Dameon Brown
DEFENDANT

DATE 9-12-95

A TRUE COPY
CLERK OF COURT FOR
HAMPTON COUNTY, SC
9-12-95
DATE

STATE OF SOUTH CAROLINA)
)
 County of Hampton)

INDICTMENT #95GS25-0295

At a Court of General Sessions, convened on September 11, 1995
 the Grand Jurors of Hampton County present upon their oath:

**COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR
 FIRST DEGREE (16-3-655)**

That Dameon Brown did in Hampton County on or about June 21, 1995,
 wilfully and unlawfully engage in criminal sexual conduct in the first degree
 in that Dameon Brown engaged in a sexual battery, with **Minor 1** [REDACTED], and did
 use aggravated force to accomplish such sexual battery, and that the said
Minor 1 [REDACTED] was of the age of five (5) years old.

Against the peace and dignity of the State, and contrary to the statute
 in such case made and provided.

SOLICITOR

Randolph Munday III

A TRUE COPY
 ALICE W. WALKER
 CLERK OF COURT FOR
 HAMPTON COUNTY, S.C.
 DATE 9-19-95

WITNESSES

Sandra Riddles

ARREST WARRANT #:

E110199

Arrested on June 26, 1995

ACTION OF GRAND JURY

True Bill

Foreman:

Joseph M. Hillis
Grand Jury

VERDICT

Foreman:

Petit Jury

Date: _____

DOCKET #: 95GS25-0295

THE STATE OF SOUTH CAROLINA
County of Hampton

COURT OF GENERAL SESSIONS

Term: September, 1995

THE STATE

vs.

J
Dameon Brown

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

FIRST DEGREE (16-3-655)

TRUE COPY
FILED FOR COURT FOR
CLERK OF COUNTY
DATE *10/1/95*

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort
STATE VS

Dameon Brown

AKA:

Race: B Sex: M Age: 23

DOB: [REDACTED] SS#: [REDACTED]

Address: _____

DL# _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

01 -GS- 07 - 2408

A/W#: BEA 0850

Date of Offense: 4-6-99

S.C. Code §: 16-3-655(2)

CDR Code #: 0 / 3 / 9 / 6

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: CSC w/minor 2nd

in violation of § 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0 / 3 / 9 / 6

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 32 days/months jail time.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$
§14-1-206 (Assessments 100%) \$
§14-1-211(A)(1) (Surcharge) \$ 100.00
§14-1-211(A)(2) (Surcharge) \$
§56-5-2995 (DUI Assessment) \$
3% to County (if paid in installments) ... \$
TOTAL \$ 100.00

[Signature]
Clerk of Court/Deputy Clerk

Court Reporter: [Signature]
White - Clerk Green - Corrections

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE [Signature]

Judge Code: _____

Sentence Date: Dec 10, 2001

Canary - Probation

Pink - Defendant



Certified - A True Copy
Jerrilyn Rosemeau - Clerk of Court
Beaufort County, SC - Melissa Kilby

STATE OF SOUTH CAROLINA)
County of Beaufort)

INDICTMENT #01GS07-2408

At a Court of General Sessions, convened on December 10, 2001,
the Grand Jurors of Beaufort County present upon their oath:

**COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR
SECOND DEGREE (16-3-655)**

That Dameon Brown did in Beaufort County on or about April 06, 1999,
wilfully and unlawfully engage in criminal sexual conduct with a minor in the
SECOND
first degree in that (Defendant) engaged in a sexual battery, with Minor 2
and that the said Minor 2 was of the age of ¹³~~age~~ years old.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

[Signature]

WITNESSES

Minor 2 [REDACTED]

ARREST WARRANT #:

BEA0850

Arrested on ,

ACTION OF GRAND JURY

TRUE BILLForeman: Jamie D. [Signature]

Grand Jury

VERDICT

Foreman: _____

Petit Jury

Date: _____

DOCKET #: 01GS07-2408

THE STATE OF SOUTH CAROLINA
County of Beaufort

COURT OF GENERAL SESSIONS

Term: December, 2001

THE STATE

vs.

