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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ANDERS
NO DEFENDANT'S BRIEF
NO RESPONDENT'S BRIEF FILED

Appeal from Greenwood County

Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED

FEB 08 2020

Court of Appeals

THE STATE,

RESPONDENT,

V.

HARLIN A. BEARDEN,

APPELLANT.

RECORD ON APPEAL

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*Exhibit was admitted for pretrial purposes only.

MONDAY, MARCH 25, 2019

THE COURT: All right. Ladies and gentlemen, the next case is State of South Carolina vs. Harlin A. Bearden. And let me tell you a little bit about this case. This case, ladies and gentlemen, is brought under what we refer to as the sexually violent predator law of South Carolina.

Now, in this case the defendant is not charged with any criminal acts. This is where the State seeks to have Mr. Bearden civilly committed for long-term control, care and treatment in a secure facility. Again, this is not a criminal proceeding, but it is a civil proceeding.

In this case the State of South Carolina alleges or claims that Mr. Harlin Bearden is a sexually violent predator under the law. Now, Mr. Harlin denies that he is a sexually violent predator, and the burden is therefore on the State of South Carolina to prove to you by evidence sufficient to satisfy by proof beyond a reasonable doubt that Mr. Bearden is, in fact, a sexually violent predator. If the State is unable to meet that burden of proof as to any one or more of the elements in this case, then the respondent, Mr. Bearden, is entitled to a finding that he

1 is not a sexually violent predator.

2 And I want to make sure that you understand and I
3 reiterate, Mr. Bearden is not accused of committing a
4 crime in this proceeding. As you've heard, he has some
5 prior charges for which he was sentenced by the Court.
6 Mr. Bearden has now completed his sentence for those
7 charges, and the State is alleging that he is a sexually
8 violent predator. The State has the burden in this case
9 and must prove its case by proof beyond a reasonable
10 doubt, and I'll give you more information as to what that
11 standard of proof is.

12 If you find that the State has not met this burden,
13 then Mr. Bearden will be released. If you find that the
14 State has met its burden and find that the respondent,
15 Mr. Bearden, is a sexually violent predator, he will not
16 be released but will be committed to a secure treatment
17 facility in Columbia operated by the Department of Mental
18 Health.

19 That being said, ladies and gentlemen, I have a
20 series of questions I need to go over with you like we did
21 in the last proceeding. Again, if you would -- if you
22 would stand up and give us the information in open court
23 and give us your juror number first.

24 Now, some of these questions will be sensitive. And
25 if they apply to you, I think it will be patently obvious

1 which ones they are, but I'll try to preface it before I
2 ask them. I'll let you come up and speak to me in a more
3 personalized setting so you don't have to give the
4 information in open court.

5 MR. BOGLE: Your Honor, if I may, I apologize, can we
6 put on the record about Mr. Bearden agreeing not to be
7 present?

8 THE COURT: Yes, sir. I'm going to do that,
9 Mr. Bogle, when I decide I want to do it.

10 MR. BOGLE: Okay.

11 THE COURT: If you will let me go forward, please.

12 MR. BOGLE: Didn't know when it was. All right.

13 JURY QUALIFICATION

14 THE COURT: All right. Now, the respondent in this
15 case is a gentleman by the name of Harlin A. Bearden. And
16 Mr. Bearden is not here in the courtroom today, but he
17 will be with us once we begin trial, and that is with the
18 consent of the State and the respondent in this matter.
19 Is that not correct?

20 MR. LAWRYMORE: That's correct, Your Honor.

21 THE COURT: Is that not correct, Mr. Bogle?

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

23 THE COURT: Is that sufficient?

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

25 THE COURT: Thank you.

1 All right. Now, ladies and gentlemen, has anyone
2 ever been related by blood or marriage to Harlin A.
3 Bearden? If so, would you please stand.

4 (No response.)

5 THE COURT: Has any member of the jury panel ever had
6 a close personal or social relationship with Harlin A.
7 Bearden? If so, would you please stand.

8 (No response.)

9 THE COURT: Very good. All right. Mr. Bogle, would
10 you stand up and introduce yourself and where you
11 practice, please, sir.

12 MR. BOGLE: Thank you. My name is Jim Bogle. I live
13 in Columbia. I'm with the Attorney General's Office. Our
14 office handles these types of cases statewide.

15 THE COURT: All right.

16 MR. LAWRYMORE: Ladies and gentlemen, my name is Cole
17 Lawrimore. I practice at Anderson, Reynolds and Stephens
18 in Charleston. I was appointed to represent Mr. Bearden
19 when I practiced in Newberry at Zimmerman and Shealy and
20 later at the Lawrimore Law firm. Thank you.

21 THE COURT: All right. Ladies and gentlemen, has any
22 member of the jury panel ever been represented by or
23 you're currently represented by Mr. Bogle or
24 Mr. Lawrimore, any members of their firm or someone
25 employed by the office of the Attorney General? If so,

1 would you please stand.

2 (No response.)

3 THE COURT: Ladies and gentlemen, has any member of
4 the jury panel ever been related by blood or marriage or
5 have you ever had a close personal or social relationship
6 with Mr. Bogle, Mr. Lawrimore, any members of their
7 respective firms, including the Attorney General's Office?
8 If so, would you please stand.

9 (No response.)

10 THE COURT: Ladies and gentlemen, the following are
11 potential witnesses who may testify in this case.
12 Dr. Marie Gehle. Did I pronounce that right?

13 MR. BOGLE: Yes, sir.

14 THE COURT: And Dr. Emily Gottfried. Ladies and
15 gentlemen, has any member of the jury panel ever been
16 related by blood or marriage or have you ever had a close
17 personal or social relationship with these potential
18 witnesses? If so, would you please stand.

19 (No response.)

20 THE COURT: Has any member of the jury panel read,
21 heard or seen anything about the case of the State of
22 South Carolina vs. Harlin A. Bearden who's accused of
23 being or alleged to be a sexually violent predator prior
24 to coming to court today? If so, would you please stand.

25 (No response.)

1 THE COURT: Has any member of the jury panel formed
2 or expressed an opinion by any matter in the case of the
3 State of South Carolina vs. Harlin A. Bearden, alleged to
4 be a sexually violent predator? If so, would you please
5 stand.

6 (No response.)

7 THE COURT: Is any member of the jury panel aware of
8 any bias or prejudice they may harbor against the State of
9 South Carolina or its attorneys or Mr. Bearden or his
10 attorneys? If so, would you please stand.

11 (No response.)

12 THE COURT: Does any member of the jury panel know of
13 any reason why he or she should not be selected to serve
14 in the trial of this matter with particular emphasis being
15 paid upon your ability to be fair and impartial to both
16 the State of South Carolina and to Mr. Bearden? If you
17 know of any reason why you should not serve, would you
18 please stand.

19 (No response.)

20 THE COURT: Is any member of the jury panel related
21 by blood or marriage or do you have a close personal or
22 social relationship with any state, local, federal or
23 military law enforcement agency? If so, would you please
24 stand.

25 (No response.)

1 THE COURT: Has any member of the jury panel ever
2 been employed by any state, local, federal or military
3 enforcement agency, military law enforcement agency? If
4 so, would you please stand.

5 And I know you are. Tell me your jury number.

6 JUROR 5: 5.

7 THE COURT: And you're with the South Carolina
8 Highway Patrol.

9 JUROR 5: Yes, sir.

10 THE COURT: Would that experience prevent you from
11 being fair and impartial to both parties in this case?

12 JUROR 5: No, sir.

13 THE COURT: Thank you so much.

14 Is any member of the jury panel, any member of their
15 immediate family or close personal friends have close
16 dealings with any state, federal or local law enforcement
17 agency? If so, would you please stand.

18 (No response.)

19 THE COURT: Has any member of the jury panel ever
20 been a witness in a criminal trial? If so, would you
21 please stand.

22 Now, again, tell me your jury number. I should know
23 it by now.

24 JUROR 5: 5.

25 THE COURT: 5. Sorry.

1 Would that experience prevent you from being fair and
2 impartial to both sides?

3 JUROR 5: No, sir.

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

5 Has any member of the jury panel ever served as a
6 grand juror in a state or federal court grand jury? If
7 so, would you please stand.

8 (No response.)

9 THE COURT: Has any member of the jury panel or
10 anyone related to you by blood or marriage ever sought the
11 assistant from or been employed by or performed volunteer
12 work for any center or program whose primary purpose is
13 treating victims of sexual assault? If so, would you
14 please stand.

15 Yes, ma'am. What is your jury number?

16 JUROR 141: 141. 141.

17 THE COURT: Ms. Rogers.

18 JUROR 141: Uh-huh. I work for Meg's House part
19 time. I work for Meg's House part time.

20 THE COURT: Meg's House?

21 JUROR 141: Uh-huh.

22 THE COURT: And is that a house for victims of sexual
23 assault?

24 JUROR 141: Victims of domestic violence.

25 THE COURT: Domestic violence.

1 And how long did you work there or volunteer there?

2 JUROR 141: I'm still there.

3 THE COURT: You're still there.

4 JUROR 141: Ten years.

5 THE COURT: Ten years.

6 Would the fact that you have this connection with
7 Meg's House prevent you from giving both the State and
8 this respondent a fair and impartial trial?

9 JUROR 141: No.

10 THE COURT: Thank you so much.

11 Anyone else?

12 Has any member of the jury panel ever worked for the
13 Department of Social Services, Child Protective Services
14 or other organization that deals with the welfare of
15 children? If so, would you please stand.

16 All right on the front row.

17 JUROR 59: 59, Danita Fancher.

18 THE COURT: Okay. And where did you work?

19 JUROR 59: For the Department of Mental Health.

20 THE COURT: And you had dealings with the welfare of
21 young children?

22 JUROR 59: Yes.

23 THE COURT: And would that prevent you from giving
24 both sides of this case a fair and impartial trial?

25 JUROR 59: No.

1 THE COURT: Thank you so much.

2 And gentlemen, I'm going to assume you have no
3 additional voir dire request if you don't ask for it,
4 okay?

5 MR. BOGLE: Thank you, Your Honor.

6 THE COURT: All right. Yes, ma'am. Tell me your
7 number again.

8 JUROR 37: 37, Michelle Collins.

9 THE COURT: Okay. Ms. Collins.

10 JUROR 37: I worked for DSS as a child protective
11 services worker, foster care.

12 THE COURT: And how long ago has that been?

13 JUROR 37: I worked there from 2002 -- I worked for
14 ten months, from 2002 until 2003 and then moved to the
15 State of Illinois.

16 THE COURT: Okay. And would that experience prevent
17 you from giving both sides to this case a fair and
18 impartial trial?

19 JUROR 37: No, sir.

20 THE COURT: Okay. Thank you so much.

21 Anyone else? Yes, ma'am.

22 JUROR 104: 104, Sherri Lewis.

23 THE COURT: Okay. Ms. Lewis ---

24 JUROR 104: Yes, sir. I worked for a place, Grove
25 [phonetic] Ministries. It's a home for young children and

1 teenagers.

2 THE COURT: And how long ago -- do you work there
3 now?

4 JUROR 104: I do not. I work for McCravy Law Firm.

5 THE COURT: Okay. Would that experience cause you to
6 be unable to give both sides a fair and impartial trial?

7 JUROR 104: No, sir.

8 THE COURT: All right. Thank you so much.

9 Anyone else?

10 (No response.)

11 THE COURT: Is there any member of the jury panel a
12 member of or contributor to the South Carolina Law
13 Enforcement Association, South Carolina Trooper's
14 Association, the Fraternal Order of Police or any other
15 law enforcement support organization? If so, would you
16 please stand.

17 Number 5.

18 JUROR 5: Yes.

19 THE COURT: All right. Now, would that prevent you
20 from being fair and impartial to everyone in this case?

21 JUROR 5: No, sir.

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

23 Is any member of the jury panel a member of or
24 contributor to or do you volunteer time to any victim
25 support organization? If so, would you please stand. All

1 right.

2 JUROR 59: 59.

3 THE COURT: And what organization is that?

4 JUROR 59: I've worked with Sister Care before as a
5 therapist. I'm still licensed as a mental health
6 therapist, and I worked with the prison, the women's
7 prison in the prison and did counseling.

8 THE COURT: Okay. And would your involvement with
9 these groups prevent you from giving both sides a fair
10 trial?

11 JUROR 59: No.

12 THE COURT: Thank you, ma'am.

13 Yes, sir.

14 JUROR 9: Number 9, Richard Ball. I contributed to
15 Beyond Abuse with Kathy Miller who ---

16 THE COURT: Beyond Abuse?

17 JUROR 9: Yes.

18 THE COURT: Okay. Sir, and how long ago is it that
19 you contributed to them?

20 JUROR 9: A couple years ago.

21 THE COURT: Well, would the fact that you had that
22 experience with this group cause you to be unable to be
23 fair and impartial to both sides?

24 JUROR 9: No.

25 THE COURT: Thank you so much.

1 All right. Ladies and gentlemen, this case is --
2 this question is of a personal nature. If it applies to
3 you, you can come forward. I'm going to ask that you come
4 forward and not give the information in open court.

5 Has any member of the jury panel, any member of their
6 immediate family or close personal friends ever been the
7 victim of any sexual assault, improper sexual touching,
8 lewd conduct, or any crime of a similar nature? If so,
9 would you line up at the bar, and I'll speak to you on a
10 more individualized basis.

11 Tell me your jury number again.

12 JUROR 141: 141.

13 THE COURT: Okay. And I'm going to let you do this.
14 You can tell me whether it's you, whether it's a friend or
15 a family member, or you don't have to tell me any of them.
16 But I just want to know, would that experience prevent you
17 from giving both sides a fair and impartial trial?

18 JUROR 141: No.

19 THE COURT: Are you sure?

20 JUROR 141: Yes, sir.

21 THE COURT: Tell me your jury number again.

22 JUROR 141: 141.

23 THE COURT: 141.

24 Does anybody object to the way I handled that?

25 MR. BOGLE: No, Your Honor.

1 MR. LAWRIK: No, I do not.

2 THE COURT: Okay. Thank you. If you have another
3 way you want me to do it, I'll be glad to.

4 Now, what is your jury number?

5 JUROR 140: 140.

6 THE COURT: 140?

7 JUROR 140: Yes, sir.

8 THE COURT: Okay. You certainly don't need to tell
9 me who, whether it was you or friends or whatever, but do
10 you know somebody or you have been a victim of one of
11 those? You don't have to tell me. Is that correct?

12 JUROR 140: Yeah.

13 THE COURT: And would that prevent you from being
14 fair and impartial in this case?

15 JUROR 140: Yeah. It was recent.

16 THE COURT: Ma'am?

17 JUROR 140: It was like within the last year, so
18 yeah.

19 THE COURT: Tell me again your jury number.

20 JUROR 140: 140.

21 THE COURT: You're Leigh Robert?

22 JUROR 140: Yes, sir.

23 THE COURT: All right. I'm going to excuse from the
24 trial of this matter.

25 JUROR 140: Okay.

1 THE COURT: Thank you, and I'm sorry to cause you any
2 bad . . .

3 Tell me your jury number?

4 JUROR 33: 33.

5 THE COURT: 33. You're Ms. Childs?

6 JUROR 33: Yes.

7 THE COURT: You don't have to tell me if it was you
8 or a family member or a friend, okay? But would that
9 experience or your knowledge of that experience prevent
10 you from being fair and impartial to both sides in this
11 case?

12 JUROR 33: No, sir.

13 THE COURT: Okay. Thank you so much.

14 I know you've given it to me. Give me your jury
15 number again.

16 JUROR 37: 37, Michelle Collins.

17 THE COURT: Okay. Ms. Collins, without telling
18 anybody, you don't have to tell me if it was you or a
19 family member or a friend, I just want to know, would that
20 prevent you from being fair and impartial to both sides in
21 this case?

22 JUROR 37: No, it will not.

23 THE COURT: All right. Thank you.

24 If y'all want anything else asked, let me know.

25 MR. BOGLE: Yes, sir.

1 THE COURT: What's your jury number?

2 JUROR 6: 6, I believe.

3 THE COURT: You're Mr. Attaway?

4 JUROR 6: Yes, sir.

5 THE COURT: Any kin to Attaway Eastland over in
6 Greenville? Used to be a car dealership.

7 JUROR 6: I have no idea.

8 THE COURT: Okay. It's just not a typical name.

9 All right. I don't want you to tell me who, whether
10 it was you or a family member or friend, but would that
11 knowledge or that experience prevent you from being fair
12 and impartial to both sides?

13 JUROR 6: Yes, sir.

14 THE COURT: It would. All right, sir. I'm going to
15 excuse Number 6 from the trial of this matter. Thank you.

16 If anybody has any objections, y'all need to let me
17 know. Thank you.

18 What is your jury number?

19 JUROR 28: 28.

20 THE COURT: 28. Okay. You're Ms. Cervenka.

21 Okay. Now, you don't have to tell anybody up here.

22 You don't have to answer whether it's you or a friend or a
23 family member.

24 JUROR 28: Yes, sir.

25 THE COURT: My concern is that you are able to give

1 both sides a fair and impartial trial. Can you do that?

2 JUROR 28: I don't think so.

3 THE COURT: You cannot. Okay. Ms. Cervenka, I'm
4 going to let you off this jury, okay? Thank you.

5 All right. What is your jury number?

6 JUROR 9: Number 9, James Ball.

7 THE COURT: Mr. Ball. I guess I should know that by
8 now.

9 JUROR 9: That's okay.

10 THE COURT: All right. Mr. Ball, without telling
11 everybody, I don't want to know if it was you or a family
12 member or friend, but my concern is that we're able to
13 have an impartial jury. Would that experience or that
14 knowledge of the experience prevent you from giving both
15 sides a fair and impartial trial?

16 JUROR 9: I'm going to be honest and say yes, it
17 would.

18 THE COURT: Okay.

19 JUROR 9: I've got very strong feelings about this.

20 THE COURT: We want you to be absolutely honest,
21 okay?

22 JUROR 9: Sorry about that.

23 THE COURT: That's okay. Thank you for coming.
24 You're excused. Oh, you're not on the first jury?

25 JUROR 9: No.

1 THE COURT: Okay. You're done.

2 Hey.

3 JUROR 110: 110.

4 THE COURT: 110. Okay. You're Ms. McCoy?

5 JUROR 110: Yes, sir.

6 My daughter ---

7 THE COURT: Okay. I was about to say this to you.

8 You don't have to say who, when, you or anybody else, but
9 would that experience or knowledge of that experience
10 cause you to be unable to be fair and impartial to both
11 sides of this case?

12 JUROR 110: I can be fair.

13 THE COURT: You can?

14 JUROR 110: Yes, sir.

15 THE COURT: Thank you, Ms. McCoy.

16 What's your jury number?

17 JUROR 173: 173.

18 THE COURT: 173. You're Ms. Winecoff?

19 JUROR 173: Uh-huh.

20 THE COURT: Okay. Ms. Winecoff, I've told everybody
21 that came before you and I'm not asking whether it was you
22 or a family member or friend, but my concern is that you
23 can be fair and impartial. Can you be fair and impartial
24 to both sides in this case?

25 JUROR 173: I don't see how I can, to be honest with

1 you.

2 THE COURT: Okay. And I want you to be honest with
3 me. It's very important.

4 JUROR 173: I do.

5 THE COURT: Listen, I know it's upsetting. I can see
6 it in your eyes. I'm going to excuse you.

7 You're not on this other jury, are you?

8 JUROR 173: No.

9 THE COURT: Okay. You are free to go. Thank you for
10 your willingness to serve, and you're done for the week.

11 JUROR 173: Okay. Thank you.

12 THE COURT: Take care.

13 All right. Anyone else?

14 (No response.)

15 THE COURT: All right. Is there any member of the
16 jury panel who has such strong feelings about allegations
17 of allegedly being a sexually violent predator that you
18 would be unable to give the State or this respondent a
19 fair and impartial trial? If so, would you please stand.

20 Yes, sir what's your jury number?

21 JUROR 36: 36.

22 THE COURT: 36. You're Mr. Coleman.

23 JUROR 36: I am indeed.

24 THE COURT: And you could not give both sides a fair
25 and impartial trial?

1 JUROR 36: I could not.

2 THE COURT: All right. Mr. Coleman, I'm going to
3 excuse you. Thank you for your candor.

4 Anyone else?

5 (No response.)

6 THE COURT: Has any member of the jury panel been
7 accused of a crime or falsely accused of a crime? If so,
8 would you please stand.

9 All right Mr. Tu. What's your jury number?

10 JUROR 158: 158.

11 THE COURT: And would that prevent you from giving
12 both sides of this case a fair and impartial trial?

13 JUROR 158: No. It wouldn't prevent me. It would
14 not.

15 THE COURT: Thank you so much.

16 Has any member of the jury panel ever testified for
17 the prosecution or the defense in a criminal case? If so,
18 would you please stand.

19 All right. Number 5, that was part of your duties as
20 a trooper?

21 JUROR 5: Yes, sir.

22 THE COURT: Would that prevent you from giving both
23 sides a fair and impartial trial?

24 JUROR 5: No, sir.

25 THE COURT: Thank you so much.

1 Ladies and gentlemen, has any member of the jury
2 panel heard or you know anything about the alleged sexual
3 offenses for which Harlin A. Bearden was convicted of in
4 the underlying charges? If so, would you please stand.

5 (No response.)

6 THE COURT: Would the fact that Harlin A. Bearden has
7 been convicted of sexual offenses and has completed his
8 criminal sentence related to that conviction in any way
9 prevent you from being fair and impartial to both the
10 State and to Mr. Bearden? If so, would you please stand.

11 (No response.)

12 THE COURT: Does any member of the jury panel have
13 training or experience in the fields of psychiatry,
14 psychology or law? If so, would you please stand.

15 All right. I know your jury numbers, but go ahead
16 and tell us for the record.

17 JUROR 141: 141.

18 JUROR 59: 59.

19 THE COURT: And would the fact that you have that
20 experience prevent you from being fair and impartial to
21 both the State and to Mr. Bearden?

22 JUROR 141: No.

23 JUROR 59: No.

24 THE COURT: Okay. Let the record reflect both
25 responded negatively.

1 Has any member of the jury panel been involved in a
2 prison ministry, a prison outreach program or any other
3 program involving contact with incarcerated persons? If
4 so, would you please stand.

5 All right, I know you're a very frequent flyer.
6 What's your jury number?

7 JUROR 59: 59.

8 THE COURT: What's your jury number?

9 JUROR 33: 33.

10 THE COURT: 33.

11 And what's your jury number?

12 JUROR 171: 171.

13 THE COURT: 171.

14 And let me ask this to all three of you if that
15 experience would prevent you from giving the State or
16 Mr. Bearden a fair and impartial trial, I'm going to ask
17 that you remain standing; otherwise, I'm going to ask you
18 to sit down.

19 Very good. Let the record reflect that all three
20 sat.

21 Has any member of the jury panel, any member of their
22 immediate family or close personal friends ever been
23 subjected to a civil commitment proceeding or
24 involuntarily civilly committed? If so, would you please
25 stand.

1 (No response.)

2 THE COURT: All right. Other than requested in the
3 written voir dire, any additional voir dire request from
4 the State?

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

6 THE COURT: From the respondent?

7 MR. LAWRIK: None, Your Honor.

8 THE COURT: If you would, make your voir dire
9 requests court exhibits with the court reporter so they'll
10 be part of the Court's record.

11 All right. Ladies and gentlemen, just like we did a
12 minute ago, the clerk is getting ready to run off
13 23 names. I'm going to give the attorneys ten minutes to
14 review those names, and we'll come back with jury
15 selection.

16 You'll run those names for me, Madam Clerk?

17 THE CLERK: Sure will.

18 (Pause in proceedings.)

19 THE COURT: All right. Gentlemen, we're going to
20 take a recess. If everybody would just stay in the
21 courtroom, we'll come back at ten minutes until 1:00 for
22 jury selection.

23 (WHEREUPON, a recess is taken at 12:39 p.m.)

24 THE COURT: All right. Is the State ready to strike?

25 MR. BOGLE: Yes, Your Honor.

1 THE COURT: Is the defense ready to strike?

2 MR. LAWRYMORE: Yes, Your Honor.

3 THE COURT: Before we go there, I'm going to ask, you
4 are Jury Number 1, Case Number 1. I'm going to ask that
5 you all stand up and go back into the gallery so that we
6 can seat the second jury, please.

7 (Pause in proceedings.)

8 JURY SELECTION

9 THE COURT: All right, Madam Clerk.

10 THE CLERK: State strike?

11 MR. BOGLE: Yes, ma'am. State strike Number 5.

12 THE CLERK: Defense?

13 MR. LAWRYMORE: 18.

14 THE CLERK: State?

15 MR. BOGLE: 10.

16 THE COURT: What was your strike, Mr. Lawrymore?

17 MR. LAWRYMORE: Number 18 on the list, Your Honor.

18 THE COURT: 18?

19 MR. LAWRYMORE: Correct, Your Honor.

20 THE COURT: Okay. I'm sorry.

21 THE CLERK: So that leaves the defense strike?

22 MR. LAWRYMORE: 1.

23 THE CLERK: Plaintiff?

24 MR. BOGLE: 16.

25 THE CLERK: Defense?

1 MR. LAWRYMORE: 7.

2 THE CLERK: State?

3 MR. BOGLE: 19.

4 THE CLERK: Defense?

5 MR. LAWRYMORE: 9.

6 THE CLERK: State, 21 through 23?

7 MR. BOGLE: 22.

8 THE CLERK: Defense?

9 MR. LAWRYMORE: 23.

10 THE CLERK: Review the strikes. Plaintiff strike 5,
11 10, 16, 19 and 22.

12 MR. BOGLE: Correct.

13 THE COURT: Defense strike 1, 7, 9, 18 and 23.

14 MR. LAWRYMORE: That's correct.

15 THE CLERK: If I call your name, please gather your
16 belongings and have a seat up here in the jury panel
17 please.

18 13, David Blizzard; 119, Ernest Noffz; 2, Nina Adams;
19 150, Kristaan Singletary; 131 Anthony Quarles; 55, John
20 Edwards; 80, Jerry Haynes; 109, Daniel Martins; 134
21 Barbara Randolph; 14, Melissa Blizzard; 74, Angelee
22 Harris; 91, Patrick Jennings; and alternate is 25,
23 Claudette Carson.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, you are known as Jury Number 2. Who from this

1 panel, I think I see a couple faces, were also selected in
2 Jury Number 1? Raise your hand. All right. The three of
3 you will not need to do this because you'll be here with
4 us and you'll know when you need to report back. The
5 remainder of you I'm going to let go today. I'm going to
6 excuse you.