Dameon Brown

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

SECOND DEGREE (16-3-655)

Certified - A True Copy

[Signature]
Jerri Ann Rosehealy, Clerk of Court
Beaufort County, SC - Melissa Kilby

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

In Re Care and Treatment of)

Dameon Brown)

Respondent,)

IN THE COMMON PLEAS COURT

FOR THE 14th JUDICIAL CIRCUIT

CASE NO.: 2017-CP-07-00038

**RESPONDENT'S MOTION IN LIMINE FOR COUNCIL HEARING TO DETERMINE
THE ADMISSIBILITY OF OPINION TESTIMONY FROM DR. AMY SWAN
REGARDING THE STATIC-99R RISK ASSESSMENT MEASURE**

The Respondent, Dameon Brown, by counsel hereby moves, in accordance with Rules 104, 403 and 702 SCRE, for an order of this Court excluding, in limine, all testimony and other evidence moves in limine to exclude from the trial evidence any testimony concerning the results of an actuarial risk assessment instrument known as the STATIC-99. The STATIC-99 compares certain historical characteristics of a given sex offender to the characteristics of a group of documented offenders, in an effort to predict the subject offender's risk of reoffending. The grounds for this Motion are that the STATIC-99: 1) has no predictive value of an individual's actual risk to reoffend; 2) is only a moderately predictor of actuarial risk; and 3) is not designed to measure an individual's volitional control. Therefore testimony regarding STATIC-99 testing is inadmissible under *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979), *State v. Ford*, 301 S.C. 485, 392 S.E.2d 781 (1990), and *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999).

BEAUFORT COUNTY CLERK OF COURT 800-881-6869	COURT'S	<u>1</u>
	EXHIBIT NO.	
	IDENTIFICATION/EVIDENCE	
	DKT.#	
DATE:	10-15-18	

Relevant Facts

On March 15, 2017 Dr Amy Swan conducted her evaluation of Respondent. In her report dated July 5, 2017 she opined that Respondent met the criteria for classification as a Sexually Violent Predator (SVP). Included in her report were results she obtained using an Actuarial Risk Assessment instrument (ARA) device described as the STATIC-99R. (The title STATIC-99R refers to the *revised* version of an ARA described as the STATIC-99). Dr. Swan assigned Respondent a STATIC-99R score of 8.

MEMORANDUM OF LAW

The most widely used of the actuarial risk assessment instruments is the STATIC-99. The STATIC-99 was revised in 2009 in order to account for a marked observed drop in the risk of reoffending with advancing age. The STATIC-99 has ten factors for assessing the risk of reoffending in adult male sex offenders and was created to be used by probation and parole officers trained on the instrument. The instrument itself is in the public domain and is supported by an active scientific community of researchers and practitioners. It is continually tested against new data as they become available. The Static 99 has been adopted by a number of states for use in assigning risk levels to sex offenders upon release from local and state incarceration. Although it tends to assign more offenders to a high risk category than actually recidivate, it still has a reported predictive accuracy of about 70%, making it moderately predictive. The predictive accuracy of South

Carolina's current risk assessment guidelines is unknown, since the instrument has never been validated.

The STATIC-99 is a 10 item ARA created by R. Karl Hanson, Ph.D. and David Thornton, Ph.D. (See <http://www.static99.org>.) The ARA is called "static" because it looks only at static, i.e., unchanging, historical events. Like other ARAs, it compares the characteristics and history of a given person to the characteristics of a group. In the case of the STATIC-99, research was done based on a group of sex offenders who had been reconvicted, and certain characteristics were identified which correlated with recidivism. A test was then developed by which the individual sex offender's characteristics could be compared with the group characteristics, to determine the extent to which the individual had characteristics associated with reoffending.

The "risk items" or "characteristics" which are contained in the STATIC-99 consist of demographic information (age of sex offender and living with a partner for more than two years), criminal history (charges and convictions for index and other sex and violent offenses), and victim questions (whether any victims were unrelated to the offender, "strangers," or male). The total point score equates with a range of risk of recidivism, with 1 point being low risk; 2 or 3 points being moderate risk; 4 or 5 points being medium-high risk; and 6 points or more being high risk. The authors of the STATIC-99 report in the Coding Rules manual that although it is possible to score more than 6 points, there is no significant increase in recidivism rates for scores between 6 and 12. The STATIC-99 then sets forth a probability table by which the raw score can be related to a percentage risk of recidivism over 5-, 10- and 15-year periods.

These tables accord with the general understanding by experts that rates of recidivism generally increase over time.