7 Does everyone have the call-in number that you need
8 to check in with? If you don't, raise your hand.

9 If you would, after 6 o'clock tonight, call in, and
10 do that same thing each night until you're told to return
11 back for trial. I don't know. Sometimes cases have a way
12 of resolving themselves, so we could go back tomorrow or
13 Wednesday or potentially Thursday, just depends on how the
14 first trial goes. But if you'd call back after 6 o'clock
15 each night, there will be a message to tell you, you know,
16 we need you to report or we need you to call back the next
17 day at 6 o'clock.

18 Thank you for being here, and we'll see you later in
19 the week with the second trial.

20 Those of you who are on the jury who were selected on
21 Jury Number 1, please stay.

22 (WHEREUPON, the jury exited the courtroom, and a recess is
23 taken.)

24 THE COURT: - In the Bearden case, any objections to
25 the jury selection process from the State or from

1 respondent?

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

3 MR. LAWRIK: None from the respondent, Your Honor.

4 THE COURT: All right. Gentlemen, if you will give
5 my law clerk your name and number, we'll try to keep you
6 advised as to the status and where we are and try to work
7 with you as much as we can, okay?

8 MR. LAWRIK: I'd appreciate that, Your Honor.

9 MR. BOGLE: Thank you, Your Honor.

10 (WHEREUPON, Court's Exhibit Numbers 1 and 2 were marked
11 for identification.)

12 (WHEREUPON, proceedings adjourned at 1:00 p.m., to be
13 reconvened on Wednesday, March 27, 2019.)
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1 WEDNESDAY, MARCH 27, 2019

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3 (WHEREUPON, State's Exhibit Number 1 was marked for
4 identification.)

5 (WHEREUPON, proceedings commenced at 9:35 a.m.)

6 THE COURT: All right. Gentlemen, a few pretrial
7 matters. There was -- respondent filed three motions in
8 limine this morning which I've reviewed, and the State
9 apparently filed some earlier when they filed the case.
10 Since the State went first, I'm going to go ahead and go
11 over its motions first, then I'll pick up the respondent's
12 next.

13 Mr. Bogle?

14 MR. BOGLE: Yes, Your Honor. Good morning. For the
15 record, we are back in Harlin A. Bearden, sexually violent
16 predator, Case 2016-CP-24-1512.

17 Judge, the State's first motion in limine was drafted
18 by my predecessor on the case, Mr. Morrow, and some of the
19 things in there changed. It used to be -- what this
20 motion is about is to prohibit the defense from attacking
21 on the record the treatment as being at a prison at the
22 old death row behind the wire and things like that ---

23 THE COURT: Right.

24 MR. BOGLE: --- and being there forever, it being a
25 punishment. The case law from Luckabaugh on four has

1 established this matter as a purely civil commitment
2 process aimed at treatment, so it's not criminal.

3 Also, since the time this motion was completed, back
4 then the actual treatment place were two unused wings of
5 Broad River Correctional Institution. One was the Edisto
6 Unit and one was, I think, Saluda. They were next door to
7 each other. And Edisto was, in fact, the old death row
8 before it got moved. Since that time, the private
9 contractor that has the contract to do all the treatment,
10 which used to be called Correct Care and is now called
11 Well Path Solutions, they had built a freestanding,
12 totally brand-new facility on the grounds of Broad River
13 but not behind the wire. Now, it's got a fence around it,
14 but if you drive in, if you ever drive in the Department
15 of Corrections, the main entrance right there, it's right
16 there on your left. So it's not the Edisto Unit, it's not
17 the Saluda Unit, it's not behind the wire at Broad River.
18 It's a freestanding facility.

19 And, of course, the ultimate charge you're going to
20 give in this case is that we're talking about committing a
21 guy to a secure facility for long-term control, care and
22 treatment. So no question about it being secure. He
23 can't get out. But it's not the old prison setting that
24 it used to be.

25 So we've modified our motion since then to take out

1 reference to death row and that sort of thing. But what
2 we're looking at is not to have defense counsel go into
3 arguments about it being at a prison or punishment or
4 therefore a life sentence or something like that.

5 THE COURT: I don't disagree with that.
6 Mr. Lawrimore, is that your intent?

7 MR. LAWRYMORE: That's not my intent, Your Honor. I
8 believe the charges that we've both submitted to Your
9 Honor prior to convening here today adequately will
10 represent to the jury what the purpose and potential
11 duration of a commitment would be.

12 THE COURT: Very good. So if you -- now, reference
13 to civil commitment, I think your concern was for life as
14 opposed to the term "civil commitment," because then your
15 charge actually says "being civilly committed."

16 MR. BOGLE: Yes.

17 THE COURT: All right. Okay. So that is granted.

18 MR. BOGLE: The State's second motion in limine.

19 THE COURT: What is your second motion in limine?

20 MR. BOGLE: The second motion in limine has to do
21 with treatment. The only thing we're supposed to prove to
22 get him committed is two things: Number 1, has he been
23 convicted of a sexually violent crime, and Number 2, does
24 he have a mental abnormality or a personality disorder
25 that makes him likely to commit these types of crimes

1 again unless he's confined at a secure facility for
2 long-term control, care and treatment. And that's it.

3 So any -- the motion about -- the second motion in
4 limine is to prevent any cross-examination or argument
5 about the type of treatment he might get. First off, it's
6 not something we have to prove. Second, it might confuse
7 the jury. And third, it's only speculative because we
8 won't know what type of treatment he might have to get
9 until he gets there.

10 THE COURT: I don't disagree with you on that either.
11 Is it your intent to cross-examine as to the type of
12 treatment Mr. Bearden would receive if he's found to be a
13 sexually violent predator?

14 MR. LAWRYMORE: Your Honor, it's not my intent to
15 introduce any material during cross-examination as to
16 potential treatment. I don't disagree that that
17 evaluation will have to be made if and only if he's
18 committed. I do think it would be potentially relevant as
19 to whether there are alternatives to commitment, but
20 nothing on the back end of that.

21 THE COURT: Well, I'll tell you what. I'm going to
22 grant the motion at this juncture subject to it
23 potentially becoming relevant. If you think that it does,
24 if you would let me know, just approach, we'll take it up
25 outside the presence of the jury and make a determination

1 at that juncture as to whether or not it's relevant.
2 Right now it's granted.

3 MR. BOGLE: We anticipate and would not be surprised
4 if there's a dispute on the record whether it should be
5 secure confined treatment versus outpatient treatment. No
6 problem there.

7 THE COURT: Right.

8 MR. BOGLE: But as far as the type of treatment,
9 things like that, that's what I'm focusing on.

10 THE COURT: Okay. All right. Next we go to the
11 respondent's. First, there's three motions in limine.
12 And I had just a brief time to look at them, quite
13 frankly, Mr. Lawrimore, but the first one that you're
14 asking for me not to allow them to bring up evidence of
15 prior bad acts, but, I mean, that's part of the burden of
16 proof that the State has. I mean, what is it specifically
17 you're asking that I prohibit them getting into?

18 MR. LAWRYMORE: Your Honor, I'm asking specifically
19 that you prohibit any unindicted acts where there's no
20 probable cause determination as to whether some sort of
21 events occurred or not.

22 THE COURT: Let me stop you right there.

23 Mr. Bogle, do you intend to try to elicit evidence of
24 unindicted prior bad acts?

25 MR. BOGLE: One of Dr. Gottfried's diagnosis was

1 antisocial personality disorder, and the very definition
2 of that is contained in the Diagnostic and Statistical
3 Manual. It talks about crimes where you committed the
4 type of conduct that is criminal even though you might not
5 have been charged. It talks about crimes where you were
6 charged but not convicted. In the case law, it also talks
7 about convicted conduct. So she may be going into that
8 sort of thing.

9 The Ettel case from 2008 talked about offenses as
10 well as offenses that were not convicted. It also talks
11 about ---

12 THE COURT: It's a different standard of proof for
13 unconvicted prior offenses, correct?

14 MR. BOGLE: I'm sorry?

15 THE COURT: Isn't there a different burden of proof
16 for you? I guess it all -- as far as admissibility.

17 MR. BOGLE: Admissibility, the Ettel case and the
18 Corley case talked about unconvicted conduct as well as
19 nonsexual crimes. The Ettel case talks about that. And
20 that's a 2008 case, and I've got a copy I can pass up if
21 you want to see it.

22 So the case law pretty much, in our memorandum of
23 law, covers that as far as getting in that type of
24 relevant evidence, but we're trying to show a pattern of
25 conduct to justify the diagnosis, and certainly she's

1 given the appropriate weight to stuff that he was
2 convicted for versus stuff where he wasn't.

3 THE COURT: Say that again, please.

4 MR. BOGLE: She's given obviously more weight where
5 he's been convicted of something than to where he's not.
6 But she's trying to look for a pattern of conduct. And
7 especially to show antisocial personality disorder, which
8 is a relevant personality disorder, you have to look at
9 the criminal conduct going back prior to age 15. And it
10 can't -- it's not always stuff you got arrested or
11 convicted for. It might be stuff that you did that was
12 criminal.

13 THE COURT: All right. Mr. Lawrimore, at this
14 junction, until I hear it, I can't make a ruling. You're
15 just going to have to object if you think it's
16 inappropriate, okay, sir? And we'll just take it up at
17 that time.

18 MR. LAWRIMORE: Very well, Your Honor.

19 And just for purposes of speedily conducting this
20 trial, would you prefer that I make my objection on the
21 record or just alert the Court that we have a matter of
22 law that needs to be discussed outside the presence of the
23 jury?

24 THE COURT: I prefer that you make your objection in
25 open court. Don't -- some people want to run up here and

1 object so the jury doesn't hear it. I think you need to
2 make it open so everybody can. If I want to send them
3 out, I will; otherwise, we'll just dispose of it then.

4 Next motion in limine is the penile plethysmograph.
5 Is that pronounced correct, plethysmograph?

6 MR. BOGLE: Plethysmograph or something like that.
7 PPG or plethysmograph.

8 Judge would you like to -- since that one might
9 involve testimony, would you like to skip to the third one
10 first and then come back to the second one? Because the
11 third one I don't believe will involve any testimony to
12 make the motion.

13 THE COURT: Yeah. I'll go to the third one. What is
14 that?

15 MR. LAWRIK: Your Honor, my third motion in limine
16 is to exclude his testimony that was made during the
17 course and scope of these evaluations. The United States
18 Supreme Court has ruled admittedly in criminal context
19 that statements made for purposes of treatment where the
20 treatment or medical diagnosis is involuntary is
21 admissible only for purposes of rebuttal. In this
22 instance I believe it's uncontroverted that my client,
23 Mr. Bearden, was obligated to provide these statements and
24 to comply with the treatment services. There was a motion
25 to compel discovery or in the alternative for sanctions

1 filed in that regard.

2 With that being said, I do not believe that his
3 statements bear the same indicia or reliability that would
4 traditionally be associated with statements made for
5 purposes of seeking medical treatment. He was making no
6 affirmative act to seek out this medical treatment. On
7 those grounds I believe that any statements that he's made
8 during the course and scope of these evaluations should be
9 admitted into evidence only to provide rebuttal.

10 THE COURT: The basis of your motion is that the
11 Court ordered him to participate, and therefore, he is
12 subject to contempt powers if he didn't?

13 MR. LAWRYMORE: Correct.

14 THE COURT: Do you have a copy of that order? Do you
15 have a copy, Jim?

16 MR. BOGLE: Well, we have the original order for
17 evaluation. We ordered that he be evaluated.

18 If I can give you a timeline, the original court
19 order which found probable cause to have him evaluated
20 ordered Dr. Marie Gehle of the Department of Mental Health
21 to evaluate the guy. She did that. She came up with a
22 recommendation he not be committed.

23 THE COURT: Right.

24 MR. BOGLE: We then exercised the option which we
25 rarely do to get a second opinion and send him down to

1 MUSC.

2 Now, at MUSC he signed -- of course, during
3 Dr. Gehle's evaluation, he made a lot of statements to
4 her, and during Dr. Gottfried's evaluation, which he
5 consented to, he signed consent forms for, he made a lot
6 of statements.

7 THE COURT: Oh, he did?

8 MR. BOGLE: Yes. He made a lot of statements to her
9 because she told him, gave him the scope of what it's
10 about.

11 Now, apparently, he balked at taking a polygraph
12 which is something that is part of their protocol at MUSC.

13 THE COURT: He did what now?

14 MR. BOGLE: I'm sorry?

15 THE COURT: I missed what you said.

16 MR. BOGLE: Apparently, he balked at taking a
17 polygraph exam, which is part of the protocol that they
18 use in their evaluation down at MUSC. It's also something
19 I think now being used by Well Path for the guys that have
20 been committed to see if they're, you know, progressing in
21 treatment.

22 But in any event, there's been many prior cases where
23 we've had to go to court and try to have the -- threatened
24 to have the guy held in contempt for not cooperating with
25 the evaluation. And the rationale is that the statute

1 provides that whatever doctors evaluate should have full
2 access to the guy.

3 And so in this case, there was a hearing. He
4 eventually took the polygraph examination. As it turned
5 out, I'm not sure -- I'm not talking about admissibility
6 of polygraphs right now.

7 THE COURT: That's not admissible.

8 MR. BOGLE: That's not what happened. For your
9 information, he wound up passing the polygraph. So, you
10 know, but he -- that was one holdup in the case where we
11 had to go to court to try and get him held in contempt for
12 not cooperating with what Dr. Gottfried was doing. So
13 anyway, we got past that.

14 And then, of course, Dr. Gottfried's opinion includes
15 statements that he made to her in the course of the
16 evaluation, questions she asked him about, his
17 convictions, what was his version of it. Because you look
18 at the conviction, and then you look at what the victims
19 told the cops, then what the defendant told the cops, and
20 then what the defense is telling her during the
21 evaluation, try to analyze those three different things.

22 So this type of statement is part of the details
23 which is outlined in my memo of law that you can testify
24 about. I think Dr. Donna Schwartz-Watts was allowed to do
25 that. It came to a hearing in the Ettel case properly

1 admitting the prior sexual offenses.

2 Also, in the Corley case from 2003, the Supreme Court
3 held that the probative value underlying details behind
4 the crime was what he did to the person outweighed the
5 prejudicial value. In that case they tried to stipulate
6 to the indictments and just move on from there without any
7 detailed testimony. And the Court said in order to prove
8 the guy is a sexually violent predator as defined in
9 44-48-30(1), you've got to get the details. And it's also
10 a part of the basis for her diagnosis as an expert
11 witness. So that's where that's coming in and the case
12 law behind all that.

13 Again, the case that's referenced in this motion,
14 Kansas v. Cheever, that is a criminal case. It was a
15 murder case. It was a court-ordered evaluation. He
16 claimed the Fifth Amendment about statements he made
17 because he didn't want to be evaluated. But that, again,
18 was a criminal case and we're here in a civil context. So
19 comments he made to her that form the basis of her
20 evaluation or her diagnosis would be admissible. And the
21 case law on the SVP side of the fence is pretty much
22 unanimous on that.

23 THE COURT: Any response to that, Mr. Lawrimore?

24 MR. LAWRIMORE: Your Honor, just in brief summation
25 that I believe the Supreme Court case, while admittedly in

1 the case of a criminal context, there's nothing directly
2 analogous on the record in South Carolina courts that are
3 direct parallels between those cases and correlations that
4 can be made. Based on the threat of coercion and possible
5 contempt sanctions, I truly do not believe the statements
6 he issued in the course and scope of his evaluation and
7 treatment were voluntarily made.

8 THE COURT: All right. I'm going to deny your
9 motion, especially given the fact that he signed releases.
10 I think it is appropriate for them to review that
11 information.

12 So your next motion in limine, Mr. Lawrimore?

13 MR. LAWRIMORE: Thank you, Your Honor.

14 My final motion in limine is to exclude any reference
15 to the penile plethysmograph test that we'll probably just
16 agree to call the PPG because it is a little tricky to
17 pronounce. Under the state's counsel standard, it does
18 not bear certain indicia of reliability typically
19 associated with admissibility in the context of expert
20 opinions. I am prepared to hand up a number of studies,
21 many of which were issued, in fact, by members of MUSC
22 staff with regard to discrepancies that can arise during
23 the course and scope of these tests. And, in fact,
24 Mr. Bearden's -- Mr. Bearden, excuse me -- Mr. Bogle's
25 memorandum of law that he submitted Friday, he indicated

1 in a footnote that on the pending case, two out of three
2 courts have denied the admissibility of this test. Only
3 one had allowed it in for evidentiary purposes. That case
4 is still on appeal.

5 I would also direct the Court's attention to two
6 Fourth Circuit Court of Appeals cases I cited in my
7 memorandum. I have copies for the Court if the Court is
8 inclined to receive them and review them, the first of
9 which is the Powers case where, in the federal context,
10 courts have allowed penile plethysmograph to be put in
11 place for purposes of conditional release upon completion
12 of a federal sentence once probation begins in a federal
13 court case. There are no State of South Carolina court of
14 record opinions incident to which they've ruled upon the
15 admissibility of the PPG. The only instances in our
16 judicial area are these Fourth Circuit Court of Appeals
17 cases. They're only letting them in for purposes of
18 treatment on the backend of a conviction or confinement.
19 They are not coming in for purposes of diagnosis.

20 In those cases the Court actually notes in one
21 instance the government's insistence that the test is
22 unreliable, that there are no readily identifiable
23 standards within the profession that makes these tests
24 reliable, and that, in fact, pretty easy to manipulate the
25 test. There are several studies in learned treatises

1 wherein there are opinions that outside influences can
2 contribute to the response that was received in this test.
3 I'm confident Your Honor has come across one of these
4 cases before, is familiar with the gory details of a PPG
5 test, but there are a number of outside factors that can
6 influence a response in these tests rendering them
7 unreliable.

8 THE COURT: Well, does each side of this agree that
9 this is scientific testimony?

10 MR. BOGLE: Yes. And if necessary, I've got
11 Dr. Gottfried to testify about the reliability of the PPG.

12 THE COURT: Well, let me -- I'll be honest with you,
13 Mr. Bogle. I've had concerns about these tests when I've
14 heard them in the past if I've not had any objections to
15 them. But do you agree with me that the factors that I
16 need to look at in determining whether or not it's
17 admissible is whether or not there's a peer-review process
18 of the technique, that any prior application of the method
19 -- of the type of evidence involved in this case, the
20 control -- quality-control procedures to ensure the
21 reliability and the consistency of the method with
22 recognized scientific laws and procedures, do you agree
23 that those are factors?

24 MR. BOGLE: Correct. That's straight out of State
25 vs. Jones.

1 THE COURT: Right.

2 MR. BOGLE: We're prepared to go into that.

3 THE COURT: Okay. I mean, obviously, you have the
4 burden of proof in this matter so you'll have to lay
5 sufficient foundation for it.

6 MR. BOGLE: Yes, sir. I would point out I submitted
7 a memo -- I didn't get these -- the defense's motions till
8 like kind of at the last minute.

9 THE COURT: I didn't get them until 15 minutes ago.

10 MR. BOGLE: And there is a ten-day rule about that
11 sort of thing, but I guess we're kind of past that.

12 THE COURT: Well, you know, I'm going to let them --
13 I'm going to go forward today.

14 MR. BOGLE: In our memorandum in support of the PPG,
15 there was talk about cases in South Carolina where circuit
16 judges have kept it in or kept it out. Of the two cases
17 where it was kept out, in one of them, the guy was
18 committed so we couldn't really appeal the issue. Okay.
19 The other cases are both on appeal. One was a case where
20 it was let in. The defense is appealing that, just to let
21 you know.

22 THE COURT: That's really beside the point, though.

23 MR. BOGLE: It's out there.

24 THE COURT: The factors, you know, that's fine and
25 well for whoever made those decisions, and I'm sure

1 they're fairly well reasoned. I'm thinking, though, is
2 for purposes of our trial today ---

3 MR. BOGLE: Okay.

4 THE COURT: --- that what I want to hear is the
5 proper foundation considering the factors, the scientific
6 factors we just went over and then I'll be in a position
7 hopefully to make a determination as to admissibility or
8 not admissibility based on that.

9 MR. BOGLE: All right. Would you like me to go ahead
10 and call Dr. Gottfried?

11 THE COURT: Well, that's the next question I was
12 going to ask. How would -- instead of stopping and
13 starting and stopping and starting, it's fine to go ahead
14 and do it now and make a decision, but if y'all want to do
15 it another way, I'm fine that way as well.

16 MR. BOGLE: Well, and again, it's your courtroom and
17 your preference.

18 And one of the situations I had in Richland County,
19 since the defense made the motion to exclude it, they
20 called the -- they had to call an expert to say it was a
21 bad thing.

22 THE COURT: Right.

23 MR. BOGLE: However you want me to go, but I can do
24 it however you want me to. I've got Dr. Gottfried
25 prepared to testify about the validity of the PPG.

1 THE COURT: Let's do it this way, just for purposes
2 -- I'm going to let you proffer it, and then I'm going to
3 let Mr. Lawrimore rebut it, and then I'll make a
4 determination as to whether or not it will be admitted.
5 So if you'd call your expert, please, sir.

6 MR. BOGLE: Dr. Gottfried, would you step forward,
7 please.

8 And you've got our memo of law about the PPG?

9 THE COURT: You know, that was in the file. It
10 hasn't been put in my hand. But if you would forward it
11 up, I'd really appreciate it.

12 WHEREUPON,

13 DR. EMILY GOTTFRIED

14 After having been duly sworn, testified as follows:

15 MR. BOGLE: For the purpose of this hearing, can we
16 stipulate to her expertise as a forensic psychologist, get
17 past that?

18 THE COURT: Do you really want to question her
19 credentials for purposes of this hearing, Mr. Lawrimore?

20 MR. LAWRYMORE: Not for purposes of this hearing,
21 Your Honor.

22 THE COURT: All right. So for purposes of this
23 proffer only, you will stipulate to her expertise?

24 MR. LAWRYMORE: In the ---

25 THE COURT: In the field of -- is it forensic

1 psychiatry?

2 MR. BOGLE: Forensic psychologist.

3 THE COURT: Forensic psychology or just psychology?

4 MR. BOGLE: Forensic psychology.

5 THE COURT: Do you stipulate to that for purposes of
6 this hearing only?

7 MR. LAWRYMORE: For purposes of this hearing only.

8 THE COURT: Without waiving your right to challenge
9 her expertise at trial.

10 MR. LAWRYMORE: Correct, Your Honor.

11 THE COURT: All right, sir.

12 MR. BOGLE: I mean, during the trial I'll qualify her
13 in front of the jury.

14 THE COURT: Right.

15 DIRECT EXAMINATION

16 BY MR. BOGLE:

17 Q Dr. Gottfried, you're employed by the Medical
18 University of South Carolina?

19 A That's correct.

20 Q And what's the name of the laboratory you work with?

21 A I work in the Sexual Behaviors Clinic and Lab.

22 Q Okay. And you got the Bearden case because we
23 retained you to get a second opinion on it; is that
24 correct?

25 A Yes. You requested the Sexual Behaviors Clinic and

1 Lab to give a second opinion, and I was assigned to the
2 case.

3 Q Okay. In addition to your qualifications or
4 education and that sort of thing, are you a member of an
5 organization called ATSA, A-T-S-A?

6 A Yes, I am.

7 Q What does that stand for?

8 A It's the Association for the Treatment of Sexual
9 Abusers.

10 Q Okay. As part of the protocol that the sexual
11 behaviors lab in Charleston has for these type of cases,
12 does that protocol include the administration of the PPG?

13 A Yes.

14 Q And I think that's called penile plethysmograph, but
15 with the Court's permission, I'm going to say PPG from
16 here on.

17 THE COURT: Absolutely.

18 BY MR. BOGLE:

19 Q We know what it is.

20 All right. Now, basically, what is that?

21 A So penile plethysmograph is a physiological measure
22 of male sexual arousal.

23 Q Okay.

24 A It's the gold standard physiological measure for
25 assessing male sexual arousal.

1 Would you like me to go into how it works?

2 Q Let me ask you one thing first. What is the
3 Diagnostic and Statistical Manual?

4 A It is the manual that psychologists and psychiatrists
5 or anyone licensed to provide diagnoses use. It lists all
6 of the psychiatric diagnoses with the diagnostic criteria,
7 and we're on the fifth edition of it right now. It's
8 published by the American Psychiatric Association.

9 MR. BOGLE: Okay. If I may approach the witness,
10 Your Honor.

11 BY MR. BOGLE:

12 Q I'm showing you a photocopy of the cover, DSM-5.
13 It's called DSM-5 for short, right?

14 A Yes.

15 Q Okay. And then I've got some pages, a section on
16 paraphilic disorder and a section on development and
17 course. Would you look at the highlighted language on the
18 -- okay. So on the section on paraphilic disorders right
19 here, which begins at page 685 ---

20 A Yes.

21 Q --- at the end of that section, is there a reference
22 to the PPG in this document?

23 A Yes.

24 Q Or in this book.

25 A Yes.

1 Q Okay. Would you read the reference that's in -- the
2 PPG that's in the DSM now?

3 A Yes. "The most widely applicable framework for
4 assessing the strength of a paraphilia itself is one in
5 which examinee's paraphilic sexual fantasies, urges or
6 behaviors are evaluated in relation to their normophilic
7 sexual interest and behaviors. In a clinical interview or
8 on self-administered questionnaires, examinees can be
9 asked whether their paraphilic sexual fantasies, urges or
10 behaviors are weaker than, approximately equal to or
11 stronger than their normophilic sexual interest and
12 behaviors. This same type of comparison can be and
13 usually is employed in psychophysiological measures of
14 sexual interest such as penile plethysmograph in males or
15 viewing time in males and females."

16 Q Okay. Now, and then the next page after that, and
17 this is on page 699 where it talks about pedophilia, under
18 Diagnostic Markers at the bottom of the page, does it
19 also, again, mention the PPG?

20 A Yes, it does.

21 Q And would you read that section?

22 A This is under the Diagnostic Markers for Diagnosing
23 Pedophilic Disorder. And it says, "Psychophysiological
24 measures of sexual interest may sometimes be useful when
25 an individual's history suggests the possible presence of

1 pedophilic disorder but the individual denies strong or
2 preferential attraction to children. The most thoroughly
3 researched and longest use of such measures is penile
4 plethysmograph, although the sensitivity and specificity
5 of diagnosis may vary from one site to another."

6 Q So Dr. Gottfried, these quotes are from the
7 Diagnostic and Statistical Manual Edition 5. That's the
8 current addition.

9 A Correct.

10 Q Were there references in the previous edition, the
11 DSM-4, to the PPG?

12 A No.

13 Q Okay. And this is the guide book which psychologists
14 and psychiatrists use in diagnosing paraphilic disorders.
15 And by paraphilic, I mean deviant sexual disorders. Is
16 that right?

17 A Yes. And all mental illnesses.

18 Q Let's talk about how does the PPG work, basically?

19 A So the examinee places a string gauge, which is
20 either filled with mercury or Indian gallium around his
21 own penis. It's put about mid shaft on the penis, and he
22 does it in a private room where he's covered up and nobody
23 can see him. He then covers himself up with a sheet, and
24 he sits in a chair where he's presented with a variety of
25 stimuli. The stimuli that is used in the Sexual Behaviors

1 Clinic and Lab are audio recorded scenarios that are part
2 of two standard sets that are used with the Limestone
3 penile plethysmography. And they're also presented some
4 still slides of nonpornographic images of children and
5 then an image or two images of adult women and adult men.

6 Q Okay. And so there's different scenarios, children,
7 sexual scenarios involving adults, but none of this is
8 pornographic.

9 A That's right.

10 So the audio material describes the sexual scenarios.
11 In the first set that we use, it's a monotone male voice
12 who's kind of reading the scenarios describing himself in
13 a variety of sexual situations with adult men, adult
14 women, and then adolescents, males and females, and then
15 prepubescent males and females. And the second set that
16 we use is called the real-child voices set. That was done
17 on a sound stage, so it includes some actors' voices
18 spliced in, and more like background noise. You can hear
19 like glasses clinking and things like that. And it
20 contains the same age groups of both genders.

21 Q Okay. And the person being examined, he's in a
22 private room.

23 A Yes.

24 Q Okay. He's covered up. And so basically, to get to
25 a conclusion here, what you're trying to see is how he

1 reacts, does he get an erection, if you will, from -- or
2 is he sexually stimulated by the things he's hearing, the
3 things he sees.

4 MR. LAWRYMORE: Your Honor, not to belabor the issue,
5 there's a lot of continuous ---

6 THE COURT: Sir?

7 MR. LAWRYMORE: Not to belabor the issue, there's a
8 lot of continuous leading here, and I object.

9 MR. BOGLE: Let me back up on that.

10 THE COURT: You know, for purpose of this hearing,
11 I'm going to let him -- give some leeway.

12 Go ahead, Mr. Bogle.

13 BY MR. BOGLE:

14 Q So that's what's happening, right?

15 A Yes. So what the string gauge is doing, it's looking
16 at the circumference changes to the penis.

17 Q Okay.

18 A And so we know where it started at baseline, and then
19 we're comparing the circumference of the penis to the
20 variety of stimuli to see if the examinee is sexually
21 aroused by any of the stimuli, and if he is aroused, if
22 there is preferential or more arousal to the child
23 scenarios or some of the other abusive or nonconsensual
24 scenarios.

25 Q Has this technique been published and received peer

1 review?

2 A Yes.

3 Q Okay. Can you give an example of where and how?

4 A Yeah. So the PPG has had studies going back to the
5 1950s. It was developed in Czechoslovakia, and the first
6 time it was used, there was a number of studies. Since
7 that time, since the 1950s, there's been a lot of research
8 on it. Meta-analysis, so studies looking at the samples
9 used in all of the PPG literature, has been combined,
10 which is the best -- arguably the best way to do research
11 is to combine as many subjects as you can to see if the
12 instrument has validity and reliability, and it's been
13 tested a lot in peer-review journal articles.

14 Q Okay. What about prior application of this
15 particular testing to the type of evidence involved in
16 this case?

17 A Can you tell me what you mean by the type of
18 evidence?

19 Q Well, this is a protocol that your lab uses, correct?

20 A Yes. It's our standard protocol.

21 Q And as far as you know, are there some doctors
22 employed by the Department of Mental Health who, when
23 they're doing their evaluations, order a PPG?

24 A Yes.

25 Q Such as Donna Maddox, formerly known as Donna

1 Schwartz-Watts.

2 A Yes.

3 Q Some doctors don't, some do.

4 A Correct.

5 Q Okay. And it's the protocol that you have at your
6 laboratory; is that correct?

7 A To use it, yes. We use it.

8 Q Are you aware as to whether or not it is also used in
9 the treatment process by Well Path Recovery if these guys
10 get committed?

11 A Well, I don't know for sure. I have heard that they
12 have a PPG. I'm not sure if they are doing PPG yet, but I
13 just presented at a conference, and there was two of, I
14 believe it was, the treatment providers from that program,
15 and they raised their hands and said that they did have a
16 PPG there.

17 Q Okay. What are the quality control methods used to
18 ensure reliability?

19 A So there have been some criticisms of the PPG
20 regarding standardization. So the machine itself,
21 machines, the literature says, don't lie, and so there's
22 nothing wrong with the machine itself. It's how people
23 are actually administering the PPG.

24 And so at MUSC, we have a very standard strict
25 protocol that we follow for every PPG that we administer.

1 They're administered in exactly the same way. Everybody
2 who administers a PPG, interprets a PPG are all certified
3 to do so.

4 Our PPG lab at MUSC has obtained a research
5 certification through Limestone, which is the highest
6 certification that can be obtained. The gauge is
7 calibrated a number of times before the examinee places it
8 on himself. And as I've already said, the test is
9 conducted in the same way every time, and it's interpreted
10 in the same manner every time.

11 Q Is the system that you use set up in any way as to
12 detect whether or not the person is trying to manipulate
13 the test or somehow not be affected by this testing?

14 A Yes. All PPGs are susceptible to attempts at
15 suppression or dissimulation, which means purposefully try
16 to manipulate a machine or a test. There is a
17 well-established base in the literature suggesting that a
18 PPG is susceptible to faking.

19 We at MUSC, which is standard, we measure
20 respiration, so we're looking for patterns of
21 breath-holding or really shallow breathing maybe during
22 just certain age groups or scenarios, and they also sit on
23 a countermeasure, which is a pad that they sit on and so
24 we can pick up movement. So if they're clenching their
25 muscles or kind of squirming in their seat, we can pick

1 that up. And that's something that regularly or part of
2 my standard protocol is if I see this evidence of
3 suppression or dissimulation, that I talk to the examinee
4 about rather than just put in the report saying that they
5 were trying to mess with the machine.

6 Q Okay. Has this method been previously applied in SVP
7 cases in South Carolina?

8 A Yes.

9 Q Okay. Is it consistent with recognized scientific
10 laws and procedures?

11 A Yes. So the PPG itself is FDA approved. We know the
12 specificity and the sensitivity estimates for using the
13 PPG, particularly with individuals who have been convicted
14 of offenses -- sex offenses against children.

15 Q Did you use -- now, knowing all this, did you use the
16 PPG in assessing Mr. Bearden?

17 A Yes, I did.

18 Q Okay. And what results did you obtain on the PPG
19 regarding Mr. Bearden that are relevant to your opinion
20 about him, your report on Mr. Bearden?

21 A If I can refer to my report.

22 Q Okay. Before you do, let me ask you one question in
23 advance. Was the PPG the sole basis of your report?

24 A It, of course, wasn't. That would be unethical.

25 Q Okay.

1 A As the guidelines actually publish, they have an
2 appendix and then I believe a chapter devoted just to
3 physiological measures in a large section on the PPG, and
4 that would be ATSA guidelines.

5 Q This is ATSA, the Association for the Treatment of
6 Sexual Abusers?

7 A That's correct.

8 Q Which you're a member of.

9 A Yes.

10 Q Okay. Going back to the PPG in this particular case,
11 was it administered to Mr. Bearden?

12 A Yes, it was.

13 Q And was there any dissimulation or attempt by him
14 that was detected by the lab to show he was trying to beat
15 the test, for lack of a better phrase?

16 A No. There really wasn't consistent evidence of
17 dissimulation. Suppression is harder. Sometimes we'll
18 commensally suppress, so I don't have any data one way or
19 the other on that. But typically, we see some kind of
20 dissimulation where a lot of breath-holding or squirming,
21 and I did not observe that in Mr. Bearden's PPG.

22 Q Okay. Before you get into the details about him, why
23 is it important for experts such as yourself to conduct
24 this assessment in the context of a sexually violent
25 predator evaluation?

1 A Well, these are really high-stake evaluations, court
2 cases, decisions, so it's very important that you
3 incorporate a lot of sources of data. And because of the
4 high stakes, these are evaluations which you would
5 reasonably expect the defendant to not be forthcoming
6 about their sexual interest. And so it's really important
7 to assess sexual interest, sexual arousal and other mental
8 illnesses in a very standardized way that you're not just
9 relying on the examinee's self-report.

10 And so because we know people offend against children
11 or sexually offend for a variety of reasons that might not
12 have anything to do with a deviant sexual arousal to
13 children, I think that the PPG is very important of kind
14 of sorting that out, because somebody who did not have a
15 sexual interest in children or another mental illness
16 might not be as dangerous as somebody who did.

17 Q Okay. So we've covered the technique, we've covered
18 prior application, we've talked about the quality control
19 methods and the consistency of the methods used. What
20 were the ages of Mr. Bearden's victims? He had two
21 victims, right?

22 A Well, the victim that he had in South Carolina was
23 8 years old.

24 Q Okay.

25 A The victim that he had in Georgia, we didn't receive

1 a lot of information. A lot of information regarding the
2 officially reported details of that offense were not
3 available or made available to me. The only thing that I
4 had was a quote from, I believe, either the indictment or
5 the warrant saying that he exposed his genitals to
6 somebody under the age of 16.

7 Q Okay.

8 A Mr. Bearden told me that the person was around
9 13 years old, but I don't have any corroborating data on
10 that.

11 Q Okay. But then the criminal conviction in South
12 Carolina for criminal sexual conduct with a minor in the
13 third degree involves an 8-year-old child; is that right?

14 A Correct.

15 Q Okay. Now, regarding Mr. Bearden, what information
16 did the PPG provide you when he was tested on that?

17 A So we interpret the two sets separately. And on the
18 first set, he showed clinically significant arousal to two
19 scenarios featuring female prepubescent children and one
20 to a female adolescent child. So we look at the
21 individual child, and then we calculated indices where
22 we're looking to see if the person's arousal to children
23 or pedophilic rape scenarios are greater to -- greater
24 than, excuse me, their arousal to consenting adults, men
25 or women.

1 And for the first set, Mr. Bearden, his indices were
2 all positive. So that meant that he had more arousal on
3 the first set to the female prepubescent scenarios, the
4 female prepubescent rape scenarios, the male prepubescent
5 and male prepubescent rape scenarios and the adolescent
6 ones as well.

7 Q Now, when you say on the first set, is that the
8 Limestone?

9 A Well, Limestone is the type of machine that's used.
10 They make all of this stuff.

11 Q Okay. That's the machine.

12 A The first set is called the Marshall.

13 Q Okay, okay.

14 A And then the second set, the real-child voices set,
15 the RCV, he had clinically significant individual trials
16 to a scenario featuring a female child, a female
17 adolescent child and an adult woman. And then looking at
18 his indices on that set, the results indicated that he had
19 more arousal to the female pedophilic, female pubescent or
20 adolescent and adult female rape indices than he did for
21 the consulting adult, man or woman.

22 Q Okay. And did these results seem to be consistent
23 with his victim profile?

24 A Yes.

25 Q Okay. And was this part of the basis for your

1 opinion about Mr. Bearden?

2 A It is a data point that I definitely weighed in the
3 consideration of my opinion.

4 Q And is it also part of the basis for your ultimate
5 diagnosis of Mr. Bearden?

6 A Yes.

7 Q What were your diagnoses of Mr. Bearden?

8 A It was my opinion that he met diagnostic criteria for
9 pedophilic disorder ---

10 Q Okay.

11 A --- to exhibitionistic disorder, to antisocial
12 personality disorder, to an adjustment disorder, and the
13 cannabis use disorder.

14 MR. BOGLE: Okay. Thank you, Doctor. Please answer
15 any question that counsel or the Court may have.

16 THE WITNESS: Certainly.

17 THE COURT: All right, sir. Mr. Lawrimore.

18 MR. LAWRYMORE: Thank you, Your Honor. May it please
19 the Court.

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. LAWRYMORE:

23 Q Dr. Gottfried, I was listening intently to your
24 testimony earlier. You used the term "clinically
25 significant arousal" ---

1 A Yes.

2 Q --- many different times. How is this measured, and
3 why were these measurement tests generated not produced in
4 response to the subpoena that I issued you?

5 THE COURT: Ask that again. I'm sorry.

6 BY MR. LAWRYMORE:

7 Q What are the raw data measurements used to gauge
8 clinically significant response, and why did you not
9 produce them in response to my subpoena?

10 A So the clinically significant is millimeter change
11 that we're looking at. And then they were not produced
12 because per the intellectual property agreement and
13 contract with Limestone, we cannot release that data to
14 anyone who is not credentialed and licensed to interpret
15 them. So we have regularly shared our PPG data with
16 individuals in the state who have those qualifications.

17 Q So you're not intending to offer any testimony today
18 about your -- what the actual measurements of clinically
19 significant response were; is that correct?

20 A Well, I can tell you -- I mean, I can tell you the
21 numbers, but it's more of did they reach the threshold.
22 And so we're looking to make sure that we're not making an
23 error, so we want the millimeter of change to be
24 significant according to the literature.

25 Q Just so I'm understanding you correctly, you're not

1 intending to release any of the raw data test to me or any
2 other person who's not certified to administer this test?

3 A That's correct. We're only allowed to release it to
4 a person with the credentials to interpret it.

5 Q And without access to that raw data, I'm sure you
6 would agree with me that it would be very difficult to
7 attack what the numbers were and whether the numbers were,
8 in fact, clinically significant.

9 A Well, unfortunately, even if you looked at the
10 numbers, I don't think that just the way the printout
11 comes out, it is kind of confusing if you don't know what
12 you're looking at. So I'm not sure that that would
13 clarify it for you. I did put all of the results in my
14 report, and so that's accurate, as accurate as any of the
15 test results or any of the summaries that I wrote in my
16 report are.

17 Q And you would also agree with me that there's been
18 significant upheaval and discord, disagreement among the
19 expert community about the reliability of these tests over
20 the last 20 years?

21 A There has been some criticism. I don't know that I
22 would categorize it in the same way because there have
23 been a number of meta-analyses that have produced really
24 favorable results for using the PPG. It's definitely not
25 perfect, and I wish that we could conduct better

1 controlled studies so that we could use it more often.

2 Q And you would agree with me that members of the MUSC
3 staff have opined in recent expert materials and treatises
4 that a number of outside factors such as anxiety, stress,
5 depression and the like can induce false instances of male
6 arousal during the course and scope of these tests?

7 A No. I believe it's the opposite. So being anxious
8 usually would inhibit somebody from becoming aroused and
9 not the opposite. Anxiety typically does not cause
10 increased blood flow to the penis causing an erection.

11 Q And would you agree with me that these same type
12 studies have indicated that the relationship between a
13 man's degree of arousal and the results of these tests or
14 any arousal is far from perfect?

15 A I'm sorry. The test measuring arousal is far from
16 perfect?

17 Q Let me go about it this way. Who is Dr. Gregg Dwyer?

18 A Gregg Dwyer is the former division director and
19 director of the Sexual Behavior Clinic and Lab.

20 Q Okay. And who is Dr. William Burke?

21 A Dr. Burke is an affiliate faculty at MUSC, and he has
22 his own practice in a PPG lab in Summerville, South
23 Carolina.

24 Q And Dr. Burke and Dr. Dwyer regularly administer PPG
25 tests?

1 A Yes.

2 Q Would you agree with me that the International
3 Society for Sexual Medicine is a recognized scholarly
4 writing in the course and scope of forensic psychology?

5 A Yes.

6 MR. LAWRYMORE: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes, sir.

9 BY MR. LAWRYMORE:

10 Q Dr. Gottfried, have you gone through that report
11 before?

12 A I have read it.

13 Q Would you agree with me that that is a scholarly
14 writing that details many of the inherent evidentiary and
15 the other difficulties in correlating the results of this
16 test and the standardization difficulties that have
17 plagued this test nationwide?

18 A It does have a summary of some of the criticisms.
19 This particular paper and all the papers out of this joint
20 research group, which includes our sister lab in Ontario,
21 Canada, is to increase the standardization of this test
22 across labs across the world. So all of the three labs
23 that participated in this article, it's not a study, do
24 really standardize assessments. And so we've been trying
25 to make a big push to get other labs to be as standardized

1 as we are so that we can conduct better research.

2 Q Okay. And that's a true and accurate copy of that
3 article?

4 A To my knowledge it looks true and accurate.

5 MR. LAWRYMORE: I would move that in as Respondent's
6 I believe that will be B.

7 THE COURT: Any objection?

8 MR. BOGLE: No.

9 THE COURT: Admitted, Exhibit 1, just for the
10 purposes of this hearing.

11 (WHEREUPON, Respondent's Exhibit Number 1 was marked for
12 identification and admitted into evidence.)

13 BY MR. LAWRYMORE:

14 Q Dr. Gottfried, are you prepared to testify today as
15 to what exact responses Mr. Bearden exhibited in response
16 to these visual and audio stimuli?

17 A What do you mean by exact responses?

18 Q What the exact changes in arousal are in hard
19 numerical terms.

20 A Yes. I can provide the numbers.

21 Q With regard to the scenario under the Limestone test
22 with young minor children, what was his degree of arousal
23 in that case?

24 A I have to get the data. I don't think I brought it
25 up with me. Can I get it from my ---

1 THE COURT: Yes, ma'am. You can step down.

2 THE WITNESS: Thank you.

3 BY MR. LAWRIMORE:

4 Q Are you ready?

5 A Uh-huh.

6 Q My question was with regard to the exact change in
7 arousal or circumference that you're measuring with the
8 test with regard to the minor female fact pattern, what
9 was the deviation from the norm and the observed metric?

10 A Sorry. So just the prepubescent or all the child
11 scenarios?

12 Q The prepubescent child scenario.

13 A One of them was 12.82 millimeters.

14 Q What was the -- what was his measured baseline with
15 regard to that particular test?

16 A Well that's the increased change. So he started
17 56.28 millimeters, which increased to 69.10 millimeters.

18 Q Was that the -- that was the most significant change?

19 A That was the greatest level of arousal.

20 Q And how long was the stimulus administered in the
21 context of that particular fact pattern?

22 A Do you mean now many minutes that scenario was
23 presented?

24 Q Yes.

25 A Typically, I don't know for sure the exact amount of

1 time. They're usually standardized that they're all
2 within a few seconds of each other, and it's typically two
3 to three minutes. But I don't know the exact time for
4 this one.

5 Q Did you supervise this test yourself?

6 A I interpreted the test. I did not administer it.

7 Q Who administered the test?

8 A Joe Secondary is our technician who is certified to
9 administer. He does almost all of our PPGs.

10 Q Why don't you do the PPGs?

11 A Currently, I'm not certified to administer them. But
12 typically, the way that it works is it's a really long
13 test, and so we use a mid-level person. I think MUSC does
14 it like based on their salary of how long it takes. So
15 typically, doctor-level people in our lab don't administer
16 the PPG.

17 Q So you believe that there is a standard length of
18 time the fact patterns are administered, you're just not
19 able to say what that is?

20 A It's typically two to three minutes, but I couldn't
21 tell you the exact amount of time.

22 Q Were you in the building when this test was
23 administered to Mr. Bearden?

24 A I couldn't say for sure. I'm there almost every day,
25 but I wouldn't want to misquote myself if I was in court

1 that day.

2 Q Would you agree with me that in the study we admitted
3 into evidence earlier that men are known to have penile
4 tumescence or sexual response in response to rapid eye
5 movement, sleep, anxiety, depression, tactile stimulation
6 in other situations that make PPG testing an
7 interpretation dependent on expert interpretation?

8 A Well, like I mentioned, the literature typically
9 suggests that things like depression and anxiety inhibit
10 sexual response, not cause them.

11 MR. LAWRIK: Okay. Your Honor, I believe those
12 are all the questions I have.

13 REDIRECT EXAMINATION

14 BY MR. BOGLE:

15 Q Dr. Gottfried, just to -- prior to the evaluations
16 that you conduct, is the person informed about what the
17 nature of the evaluation is?

18 A Yes.

19 Q And he's told who the report will be given to?

20 A Yes.

21 Q He's told that? Okay.

22 Is he also given a consent form to sign that lists
23 all the different things that are going to be done
24 including the PPG?

25 A Yes. Our initial consent form is several pages long.

1 It goes through every possible test that we could give.
2 And then on subsequent days after signing the consent
3 form, we do a rereading of the form where the examinee is
4 given the opportunity to go back over that consent form,
5 ask any additional or remaining questions that they may
6 have and then sign a rereading of that consent form.

7 MR. BOGLE: Okay. If I may approach.

8 THE COURT: Yes.

9 BY MR. BOGLE:

10 Q First, I'd like to show you again the excerpts from
11 the Diagnostic and Statistical Manual that you testified
12 about a few minutes ago.

13 A Yes.

14 MR. BOGLE: Your Honor, we'd like to introduce this
15 as the State's first exhibit for the purpose of this
16 hearing.

17 THE COURT: Yes, sir.

18 MR. BOGLE: This is the excerpts from the DSM-5.

19 THE COURT: Yes, sir. That will be admitted, unless
20 you have a strenuous objection, Mr. Lawrimore.

21 MR. LAWRYMORE: The DSM is learned treatise.

22 (WHEREUPON, State's Exhibit Number 2 was marked for
23 identification and admitted into evidence.)

24 BY MR. BOGLE:

25 Q Now, Dr. Gottfried, I'll hand you this document you

1 emailed me yesterday. Is this the consent form
2 Mr. Bearden signed when he showed up at your laboratory to
3 be evaluated?

4 A This is the rereading form that he signed on the day
5 of the PPG, and the day prior to the PPG he signs the full
6 consent form.

7 Q Okay. Is the PPG specifically mentioned in that
8 form?

9 A Yes, it is.

10 Q On what page?

11 A It is on page 4.

12 Q Okay. And he didn't cross it out, didn't object to
13 it. He took the test willingly; is that correct?

14 A Correct.

15 Q So was this a test or a thing that is administered to
16 him that he objected to and didn't want to do?

17 A Not -- I have no knowledge that he objected to it.

18 Q Okay. And he was informed that the results of this
19 entire evaluation would be given to the Attorney General's
20 Office when he was done, correct?

21 A Yes. It's listed on the consent form.

22 MR. BOGLE: Move to introduce the consent form into
23 evidence as Exhibit 2 for the purposes of this hearing.

24 THE COURT: Any objection?

25 MR. LAWRYMORE: None, Your Honor.

1 THE COURT: Admitted.

2 (WHEREUPON, State's Exhibit Number 3 was marked for
3 identification and admitted into evidence.)

4 MR. BOGLE: Okay. Thank you, Doctor. No further
5 questions.

6 THE COURT: Anything further?

7 MR. LAWRYMORE: No redirect -- or no recross.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Lawrimore, be glad to hear -- do
11 you have anyone you want to present to refute the
12 testimony?

13 MR. LAWRYMORE: Your Honor, I have Dr. Gehle here as
14 my expert witness. I would proffer her to rebut the
15 reliability and admissibility of the PPG test.

16 THE COURT: Come around, please, ma'am.

17 MR. LAWRYMORE: Just a moment of the Court's
18 indulgence, Your Honor.

19 THE COURT: I'll tell you what. Let's take a
20 five-minute break and we'll be right back.

21 (WHEREUPON, a recess is taken at 10:31 a.m.)

22 THE COURT: Call your witness, please,
23 Mr. Lawrimore.

24 MR. LAWRYMORE: Thank you, Your Honor. I call
25 Dr. Marie Gehle.

1 WHEREUPON,

2 DR. MARIE GEHLE

3 After having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LAWRYMORE:

6 Q Dr. Gehle, would you please state your full name for
7 the record.

8 A It's Marie Elizabeth Gehle, G-E-H-L-E.

9 Q What do you do at the Department of Mental Health?

10 A I'm a chief psychologist and I do sexually violent
11 predator pre-commitment evaluations.

12 MR. BOGLE: Judge, we'll stipulate to her expertise.

13 THE COURT: For the purposes of this hearing?

14 MR. BOGLE: Yes, sir.

15 THE COURT: All right. Very good.

16 BY MR. LAWRYMORE:

17 Q You, in fact, conducted the ---

18 THE COURT: Let me stop you for one second so the
19 record's clear. I didn't mean to interrupt you. Would
20 you state the area of expertise, please.

21 MR. LAWRYMORE: I'm admitting -- proffering Dr. Gehle
22 as an expert in the field of forensic psychology.

23 THE COURT: Psychology or psychiatry?

24 MR. LAWRYMORE: Psychiatry.

25 THE WITNESS: Psychology.

1 THE COURT: Psychology.

2 THE WITNESS: I'm a psychologist. Yes.

3 THE COURT: Thank you.

4 MR. LAWRYMORE: Long drive in from Charleston. I
5 apologize.

6 BY MR. LAWRYMORE:

7 Q Dr. Gehle, you conducted the initial evaluation of
8 Mr. Bearden in this case; is that correct?

9 A Yes, I did.

10 Q And I've reviewed your report, noted no reference to
11 a PPG test in your report; is that correct?

12 A That's correct.

13 Q Why do you not perform PPG tests in the course and
14 scope of your evaluations of individuals in commitment
15 proceedings under the Sexually Violent Predator Act?

16 A Well, the PPG has many problems with the reliability
17 and validity, and the stimulus sets that are used have not
18 been peer reviewed. And so in the context of
19 pre-commitment evaluations making this big of a decision,
20 I don't want to use that unreliable information.

21 Q In what ways is the information unreliable?

22 A Well, one of the big issues is that much of the
23 research has been done on other stimulus sets so we don't
24 know if the stimulus sets that are used in South Carolina,
25 if the research that's been done in other areas, if it

1 applies to the test that's used here.