As should be made clear in the hearing testimony, the STATIC-99 has no predictive value for an individual. The STATIC-99 does not and cannot measure an individual's risk of reoffending. Rather, it ranks an individual with a group sharing certain characteristics. In other words, the STATIC-99 score only indicates that a respondent has characteristics which correlate with a group of individuals whose rate of recidivism is "x" percent. The offender's risk may be higher or lower than the probabilities estimated in the STATIC-99, depending on other risk factors not measured by the STATIC-99. ARAs place people in a risk group, but the individual may or may not have the same outcome of that group, and the margin of error increases as to the individual as compared to the group. (Vincent, Maney and Hart, *The Use of Actuarial Risk Assessment Instruments in Sex Offenders*, ch 6, at 84 ["They (the courts) should understand that it is impossible to make accurate estimates about the probability of an individual reoffending using these tests"].) What this means for the finder of fact is that a clinician cannot testify that this respondent's rate of recidivism is "x" or "y" percent, and can only opine that respondent shares characteristics of a group of people found to recidivate at those percentages.

The STATIC-99 has been described as a "predictive" instrument, as opposed to a "descriptive" instrument, meaning that it cannot describe the person's psychology, emotions, volitional capacities or personality dynamics. For the purposes of our present challenge, what this means is that the STATIC-99 does not distinguish between, nor can it explain, the reasons why a person might reoffend. For the population of repeat sex offenders who formed the control group, the STATIC-99 does not differentiate between those persons who intended to commit

the crime, were motivated by passion, revenge or rage, came upon a crime of opportunity, or were compelled to offend due to an inability or serious difficulty in controlling their behavior due to a disease, defect or condition. Put more simply, the STATIC-99 does not distinguish between those who are at risk of reoffending due to a lack of ability to control their behavior-called "volitional impairment" from those who are at risk of reoffending due to choice or opportunity. This is an essential distinction as will be discussed in more detail later, as the United States Supreme Court has held that only those persons who have serious difficulty in controlling their behavior due to a disease or defect can be the subject of civil confinement statutes. Those individuals who chose to reoffend, those considered to have "criminal tendencies," are not subject to civil confinement statutes. (See *Kansas v Hendricks*, 521 US 346 [1997].)

Experts agree that the STATIC-99 is generally accepted in the scientific community to predict rates of recidivism. The primary conceptual difficulty in the present context is whether the STATIC-99 has any validity in assessing volitional impairment, or the element of "serious difficulty in controlling behavior," which is a component of the definition of "mental abnormality" under the statute. Most significantly, the STATIC-99 does not assess volitional impairment. The STATIC-99 does not impart any psychological or clinical information as to why a person is reoffending, and does not identify the causal reasons why someone is likely to reoffend. Consequently, a "high" score indicates a high risk of reoffending, but does not mean that an individual with a high score has more difficulty in controlling his behavior, any more than a low score means a person has no serious difficulty in controlling his behavior. Since

the STATIC-99 does not in fact measure an individual's risk of reoffending, but only expresses that an individual has some shared characteristics of a known group of reoffenders. Allowing an expert to testify as to placing someone as "high" risk to reoffend, this will confuse the jurors' perceptions of future dangerousness and improperly perceive risk of reoffending.

If jurors accept the explanation of the expert's interpretation of the Static 99 as true that the group of persons who are likely to reoffend may include many people who have serious difficulty in controlling behavior, this observation is not persuasive to the legal issues at trial, since the "serious difficulty in controlling behavior" with which we are concerned must result from a condition, disease or disorder in the first instance in a particular respondent; a finding that the STATIC-99 cannot make. Finally, it is evident that a mere "association" under accepted scientific principles is not sufficient to establish a causal effect.

To assist this Court, Respondent has attached several cases in other jurisdictions considering this inquiry and challenge. While South Carolina does not conduct analysis under *Frye* or *Daubert*, *Council*, and *Jones* provide similar inquiry. And when applied in this case should agree that the use of a clinical component to place a respondent within a wide range risk has not been shown to be scientifically accepted, the expert evidence placed before this court did not support the conclusion. It has not been shown that reporting a range and thereby avoiding a clinical judgment is a methodology which is generally accepted in the relevant scientific community. There is no information that the new percentages are statistically valid, i.e., that the accuracy of the numbers has been accepted by the scientific community following peer review of the raw data.