2 There is a huge problem with standardization of the
3 test. There's no agreed-upon method in which to conduct
4 the evaluation. Each lab does it differently, and so
5 there's a lot of variation, which, again, you don't know
6 if you can generalize any of the research that says it's
7 valid and reliable if that research, you know, exists.
8 It's -- it's completely different. It's comparing apples
9 and oranges.

10 Q Are you aware of any quality control procedures in
11 the course and scope of PPG tests?

12 A I believe that there are some quality control
13 procedures in terms of they use some measures to try to
14 determine if the person moves around a lot and trying to
15 not exhibit arousal. It's a weighted pad on the chairs,
16 what I understand. Things like that.

17 Q Are you aware of any mechanism by which the person
18 administering the test can gauge for outside influences
19 that would generate arousal?

20 A I'm not sure if I understand what that -- what -- the
21 question.

22 Q Isn't it true that stimuli other than the fact
23 pattern that is being administered can result in arousal
24 or change in penis circumference?

25 A Yes. I mean, there's a wide variety of things that

1 could change the penis circumference during the test.

2 Q What are some instances of those?

3 A Some of them, I guess, what speaks to the variability
4 is temperature of the room, humidity of the room,
5 medication that the person takes, the IQ of the person,
6 the person that gives the test, the stimulus sets,
7 definitely whether it's audio versus visual or a
8 combination of the two that results in all variability in
9 arousal.

10 Q In what ways is the PPG test consistent with
11 recognized scientific laws and procedures, if any?

12 A I don't think that it is consistent because it's not
13 standardized. If I give an IQ test -- if I give an IQ
14 test, there's a very standardized set of instructions, and
15 I know that the IQ test that I give will be similar to the
16 results that Dr. Gottfried would give because we're giving
17 it in a very standardized way. There are prompts when
18 people give a certain response. Whether you ask them for
19 clarity, whether you ask them for more responses, all that
20 stuff is spelled out in the manual. And that's just not
21 the case here.

22 So there's a lot of variability from test sites. You
23 could go to one lab and show arousal and to another lab
24 and not show arousal. And we also don't know the stimulus
25 sets, if they're measuring what they say they're

1 measuring.

2 Q On how many instances, and you can approximate, has
3 the State offered your testimony as its testifying expert
4 for purposes of a sexually violent predator commitment
5 proceeding?

6 A I would say more than 50 times I've been the State's
7 expert.

8 Q And you haven't conducted a PPG test incident to any
9 of those investigations?

10 A No.

11 MR. LAWRIMORE: No further questions.

12 THE COURT: Cross-examination?

13 MR. BOGLE: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. BOGLE:

16 Q In fact, Dr. Gehle, I think you're the State's expert
17 next week in Greenville, aren't you?

18 A Yes.

19 Q Okay. Regarding the PPG, the Department of Mental
20 Health either owns or used to own one, correct?

21 A Yes.

22 Q But it was never used because no one was -- they
23 never got anybody licensed to operate it; is that correct?

24 A No. It was used for many years.

25 Q Okay. So it was used? Okay.

1 Is it still there, do you know?

2 A I know that the Department of Mental Health still has
3 it. I don't know where it is.

4 Q Okay. Now, Correct Care, which I think is now known
5 as Well Path Solutions, is that right?

6 A I think that's what it's called now, yes.

7 Q Let's just call them Well Path. That's the company a
8 couple of years ago that got the contract with the
9 Department of Mental Health to do the actual treatment if
10 a guy is committed, correct?

11 A Yes.

12 Q And they have the facility out at Broad River on the
13 campus there where these guys have been committed are
14 there, and that's where they get their treatment.

15 A Yes.

16 Q Are you aware that Correct Care uses a PPG as part of
17 its treatment programs?

18 A Yes. I believe that they're starting that or they
19 are using it now ---

20 Q Okay.

21 A --- in terms of treatment, not in terms of
22 evaluation.

23 Q Correct. Have you yourself ever given one, a PPG?

24 A No.

25 Q Have you ever sat in a room and watched one being

1 given?

2 A No.

3 Q Have you ever yourself sat down and looked at the
4 visual stimulus sets showed to the guy?

5 A Yes.

6 Q Have you listened to the real-child voices played
7 during the stimulus sets?

8 A Yes.

9 Q Okay. How did you have occasion to do that if you've
10 never seen one given?

11 A Well, I actually asked our technician if I could sit
12 and watch the test.

13 Q Okay.

14 A So I sat in the chair like a respondent would and
15 watched the test.

16 Q And among -- now, DMH has a number of -- more than
17 one, several chief psychologists on a rotating basis are
18 given these types of pre-commitment evaluations, correct?

19 A That's correct.

20 Q You've done the most probably in the last four or
21 five years, but there's other doctors who also are
22 assigned the cases, depending on whatever rotation y'all
23 observe; is that correct?

24 A Yes.

25 Q Okay. And one of those doctors was Dr. Amy Swan, a

1 forensic psychologist licensed here but who lives in
2 Florida, correct?

3 A Yes.

4 Q And another one was Dr. Donna Schwartz-Watts, now
5 Dr. Donna Maddox, a forensic psychiatrist who lives here
6 in South Carolina, correct?

7 A Yes.

8 Q And both of them will authorize a PPG, and Mental
9 Health then pays to have the guy sent down to Dr. Burke's
10 office in Summerville for that PPG to be administered,
11 correct?

12 A I'm not sure if that happens or not.

13 MR. LAWRYMORE: Your Honor, I object to speculation
14 and facts not in evidence.

15 THE COURT: Sustained.

16 BY MR. BOGLE:

17 Q Are you aware that Dr. Maddox regularly orders a PPG
18 when she has a pre-commitment evaluation?

19 A No. I'm not aware of that.

20 MR. LAWRYMORE: Same objection, Your Honor.

21 THE COURT: Sustained.

22 MR. BOGLE: That's all. Nothing further.

23 THE COURT: All right. Thank you, ma'am. You may
24 step down.

25 THE WITNESS: Thank you.

1 THE COURT: Gentlemen, I'm going to grant the motion
2 in limine to prohibit the introduction of the PPG test
3 results in this matter. In doing so, I want to make a few
4 findings on the record first. At first blush, it appeared
5 that the State did separately establish reliability and
6 admissibility for scientific expert opinion under the
7 State v. Counsel factors. But in this case, it appears
8 that the stimulants in this case that are used, there's
9 stimulants that are used are not peer-review process that
10 affects the standard application of tests and therefore
11 the consistency of the test results.

12 Also, I'm giving a lot of weight to the fact that the
13 State refused to give the actual test results out claiming
14 -- and I'm sure so, based on a proprietary arrangement
15 with the manufacturer. In addition, the person who
16 actually administered the test is not here to testify as
17 to his qualifications, and the fact that he -- the test
18 results or the administration of this particular test, our
19 expert here today candidly admits she's not certified to
20 administer the test, just relates and interprets the
21 results. As such, because of the magnitude of the issues
22 involved in this case, I am going to grant the motion.

23 If you want to make the actual test results a court
24 exhibit in case somebody wants to review me for legal
25 error, Mr. Bogle, you may do so.

1 MR. BOGLE: Yeah. Let me just clarify something. I
2 know you ruled, but just to put things in the posture, the
3 subpoena issued by the respondent to Dr. Gottfried asked
4 for all kinds of records and documents. The MUSC general
5 counsel's office, Vivian Fairborn, got involved and
6 directed Dr. Gottfried to release everything to him except
7 what they contractually cannot release, and that's the
8 underlying raw data on the PPG.

9 Now, if he had an expert who was qualified on the PPG
10 or licensed to give one, that would have been handed over
11 in a heartbeat.

12 So I don't want Your Honor penalizing the State for
13 holding back something that was contractually, by
14 contract, couldn't give, made -- a decision made by
15 another attorney.

16 THE COURT: Well, when you start affecting people's
17 liberty interest, whether it be civil or criminal, I have
18 big concerns that information is not being -- whether it's
19 by contractual arrangement or not. And so it's not --
20 that's not solely the basis of my ruling, but that is a
21 big concern I have. I ran into this in a DNA context down
22 in Beaufort County one time. Same arguments being raised.
23 It is proprietary, and that very well may be.

24 But more concerning to me, quite frankly, in finding
25 that the test is not going to be admissible is the failure

1 to have a standard set of stimulus and the fact the ones
2 being used have not been peer-reviewed. I think that's
3 critical to the reliability and the consistency of the
4 test.

5 With that being said, my ruling is as is. And I note
6 your objection.

7 And, again, Mr. Bogle, if you want to get the actual
8 written test results and make them a court exhibit for
9 somebody else to review me later, you're more than welcome
10 to do so.

11 MR. BOGLE: Let me think about that, Judge.

12 THE COURT: Yes, sir.

13 MR. BOGLE: Because basically, it's part of her
14 report. But -- and I can make that report a court
15 exhibit. We don't introduce them in evidence. I can make
16 it a State's exhibit for the purpose of this hearing and
17 nothing else.

18 THE COURT: Right. Exactly. That's what I'm saying.
19 Just have it as part of the record not going to the jury.

20 MR. BOGLE: Let me do that.

21 THE COURT: Okay.

22 MR. BOGLE: I will do that.

23 And, again, in that report are four or five pages
24 that deal with the PPG. The bulk of the report does not.

25 THE COURT: All right, sir.

1 MR. BOGLE: Thank you, Your Honor.

2 THE COURT: So are we clear?

3 MR. LAWRIMORE: We are. I suppose just so we don't
4 have to cross this bridge, the polygraph test that's
5 referenced in a result, I believe you ruled earlier that's
6 inadmissible.

7 THE COURT: Yeah. Mr. Bogle's already admitted he's
8 not going to try to bring that up. He knows that's not
9 admissible. Isn't that right?

10 MR. BOGLE: Yes.

11 MR. LAWRIMORE: I won't either. I just wanted to put
12 that on the record.

13 THE COURT: You can't use it as a sword either.
14 Yeah. I mean, you can't use it as a shield or a sword.

15 All right. With that being said, are we ready to get
16 started?

17 MR. BOGLE: Can you give me a couple of minutes with
18 my expert.

19 THE COURT: Yes, sir.

20 (Pause in proceedings.)

21 THE COURT: Mr. Bogle, are you ready to proceed?

22 MR. BOGLE: We are.

23 THE COURT: Mr. Lawrimore?

24 MR. LAWRIMORE: Ready to proceed, Your Honor.

25 THE COURT: Bring the jury in, please.

1 (WHEREUPON, the jury entered the courtroom at 10:52 a.m.)

2 THE COURT: Good morning. Mr. Blizzard, you are our
3 foreperson.

4 JURY FOREPERSON: Yes, sir.

5 THE COURT: All right. Sir, if you would use that
6 chair each time you're coming in and out of the courtroom,
7 I'd appreciate it. And you are our alternate back in the
8 back. Ma'am, if you'd use that chair each time we come in
9 and out, I'd appreciate it. The rest of you can sit,
10 other than those two seats, where you'd like.

11 Is there any member of the jury panel who would
12 like to have pad and pen to take notes with during the
13 course of these proceedings? Good. If you do decide you
14 want to, let the bailiff know and we'll make them
15 available.

16 Ladies and gentlemen, thank you for your patience. I
17 know juries a lot of times think that we're sitting out
18 here drinking coffee and eating donuts and not working,
19 but that's not the case. We've been taking up some
20 preliminary matters that will expedite and make the trial
21 of this matter more efficient.

22 With that being said, Madam Clerk, will you swear the
23 jury.

24 THE CLERK: Please stand, raise your right hand.

25 (WHEREUPON, the jury is duly sworn.)

JURY INSTRUCTIONS

THE COURT: All right. Ladies and gentlemen, this is the case In the Matter of the Care and Treatment of Harlin A. Bearden. And as I told you on Monday, the State of South Carolina has brought this case under the sexually violent predator law based on our statutes. In this case, the State seeks the civil commitment of Mr. Bearden, who is the respondent. The commitment would be for long-term care, control and treatment in a secure facility. Let me emphasize that this is not -- this is not a criminal proceeding seeking incarceration, but it is a proceeding seeking the civil commitment of Mr. Bearden.

Now, in this case, ladies and gentlemen, the State alleges or claims that Mr. Bearden is a sexually violent predator under our statutes. Mr. Bearden denies that he is a sexually violent predator, therefore, the burden is on the State to prove by sufficient evidence to satisfy you that he is a sexually violent predator. The burden of proof is known as what is the standard that must be met by the State is beyond a reasonable doubt. It's the same as in a criminal case.

So let me give you a brief definition of what reasonable doubt is so you can have it in your mind when you hear the evidence presented in this case. Now, in this case, the State has the burden of proving that

1 Mr. Bearden is a sexually violent predator by proof beyond
2 a reasonable doubt. A reasonable doubt is the kind of
3 doubt that would cause a reasonable, sincere and
4 conscientious person to hesitate to act in an important
5 matter in their own affairs.

6 In normal civil proceedings, the standard of care is
7 by what is known as a preponderance or the greater weight
8 of the evidence. If you imagine a set of scales, in a
9 civil proceeding, if it tilts ever so slightly in favor of
10 the party who has the burden, they would have met their
11 burden of proof.

12 In this case, the burden is much stronger than by a
13 preponderance of the evidence. Proof beyond a reasonable
14 doubt is proof that leaves you firmly convinced that
15 Mr. Bearden is a sexually violent predator.

16 Now, with that being said, ladies and gentlemen,
17 there are very few things in this world that we know with
18 absolute certainty, and in this case, the law does not
19 require the State to overcome every possible doubt that
20 may exist in this case. At the end of this matter when
21 you're told to begin your deliberations, if you are firmly
22 convinced that Mr. Bearden is a sexually violent predator,
23 then it will be your duty to find that he is. On the
24 other hand, if you have a real doubt and think there's a
25 real possibility that he is not a sexually violent

1 predator, then it will be your duty to give him the
2 benefit of the doubt and find that he is not a sexually
3 violent predator.

4 Now, ladies and gentlemen, I don't know if all of you,
5 or any of you have been involved in proceedings before. I
6 know we have a couple holdovers from our prior jury, but
7 let me say something to you. Trials are not like what you
8 watch on TV. They're not entertainment and they don't
9 happen in five-minute sections. They're very slow,
10 they're very methodical and they're very deliberate. They
11 are a fundamental part of our democracy which every
12 citizen is entitled to, and these cases are very
13 important.

14 Now, these attorneys in this case, like all attorneys
15 when they're sworn in, become advocates and take an oath
16 that they will zealously represent their client's interest
17 in a court proceeding, and you can expect no less of these
18 fine attorneys in this case. They're also officers of the
19 Court. What that means is you can expect that they will
20 be professional, competent and ethical towards each other,
21 towards any witnesses that may appear in this case, to me
22 and throughout this case as a general matter.

23 Now, you just took an oath where you swore or
24 affirmed that you would try to reach a fair and just
25 verdict in this matter. What that means is that the

1 State, Mr. Bearden, the attorneys in this court have the
2 right to expect of you that you will be fair, that you
3 will be impartial and that you will hopefully reach a
4 unanimous decision based on the testimony and evidence and
5 according to the law as I will give it to you at the end
6 of this case.

7 Now, what I'm telling you now is not the law that you
8 will apply. That will be given to you after all the
9 testimony has been admitted and closing arguments had.
10 This is basically a roadmap for you to understand where
11 you are. You are, in the vernacular of the law, the sole
12 judges of the facts of this case. No one, including
13 myself, has the right to invade your province as being the
14 sole judges of what the facts are, in other words, what
15 your verdict is going to be.

16 And you will determine what your verdict is and what
17 your facts are by the testimony that is presented here in
18 this courtroom and any exhibits that I allow into
19 evidence. You're not to consider anything that you see or
20 hear when court is not in session. You're not to engage
21 in any independent jury research about any matter, person
22 or issue involved in this case or issue that you think
23 would be helpful.

24 I don't think it's going to be an issue, but in the
25 event it is, you may not read, hear or listen to anything

1 about this case at any time until after you have
2 discharged your duties completely as jurors in this
3 matter.

4 Now, the law that makes you the sole judges of what
5 the facts are makes me the sole judge of the law. You
6 must accept the law as I give it to you. You may not
7 think that it should be something else and apply what you
8 would like it to be. You must accept it as I give it to
9 you at the end of this case and during these charges
10 throughout this case. It will be dereliction of your
11 duties for you not to apply the law as I give it to you.

12 Now, ladies and gentlemen, every case has five
13 phases. In just a moment, the parties are going to stand
14 up and give you what they say is opening statements. It
15 is not evidence in this case what these attorneys tell you
16 in their openings and closings. It's not evidence. It is
17 designed to help you understand what their contentions are
18 and what the issues are and what their case is intended to
19 show you, but it is not evidence. The only true evidence
20 that you may consider as evidence is the responses to the
21 questions being asked by the witnesses and any exhibits
22 that I allow into evidence during the trial of this case.

23 Now, after opening statements, there will be the
24 presentation of the testimony. That's the second phase,
25 after which we will have a closed session outside of your

1 presence. I'll go over the law that I intend to charge
2 with the lawyers. We'll come back. There will be closing
3 arguments. I will then charge you on the law, and then
4 you'll be advised to begin your deliberations. Until that
5 time, you're not to speak with anyone about this case
6 including one another until you're told to begin your
7 deliberations.

8 Ladies and gentlemen, lawyers have an ethical
9 obligation to object anytime he or she sees a process or
10 evidence being proffered that they feel is inappropriate.
11 I anticipate no difference in this case. The fact that a
12 lawyer raises an objection and to the extent I'll let you
13 stay in the courtroom and see my ruling on that objection
14 may not be considered by you in your deliberations
15 whatsoever. Just for the record, that's the process
16 that's followed in all places.

17 With that being said, is the State ready to proceed
18 with opening statements?

19 MR. BOGLE: We are, Your Honor.

20 THE COURT: Is the defense ready?

21 MR. LAWRYMORE: We are, Your Honor.

22 THE COURT: All right. Mr. Bogle?

23 OPENING STATEMENTS

24 MR. BOGLE: Thank you. May it please the Court,
25 Mr. Lawrimore.

1 On Monday I introduced myself. Again, my name is Jim
2 Bogle. I'm with the Attorney General's Office in
3 Columbia.

4 Oftentimes, people, in cases like this, they're
5 thinking, well, how come it's not our solicitor or our
6 county attorney or some local person? And the reason is
7 that when the General Assembly passed this law back in
8 1998, they gave the job to the Attorney General's Office
9 to do these cases statewide. There's two of us at the
10 office that has the state divided up into different parts,
11 and I have this part of the state. So that's why it's me
12 here instead of somebody from your local area.

13 Now, when you came to jury selection on Monday and
14 you were hearing about the type of cases that were being
15 explained by the Court, I'm sure you thought -- you told
16 your friends and family, hey, I'm on jury duty. Okay.
17 You probably were thinking I'll be there for maybe an auto
18 wreck case or a contract case or a property dispute or
19 something like. You never thought for a moment it would
20 be like this.

21 Let me tell you what we have. In 1998 the General
22 Assembly passed a law called the sexually violent predator
23 law. And what they did was they listed in that law
24 certain crimes called sexually violent crimes. And what
25 they said in their opening statement, Section 44-48-20 of

1 the law says, "The General Assembly finds that a mentally
2 abnormal and extremely dangerous group of sexually violent
3 predators exist requiring involuntary civil commitment in
4 a secure facility for long-term control and care and
5 treatment." They went on to say that because the existing
6 civil commitment process like probate court was inadequate
7 to address the special needs of sexually violent predators
8 and the risk they present to society, the General Assembly
9 determined that a separate involuntary civil commitment
10 process or long-term control, care and treatment is
11 necessary. That's what we have here.

12 Now, Harlin Bearden sitting behind me, he was
13 convicted of a sexually violent crime some time ago. His
14 criminal conviction is a done deal. He's been convicted,
15 he's been sentenced, he served his time. So that's not
16 what's before you. That's not what this case is about.
17 Here's what we have to prove today. This case is about
18 the civil commitment of Mr. Bearden. In other words, is
19 he enough of a danger because of his crimes, because of
20 his mental condition so that he might commit these crimes
21 again?

22 So what does the State have to prove to you? First,
23 we have to prove that he's been convicted of a sexually
24 violent crime. We have that here in Greenwood County.
25 He's got two victims, one in Georgia and one here in

1 Greenwood, and the Greenwood County girl was about 8 years
2 old. The girl in Georgia, early teens. So that's his
3 victim profile. The 8-year-old girl crime, you'll receive
4 those documents into evidence.

5 So the first thing is the conviction of a sexually
6 violent crime.

7 The second thing is, does he have a personality
8 disorder or a mental abnormality that makes him likely to
9 commit these types of crimes again unless he's confined
10 for treatment in a secure facility? That's what the case
11 is about. That's what we have to -- the two things the
12 State has to prove to you.

13 And, again, like the judge said, the proof is beyond
14 a reasonable doubt, because in all fairness, Mr. Bearden's
15 liberty is at stake here.

16 During the trial, you'll hear testimony from expert
17 witnesses. At a prior proceeding, prior hearing, the
18 Court looked at this case and appointed someone to
19 evaluate Mr. Bearden. Her name was Dr. Marie Gehle.
20 She's sitting over there. She's with the Department of
21 Mental Health. Her job was to evaluate this guy and see
22 if he met the criteria to be civilly committed. And she
23 issued a report saying no, he did not.

24 Now, the statute allows the State to get a second
25 look at the case if we want to. And in this case, after

1 reading her report, we decided to do that. So we sent the
2 case down to a laboratory that we have a contract with in
3 Charleston at MUSC. And Dr. Gottfried sitting back there
4 in the dark suit, she was the one assigned to evaluate
5 Mr. Bearden. And after looking at everything about
6 Mr. Bearden, she decided her opinion is that yes, he does
7 meet the criteria and needs to be committed. So that's
8 what the case is.

9 Now, because of that, you're going to hear the
10 testimony of both experts. Normally, in a case in court,
11 a person can't testify about opinions. They can only
12 testify about facts, things they see, things they perceive
13 with their senses. I saw the light turn red, I heard the
14 gun go off, I saw the knife in his hand. Things like
15 that. They can't give opinions.

16 But under our law, if people possess the kind of
17 educational qualifications and expertise in a certain area
18 that will help you interpret what you hear about a case,
19 they can be qualified by the judge as expert witnesses.
20 And I anticipate in this case that both Dr. Gottfried and
21 Dr. Gehle will be qualified as expert opinions [sic], and
22 they can give an opinion about Mr. Bearden as to whether
23 or not he fits the criteria to be civilly committed.

24 That's what the case is. I thank you for your
25 attendance. I appreciate your attention. Listen to

1 everything. And, again, like the judge said, the judge
2 will tell you what the law is. If anything I say sounds
3 like the law and it differs in what the judge says, go
4 with what the judge says because he's the administrator of
5 the law. Your job is going to be to hear everything
6 that's testified to from that witness stand, look at the
7 exhibits that come in if there's any, and decide whether
8 or not the State has met its burden of proof. So that's
9 what the case is. And, again, I thank you so much for
10 your attendance.

11 Your Honor.

12 THE COURT: Yes, sir.

13 Mr. Lawrimore?

14 MR. LAWRIMORE: Thank you, Your Honor. May it please
15 the Court.

16 THE COURT: Yes, sir.

17 MR. LAWRIMORE: Mr. Bogle, ladies and gentlemen of
18 the jury, my name is Cole Lawrimore. I live in
19 Charleston, South Carolina, with my wife, my six-month-old
20 daughter and our Golden Retriever. I represent
21 Mr. Bearden who is seated to my immediate right in the
22 blazer and green striped tie.

23 As Mr. Bogle and the Court have previously indicated
24 to you, we are here today in a Sexually Violent Predator
25 Act commitment hearing. You've heard the word "sexually

1 violent predator" thrown at you by my count at least
2 15 times at this point. However, as the Court's
3 instructed you, the purpose of our inquiry today is to
4 determine whether, in fact, Mr. Bearden does meet the
5 statutory criteria as a sexually violent predator.

6 The burden of proof, fortunately, is not on me. The
7 State has the burden of evidence in this case. As the
8 Court's instructed you, the burden of proof here is the
9 highest evidentiary standard that our courts of law
10 recognize, and that it's proof beyond a reasonable
11 doubt.

12 You're going to hear from two witnesses today.
13 You're going to hear from Dr. Gehle, who's seated in the
14 blue blazer to your right, and you're going to hear from
15 Dr. Gottfried, who is was seated in the black to your more
16 immediate right.

17 We have dueling expert opinions in this case. I'd
18 like to note that I did not initially ask for Dr. Gehle to
19 be appointed as the State's evaluator. The State made
20 that decision, the Court approved it.

21 Dr. Gehle, as Mr. Bogle indicated, has reached the
22 conclusion and it's her opinion that Mr. Bearden does not,
23 in fact, meet the definition of a sexually violent
24 predator. You'll hear her testimony that the State has
25 offered her as its expert witness in these cases more than

1 50 times, so she certainly has a lengthy track record with
2 them.

3 You are also going to hear from Dr. Gottfried that,
4 after being hired to represent the State when they
5 exercised their right to get a second opinion after
6 Dr. Gehle said no, that he may, in fact, meet the
7 definition of a sexually violent predator.

8 I'm sure you've heard lots of jokes, all of which are
9 pretty accurate, about lawyers being bad at math, but
10 we've got two experts who disagree with each other. I'll
11 let y'all take it from there.

12 These two ladies are much more qualified than I am to
13 render these opinions, and I'm sure that they will comport
14 themselves ably and assist you in reaching a verdict here.
15 However, it's my firm conclusion, and I hope that you'll
16 eventually share this belief with me, that after
17 evaluating all the evidence when it's submitted, that
18 Mr. Bearden does not, in fact, meet that definition of a
19 sexually violent predator. And with that, ladies and
20 gentlemen, I will look forward to speaking with you later.
21 Thank you.

22 THE COURT: Would you call your first witness,
23 please, sir.

24 MR. BOGLE: Yes, Your Honor. May it please the
25 Court. The State would call Dr. Emily Gottfried.

1 WHEREUPON,

2 DR. EMILY GOTTFRIED

3 After having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BOGLE:

6 Q Okay. Would you please state your name and county of
7 residence.

8 A Yes. Dr. Emily Gottfried, it's G-O-T-T-F-R-I-E-D,
9 and I live in Charleston County, South Carolina.

10 Q Dr. Gottfried, how are you employed at the present
11 time?

12 A I am an assistant professor at the Medical University
13 of South Carolina where I work in the Department of
14 Psychiatry and Behavioral Services, and I teach and
15 conduct evaluations in our Sexual Behaviors Clinic and
16 Lab.

17 Q What professional degrees do you hold?

18 A I have a bachelor's degree in psychology from San
19 Diego State University, I have a master's degree in
20 psychology from Teachers College of Columbia University in
21 New York City, I have a master's degree in clinical
22 psychology from Florida State University, and I have a PhD
23 or a doctorate in clinical psychology from Florida State
24 University.

25 Q Okay. Now, when you talk about -- so you're a

1 psychologist.

2 A Correct.

3 Q And you used the phrase "clinical psychology." What
4 is that? What does "clinical" mean in the terms of
5 clinical psychology?

6 A There are a couple different specialties that the
7 American Psychological Association recognizes as
8 specialties of psychology. Clinical psychologists
9 specialize in the diagnosis or treatment, assessment of
10 mental illnesses. They also learn how to do assessment or
11 psychological tests, and they frequently conduct research.

12 Q Have you had any personal or specialized training in
13 the field of clinical psychology?

14 A Yes.

15 Q Would you briefly tell us what we're talking about
16 there?

17 A In addition to my education, in order to complete
18 your education as well as get licensed in the states as a
19 psychologist, you need a lot of hours and training, like
20 hands-on experience. And most of my or maybe all of my
21 training was in forensic psychology, so that means that I
22 worked with people at various stages of the criminal
23 justice system or the legal system conducting risk
24 assessments, leading sex offender treatment groups. And
25 so I did that all through my educational experiences.

1 And then prior to finishing your PhD, we require a
2 2,000 hour, which is a full-year internship. And I did
3 mine in Southern California at a large forensic state
4 hospital that had felony defendants. So I was there for a
5 year. And when I was there, I did evaluations, looking at
6 a lot of different legal questions such as competency to
7 stand trial. I worked on the sex offender treatment unit
8 there where I conducted risk assessments and co-led sex
9 offender treatment groups.

10 After I graduated with my PhD, I did a one-year
11 specialized forensic psychology postdoctoral experience at
12 the Medical College of Georgia, now called Augusta
13 University, in Augusta, Georgia, where I specialized in
14 forensics for one year after getting my PhD.

15 Q What states are you licensed to practice psychology
16 in?

17 A I'm licensed in South Carolina and Georgia.

18 Q Now, you mentioned a term a minute ago, the word
19 "forensic psychology." I asked you about clinical. What
20 does "forensic" mean when coupled with the word
21 "psychology"?

22 A Forensic psychology or just the word "forensic" in a
23 science is the marriage of or the combination of a
24 particular science and the law. And so forensic
25 psychologists typically work with courts or help answer

1 psycho-legal questions, so looking at things like mental
2 illness and the relationship, for example, of a defendant
3 being able to stand trial on that day. We also conduct
4 risk assessments, so we look at the literature and
5 administer testing to try to estimate this person's future
6 risk of some kind of a behavior. And that's typically
7 what forensic psychologists do.

8 Q Have you previously been recognized as an expert
9 witness and testified as an expert in the field of
10 psychology in the courts of law?

11 A Yes.

12 Q In both Georgia and South Carolina?

13 A In both Georgia and South Carolina.

14 Q About how many times total?

15 A I think about 21 times in both states.

16 Q Okay. And the laboratory you work for, what's the
17 name of the laboratory you work for right now at
18 Charleston at MUSC?

19 A I work for the Sexual Behaviors Clinic and Lab at the
20 Medical University of South Carolina.

21 Q And in that context, have you been assigned cases
22 where our office sought a second opinion, if you will, on
23 a commitment case or a release case, the guy has already
24 been committed and is trying to be released? Have you
25 done those type of evaluations before today?

1 A Yes. I've done 18 evaluations.

2 Q Okay. And of those 18, have you also had to go to
3 court and be qualified as an expert and testify about some
4 of them?

5 A Yes.

6 Q About how many times?

7 A About six times.

8 Q Okay. So of the 18 we sent you, 12 of them I guess
9 y'all agreed -- pretty much agreed with the first
10 evaluator, correct?

11 A No. I don't think all of them have been called. So
12 of the 18 evaluations that I did for your office, in five
13 of them, I said that the person did not meet the statutory
14 definition for being a sexually violent predator, and in
15 13 I said that they did.

16 Q Okay. Now, you mentioned a minute ago criminal and
17 civil and risk assessments, I believe, and violence
18 assessments?

19 A Yes.

20 Q What about sexual risk assessments for, say,
21 licensing? Have you done those type of things?

22 A For the Licensing Board?

23 Q Yeah.

24 A Yes. At the Sexual Behavior Clinic and Lab, we see a
25 wide range of evaluatees, so they aren't just about the

1 Sexually Violent Predator Act. They are for people, maybe
2 a licensed professional such as a massage therapist or a
3 nurse or a doctor who has had some kind of a sexual
4 boundary violation. We conduct those evaluations to look
5 at how risky that person might be for future practice in
6 their licensed field.

7 In addition to that, we see individuals who have not
8 been convicted of a crime typically for the defense
9 attorney to let the defense attorney know if there is a
10 mental illness or what we can tell them about maybe why
11 the person perhaps committed the crime but they haven't
12 been found guilty yet. We do evaluations to help courts
13 decide about registry requirements, especially for
14 juvenile sex offenders and so forth.

15 Q Okay. And do these evaluations, the types you just
16 mentioned, along with the sexually violent predator
17 evaluation, do they have a lot of features in common?

18 A They do. It's the -- I guess the ultimate issue is
19 somebody who is a licensed doctor and maybe doesn't have
20 any criminal charges but the Licensing Board is trying to
21 figure out if they should let this person practice
22 medicine anymore. So the end opinions are different, but
23 typically the methods of assessment are the same.

24 MR. BOGLE: Okay. Your Honor, at this time I would
25 like to offer Dr. Emily Gottfried as an expert witness in

1 the field of forensic psychology for the purposes of this
2 hearing.

3 THE COURT: Forensic?

4 MR. BOGLE: Forensic psychology.

5 THE COURT: All right. Any voir dire, Mr. Lawrimore?

6 MR. LAWRYMORE: None, Your Honor. We'll stipulate
7 that she's an expert in that arena.

8 THE COURT: All right. Very good. Mr. Foreman,
9 ladies and gentlemen of the jury, Dr. Gottfried has been
10 stipulated to be an expert in the field of forensic
11 psychology. She'll be allowed to give her opinion in that
12 field. Normally, a witness is prohibited from giving
13 their opinion. They have to testify to what they saw,
14 they heard, they felt, they smelled, things along those
15 lines. However, because she has been stipulated to be an
16 expert in this area, she'll be allowed to give her
17 opinions.

18 I'll tell you that expert testimony is just like any
19 other testimony you may hear. You may accept it, you may
20 reject it or give as much weight as you think it deserves.

21 All right. Mr. Bogle.

22 MR. BOGLE: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 BY MR. BOGLE:

25 Q Dr. Gottfried, are you a member of any professional

1 organizations that relate to this type of work?

2 A Yes.

3 Q What?

4 A I am a member of the Association for the Treatment of
5 Sexual Abusers, that's a national organization, I'm also
6 the secretary of the state chapter here in South Carolina
7 of the Association for the Treatment of Sexual Abusers.
8 And then not quite as related, but I am a member of the
9 American Academy of Forensic Sciences, I'm a member of the
10 American Psychology and Law Society, a couple other ones,
11 American Psychological Association. But those are the
12 main ones.

13 Q Okay. And the one called the Association for the
14 Treatment of Sexual Abusers, that's A-T-S-A?

15 A It's ATSA.

16 Q Commonly called ATSA?

17 A Yes.

18 Q Okay. Now, in this particular case, what type of
19 evaluation were you called upon to conduct regarding
20 Mr. Bearden?

21 A My office was asked to conduct a pre-commitment
22 evaluation.

23 Q Okay. Can you describe for the jury your protocol,
24 just steps in doing an evaluation like this?

25 A Yes. So the Attorney General's Office will reach out

1 to the Sexual Behaviors Clinic and Lab at MUSC and request
2 a second opinion or another evaluation. That is then
3 assigned to an evaluator. Typically, I see most of those
4 cases right now, but it's assigned. It doesn't just come
5 to me. And once I get that, typically, the Attorney
6 General's Office will send a lot of records, so they'll
7 send police reports detailing the crimes and court
8 documents, they'll send prison and jail records, and then
9 I go through it and look to see what I think I'm missing
10 and then I try to request all of that information before I
11 see the individual.

12 Once I've reviewed all of the documents, then I set
13 up a couple of appointments for the examinee. And they
14 come in and do some testing at our lab, and then they meet
15 with me and have a pretty comprehensive interview. It's
16 typically five or six hours where I ask them standardized
17 questions of what I typically ask most examinees. I'll
18 give them some feedback about their testing, and then I
19 will write a report that includes all of the data that I
20 relied on for my opinion and then any diagnoses if
21 present, and then my opinion regarding dangerousness or if
22 they're a sexually violent predator per statute.

23 Q Okay. So basically, in this case, there already had
24 been another evaluation as ordered by the Court sometime
25 earlier.

1 A Yes.

2 Q And that was done by Dr. Gehle of the Department of
3 Mental Health.

4 A Yes.

5 Q And you were called on by us to take a second look at
6 the case.

7 A Yes.

8 Q Okay. How are you compensated for these types of
9 things?

10 A I'm a salaried faculty member at MUSC, so I get my
11 salary regardless. You guys don't pay me. I guess you
12 pay MUSC.

13 Q So we pay MUSC I think it's \$4,500 for an evaluation.

14 A I believe so.

15 Q And you are salaried. That's part of your job ---

16 A As a salaried ---

17 Q --- to do those evaluations.

18 Now, as part of this evaluation process, did you meet
19 with and interview Harlin Bearden?

20 A Yes.

21 Q Just for the record, is the man you talked to here in
22 the courtroom today?

23 A Yes. Sorry. Yes. He is at the defense table.

24 Q Would you point him out?

25 A At the defense table.

1 MR. BOGLE: Okay. Let the record reflect she's
2 identified Mr. Bearden.

3 THE COURT: So reflected.

4 BY MR. BOGLE:

5 Q About how many times did you meet with Mr. Bearden?

6 A Mr. Bearden came to our office three or four times.
7 Most of that was for testing. And then personally for the
8 interview I met with him for six hours and about
9 17 minutes.

10 Q Okay. In looking at the documents. You mentioned
11 documents that were sent to you. Could you briefly
12 describe the type of written documents you got in
13 preparing for this type of evaluation?

14 A Yes. So Mr. Bearden had previous charges in the
15 State of Georgia, so I reviewed all of the available
16 information from the State of Georgia regarding the nature
17 of those charges. I also reviewed his criminal history
18 report. I reviewed the Greenwood County Police Department
19 documents, and I reviewed all of the records that were
20 provided to me from the South Carolina Department of
21 Corrections from when he served his sentence there. I
22 also reviewed Georgia Department of Corrections records.
23 Let's see. I reviewed County of Greenwood records that
24 came out from his initial -- or his last charge that
25 happened here in Greenwood, all of the arrest warrants,

1 the sentencing sheets. I reviewed Dr. Gehle's report, and
2 the Greenwood County Detention Center records.

3 Q Why was it ---

4 MR. LAWRYMORE: Your Honor, at this point I'm going
5 to object. I believe we may have a matter of law with
6 regard to some of these Greenwood documents that will need
7 to be discussed outside the presence of the jury.

8 THE COURT: Just one second.

9 Okay. Mr. Foreman, would you take your jury to the
10 jury room, please, sir.

11 (WHEREUPON, the jury exits the courtroom at 11:23 a.m.)

12 THE COURT: All right. Mr. Lawrymore?

13 MR. LAWRYMORE: Your Honor, we touched on this
14 earlier. I made a motion in limine to exclude certain
15 prior unindicted acts of bad conduct offered to prove
16 propensity as to future-type conduct. She's referencing
17 some Greenwood County documents that did not result in any
18 sort of criminal charge. There was no indictment, there
19 was no true bill, there was no guilty plea. There was no
20 probable-cause determination at any point in time as to
21 whether these offenses took place. The record she is
22 relying upon are hearsay within hearsay. Her testimony
23 about them is likewise hearsay. For these reasons, they
24 are propensity evidence, in their purest and most absolute
25 form, shouldn't be admitted.

1 THE COURT: All right. Mr. Bogle?

2 MR. BOGLE: Judge, if this was a criminal case, I
3 might agree with some of that, but it's not. It's a civil
4 case. The case law we talked about earlier today allows
5 her to go into details about misconduct he's committed,
6 some of which has been convicted, some not convicted, some
7 charged. One of the things we look at in all of these
8 cases is does the person have a prison disciplinary
9 history.

10 THE COURT: Say that again?

11 MR. BOGLE: A prison disciplinary history, the theory
12 being that if they can't behave in a place where they're
13 under watch 24/7, how are they going to be in the
14 community?

15 So what these doctors always look at is his prison
16 disciplinary history if he has any at the Department of
17 Corrections, and in this case also his disciplinary
18 history in the Georgia Department of Corrections, and
19 finally at the Greenwood County Jail. Remember, he maxed
20 out his prison term.

21 THE COURT: Right.

22 MR. BOGLE: So you know how these cases work. He
23 then is transferred to the local detention center to await
24 this trial. And she got records from the Greenwood
25 Detention Center about misconduct, including sexual

1 misconduct he did there. In fact, and I don't know if
2 this will come out in evidence, it got so bad there, that
3 they shipped him off to the Department of Corrections
4 where he's been held awaiting this trial.

5 THE COURT: Well, let me ask you this, Mr. Bogle.
6 Obviously, that would be relevant evidence for the
7 underlying determination of being a sexually violent
8 predator or not being one. And although experts can look
9 at not admissible testimony in formulating their opinion,
10 isn't the rule that if you're going to try to admit these
11 other records reviewed by the expert, they have to meet an
12 exception to the hearsay rule?

13 MR. BOGLE: Yes, Your Honor. In my memo of law, I
14 talk about that.

15 THE COURT: So do those records, would you agree with
16 me or disagree with me that these records from the
17 detention center would constitute hearsay?

18 MR. BOGLE: They would.

19 THE COURT: So is there an exception to that?

20 MR. BOGLE: There is, Your Honor.

21 THE COURT: Okay. Tell me which rule, please, sir.

22 MR. BOGLE: Well, first off, under Rule 703, when it
23 comes to expert testimony, if the facts or data upon which
24 the expert relies are those customarily relied upon by
25 experts in their field, and in this case Dr. Gehle and

1 Dr. Gottfried looked at prison disciplinary history, it's
2 a type ---

3 THE COURT: Let me -- let me -- I don't mean to
4 interrupt you there, but the case is very clear. I think
5 it's Justice Few's case that said that although they can
6 use those in formulating their opinion, they have to meet
7 their admissibility independently. So, again, if they're
8 hearsay, you need to meet a hearsay exception, I believe.

9 MR. BOGLE: Right. But under the rule I just gave
10 you, 703, it goes on to say if it's the type of stuff
11 reasonably relied upon experts in the field, the facts or
12 data need not be admissible in evidence. And that's the
13 State vs. Cutro case from 2005.

14 THE COURT: I agree. And what that rule says, that
15 they can say I looked at this and I looked at this and I
16 looked at this, and I formulated my opinion based on
17 those, but that doesn't mean those actual documents come
18 into the evidence of the case.

19 MR. BOGLE: Oh, we're not trying to introduce
20 documents. What she's going to talk about from her review
21 of his history at the detention center, at the Department
22 of Corrections, is did he commit the kind of misconduct
23 that is relevant to her opinion as in sexual misconduct or
24 violent misconduct.

25 THE COURT: Well, let me think this through for a

1 second. You are going to attempt to elicit testimony
2 about specific bad conduct by this respondent while at the
3 Greenwood County Detention Center.

4 MR. BOGLE: As well as at SCDC and while at the
5 Department of Corrections in Georgia. It's one of the
6 things these doctors customarily testify about in these
7 type of cases. Because, again, he can't ---

8 THE COURT: I understand that.

9 MR. BOGLE: If he can't behave in a place where he's
10 being watched 24/7, how is he going to be on the outside?

11 THE COURT: And that I understand. It seems to me
12 that that would still constitute hearsay, and that's my
13 concern.

14 MR. BOGLE: Well, it's part of the basis for her
15 opinion so it doesn't have to be independently admissible
16 under Rule 703.

17 THE COURT: That's a misconception by the bar as a
18 general rule that although the matter is being reviewed,
19 those do not have to be admissible. In order to make them
20 admissible, they have to meet an exception to the rules of
21 -- or meet a rule of evidence. So just because she looked
22 at it in formulating her opinion, then she can give her
23 opinion. But when she goes into specifics of these
24 records, that would be the same hearsay as the records
25 themselves, would it not?

1 MR. BOGLE: Well, but I'm not trying to put the
2 records in evidence. I'm not offering ---

3 THE COURT: I know. But you're seeing the same
4 contents of the records. That is hearsay.

5 MR. BOGLE: But I'm not necessarily offering it for
6 the truth of the matter asserted but to show a pattern of
7 conduct by this guy that fits his criminal conduct.

8 THE COURT: Okay. Then let me hear Mr. Lawrimore on
9 that. You said it's not hearsay because it's not being
10 offered for the truth of the matter asserted but show a
11 pattern of conduct.

12 MR. LAWRYMORE: It's being offered to provide data
13 points, Your Honor. That's why ---

14 THE COURT: To be -- for what, please, sir.

15 MR. LAWRYMORE: My anticipation is it will be offered
16 to provide data points for purposes of satisfying the
17 diagnostic ---

18 THE COURT: Criteria.

19 MR. LAWRYMORE: --- standards provided in the DSM.
20 They're attempting to get these statements in that are her
21 only knowledge of these events is based on documents that
22 are provided to her that bare no indicia of reliability.
23 They're not business records. There's no business records
24 affidavit.

25 THE COURT: I think they are business records, just

1 by a state agency or a county agency. I think they would
2 probably, if need to be authenticated, could be done so
3 under a business record. But ---

4 MR. LAWRIK: If I may, Your Honor. In either
5 event, I don't believe we're going to hear any testimony
6 from the custodian of those records that they're kept in
7 the regular course of business, and we also will not hear
8 any testimony as to her conversations of that person.
9 Purely relying on these records that are hearsay for the
10 purpose of formulating her opinion and it tends to offer
11 without -- even without admitting the records themselves,
12 the dates and the fact patterns such that renders
13 admission of the document are relevant. There's going to
14 be no unringing that bell once the jury hears it.

15 THE COURT: Well, let me say this to you. I think it
16 is being offered for the truth of the matter asserted.
17 And the truth of the matter being asserted is that this
18 gentleman allegedly is a sexually violent predator, and if
19 that goes into the criteria to establish that, then they
20 would fall into that category, not necessarily a pattern.

21 At the same time, if I make this ruling and exclude
22 it, when you start putting your expert up, you're going to
23 start running into the same problems.

24 So I'm going to take about a five-minute break, let
25 y'all talk about it, see if that's really the way you want

1 to go with this thing, okay? All right. And I'll come
2 back. I'm ready to give a ruling in just a minute, but I
3 prefer that y'all put your heads together and try to come
4 up with a stipulation as to admissibility and scope. If
5 you can't, that's my job. All right.

6 MR. LAWRIMORE: Thank you.

7 MR. BOGLE: Thank you, Your Honor.

8 (WHEREUPON, a recess is taken at 11:32 a.m.)

9 (WHEREUPON, Court's Exhibit Number 3 was marked for
10 identification.)

11 THE COURT: All right. Gentlemen, my understanding
12 is that y'all can't reach a stipulation to admissibility.

13 MR. BOGLE: My expert stepped out for a second. Can
14 I get her back in? Oh, she's here.

15 Would you get back on the stand?

16 If I may, Your Honor, and I apologize for not being
17 as able to respond to this. It's just the first time it's
18 been objected to in the ten years I've been doing this.

19 THE COURT: It doesn't mean it's admissible, though.

20 MR. BOGLE: It doesn't mean. It doesn't mean. But
21 first -- but that's why, if I could, proffer very briefly
22 why she needs to look at that kind of stuff through her
23 testimony.

24 THE COURT: Well, let me ---

25 MR. BOGLE: I would also ---

1 THE COURT: Hang on.

2 MR. BOGLE: Okay.

3 THE COURT: Let me say this. I would prefer that you
4 try to elicit the testimony that he's objected to, not why
5 she needs it. Because the fact that she used it, she can
6 give her opinion. It's just that the individual acts that
7 you complain of appears to me to be hearsay.

8 MR. BOGLE: The only -- and I didn't argue this
9 earlier. There's an -- I didn't -- I haven't got the rule
10 in front of me. There's an exception to the hearsay rule
11 relating to statements made -- or information collected
12 for purposes of medical diagnosis or medical -- or
13 diagnosis, and that's kind of what we're doing right here.

14 THE COURT: No.

15 MR. BOGLE: The stuff that he did that relates to her
16 diagnosis ---

17 THE COURT: It's a statement by the declarant for
18 purposes of medical treatment, right?

19 MR. BOGLE: Yes, sir.

20 THE COURT: In other words, if I went to the doctor
21 and said, look, my chest is hurting, blah, blah, blah,
22 blah, for purposes to determine whether or not I have a
23 heart attack, that's what that rule is about. It's not
24 looking at prison records to say that I went up and
25 punched another jailer in the face, for example. That

1 would not be for purposes of that. I disagree.

2 But go ahead, elicit the testimony that I think is
3 being objected to.

4 BY MR. BOGLE:

5 Q Dr. Gottfried, in the course of an evaluation, is it
6 common for you to seek records of the guy's prison history
7 or history of any kind of incarceration such as in this
8 case the Greenwood County Detention Center?

9 A Yes.

10 Q What are you looking for in those kind of records?

11 A Well, I'm looking to see how the examinee functions
12 in that secure environment, so I want to know if there's a
13 history of a lot of disciplinary infractions, if they've
14 had a hard time maintaining or controlling their behavior
15 in that structured setting. I also want to know the
16 nature of those evaluations because that gives me more
17 information potentially about future risk.

18 Q Okay. And why is that important to you to know if
19 they had any disciplinary problems either in the prison,
20 be it in Georgia, be it in South Carolina or at the
21 Greenwood County Detention Center while awaiting trial?
22 Why is that important to your diagnosis?

23 A Well, it depends on the characteristics. What I was
24 going to say is some of the information might be necessary
25 or would give more data points for a diagnosis. If they

1 were sexual in nature, they could -- the description of
2 the offense, just like how I read the description of
3 offenses that they were arrested for, that gives me a lot
4 of information about what victims are reporting and what
5 the officially reported actions were.

6 Q Is this of the same method by which you look at, say,
7 his underlying criminal conviction?

8 A Exactly, yes.

9 Q What the victim said, what he told the cops, what he
10 told you?

11 A Yes.

12 Q And are these things part of the basis for your
13 diagnosis in a sexually violent predator case?

14 A They can contribute to my diagnosis.

15 Q Okay. In this particular case, what records from the
16 Greenwood County Detention Center regarding his conduct
17 there did you find significant to your diagnosis?

18 A Well, the first thing that I noted at Greenwood
19 County Detention is that he engaged in a lot of seemingly
20 disruptive behavior. There were some threatening
21 officers, some reported physical assault on an officer, he
22 frequently had to be moved to a different housing unit or
23 a different cell due to defective locks in each one or
24 discovering that the examinee could open his food port
25 himself or that his door wasn't locking fully.

1 There also were at least five or six reports that he
2 had been exposing himself and masturbating to female
3 correctional officers, and that I also noted that he had
4 been engaging in those behaviors over the course of my
5 evaluation, which was notable to me because he knew the
6 purpose of the evaluation, that he was being evaluated for
7 sexual-related disorders or any disorder related to the
8 Sexually Violent Predator Act, but he still was unable to
9 conform his conduct to the requirements of being in that
10 secure environment.

11 Q So are you saying that between, say, the first time
12 you saw him and had him sign the release to be evaluated
13 and the later times he came in, he's doing this type of
14 conduct in between?

15 A Yes.

16 Q Okay. And is that significant in this type
17 evaluation?

18 A Yes.

19 Q Why?

20 A Because we're looking at volitional control, we're
21 looking at impulsivity, we're looking at the ability for
22 somebody to manage these kinds of behaviors or have
23 control over them. And to me that speaks that they either
24 don't want to or have a very hard time controlling those
25 behaviors.

1 Q Is one of the things you have to establish in your
2 ultimate conclusion is that the person lacks sufficient
3 control over his impulses?

4 A Yes.

5 Q In addition to the sexually violent crime, the
6 personality disorder or the mental abnormality, you also
7 have to testify about lack of control over his activities,
8 correct?

9 A That's correct.

10 Q Okay. And so it is important -- is it important to
11 you to look at detention records, be it prison or the
12 local county, in making this conclusion?

13 A Yes. That's why I look at all the records. I want
14 to know how he previously did on supervision because
15 failures of conditional release and things like that in
16 the literature have been correlated with future offending.
17 So I'm looking at all of those things, how he does in the
18 community and how he does in controlled environments.

19 Q So stepping outside the box for a second, if his
20 probation got revoked, would that be relevant for much of
21 the same reasons?

22 A Yes. Especially if there was a pattern of his
23 probation being revoked or in violating.

24 Q Okay. So the conduct while he's confined, misconduct
25 he commits, particularly sexual in nature while he's

1 confined somewhere, be it the prison or the county jail,
2 that's relevant to your diagnosis?

3 A Yes.

4 Q And is it part of the basis of your diagnosis?

5 A Yes.

6 MR. BOGLE: Thank you, Your Honor.

7 THE COURT: Mr. Bogle, it seems to me you can get the
8 same place without there being evidentiary concerns. And
9 what I'm saying is it seems like Dr. Gottfried, when you
10 ask her did you obtain these records and the fact that she
11 obtained them is certainly relevant and admissible, and
12 when you look at these records, what are you looking for
13 and she sets out the factors in that, and after -- and
14 based on your review, did the respondent meet any of these
15 -- have evidence of this conduct, yes, he does, instead of
16 going in and having specific dates and times and events
17 being related, because that clearly is violative of the
18 rule. Do you see a distinction there?