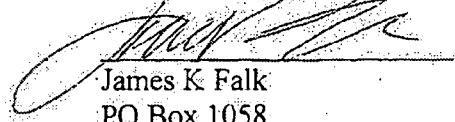
The Prejudicial Effect of Admission of STATIC-99 Results

Lastly, under a *Jones* and *Council* analysis, even if "technically relevant," the evidence can be precluded if its probative value is substantially outweighed by the danger that it will unfairly prejudice the other side or mislead the jury. In the immediate case, respondent's STATIC-99 score of "6" is considered to be a high risk of reoffending. The statistical analysis provides the perfect example of the pitfalls of admitting the STATIC-99 at a jury trial. The testimony could greatly prejudice the respondent if the jury accepted testimony that the risk was higher. However, as discussed above the score of "6" has at best marginal relevance to the issue of whether respondent has a mental abnormality in the first instance, since the score only means that respondent shares certain characteristics of a group found to reoffend at a certain rate without telling the jury anything about respondent's volitional capacity. Given the tenuous connection between a STATIC-99 score and volitional capacity, a jury could easily be confused by the evidence and give it undue significance in either direction.

CONCLUSION

The STATIC-99 is not scientifically accepted, under *Jones* and *Council*, as a tool to inform decision-makers as to the existence of a mental abnormality as defined under SVP Act, as it does not measure any of the elements of that definition. Respondent requests the motion in limine be granted, and the testimony concerning respondent's STATIC-99 score be excluded from the trial testimony.

Respectfully Submitted,



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Attorney for Respondent

STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT)

COUNTY OF BEAUFORT)

FOR THE 14th JUDICIAL CIRCUIT)

In Re Care and Treatment of)

CASE NO.: 2017-CP-07-00038)

Dameon Brown)

Respondent,)

**RESPONDENT'S REQUEST FOR COUNCIL HEARING TO DETERMINE
THE ADMISSIBILITY OF TESTIMONY FROM DR. AMY SWAN REGARDING THE
RESULTS OF A HARE PCL-R TEST SHE ADMINISTERED UPON RESPONDENT**

The Respondent, Dameon Brown, by counsel hereby moves, in accordance with Rules 104, 403 and 702 SCRE, moves this Court to conduct an *in-camera* hearing pursuant to *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999) to determine the reliability of expected testimony from Dr Amy Swan regarding the HARE PCL-R test she administered to Respondent.

Relevant Facts

The Hare Psychopathy Checklist-Revised (PCL-R) is a diagnostic tool used to rate a person's psychopathic or antisocial tendencies.... Originally designed to assess people accused or convicted of crimes, the PCL-R consists of a 20-item symptom rating scale that allows qualified examiners to compare a subject's degree of psychopathy with that of a prototypical psychopath. *U.S. v Campbell*, 738 F.Supp.2d 960, 967 n. 14 (D. Neb 2010). On March 15, 2017 Dr Amy Swan conducted her evaluation of Respondent. She prepared the first report of her evaluation on May 30, 2017. Then on July 15, 2017 Dr Swan prepared an amended report on her evaluation of Respondent. One significant difference between the May 30th and July 15th reports is that the later report included her conclusions regarding

Respondent's score on the Hare PCL-R test. In her amended report Dr Swan states: *Mr Brown's score on the PCL-R was 34, which places him approximately in the 96th percentile among prison inmates. The authors of the test suggest a cut-off score of 30 to designate a prototypical psychopath. Thus on this instrument, Mr Rogers is deemed to be a prototypical psychopath.*

Before an expert's testimony can be published to the jury, the Court, if asked, must carry out its gatekeeping role to determine the admissibility of the evidence. In exercising its gatekeeping duties, the Court must make three preliminary findings. First, the Court must find that the subject matter is beyond the ordinary knowledge of the jury. Second, that the proffered expert has acquired the necessary knowledge and skill to qualify as an expert on the subject matter. Third, the Court must evaluate the substance of the testimony and determine whether it is reliable. *Watson v Ford Motor Company*, 699 S.E.2d 169, 175 (2010).