19 MR. BOGLE: I'm trying, Judge. And I apologize.

20 THE COURT: And I'm not trying to be hard on you. I
21 mean, I ---

22 MR. BOGLE: I apologize. It just hadn't come up yet.
23 I know it doesn't meet necessarily as a defense.

24 In her testimony I can ask her if it's necessary to
25 look at, just like I did now, confinement conditions,

1 prison conditions, be it at a prison or at the local jail.
2 And she says yes, I'm going to ask her why. And I'll ask
3 her did you find any conduct starting with the prison
4 system then moving to the jail that you found significant
5 to your evaluation? And she can testify what she saw, he
6 did sexual things or exposing himself while at the
7 Greenwood County Detention Center. I mean, that's what it
8 is.

9 THE COURT: Well, I think when you go there, you go
10 to the specific events themselves, that on January 5th,
11 that he allegedly punched somebody or masturbated or
12 whatever the term -- or the event was, and I think that's
13 the objection that Mr. Lawrimore has to the evidence as
14 being hearsay. And I agree with him. I think that if you
15 ask her did you get these records, when you see these
16 records, what are you looking for, evidence of sexual
17 misconduct or whatever it is, whatever terminology that
18 she uses to fit her -- make her opinion or diagnosis, and
19 did he have evidence that he did these kind of things,
20 yes, there is, I don't think is violative. That may be
21 too cumbersome to do.

22 Mr. Lawrimore?

23 MR. LAWRYMORE: Your Honor, my greatest concern is
24 that these records are being introduced to show this
25 ongoing course of conduct. And the record ---

1 THE COURT: Well, that's part of the standard that he
2 has to meet.

3 MR. BOGLE: That's what the case is, pattern of
4 behavior.

5 THE COURT: That is the case. And I know you kept
6 saying propensity, but this is a propensity case. I don't
7 see it being irrelevant, I don't see it being
8 inadmissible. That's the fact -- that's the type of
9 nature of a sexually violent predator case, that he has
10 the propensity to reoffend. So that's what this case is
11 all about, right?

12 MR. LAWRYMORE: Right, right. But the diagnostic
13 burden of proof there requires a time frame, and these
14 unreliable statements are being offered to prove that
15 conduct was taking place in excess of that time frame.

16 THE COURT: You see -- I hear you saying unreliable.
17 The fact is, if all Mr. Bogle needed to do is have
18 somebody from the prison say these are the records, and
19 they could probably come in. Just authenticate them.

20 Now, normally, people don't make people come in and
21 authenticate records because it's cumbersome, expensive,
22 time-consuming, and what's good for the goose is good for
23 the gander, so to speak. But since you've raised the
24 objection, I think it is hearsay.

25 I'm going to let you try to follow along the rubric

1 I've given you, if you would, Mr. Bogle. If you feel like
2 there's an objection, you've just got to stand up and make
3 it and we'll just kind of forge our way through it. All
4 right?

5 MR. LAWRYMORE: Thank you.

6 MR. BOGLE: Thank you, Your Honor.

7 THE COURT: Bring the jury in, please.

8 Hang on.

9 Just so we don't have a problem, Dr. Gottfried asked
10 me, she's not clear in what I was trying to say.

11 THE WITNESS: I just want to make sure that I'm
12 totally clear, that I don't say something that I'm not
13 allowed to say.

14 THE COURT: What I'm trying to say is that from a
15 generic classification sense, that you say I've looked for
16 evidence of sexual misconduct, sexual deviance, whatever
17 the terminology is as opposed to on January 1st, he was
18 aroused and did X, Y, Z while in his jail cell. That kind
19 of thing.

20 THE WITNESS: So no dates and no specific
21 information.

22 THE COURT: You can do dates or you can do a time
23 period, which is fine, but if you start giving specific
24 instances of this conduct, then I think we have problems
25 from the evidentiary standpoint.

1 THE WITNESS: Can I give examples of the conduct? I
2 guess that's not ---

3 THE COURT: I think the kind of things -- yeah.
4 Examples.. She could do it as a general what I'm looking
5 for is these examples, did he have, yes, he did.

6 MR. BOGLE: All right. Let me do it that way.

7 THE COURT: That's what I'm trying to say.

8 And I hear you. You're noted for the record for your
9 objection, Mr. Lawrimore. I'm going to let that in.

10 MR. LAWRYMORE: And, Your Honor, and I truly don't
11 want to belabor this more ---

12 THE COURT: That's all right.

13 MR. LAWRYMORE: --- and I'll be super, super brief.

14 THE COURT: That's fine.

15 MR. LAWRYMORE: If the time frame is coming in and
16 the general type of act is coming in, why not let them in
17 so I can cross-examine her on it, I mean, if it's coming
18 in that way?

19 THE COURT: All right. Then we'll note your -- I'm
20 going to let it in then. I'll let it in then.

21 Go ahead, Mr. Bogle. You'll have carte blanche.

22 Would you bring the jury in.

23 MR. BOGLE: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 (WHEREUPON, the jury entered the courtroom at 11:50 a.m.)

1 THE COURT: Mr. Bogle.

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

4 BY MR. BOGLE:

5 Q Dr. Gottfried, I think where we left off was I was
6 asking you to tell the jury the type of information you
7 received to help you evaluate Mr. Bearden. And you were
8 going through a list of documents that included police
9 records, conviction records, statements, things like that,
10 stuff from the Georgia Department of Corrections, stuff
11 from the SCDC, the South Carolina Department of
12 Corrections, and finally you mentioned records from his
13 confinement at the Greenwood County Detention Center
14 awaiting this trial.

15 A Correct.

16 Q Okay. Now, is this the type of information that is
17 typically and reasonably relied upon by experts in your
18 field?

19 A Yes.

20 Q And did you consider and rely upon the information of
21 the stuff you listed for the jury a few minutes ago and
22 your interview with Mr. Bearden and the assessments that
23 were run in rendering an opinion in this matter?

24 A Yes, I did.

25 Q Can you explain to the jury how a person's past

1 sexual offense behavior relates to future sexual offense
2 behavior?

3 A Well, it's important to look at previous sexual
4 offense behaviors, because the best predictor of the
5 future are things that we do in the past. So when I'm
6 looking at a case like this, I want to look at all of the
7 history that has been before because that will tell me
8 something about the likelihood of it being done again in
9 the future. It also gives me information about who
10 potential victims could be or the extent of injuries, if
11 there were any, if the person did reoffend based on their
12 pattern of offending initially.

13 Q And when you met with Mr. Bearden, you informed him
14 about the nature of the evaluation; is that correct?

15 A Correct.

16 Q And did he sign a lengthy consent form agreeing to be
17 evaluated?

18 A Yes, he did.

19 Q By your office?

20 A Yes.

21 Q Okay. Based on the records you looked at, did he
22 have sex offender treatment while at the Department of
23 Corrections?

24 A Not at the Department of Corrections. I didn't have
25 any record of him receiving sex offender treatment, but he

1 reported to me during my evaluation that when he was on
2 probation in Georgia, as a condition of this probation,
3 that he had to attend outpatient sex offender treatment.
4 I don't have any record of this. He described it to me as
5 learning about things like, quote, avoiding riskful
6 situations, is what he told me, but I don't have any in
7 the records and none at prison. None in prison.

8 Q Okay. And this is prior to -- when he was on
9 probation in Georgia, that would have been before his
10 South Carolina conviction for the criminal sexual conduct
11 in the third degree involving that little girl, right?

12 A Correct.

13 Q So is it important -- why is it -- is it important
14 for you to look at prior sex offender treatment?

15 A Well, I want to know if the person has been amenable
16 to treatment or open to treatment, what their treatment
17 response has been, if they're motivated for treatment and
18 then if they had treatment, if they reoffended despite
19 having treatment, what was covered in the treatment.
20 Things like that.

21 Q And did those type of things factor into your
22 ultimate conclusions about Mr. Bearden?

23 A Yes.

24 Q Okay. Now, is it also important to look at prior
25 evaluations done of Mr. Bearden?

1 A Yes.

2 Q Why is that?

3 A Well, I want to see the differences between what
4 Mr. Bearden tells me and what he tells other evaluators.
5 Sometimes they're different. Oftentimes a length of time
6 has passed, and so people aren't going to remember the
7 exact same information. And so if somebody does give me
8 different information, I like to talk to them about it and
9 figure out like where the discrepancy is. And I also look
10 at other people's reports, evaluations because I want to
11 make sure that I have all the relevant documents, that I'm
12 not missing anything that they also looked at.

13 Q And is this something also done by other experts in
14 your field?

15 A Yes.

16 Q In this course of examination, did you also -- that
17 caused you to look at some evaluations done while he was
18 in the Georgia Department of Corrections?

19 A Yes. The Georgia Department of Corrections provided
20 me with really lengthy or a big stack of documents from
21 when he had been incarcerated there, and I looked at
22 everything in there which included treatment records and
23 some measures that they had given him in prison, and
24 basically his whole prison record.

25 Q Okay. Did anything in those records, those

1 evaluations done as part of the Georgia Department of
2 Corrections, did anything there -- was anything there
3 significant to you in reaching your conclusions about
4 Mr. Bearden for this type of evaluation we're here on
5 today?

6 A Several things. One thing that I looked at was they
7 had given him some measures, it looked like. It looked
8 like they gave him something assessing substance use, his
9 history of substance use. They also rated him on it's
10 called the correctional offender management profiling for
11 alternative sanctions. It's not a psychological test but
12 it's a risk assessment that some states use, I think, when
13 they're trying to figure out like sentencing
14 recommendations. It's called the compass. And so I
15 looked at that because there was a report about it, and it
16 -- I guess it assesses the likelihood of a defendant going
17 on to reoffend. It has nothing to do with sexual
18 behavior, just reoffend in general.

19 Q Okay.

20 A And they noted in that report that his category level
21 was -- reflected the most serious criminal profile, and
22 they said a chronic, violent and personal criminal career
23 is paralleled by multiple co-occurring social and
24 psychological risk factors. So basically, when they took
25 all of the information that they knew about Mr. Bearden

1 and put it together, I think it's computer-generated, the
2 computer spit out this report saying this guy's at a high
3 level based on the factors that we know about him.

4 Q Now, in cases like this, what we're here about today,
5 is it important to look at all prior criminal history?

6 A Yes.

7 Q Does that include criminal history that might not be
8 sexual in nature?

9 A Yes.

10 Q Does it include criminal history where the person
11 wasn't necessarily arrested or convicted for it?

12 A Yes.

13 Q Why is that important?

14 A Well, it's important to look at all of that stuff
15 because you're trying to establish patterns of behavior.
16 You're also looking at the person's ability to conform to
17 society, to follow the rules. You're looking at elements
18 of impulsivity. There might be elements of crimes that
19 might factor into with diagnosis or another. Also, you're
20 looking at if the person can follow like the terms of
21 their supervision, if they're out on parole or out on
22 probation, how responsive are they to that. So it's
23 important to look at all of those things. And also, as I
24 mentioned, with the sex offenses, it also may give you
25 some characteristics of what could happen in the future,

1 particularly if there's a history of violence or something
2 similar like that.

3 Q If a person has a long criminal history, does that
4 lead you to see whether or not -- is one of the personal
5 disorders you might look for is something called
6 antisocial personality disorder?

7 A Yes.

8 MR. LAWRYMORE: Your Honor, I object. There's been a
9 lot of leading here lately.

10 THE COURT: Rephrase, please, sir.

11 BY MR. BOGLE:

12 Q All right. When you're looking at a -- why would you
13 -- in this type of evaluation, why would you want to look
14 at a person's entire criminal history including crimes
15 that he might not have been arrested for and might not
16 have been convicted of? Why is that important?

17 A Well, some of those do factor into diagnoses. So if
18 they had a sexual nature that they're reporting, that
19 could be for a paraphilic disorder or a disorder related
20 to abusive or nonconsensual sexual interests. If they
21 have a long pattern of criminal offending, they could meet
22 diagnostic criteria for antisocial personality disorder
23 which means a person who has a very hard time following
24 the rules and the norms of society and are irresponsible
25 and impulsive. So all of that data is kind of -- they're

1 all data points for doing this kind of evaluation,
2 particularly with diagnosis.

3 Q Okay. Going at his criminal history starting on page
4 14 of your report, would you start there and talk about
5 the criminal activity or the history that you found
6 significant? I believe it starts in 2005.

7 A Yes. His first arrest was in 2005, and he had been
8 charged with two counts of burglary. I believe he was 17
9 or 18 years old at the time, if my math is right. He
10 served some time for that, and then when he got out, he
11 was placed on probation. He was subsequently charged with
12 two violation of probations for, I think, failing to
13 report to his probation officer. He told me that he had a
14 problem with a female probation officer, that she would
15 come to his job and that would hurt him with his
16 customers, or he felt like she'd make him wait in the
17 waiting room for a long time and then he'd have to
18 sacrifice an entire day of work.

19 Q Now, for the second probation -- for any of those
20 probation violations you're talking about right now ---

21 A Yes.

22 Q --- the 2007 time frame, did any of those result in
23 going back to prison?

24 A It said that he was sentenced to serve 90 days.

25 Q Okay. What about in 2008, the next criminal activity

1 we have there involving a sexual crime?

2 A He was charged in 2007 and convicted in 2008. He was
3 charged with child molestation and public indecency,
4 indecent exposure. He was convicted of both charges in
5 2008 and sentenced to a year in prison and four years on
6 probation.

7 Q And then -- okay. Go ahead.

8 A Also in 2008 he was charged with another probation
9 violation, and his probation was revoked. He said that he
10 had been violated. When I asked him about this probation
11 violation, he told me that he had been violated because he
12 was, quote, not reporting. He said it was a different
13 probation officer than the one he had previously, but he
14 said that probation was a hassle, money, excessive and he
15 said, "I don't like to be controlled after I served my
16 time." He didn't recall the sentence that he got for
17 that, and I didn't note it in the records.

18 Q Why are probation violations significant? Or are
19 they significant?

20 A I think that a pattern of probation violations is
21 significant.

22 Q Why is that?

23 A Well, they demonstrate an inability or unwillingness
24 to follow the rules in a controlled environment such as
25 probation, especially you would think that somebody knows

1 that they have prison hanging over their head. It could
2 suggest a problem with authority figures and failing on
3 conditional release such as being out on parole or
4 probation has been correlated or shown a relationship in
5 the literature to future offending, not necessarily sex
6 offending, but just offending in general.

7 Q Okay. Continue that. We have these probation
8 violations you just talked about. What came next in the
9 criminal history?

10 A He had another probation violation, but that one was
11 unfounded.

12 And then in 2009 he was charged with another
13 probation violation, and his probation was revoked and he
14 was sentenced to five months and five days incarcerated.

15 In 2009 he was charged with failure to register as a
16 sex offender, failure to comply with requirements,
17 provided false information and a probation violation. He
18 was convicted, sentenced to three years in prison and
19 seven years of probation. He told me that he incurred
20 those charges because he stopped going to the probation
21 office, he changed his job location because he was worried
22 that he was going to lose his job if his probation officer
23 was showing up at his job.

24 And then finally, in 2014 he was charged with
25 criminal sexual conduct with a minor under the age of 16.

1 Q Okay. And is that the South Carolina conviction in
2 2014?

3 A Yes.

4 MR. BOGLE: If I may approach the witness, Your
5 Honor.

6 THE COURT: Yes, sir.

7 BY MR. BOGLE:

8 Q Let me show you what's been already marked
9 preliminarily as State's Exhibit Number 1, a certified
10 copy of an indictment, sentencing sheet and a warrant for
11 criminal sexual conduct with a minor in the third degree.
12 Is this a document that you were talking about just then,
13 the conviction you were talking about just then?

14 A Yes.

15 Q Is it a document you've looked at?

16 A Yes.

17 Q Okay. Is this something you would consider in your
18 evaluation of Mr. Bearden?

19 A Yes.

20 Q What is the crime he was convicted of?

21 A He pled nolo contendere or no contest to criminal
22 sexual conduct with a minor in the third degree.

23 Q And the date he was convicted, the lower right-hand
24 corner? When was he sentenced?

25 A December 8, 2014.

1 Q Okay. Is criminal sexual conduct with a minor in the
2 third degree classified as a sexually violent offense
3 under our law?

4 A Yes.

5 MR. BOGLE: Your Honor, at this time we move to
6 introduce into evidence the certified copy of the
7 Greenwood conviction for criminal sexual conduct with a
8 minor in the third degree.

9 THE COURT: Any objection?

10 MR. LAWRIK: None, Your Honor.

11 THE COURT: Admitted.

12 (WHEREUPON, State's Exhibit Number 1 was admitted into
13 evidence.)

14 BY MR. BOGLE:

15 Q Now, Doctor, let me move away from that in just a
16 second. Is it important to look at how a person behaves
17 while they're incarcerated either in prison or in the
18 county jail?

19 A Yes.

20 Q Why is that important?

21 A As I kind of indicated when I talked about failing
22 unconditional release or supervision, prisons are a really
23 restrictive environment. There's a lot of rules.
24 Somebody's monitoring you every day all day. And so
25 somebody who has a very hard time following the rules in

1 prison, that speaks to perhaps an unwillingness or an
2 inability to control their behavior. Especially if
3 somebody is repeatedly getting in trouble and having
4 sanctions in the prison and continues to get in trouble, I
5 think that speaks a lot about their behavior, their
6 personality and perhaps how well they'll do on supervision
7 in the future.

8 Q And in this particular case, were you provided
9 records from the Georgia Department of Corrections about
10 his time there?

11 A Yes.

12 Q Were you provided records from the South Carolina
13 Department of Corrections for his time there?

14 A Yes.

15 Q Were you provided records from the Greenwood County
16 Detention Center for his time there awaiting this trial?

17 A Yes.

18 Q Okay. What type of -- and are these the type of
19 records typically reviewed by experts in your field?

20 A Yes.

21 Q What are you looking for in those type of records
22 that relate to this type of evaluation?

23 A Well, I'm looking at the number of disciplinary
24 infractions somebody has incurred. I'm looking at the
25 nature of them. I want to know if they had any kinds of

1 sexual or violence misconduct, and just kind of looking
2 for a pattern about what their behavior was like when they
3 were incarcerated.

4 Q Did you find such a pattern regarding Mr. Bearden
5 while he was incarcerated at these three places I just
6 talked about?

7 A Yes, I did.

8 Q What type of pattern did you find that was relevant
9 to your diagnosis -- I'm sorry. Was this pattern of
10 behavior relevant to your ultimate diagnosis and
11 recommendation regarding Mr. Bearden?

12 A Yes.

13 Q What did you find?

14 A Well, in the Georgia Department of Corrections, he
15 had a number of disciplinary infractions, a number for
16 failure to follow the rules or being out of place like
17 being in an area he wasn't supposed to be. He also got in
18 trouble for masturbating in front of a female correctional
19 officer on two occasions. And then the rest in the
20 Georgia Department of Corrections were for failure to
21 follow the rules.

22 Q Okay. Why are the sexual misconduct ones important?

23 A Well, again, I'm looking for a pattern. I'm looking
24 at the behaviors that they exhibited. I want to know if
25 they have sexual arousal to certain things, are they able

1 to control it in this environment where they are going to
2 get in trouble if they get caught.

3 Q Okay. Now, what about in the South Carolina
4 Department of Corrections, was there any record of
5 disciplinary infractions there that you found important to
6 your diagnosis?

7 A Yes. I saw that he only had one disciplinary
8 infraction in the South Carolina Department of
9 Corrections, and that was for refusing or failing to obey
10 orders. He told me that this occurred when an officer
11 told him to go to his cell but he said his buddy had some
12 kind of a key and that Mr. Bearden was told by an officer
13 that he was interrupting the count of the inmates. He
14 said, "So I took my ID and shoved it in" -- I think he
15 said the correctional officer's name, but I put in
16 brackets the correctional officer's name. He said it was
17 excessive. He was being dictative. He wanted to make a
18 scene and he sent me to the refocus dorm for lockup for a
19 month and then I was moved to a different dorm.

20 Q Okay. And what about the Greenwood County Detention
21 Center? Was he confined there for a while awaiting this
22 trial?

23 A Yes.

24 Q Did you find misconduct there that he committed that
25 was relevant to your diagnosis?

1 A Yes, I did. I noted that he had a lot of
2 disciplinary write-ups. Some of them were things like
3 being out of place and failing to follow the rules. He
4 threatened officers verbally on several occasions. It was
5 noted he had to be moved to a different cell or to a
6 different dorm or pod frequently. And he -- they noted
7 that like the locking mechanism on his cell door was
8 usually tampered with or it was broken in every cell that
9 he was in. He was found with a knife in his cell.

10 Q Was there any sexual misconduct while at the
11 Greenwood County Detention Center awaiting this trial?

12 A There were. There were about six instances of where
13 he was observed by female correctional staff masturbating
14 or stroking his penis or being naked in his cell and
15 asking them to come talk to him. They also noted that he
16 had figured out a way to open like the food port in his
17 cell door where they can slide food trays through, and
18 that he was observed with his penis out of the food port
19 masturbating to a female correctional officer there as
20 well.

21 Q Now, is this type of sexual misconduct while in
22 prison, is this something you're looking for in these
23 types of evaluation?

24 A I'm definitely considering it. I'm looking at all
25 disciplinary infractions.

1 Q And when you find it, though, what weight does it
2 have on your evaluation?

3 A I consider it as a data point. In this case this was
4 a lot of data points because I had so many disciplinary
5 incidents that had been written about him.

6 Q Okay. Now, going back to the sexually violent
7 convictions, State's Exhibit Number 1 which I showed you a
8 minute ago ---

9 A Yes.

10 Q --- and I'm going to hand it back, did you review the
11 law enforcement records relating to this offense?

12 A Yes, I did.

13 Q Are they part of the records you listed a few minutes
14 ago for the jury of the stuff that you looked at?

15 A Yes.

16 Q And are these types of records something that is used
17 by experts in your field in rendering diagnoses or
18 opinions in cases like this?

19 A Yes, they are.

20 Q Would you please tell the jury -- well, first off,
21 why is it necessary to look at the underlying background
22 details behind an offense like the one you've got up there
23 with you?

24 A Well, I want to see what the victim or victims
25 reported to police. I want to see what's in the

1 officially reported documents. I want to see what the
2 defendant or the examinee said to police, if anything.
3 And then I want to get the examinee's account of what
4 actually happened in their opinion during that offense.

5 Q Okay.

6 A I'm also looking for patterns of behaviors or things
7 that suggest abusive or nonconsensual sexual arousal to
8 stimuli such as children or rape or something like that.

9 Q Now, prior to this crime -- let me back up a second.
10 Was there a prior conviction involving a young girl in the
11 State of Georgia?

12 A Yes.

13 Q What was he convicted of there?

14 A He was convicted of child molestation and public
15 indecency/indecent exposure. He was convicted of both in
16 2008.

17 Q And how old was the girl in that particular case?
18 Did you ever get an exact age or an approximate age?

19 A No. The unfortunate thing is I think that your
20 office tried to reach out to Georgia several times to get
21 this information, but we only really got very, very
22 limited information about this offense from Georgia. The
23 only really description that I had of those crimes was
24 that he, quote, performed a lewd exposure of sexual organs
25 in a public place to a child under the age of 16 years old

1 by exposing his penis.

2 Q Okay. And he was convicted of that in the State of
3 Georgia?

4 A He was.

5 Q All right. Now, moving back to South Carolina, the
6 criminal sexual conduct with a minor in the third degree,
7 tell the jury what details behind that offense you found
8 significant in reaching your conclusions about
9 Mr. Bearden?

10 A This was a 2014 case in which an 8-year-old girl
11 reportedly told her guidance counselor that she felt
12 uncomfortable with Mr. Bearden and maybe reported some
13 other questionable behavior. That elementary school
14 teacher called the police, and they went to the school and
15 met with the guidance counselor and the reported victim in
16 the case.

17 The victim was the 8-year-old child of Mr. Bearden's
18 sister's fiance. And this child told police that from
19 December of 2013 till I guess when it was reported,
20 February in 2014, Mr. Bearden had kissed her on the mouth,
21 touched her under her shirt, rubbed her upper and lower
22 back.

23 MR. LAWRYMORE: Your Honor, I object to these
24 statements as being hearsay.

25 THE COURT: Overruled. Go ahead, please.

1 BY MR. BOGLE:

2 Q Go ahead, ma'am.

3 A And then touched her breasts and then touched her
4 underneath her belly button and just above her pants in a
5 rubbing motion. She said that it didn't hurt but it made
6 her really uncomfortable. She said that Mr. Bearden told
7 her that if she told her stepmother, who was his sister,
8 that his sister would get mad at him and then he would
9 never be allowed to come over again.

10 There was other indication that he would do nonsexual
11 activities with this 8-year-old including nail painting
12 and playing hide and go seek, and that this had been going
13 on since approximately December until she reported it to
14 her guidance counselor.

15 Q What is grooming?

16 A Grooming is a term that applies to individuals who
17 offend against children who do these called grooming
18 behaviors in which they are -- sometimes it's giving gifts
19 to a child or playing games with them, kind of making them
20 more comfortable, and it's thought that they are like
21 preparing them to sexually abuse them.

22 Q The activities you talked about a minute ago, nail
23 painting, hide and seek and things like that, are these
24 activities consistent with the pattern of trying to groom
25 a child?

1 A They certainly could be.

2 Q Okay. So to recap, we've got the child molestation
3 in Georgia.

4 A Yes.

5 Q We have the exposure at the Department of Corrections
6 in Georgia.

7 A Yes.

8 Q We have the indecent exposure and the sexual
9 misconduct at the Greenwood County Detention Center in
10 South Carolina.

11 A Yes.

12 Q And finally, we have the criminal sexual conduct in
13 the third degree on a minor here in South Carolina.

14 A Yes.

15 Q And you already testified, I believe, just one more
16 time, is CSC, criminal sexual conduct with a minor in the
17 third degree, is that a sexually violent crime?

18 A Yes, it is.

19 Q Okay. Now, did you have a number of assessments
20 performed or performed assessments on Mr. Bearden as part
21 of your evaluation?

22 A Yes.

23 Q Okay. Starting at the top, were these assessments
24 the basis -- part of the basis of your opinion?

25 A They were data points for the basis of my opinion.

1 Q Why do so many? Why not just do one or two?

2 A Well, this is a really high-stakes case, so it's
3 really important to consider multiple data points.

4 I'm also looking at separate issues. So I want to
5 look at the full range of psychiatric conditions, so I'm
6 not just looking for things like sexual disorders or
7 personality disorders. I want to know what symptoms the
8 examinee has, so I give some instruments that measure
9 symptoms. I also give tests to make sure that the
10 examinee is going to be able to attend and pay attention
11 during the whole evaluation. Then I'm looking at other
12 kinds of symptoms. I'm looking at things that have
13 validity indicators, which means there are scales built
14 into the test that tell you how valid the person
15 approached the test, did it seem like they were defensive,
16 like not wanting to admit maybe negative information about
17 themselves, or were they over-reporting and maybe like
18 exaggerating or making up symptoms. So I'm looking for
19 measures that have that. Then I'm looking at things that
20 are more sex specific including questionnaires that look
21 at sexual behavior and scoring on risk assessment measures
22 and other things that we know are associated with
23 reoffending.

24 Q Okay. Well, let's start at the top. The first one I
25 found is called the Conners Continuous Performance Test 3.

1 A Yes.

2 Q The Connors CPT 3, what is that?

3 A So the CPT is a measure of attention, and the
4 examinee, it's on the computer, they have to like press
5 the space bar every time they see one letter but not
6 another letter. So it looks at attention, it also looks
7 at impulsivity. It's used as a measure for attentional
8 deficit hyperactivity disorder, ADHD.

9 The reason that I use it is because I know that I'm
10 going to give them a battery of tests and I want to make
11 sure that this person is able to pay attention to the
12 battery of tests. It also is a screener, if they have any
13 kind of neurological or cognitive condition that I'd want
14 to look at further.

15 Q Okay. And as a result of this, what did you learn?
16 What did you learn about Mr. Bearden as a result of this
17 particular assessment?

18 A I learned that there were no atypical test scores on
19 the CPT 3, and that suggests that he likely doesn't have a
20 problem with sustaining his attention or impulsivity on
21 that test.

22 Q Okay. Next thing is called SASSI-4, S-A-S-S-I 4 ---

23 A Yes.

24 Q --- related to substance abuse. Would you tell the
25 jury what that is?

1 A Yeah. This is a questionnaire that's assessing
2 lifetime history of substance use, looking at problems
3 caused by substances and other symptoms that could lead to
4 diagnoses of substance use disorders.

5 We know that substances don't make somebody commit
6 sex offenses, but we know that if somebody has a sexual
7 interest in something that could be illegal, that
8 sometimes substances lower their inhibitions or like their
9 ability to put the brakes on to stop themselves. So
10 substance use is a relevant factor when looking at these
11 kinds of evaluations. And so I give this as another
12 symptom measure to look at substance use.

13 Q And what did you find regarding this assessment
14 relating to Mr. Bearden?

15 A I found that the test results indicated that
16 Mr. Bearden approached the test in a defensive manner. He
17 might have been unwilling to report negative information
18 about himself. But despite that defensiveness noted,
19 there was a high probability that he's had or has a
20 substance use disorder.

21 Q Okay. The next thing was called a Personality
22 Assessment Inventory or PAI.

23 A Yes.

24 Q What is that?

25 A The PAI looks at psychological and psychiatric

1 symptoms, and it also looks at personality functioning.
2 It has validity indicators and gives us information about
3 a person's thoughts of suicide, anxiety, depression, all
4 of those kinds of things in personality characteristics.

5 Q And what did you learn from that when it was assessed
6 on Mr. Bearden?

7 A Well, the validity scales indicated that he may have
8 been attempting to present himself in a favorable light.
9 So that was some defensiveness. There was also indication
10 that he would report that substances have caused problems
11 for him in his life. People who obtain similar test
12 protocols as Mr. Bordon [sic] did frequently report being
13 moody, others view them as being sensitive. He might be
14 dissatisfied with his relationships and his life goals.
15 Aside from that, there were really no other psychological
16 symptoms that he reported or endorsed on that test.

17 It looks at things like stressors. So the test
18 indicated that his stress at the time he took it was
19 probably pretty average, that he's probably competent and
20 dominant and would be described as others as being
21 ambitious. He probably likes to interact with people who
22 he can exert some measure of control over them.

23 Those were my main findings.

24 Q Why is that important in a case like this to give
25 that type of assessment?

1 A I'm looking at the full picture. So I'm just kind of
2 picking and choosing what I want to look at, but I'm doing
3 a comprehensive diagnostic evaluation, and personality in
4 psychopathology is definitely part of that.

5 Q Personality and what?

6 A Psychopathology ---

7 Q Psycho -- psycho ---

8 A --- like psychological problems, symptoms,
9 conditions.

10 Q Okay. The next thing is something called the Abel
11 Assessment, Abel Assessment for Sexual Interest Part 3 or
12 Type 3?

13 A Version 3, yes.

14 Q Has there been some controversy in the psychology
15 industry about the Abel test?

16 A About a part of it, the visual reaction time, the VRT
17 part.

18 Q And why is that?

19 A Well, the person who made this test hasn't really
20 released a lot of information about how he made it, so
21 it's hard to independently test it if you don't exactly
22 know like the science that he used behind the test.

23 Q So why do you use it?

24 A He's published a lot of literature on it, but there
25 haven't been a lot of independent.

1 So the reason that I use it is a couple fold. So it
2 has a questionnaire, first. And I like the questionnaire
3 because it looks at some validity issues, but it also asks
4 the questions that I'm later going to sit down and talk to
5 him about in my clinical interview. And so there's been
6 mixed results on literature about if somebody is more
7 likely to tell you something that they might not want to
8 talk about to a computer or face-to-face, so I think it's
9 important to ask questions like in multiple ways and in
10 different ways.

11 MR. LAWRIK: Your Honor, I'm going to make an
12 objection on the grounds that she's testified that this
13 test isn't standardized, there's some deviations there,
14 thus it's not reliable and admissible.

15 THE COURT: Thank you, sir. I'm overruling that.
16 Go ahead.

17 BY MR. BOGLE:

18 Q So what did you find? So basically, this is
19 computer-generated ---

20 A Yeah.

21 Q --- versus a computer done ---

22 A Right.

23 Q --- versus him sitting down face-to-face with you
24 later on.

25 A Right. He did this on a computer, and it was a

1 questionnaire. It asked him questions like how old were
2 you the first time you viewed pornography? Have you ever
3 had an affair with a stranger? Things like that. And so
4 he sat down and took this test by himself.

5 What I found was he didn't report any what we would
6 call deviant behavior on this test, so he didn't report
7 being sexually aroused by children, meaning he reported
8 like looking up adult pornography and things like that
9 that are normative. So I didn't see anything really
10 atypical.

11 There was some indication of social desirability, and
12 what that means is presenting yourself in a way that other
13 people -- let me rephrase that. Presenting yourself in a
14 way that kind of minimizes faults about yourself. So
15 somebody who is high in social desirability might be
16 unwilling to report things that other people typically
17 would such as being impatient. So there's a high level of
18 that on that test.

19 But looking at cognitive distortions, and cognitive
20 distortions are things that some people who offend against
21 children will like say to excuse that behavior, and I
22 didn't find a high level of that on this.

23 Yeah. And then the visual reaction portion, that's
24 the one where there's been some controversy with it.
25 Basically, the person taking the test is on the computer

1 and the computer is showing them slides of children and
2 adults and teenagers. They're all clothed. And the test
3 is kind of measuring how long they look at pictures of,
4 say, children than they do to adults. It's a proxy for
5 sexual interest, but that's the one there's been some
6 problems. It's a small data point that I look at because
7 I really like the questionnaire part of it.

8 And on that it showed that he has sexual interest in
9 adult women, men and female teenagers. All of those are
10 biologically normal. Having sex with a teenager might be
11 illegal, but it's not what we would call deviant or a
12 disorder. And you can think about that. Like anybody who
13 has gone through puberty biologically, you would find that
14 person attractive, if that makes sense. It's hard to tell
15 the difference between like an 18-year-old and a
16 16-year-old, so that's why it's biologically normal.

17 Q Now, the next thing I see is something called the
18 Hare Psychopathy Checklist Screening Version, the PCL.
19 What's the purpose of this?

20 A I did not give him the screening version. I gave him
21 the Hare Psychopathy Checklist Revised Second Edition, the
22 PCL-R2.

23 Q Okay. What's the purpose of that?

24 A This is a psychopathy measure. So psychopathy is a
25 personality construct that includes traits of like

1 interpersonal skills of other people, antisocial
2 behaviors, so breaking the law or committing crimes or
3 doing things against society. It's looking at this
4 constellation of traits that are consistent with
5 psychopathy. And this is a measure that I rate the person
6 on after meeting with them and reviewing all of the
7 records.

8 Q What did you learn from this test, this assessment?

9 A So I learned that Mr. Bearden does not meet the
10 criteria for psychopathy. He does have some of the
11 characteristics. Most people do have some of the
12 characteristics. And if you're looking at like the cut
13 score or what number you wanted the score above to say
14 somebody was psychopathic, he did not meet that threshold,
15 so he's not classified as being a psychopath.

16 Q Okay. Now the next thing I'm seeing is something
17 called the Static-99R. What is that?

18 A The Static-99R is an actuarial risk assessment
19 measure.

20 Q Whoa, whoa, whoa.

21 A I'm going to explain what it is.

22 Q Can you tell us what that means?

23 A Yes. So this is a measure, if you think -- so an
24 actuarial is where you're compared to a known group of
25 people. And so a good example to think about is when you

1 apply for life insurance. So a life insurance company
2 doesn't know when you personally are going to die, but
3 they know characteristics that are associated with an
4 early death. So if they know that the person smokes and
5 they have a family history of heart disease and they work
6 as a roofer at a company that was sued a bunch of times
7 for safety issues or whatever, they know that the more of
8 those risk factors that you have, the higher risk you are
9 for having an early death. And so they use that method to
10 kind of calculate what your premium is going to be for a
11 life insurance policy based on the number of
12 characteristics you share with people who have died early.

13 Q Okay. So is that the basis of the Static-99R, the
14 type of assessment that it is?

15 A Yes. But for the Static-99R, it's looking at groups
16 of people that were detected sexually reoffending. So
17 it's based on large studies with lots of men who have been
18 convicted of sex offenses and then went on to reoffend to
19 look at what characteristics those people shared.

20 Q Okay. And this is thousands of sex offenders over
21 multiple countries?

22 A Correct.

23 Q And what score -- now, what's the low end and the
24 high end of the score you can get on the Static-99R? When
25 you're assessing all these factors, you give him a 1 or a

1 0 or whatever, what's the lowest end and the highest end?

2 A The lowest is a -3, the highest -- I'm going to
3 check. 12. The highest grade you can get is a 12.

4 Q Okay. In assessing Mr. Bearden on this using this
5 particular instrument, the Static-99R, what score did he
6 get?

7 A Mr. Bearden obtained a score of an 8 on the
8 Static-99R.

9 Q What is the average sex offender's score on the
10 Static-99R?

11 A I mean, the middle of the range, the typical score is
12 a 2.

13 Q Okay. He got an 8.

14 A He got an 8, and that places him in the well-above
15 average risk category for being charged or convicted of
16 another sex offense.

17 Q Now, does that also, does the literature accompanying
18 that test also give you a prediction like his risk of
19 offending five years out?

20 A Well, it's not a prediction for him. So like I said,
21 no test exists that can tell you if a person is going to
22 reoffend or not. You just can't do that.

23 Q Okay. Let me rephrase the question. Go ahead. Go
24 ahead.

25 A But it will -- it tells you the rates of people who

1 have the same score in the studies that they conducted,
2 how often those people reoffended.

3 Q Okay. So a person with that score, just like in the
4 insurance example ---

5 A Yes.

6 Q --- can't say if you're going to die ---

7 A Right.

8 Q --- if you've got 8 things wrong with you, you're
9 more likely to. In this case, a score of 8, what is the
10 likely to reoffend within five years based upon the
11 science behind this test?

12 A The five-year recidivism rate or reoffending sexually
13 rate was 35.1.

14 Q Percent?

15 A Yeah. Percent.

16 Q Okay. Is there another way to look at his score, it
17 being either higher than or lower than a certain
18 percentage of the people scored on this test?

19 A Yes. So when you look at the sample of people that
20 these tests were normed on, when you compare him -- sorry.
21 Let's see. When you're looking at percentiles,
22 Mr. Bearden was in the 99.1 percentile. So that means if
23 you took a sample of 100 sex offenders, 99 would have a
24 lower score than him, one would have the same score and 0
25 in that sample would have a higher score than him. And

1 those numbers are rounded.

2 Q And this is well above average risk?

3 A It's well above average risk, and it's about 7.3,
4 almost 7 1/2 times the average risk -- or, sorry -- the
5 average sex offender's risk level.

6 Q Is there another -- again, you called it an actuarial
7 risk assessment, I believe?

8 A Yes.

9 Q Is there another one that goes by the number 2002R?

10 A Yes.

11 Q Did you run that one on Mr. Bearden?

12 A I don't do the 2002R.

13 Q Why is that?

14 A Well, I think that the literature behind the
15 Static-99R is better. I did notice that other evaluators
16 in the state had started combining or giving both the
17 Static-99R and the Static-2002R, and I can't recall if I
18 had asked or heard someone testify that that had been
19 recommended by a trainer. And so when the new workbook to
20 score the Static-99R came out, I went and got trained at
21 the Association for the Treatment of Sexual Abusers by one
22 of the people who made that test. And he didn't recommend
23 combining those scores.

24 So when I heard this, I wanted to make sure that I'm
25 still following the science and doing everything

1 correctly. I emailed one of the authors of the Static-99R
2 and said, "I notice that people have been doing this. I
3 think this has been recommended. What is recommended?"
4 And this wasn't just one of the authors. This is like
5 their official email address that you email to them if you
6 have questions about their measure.

7 And they said that it has been recommended in some
8 research studies that if you add the Static-2002 to the
9 Static-99, it adds a little incremental, like it increases
10 the competence of that score by a little bit. However,
11 the person who responded to the email said that those
12 articles or studies didn't give any good way to combine
13 those scores, and it isn't just scoring both. It's
14 somehow combining them. But because there's no standard
15 way to do that, the authors of the Static-99R weren't
16 recommending it, and so that is why I personally have not
17 yet or have not given the Static-2002.

18 Q And wasn't the workbook and the training for the
19 Static-99R updated fairly recently?

20 A The new workbook came out in 2016.

21 Q Okay. Just two years ago.

22 Okay. Now, based upon your evaluation of
23 Mr. Bearden, the documents you looked at, the prison
24 record, the sex offender treatment or lack of sex offender
25 treatment, all the stuff you've looked at and talked about

1 today, were you able to diagnose Mr. Bearden with either a
2 mental abnormality or personality disorder?

3 A Yes.

4 Q What did you come up with?

5 A Well, firstly, it's my opinion that Mr. Bearden meets
6 diagnostic criteria for what's called exhibitionistic
7 disorder. This is for a period of six months or longer
8 having really intense, persistent sexual arousal to
9 exposing your genitals to an unsuspecting person. And so
10 that diagnosis is based on not just the crimes that he was
11 convicted of in Georgia, but also the kind of years of
12 exposing his penis and masturbating to female correctional
13 officers.

14 Q Okay. What else? Any other diagnoses?

15 A I also diagnosed him with antisocial personality
16 disorder. And so that is a pervasive pattern of behavior
17 that typically starts in adolescence, and it's this
18 pattern for disregarding and violating the rights of other
19 people. Some symptoms of it include failing to conform to
20 social norms, so doing things that could lead to you
21 getting arrested, repeatedly exhibiting behaviors that are
22 grounds for arrest, deceitfulness including lying, using
23 aliases, conning people for personal profit, impulsivity,
24 failure to plan ahead, irritability and aggressiveness.

25 They also, for a diagnosis of antisocial personality

1 disorder, there needs to be evidence of conduct disorder
2 prior to the age of 15. Conduct disorders are a
3 behavioral disorder that occurs in children and includes
4 things such as stealing, cruelty to animals, aggression to
5 people, starting fires. And they don't need to have been
6 diagnosed with it during childhood. There just needs to
7 be evidence that it was there before the age of 15.

8 And so for Mr. Bearden, he did have some evidence of
9 conduct disorder. He had set at least one fire as a
10 child. He stole from stores beginning at the age of 8.
11 He began getting suspended from school around the age of
12 11. He frequently got into fights with his peers. He had
13 attempted to steal things from mailboxes. He was expelled
14 from school.

15 As an adult, I noted that he had a lot of arrests,
16 problems with authority figures, problems following the
17 rules. He reportedly was an enforcer in a prison gang for
18 a number of years, had gotten into a number of fights and
19 engaged in some violent behavior both against correctional
20 officers and in mutual fights with other inmates. He told
21 me that he had stabbed people in the Department of
22 Corrections. I don't believe that I saw a record of that.
23 That was per his self-report.

24 And taking all that together, it's my opinion that he
25 meets diagnostic criteria for antisocial personality

1 disorder.

2 Q Okay. Was there any other diagnoses besides those
3 two?

4 A Yes. I also diagnosed him with an adjustment
5 disorder. An adjustment disorder is like the development
6 of emotional or behavioral symptoms because of a stressor
7 in your life. And so Mr. Bearden reported that he had a
8 low mood, so some depressive symptoms, some anxiety. But
9 when I really drilled down and talked about these symptoms
10 with him, the depression did not seem so severe or
11 significant to warrant a diagnosis of a depressive
12 disorder. Rather he said he was really depressed when he
13 had to go to the Greenwood County Jail from South Carolina
14 Department of Corrections in order to undergo these
15 evaluations rather than just get out of prison and get to
16 go home.

17 He also had some anxiety in which he worried about
18 his daughter and worried about the future. But when I
19 talked to him about it, he said that he thought that his
20 amount of worry was reasonable, that somebody in a similar
21 situation would worry a similar amount, so I did not think
22 that it qualified for a standalone anxiety disorder, but I
23 thought that he had an adjustment disorder with some
24 depressive and anxious symptoms.

25 And then finally, it's my opinion that he meets

1 diagnostic criteria for a cannabis disorder. Substance
2 use disorders are symptoms that are interfering with your
3 functioning caused by abusing substances, in his case
4 marijuana or cannabis. Typical symptoms include using
5 more of the drug than you wanted to or you intended to,
6 finding it difficult to stop or cut back on your use,
7 having problems associated with the use, other people
8 complaining or expressing concern, tolerance, withdrawal,
9 all of those things. And it's my opinion that, based on
10 his history of cannabis use and associated symptoms, that
11 he met diagnostic criteria for a cannabis use disorder.

12 Q Now, in this particular case, the Georgia victim was
13 under 16.

14 A Yes.

15 Q The South Carolina victim was 8.

16 A Yes.

17 Q Both were little girls. Did you look for any
18 evidence of pedophilic disorder because he's got two girl
19 victims?

20 A Yes.

21 Q One's pretty young.

22 Were you able to find anything?

23 A Yes. Some of the crime characteristics suggest that
24 Mr. Bearden might have sexual arousal to prepubescent,
25 which means children not yet in puberty. Those children

1 are typically under the age of about 12, depending. But
2 in the criteria that we use to diagnose mental illnesses,
3 they have a time of six months or longer. And so I didn't
4 have evidence of this six months or longer, but based on
5 the crime characteristics, especially the one in South
6 Carolina, it does sound like he might have a sexual
7 interest in children.

8 Q Okay. Now, we mentioned other evaluations a minute
9 ago. Who is Dr. Marie Gehle? Did she do an evaluation in
10 this case?

11 A She did. Dr. Gehle is, I think, the chief
12 psychologist at the Department of Mental Health in
13 Columbia. She does a lot of these pre-commitment
14 evaluations.

15 Q And she was appointed by the Court, was she not, to
16 do the initial evaluation?

17 A Yes.

18 Q Okay. Was her evaluation also part of your
19 evaluation of Mr. Bearden?

20 A I reviewed it and summarized some of her findings in
21 my evaluation.

22 Q Okay. Why is it important to look at her evaluation
23 in this case?

24 A Well, I want to know what Mr. Bearden reported to her
25 that's different than what he reported to me. I want to

1 look to see what measures she administered, what symptoms
2 she observed, what records she reviewed to make sure that
3 I have all of those records and so forth.

4 Q Did she in her report find anything that related to a
5 sexual preference for pubescent or prepubescent children?

6 A She noted that he had a risk factor of having a
7 preference for prepubescent children.

8 Q Okay. Now, let's come back -- I'll come back to that
9 in a minute. What is his plan for release?

10 A He's not sure if he wants to go back to Georgia or
11 stay in South Carolina.

12 MR. LAWRIK: Objection, Your Honor. Relevance as
13 to any plans he might have after this proceeding is
14 speculative.

15 THE COURT: I sustain the objection.

16 MR. BOGLE: His plans at release are relevant.

17 THE COURT: Just -- okay. One second. Let me get
18 the jury -- Mr. Foreman, would you take the jury out for a
19 second?

20 (WHEREUPON, the jury exits the courtroom at 12:38 p.m.)

21 THE COURT: What is the relevance?

22 MR. BOGLE: She -- I'm going to ask what is -- my
23 plan is to ask what his plans are for release. Next I'm
24 going to go into the dynamic or change ---

25 THE COURT: Stop. What is the relevance?

1 MR. BOGLE: The relevance is are there realistic
2 plans to keep him from reoffending as part of her report.

3 THE COURT: I sustain the objection. I'm not going
4 to let you do that. I don't think it's part of your case.
5 Bring the jury back, please.

6 MR. BOGLE: Thank you, Your Honor.

7 (WHEREUPON, the jury entered the courtroom at 12:39 p.m.)

8 BY MR. BOGLE:

9 Q Dr. Gottfried, when you were talking about the
10 Static-99R earlier, it measures something called static
11 risk factors?

12 A Yes.

13 Q Does that mean things that are unchangeable about
14 him?

15 A Yes. Static factors are things that you can't use
16 treatment to target. So things like your age, so you are
17 going to get older, but you can never treat somebody,
18 obviously, to get younger. Other static factors are
19 things like if you've had male victims, you can help
20 somebody not have future male victims, but you can never
21 go back and treat that they had or make it that they
22 didn't have male victims.

23 Q These are unchangeable things in his past.

24 A Yes.

25 Q Now, what are dynamic risk factors?

1 A Dynamic risk factors are things that are potentially
2 treatable. So these are things that they might be
3 difficult to treat, but you can target them in treatment,
4 and they are also things that have been shown to be
5 associated with people who go on to reoffend sexually.

6 Q Did you find any dynamic risk factors regarding
7 Mr. Bearden?

8 A Yes.

9 Q What are they?

10 A Well, I think that Mr. Bearden has a sexual interest
11 in children. I think that that sexual interest in
12 children and ---

13 MR. LAWRIK: Your Honor, I object.

14 THE COURT: Overruled.

15 THE WITNESS: I think that that interest and his
16 exhibitionistic disorder where he's aroused by exposing
17 himself which is a paraphilic sexual disorder coupled ---
18 BY MR. BOGLE:

19 Q By paraphilic, you mean what now?

20 A The paraphilic is the sexual disorder. Typically,
21 somebody aroused by something abusive, nonconsensual,
22 deviant, if you will, and so exhibitionistic disorder is
23 under the category of paraphilic disorders in which
24 somebody is sexually aroused by exposing their genitals to
25 an unsuspecting person.

1 Q Okay. I'm sorry. Please continue.

2 A So it's my opinion that his sexual interest in
3 children, having that exhibitionistic disorder coupled
4 with his antisocial personality disorder is a risk factor
5 -- is a big risk factor, because antisocial personality
6 disorder, while not directly related to sex offending,
7 it's related to general offending. And if he already has
8 these sexual interests, then that might prevent him from
9 being able to stop himself or put himself in the victim's
10 shoes to relate to them.

11 Another risk factor is that he's had a lot of
12 problems in jail following the rules, on supervised
13 release, on probation which suggests to me that he can't
14 control these behaviors or he doesn't want to behave -- or
15 control these behaviors. It was notable to me that during
16 the course of my evaluation when he knew that he was being
17 evaluated pursuant or under the Sexually Violent Predator
18 Act, he continued to expose his penis and masturbate in
19 jail to female correctional staff despite knowing that he
20 was getting evaluated for this serious statute.

21 Some of his crimes had some impulsivity, so I think
22 that that is a risk factor. As I mentioned, substances
23 don't make you commit a crime, but substance use, if you
24 have those intrasexual interests, can make you risky
25 because it can lower your ability to stop yourself. And

1 the problems that he's had in supervision and authority
2 factors I think are all dynamic risk factors.

3 Q Now, Doctor, a minute ago you listed your diagnoses
4 of Mr. Bearden. Were all those diagnoses established to a
5 reasonable degree of psychological certainty?

6 A Yes.

7 Q Okay. Now ---

8 MR. LAWRYMORE: Your Honor, I would object, and I
9 believe I'll have one brief matter that we'll need to
10 discuss.

11 THE COURT: Okay. Just one second.

12 Mr. Foreman, if you'd go back to your jury room right
13 quick, please.

14 (WHEREUPON, the jury exits the courtroom at 12:44 p.m.)

15 THE COURT: Mr. Lawrymore?

16 MR. LAWRYMORE: Your Honor, I'd move to exclude any
17 testimony that there's a diagnosis as to pedophilia
18 interest in children. She's testified that the acts that
19 have been admitted into evidence do not meet the DSM
20 criteria for pedophilia.

21 THE COURT: She didn't say that he had pedophilia.
22 She said he has a sexual interest in children. And it's
23 not the same.

24 Is that the same thing?

25 THE WITNESS: No. I said I did not diagnose him with

1 pedophilic disorder.

2 THE COURT: That's right.

3 MR. LAWRYMORE: I want it to be abundantly clear when
4 we're moving all of these diagnoses en mass into evidence
5 that pedophilia has not been established to a reasonable
6 degree of medical certainty because the testimony has not
7 done so.

8 THE COURT: Right. And I haven't -- my notes don't
9 indicate that it has, but I think that would be more of a
10 situation that's cross-examination fodder as opposed to an
11 objection.

12 With that being said, you objected to the defendant
13 having a sexual interest in children, her testimony on
14 that. I did not allow you to state your reasons for it.
15 Do you want to do that now?