Before offering testimony regarding the PCL-R the state must offer proof that the PCL-R is a reliable predictor respondent's likelihood to commit crimes of sexual violence. Respondent is aware of court decisions that questioned the validity of PCL-R testing as a means of predicting future violence. In *U.S. v Taylor*, 320 F. Supp 2d 790 (N.D. Ind. 2004). The Indiana District court held that due to the uncertainty of the validity and reliability of the PCL-R the Government and its experts were prohibited from using PCL-R testimony in a capital sentencing hearing. In *State v Ian I.*, 127 A.D.3d 766, 7 N.Y.S.3d 199, (2015) in reversing the trial court's decision, the Court held that the probative value of the PCL-R did not outweighed the prejudicial effect of the terms psychopath and psychopathy.

One's score on the PCL-R is generated from a semi-structured interview between the psychologist and the respondent. Therefore unlike the STATIC-99, the psychologist using the PCL-

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF BEAUFORT	)	FOR THE 14th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2017-CP-07-00038
	)	
	)	
Dameon Brown	)	RESPONDENT'S MOTION
Respondent,	)	IN LIMINE TO EXCLUDE
	)	CERTAIN TESTIMONY

Respondent, by counsel moves the Court *in limine* to exclude the utterance or introduction of certain testimony and or statements described below from the State's opening statement, case in chief, and closing argument. As grounds for this motion Respondent asserts that the utterance or introduction of such testimony and statements would violate his right to due process as protected by the 5th Amendment to the United States Constitution and Article 1 Section 3 of the South Carolina Constitution. Moreover Respondent asserts that the probative value of such information would be substantially outweighed by the risk of unfair prejudice such information would inject into these proceedings.

1. Any statements relating to the legislative history of S.C. Code Ann. § 44-48-30 et seq. including without limitation the terms **mentally abnormal**, and **extremely dangerous group of sexually violent predators**.
2. All references to whether Respondent may have the right, if committed, to petition annually for release from the SVP program, and whether he would receive annual evaluations.
3. In her July 5, 2017 report, Dr Swan uses the term "psychopath" and or "prototypical psychopath". Dr Swan does not use these terms to describe her diagnosis of Mr Brown. She uses these terms in conjunction with her scoring of Mr Brown's performance on the HARE PCL-R test.
4. In her July 5, 2017 Dr Swan suggests that while he was incarcerated Mr Brown tested positive for THC, cocaine, and heroin. Counsel is informed and believes that Mr

Brown's records from the South Carolina Department of Corrections does not support this assertion.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "James K Falk", written over a horizontal line.

James K Falk

Falk Law Firm

PO Box 38

Charleston, SC 29402

(843) 606-6007

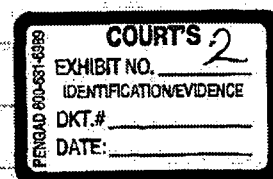
(843) 972, 9005 Fax

jfalklaw@gmail.com

1.

Lock down, mental health facility
housing only persons committed under the
Sexually Violent Predator Act.

2. Indeterminate, decided on a case
by case basis.



Please give us a
~~description of the long~~
~~term facility in which~~

• PLEASE DEFINE THE "LONG TERM
FACILITY" IN WHICH HE COULD BE
SENT TO

• PLEASE DEFINE "LONG TERM"

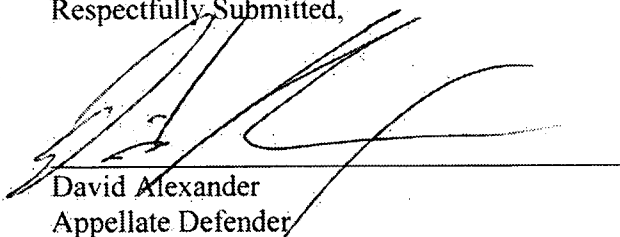
Norm Lohr

10/16/18

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

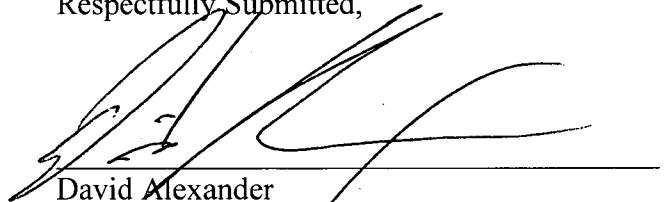
ATTORNEY FOR APPELLANT

This 5th day of September, 2019.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of September, 2019.