16 MR. LAWRYMORE: Your Honor, those reasons would
17 mirror the ones that I just presented to the Court.

18 THE COURT: Okay. Very good. Those will be
19 overruled.

20 Bring the jury back.

21 (WHEREUPON, the jury entered the courtroom at 12:45 p.m.)

22 BY MR. BOGLE:

23 Q Let me rephrase or recap a little bit. Earlier you
24 testified about diagnoses of exhibitionist disorder,
25 antisocial personality disorder, adjustment disorder and

1 cannabis use disorder. Were all these diagnoses of
2 Mr. Bearden made to a reasonable degree of psychological
3 certainty?

4 A Yes.

5 Q Okay. My next question then is do you have an
6 opinion, again, to a reasonable degree of psychological
7 certainty, as to whether these diagnoses of Mr. Bearden
8 affect his emotional or volitional capacity so that he is
9 predisposed to commit sexually violent crimes?

10 A Yes.

11 Q Okay. By volitional, what am I saying there? What
12 does that word mean in this context?

13 A Ability to control yourself.

14 Q Okay. Do you also have an opinion, again, to a
15 reasonable degree of psychological certainty, as to
16 whether Mr. Bearden has the propensity to be dangerous and
17 commit future sexually violent offenses?

18 A Yes. It is my opinion that he does have the
19 propensity to be dangerous and commit new offenses ---

20 Q Do you also have an opinion -- I'm sorry.

21 A I was clarifying sexually violent offenses.

22 Q Do you also have an opinion, again, to a reasonable
23 degree of psychological certainty, as to whether
24 Mr. Bearden's propensity to commit sexually violent
25 offenses in the future is of such a degree it poses a

1 menace of the health and safety of others?

2 A Yes. It is my opinion that it does pose that.

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

7 A Yes. It is my opinion that he has serious problems
8 controlling his behavior.

9 Q Do you also have an opinion, again, to a reasonable
10 degree of psychological certainty, as to whether
11 Mr. Bearden's diagnoses you talked about earlier that I
12 mentioned a minute ago, do they make him likely to engage
13 in acts of sexual violence unless he's confined in a
14 secure facility for long-term control, care and treatment?

15 A Yes. I think particularly antisocial personality
16 disorder would satisfy that.

17 Q Okay. And do you also have an opinion, again, to a
18 reasonable degree of psychological certainty, as to
19 whether Harlin Bearden meets the criteria to be found a
20 sexually violent predator?

21 A Yes. It is my opinion that he meets the statutory
22 criteria for being a sexually violent predator.

23 Q Now, we've talked about Dr. Gehle's report and how
24 she got involved and that you reviewed this. It's
25 apparent from your testimony you disagree with her

1 conclusions. What led you to a different conclusion than
2 Dr. Gehle?

3 MR. LAWRIMORE: Objection. Improper pitting.

4 THE COURT: I'll sustain that objection.

5 MR. BOGLE: Thank you, Your Honor.

6 BY MR. BOGLE:

7 Q If Mr. Bearden is released, who would be at risk,
8 based upon your analysis of him, your evaluation of him?

9 A Well ---

10 MR. LAWRIMORE: Objection. Speculative.

11 THE COURT: What was the question?

12 MR. BOGLE: If he's released from this proceeding,
13 who would be at risk to be -- as a criminal victim of his.

14 THE COURT: Overruled. Note your objection.

15 Go ahead.

16 THE WITNESS: Based on his prior offense history, I
17 think that prepubescent female children would be at risk
18 from him. There probably also is a risk for exposing
19 himself to unwanted people in public, but that's not a
20 sexually violent offense. But I think that there is a
21 risk for that as well.

22 MR. BOGLE: Okay. Thank you, Doctor. Please answer
23 any questions counsel may have or the judge may have.

24 THE WITNESS: Thank you.

25 THE COURT: All right. Mr. Foreman, it is ten

1 minutes until 1:00. I'm going to go ahead and call a
2 lunch break now. If you would be back in your jury room
3 at 2:15, and we'll resume the cross-examination in the
4 trial. If you'd go with the bailiff, please.

5 Make that 2:30. I have a hearing at 2:00. I'm
6 sorry.

7 (WHEREUPON, the jury exits the courtroom at 12:49 p.m.)

8 THE COURT: Let me see the attorneys up here.

9 (WHEREUPON, a bench conference was held off the record,
10 and a recess was taken at 12:52 p.m.)

11 (WHEREUPON, the jury entered the courtroom at 2:31 p.m.)

12 THE COURT: All right. Before we get started, ladies
13 and gentlemen, I know that we have a juror who has some
14 personal issues to care for tomorrow. I've spoken with
15 the attorneys, and if the need arises, we'll make some
16 arrangements to make sure you don't miss what you need to
17 do.

18 Also, Mr. Foreman, I've been hearing reports that you
19 can hear us when we send you back to the jury room. Can
20 you hear us out here?

21 JURY FOREPERSON: Indiscernible, but yes, we can hear
22 you.

23 THE COURT: You can hear the noise, but you can't
24 discern what we're saying?

25 JURY FOREPERSON: No, sir.

1 THE COURT: Okay.

2 JURY FOREPERSON: But we can -- we can hear mumbling.

3 THE COURT: All right. If you start to hear me,
4 stop, get the bailiff and come out here or hear us
5 speaking, because that's why we send you in there. It's
6 matters that shouldn't be before the jury.

7 JURY FOREPERSON: I will.

8 THE COURT: Thank you so much.

9 All right. You were -- where were we?

10 Cross-examination of the state's witness; is that
11 correct?

12 MR. BOGLE: Yes, Your Honor.

13 MR. LAWRYMORE: Correct.

14 THE COURT: Would you come back around,
15 Dr. Gottfried.

16 MR. LAWRYMORE: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. LAWRYMORE:

20 Q Dr. Gottfried, good afternoon. My name is Cole
21 Lawrimore. You and I briefly met before our trial began
22 today.

23 A Yes.

24 Q I have a few quick questions for you in follow-up.
25 Hopefully won't keep you and these other folks a couple

1 more hours.

2 In going through your opinions with Mr. Bogle, you
3 indicated that you'd performed a battery of tests on
4 Mr. Bearden; is that correct?

5 A I had a battery administered to him as part of our
6 standard protocol.

7 Q When you say you had it administered to him, who
8 actually performed those tests?

9 A One of our lab technicians is credentialed to
10 administer the psych battery, and that's standard how we
11 do it for every case.

12 Q What portions of the testing that Mr. Bearden was
13 subjected to did you personally administer?

14 A Of the ones that I discussed here today,
15 Mr. Secondary did the CPT, the SASSI, the PAI and the Abel
16 assessment.

17 Q And as a preliminary matter, how many times did you
18 say you had offered testimony on behalf of the State of
19 South Carolina?

20 A For SVP or for ---

21 Q In sexually violent predator commitment proceedings
22 only.

23 A Sorry. Does that include annual review?

24 Q No. That does not. How many commitment proceedings
25 have you testified in?

1 A That I don't know. I've done six total. At least
2 two of them were annual reviews, but I don't have those
3 numbers broken down with me.

4 Q So you have testified in commitment proceedings
5 between one and four times?

6 A Yeah. At least two of them were annual reviews, so
7 that would be right. Correct.

8 Q Okay. And in those instances, on how many occasions
9 were you the first expert appointed by the State to
10 evaluate a person to determine whether they needed to be
11 in the program?

12 A Well, the sexual behavior clinic and lab at MUSC is
13 never the first expert by the State. It's the Department
14 of Mental Health who does the initial evaluation, and then
15 if the Attorney General's Office wants a second opinion,
16 we have a contract with them to do that through MUSC.

17 Q So you only get involved if and only if the State
18 wants an opinion other than the first one they received?

19 A Yes. If they request another evaluation, that's when
20 MUSC will get involved.

21 Q And I'm correct in my understanding that MUSC
22 receives \$2,000 for an initial review of the file, and
23 then receives \$2,500 more for a flat fee of \$4,500 in the
24 event that you believe a full evaluation is necessary.

25 A Well, it's a total of \$4,500 for an evaluation. If

1 it was just a file review, sometimes they just request a
2 file review, sometimes they request the full evaluation
3 and sometimes they request a file review first and then to
4 get back to them.

5 So the full evaluation is \$4,500, and then just to do
6 the file review is either \$2,000 or \$2,500.

7 Q Did you initially perform a file review here and
8 determine in your estimation that subsequent evaluation
9 was necessary or did you ---

10 A Yes.

11 Q Okay. So you reviewed, decided you wanted to do some
12 more testing?

13 A Yes. So how it works is we'll get all of the
14 discovery and the documents from the Attorney General's
15 Office, and then we'll do a review of some of the records,
16 treatment records if they're available, the initial
17 reports and then the underlying characteristics of the
18 offenses.

19 Q What records did you seek out on your own that
20 weren't provided to you by the ---

21 MR. BOGLE: He's kind of blocking my view of her.

22 THE COURT: Do you mind moving over just a little
23 bit?

24 MR. LAWRYMORE: I do not. I'm sorry.

25 MR. BOGLE: I'm sorry.

1 BY MR. LAWRYMORE:

2 Q What records did you review that were not provided to
3 you by the Attorney General's Office?

4 A I believe every record was eventually provided by the
5 Attorney General's Office. So if I think that I'm missing
6 something or I noted that Dr. Gehle reviewed something
7 that I realized I didn't have, then the Attorney General's
8 Office, I'll ask them can you get more information from
9 Georgia or can you get something that Dr. Gehle saw or can
10 you get detention center records, but they all go through
11 the Attorney General's Office.

12 Q So nobody at MUSC corresponded with anybody in
13 Georgia, anybody in South Carolina Department of
14 Corrections or anybody at the Greenwood County Detention
15 Center?

16 A Well, not that I'm aware of. The only time I guess
17 they would is if it was to set up like transportation of
18 the examinee, but I don't think anyone from my office
19 would contact anyone because we would need like releases
20 to get those records.

21 Q You didn't contact anybody from the State of Georgia,
22 Department of Corrections or Greenwood County Detention
23 Center?

24 A None of those three agencies.

25 Q You spoke with nobody in any of those three agencies

1 about Mr. Bearden's case?

2 A No.

3 Q You offered some testimony earlier about some records
4 you reviewed from them. You have conducted no independent
5 fact-seeking inquiries to the validity of those records
6 you reviewed, have you?

7 A Well, it's kind of standard practice when you request
8 records that they come from the agency to not then call
9 the agency and ask if they're their records. Pretty
10 standardly while they're their medical records or mental
11 health records, once I got a record from the source, I
12 don't independently verify that it came from, say, the
13 Department of Corrections.

14 Q And you likewise don't verify if the information
15 contained in that report is accurate in any way.

16 A Well, it's as accurate as the person who authored it.
17 So no, I don't call like the correctional officer who
18 wrote the incident report.

19 Q So if the correction officer's is inaccurate in some
20 way, you'd have no way of knowing that, would you?

21 A Well, correct. But to elaborate on that, police
22 reports, mental health records, all of them are just as
23 good as the person who wrote them. So I wouldn't say that
24 it's just limited to a correctional officer, that you can
25 say that for any collateral record.

1 Q Sure. So fair to say garbage in, garbage out?

2 A Yeah. I like that phrase.

3 Q Okay. And moving a little more specifically towards
4 the test that you administered. Excuse me while I'm going
5 through my notes from your testimony. The first test I
6 believe you discussed was the Conners Continuous
7 Performance Test 3?

8 A Yes.

9 Q I believe it was your testimony a minute ago that you
10 did not personally administer that test; is that correct?

11 A I rarely administer it. I only administer it if for
12 some reason our lab administrator is out.

13 Q But in any event, whoever reviewed it, the results
14 were that there was no indication of attention problems or
15 impulsivity on behalf of Mr. Bearden; is that correct?

16 A That is correct.

17 Q With regard to the Personal Assessment Inventory
18 Test, did you administer that test yourself?

19 A No. Again, all the computer-based tests are done by
20 our lab technician.

21 Q Okay. The Abel Assessment Test, you likewise did no
22 -- you had no personal involvement in the conducting of
23 that test, correct?

24 A Did not administer it. Our lab technician has a
25 binder. He has standard instructions that he gives every

1 person, so it's very standardized. But he administers,
2 sets up the computer, sits the person in front of it,
3 gives the instructions and then I do the interpretation.

4 Q Okay. And your interpretation was that his cognitive
5 distortion and score was nonproblematic; isn't that
6 correct?

7 A Correct.

8 Q And to the extent his social desirability score was
9 highly problematic, that's something along the lines of
10 somebody saying they're not admitting to being impatient
11 from time to time?

12 A Well, that's an example of social desirability. So
13 like I said, it's usually an unwillingness to admit to
14 common faults, for example, being impatient.

15 Q And to the extent that he registered any response to
16 male and female teenagers and the administration of that
17 test, it was your testimony that's a completely normal
18 response that you would expect across the general
19 population of human beings, correct?

20 A Talking about the visual reaction test of the Abel
21 assessment where they look at the slides and it kind of
22 looks at how long they look at the images versus the adult
23 images, that's correct. So while having sex with a minor
24 is illegal, it's not a mental illness to be attracted to a
25 15-year-old because they're biologically developed.

1 Q And moving along to the Hare Psychopathy Test,
2 Mr. Bearden is not a psychopath, correct?

3 A That's correct. As I testified, he doesn't meet the
4 clinical cutoff that you would identify him as being a
5 psychopath, although he did have some characteristics
6 associated with psychopathy.

7 Q Okay. And did you administer the Static-99 test?

8 A I scored it. It's not a test that you administer.
9 It's a clinician-rated test.

10 Q And now many criteria are included in that survey?

11 A Items?

12 Q Yes. How many items?

13 A I don't want to misquote it. There are ten items.

14 Q What do those ten items include?

15 A Oh, I'm sorry. I thought you were asking me a
16 question, what do those items include.

17 Q I was. What do those ten items include?

18 A The first item is how old the person will be when
19 they're released from confinement; if they've ever lived
20 with a lover for two years or longer; if the most recent
21 sex offense had any nonsexual violence; if they had any
22 prior convictions for nonsexual violence; the number of
23 prior sex offenses, you count up the charges and the
24 convictions; whether -- it's pretty much the number of
25 prior sentencing dates that they have had; if they've had

1 any convictions for noncontact sex offenses. Those are
2 things that there is no contact between the defendant or
3 examinee and a victim. It's more like child pornography
4 or exposing one's self. Whether or not they had any
5 victims that were unrelated to them; whether or not they
6 had any victims that were strangers; and whether or not
7 they had any male victims.

8 Q And when you went through that survey, you got a
9 score of 8, correct?

10 A Yes. When I scored the Static-99R, his score was an
11 8.

12 Q And I believe it was your testimony that that
13 correlated with -- let me rephrase that. I believe it was
14 your testimony that his actual risk could be lower or it
15 could be higher, correct? There's no way of using it to
16 actually diagnose his personal rate of recidivism,
17 correct?

18 A That is the gist of what I said. There are no
19 measures, unfortunately, that's going to tell you whether
20 or not the person you're evaluating is going to reoffend
21 or not. It tells you people of similar characteristics,
22 but the Static-99R doesn't account for other factors such
23 as the dynamic risk factors. So that's correct. We don't
24 ever know if the risk category that we put that person in
25 was higher or lower than it actually was for that person.

1 Q Fair to say putting Mr. Bearden in a vacuum based
2 solely on a score of 8, you can't say what his expected
3 rate of recidivism would be?

4 A You can't say that for any individual. You can just
5 compare them to a reference or a comparison group, and
6 that is how we come up with the score of 8, and then can
7 give you those numbers of people who also have an 8, how
8 often they go on to reoffend.

9 Q Why did you include a sample score with Canadian
10 citizens?

11 A Well, that's the standard reference sample.

12 So the Static-99R was developed in Canada. A lot of
13 people at universities who study sex offender recidivism
14 live in Canada, and so a lot of the samples that came in
15 the original study and subsequent studies of the Static-99
16 and the Static-99R took place in Canada. Those studies
17 have been replicated in the United States in multiple
18 countries. So that's just part of the normative sample.

19 Q Okay. And then moving onto your diagnosis with the
20 first position you took was that Mr. Bearden exhibited --
21 sorry. It's been a very long day.

22 A Exhibitionistic disorder.

23 Q Exhibitionistic disorder, got a little tangled up
24 there. What type of offenses, generally speaking, do you
25 see the possibility of somebody with that disorder

1 potentially committing or based on past offenses that you
2 would use in reaching a diagnosis?

3 A I'm sorry. I'm not sure I understand the question.
4 What -- for him specifically or people with exhibitionist
5 disorder?

6 Q Generally speaking, what type of behavior are we
7 talking about?

8 A Well, exhibitionistic disorder is intense arousal
9 lasting for six months or longer where you're aroused by
10 exposing your genitals to an unsuspecting person.

11 Q And you'd agree with me that that's not classified as
12 a sexually violent offense in the State of South Carolina.

13 A Correct. Uh-huh.

14 Q So if someone was engaging in that type of behavior,
15 they would not be committing a sexually violent offense.

16 A That's correct. So that's against the law. It
17 obviously causes sanctions in the corrections. But as I
18 indicated during direct testimony, it's not a sexually
19 violent offense.

20 Q And with regard to antisocial personality disorder,
21 would you agree with me that the DSM-5 is the preeminent
22 framework for rendering a diagnosis for that disorder?

23 A Well, the DSM-5 is the manual that most licensed
24 professionals who can offer diagnoses, it's most commonly
25 used for all diagnoses.

1 Q And you use the DSM-5.

2 A I -- I regularly use it.

3 Q Did you use anything other than the DSM-5 for
4 purposes of diagnosing Mr. Bearden with antisocial
5 personality disorder?

6 A I don't think I used anything else. I think I
7 considered some of his scores on the psychopathy measure
8 when I was thinking about diagnoses. I read a lot of
9 articles, and that might have affected my opinion, but I
10 didn't pull out anything else while I was thinking about
11 his particular diagnoses.

12 Q As you're sitting here today, the best of your
13 recollection, you believe you looked at the criteria in
14 the DSM-5, and that was the sole exclusive source of your
15 diagnostic criteria.

16 A Yes. I mean, I have a research interest in
17 antisocial personality disorder so I read a lot of the
18 studies that come out on it, so that might influence it.
19 But when I sit down and think about diagnoses, I am going
20 through the criteria in the DSM.

21 Q Okay. You also issued a diagnosis of adjustment
22 disorder; is that correct?

23 A Correct.

24 Q It's your testimony that Mr. Bearden experienced a
25 low mood and anxiety while in the Greenwood County

1 Detention Center?

2 A That's correct.

3 Q Okay. I think I'm finishing up here.

4 So just so I'm clear, it's your testimony that
5 exhibitionistic disorder does not, generally speaking,
6 lead to commission of a sexually violent offense.

7 A Right. That's not been my testimony. That's
8 correct.

9 MR. LAWRYMORE: A moment of the Court's indulgence,
10 Your Honor.

11 THE COURT: Yes, sir.

12 MR. LAWRYMORE: That's all I have for the moment.
13 Thank you, Your Honor.

14 THE COURT: Thank you, sir.

15 Redirect?

16 REDIRECT EXAMINATION

17 BY MR. BOGLE:

18 Q Doctor, regarding the diagnosis of antisocial
19 personality disorder, what, again, were the criteria for
20 that? What did you have to find to reach that, the
21 criteria for antisocial personality disorder?

22 A Yes. So according to the DSM-5, antisocial
23 personality disorder is a pervasive pattern of disregard
24 for and violation of the rights of others occurring since
25 age 15 as indicated by three or more of the following

1 symptoms: failure to conform to social norms with respect
2 to lawful behaviors as indicated by repeatedly performing
3 acts that are grounds for arrest; deceitfulness as
4 indicated by repeated lying, use of aliases or conning
5 others for personal profit or pleasure; impulsivity or
6 failure to plan ahead; irritability and aggressiveness as
7 indicated by repeated physical fights or assaults;
8 reckless disregard for safety of self or others;
9 consistent irresponsibility as indicated by repeated
10 failure to sustain consistent work behavior or honor
11 financial obligations; lack of remorse as indicated by
12 being indifferent to or rationalizing having hurt,
13 mistreated or stolen from another; and there's evidence of
14 conduct disorder with the onset before the age of 15.

15 MR. BOGLE: Okay. Thank you.

16 THE COURT: May this witness be excused? May this
17 witness be excused?

18 MR. BOGLE: Yes, Your Honor. I'm sorry. We'd ask
19 that she be excused.

20 MR. LAWRIMORE: No objection from the respondent.

21 THE COURT: Thank you, ma'am.

22 MR. BOGLE: Your Honor, at this time the State would
23 rest.

24 THE COURT: Thank you very much.

25 Mr. Foreman, the State announces that it rests, in

1 other words, it's presented its case in chief. I have
2 some administrative matters to take up outside of your
3 presence, then we'll bring you back out for the
4 continuation of the trial. But if you'd go with the
5 bailiff, please, sir.

6 (WHEREUPON, the jury exits the courtroom at 2:52 p.m.)

7 THE COURT: All right. Mr. Lawrimore, any motions?

8 MR. LAWRIMORE: Yes, Your Honor. At this point I'd
9 like to make a motion for a directed verdict on the
10 grounds that even in the light most favorable to the
11 nonmoving party, the State has introduced no evidence
12 reasonably tending to support the conclusion that
13 Mr. Bearden suffers from a mental abnormality such that
14 he's unable to control his behavior and needs to be
15 committed to a long-term care facility. The testimony was
16 that he suffered from antisocial personality disorder,
17 with exhibitionistic, which I have struggled mightily with
18 so far today, if that's the case, not likely to commit
19 sexually violent acts. If that's the evidence against
20 him, I truly do not believe that he meets the definition
21 as required by the act.

22 THE COURT: All right. Thank you very much. That
23 motion is denied.

24 All right. Are you ready to proceed with your
25 expert?

1 MR. LAWRYMORE: I am, Your Honor.

2 THE COURT: Do you have any other witnesses other
3 than your expert?

4 MR. LAWRYMORE: I don't believe so, Your Honor.

5 THE COURT: All right. You don't have to make that
6 call now. I'll be asking at some point.

7 All right. Would you bring the jury back?

8 (WHEREUPON, the jury entered the courtroom at 2:54 p.m.)

9 THE COURT: Mr. Lawrimore, would you call your first
10 witness, please, sir.

11 MR. LAWRYMORE: Yes, Your Honor. I call Dr. Marie
12 Gehle.

13 WHEREUPON,

14 DR. MARIE GEHLE

15 After having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. LAWRYMORE:

18 Q Good afternoon, Dr. Gehle. Would you please state
19 your full name for the record.

20 A Yes it's Marie Gehle, and it's spelled G-E-H-L-E.

21 Q Where do you live, Dr. Gehle?

22 A In Columbia, South Carolina.

23 Q Where do you work?

24 A I work at the Department of Mental Health.

25 Q What do you do at the Department of Mental Health?

1 A I am a chief psychologist in the forensic evaluation
2 service.

3 Q Do you have any specific educational background that
4 led to your attaining that position?

5 A Yes, I have a bachelor's degree in psychology from
6 Ohio Northern University, I have a master's degree in
7 clinical psychology from Xavier University, and I have a
8 doctorate in psychology from Xavier University. I
9 completed a pre-doctoral internship at Western State
10 Hospital in Tacoma, Washington, and I did a postdoctoral
11 fellowship at East Central Regional Hospital in Georgia.

12 Q And how long have you been with the Department of
13 Mental Health?

14 A I've worked there since November of 2009.

15 Q What type of services do you perform at the
16 Department of Mental Health?

17 A My sole job right now is to do pre-commitment
18 evaluations under the Sexually Violent Predator Act.

19 Q And who typically assigns you to conduct the
20 pre-commitment evaluation?

21 A I'm either appointed by court order or I am assigned
22 by my supervisor to do those evaluations.

23 Q And how many direct supervisors do you have?

24 A I have one direct supervisor.

25 Q Do you have any other employees that work under your

1 direct supervision?

2 A No.

3 Q Has the State of South Carolina ever offered you as
4 an expert witness in the field of forensic psychology?

5 A Yes.

6 Q On how many such occasions has the State offered your
7 testimony in the field of forensic psychology?

8 A I've been offered by the State probably about
9 90 times as the expert in sexually violent predator
10 proceedings.

11 Q And how many times have you actually testified in
12 that capacity?

13 A In South Carolina under the Sexually Violent Predator
14 Act, I've testified more than 100 times. It's probably
15 around 115 times.

16 Q And in how many pretrial -- in how many commitment
17 hearings have you testified?

18 A Well, typically, I testify in commitment trials
19 before a jury. I used to testify in summary judgment
20 hearings when cases were dismissed as well, and those are
21 also commitment proceedings. But I would estimate that
22 I've testified in about 45 jury trials for commitment
23 under the Sexually Violent Predator Act, roughly.

24 Q And can you attribute a percentage to the proportion
25 of those instances in which you testified on behalf of the

1 State of South Carolina?

2 A The majority of the time I've testified on behalf of
3 the State. Sometimes the State has called me as a
4 witness, especially in summary judgment proceedings when
5 my testimony wasn't supportive of their position but they
6 were the ones that called me to -- and subpoenaed me. So
7 I would just say the majority of time has been for the
8 State.

9 Q And under what circumstances do you get called to
10 offer testimony on behalf of the respondent in a
11 commitment trial?

12 A Well, I'm a court-appointed expert, so I can get
13 called by the side that my opinion supports. If my
14 opinion supports the respondent's side, then typically,
15 the respondent will call me for trial, and if my opinion
16 supports the State side, then the State will call me for
17 trial.

18 Q In what way were you compensated for issuing your
19 evaluation of Mr. Bearden in this matter?

20 A I receive a salary from the South Carolina Department
21 of Mental Health.

22 Q Does the South Carolina Department of Mental Health
23 receive any additional funds from any other party to this
24 action?

25 A No. I believe that their -- their finances come out

1 of the state budget.

2 Q And did you at some point perform an evaluation of
3 Harlin Bearden?

4 A I did.

5 Q When is the last time you've seen Harlin Bearden
6 before today?

7 A It's been about two years ago, in May of 2017.

8 Q Okay. And Mr. Bearden's sitting at the table to my
9 immediate right?

10 A Yes.

11 MR. LAWRYMORE: Your Honor, at this time I'd move to
12 introduce Mr. Gehle's testimony as an expert in the field
13 of forensic psychology.

14 THE COURT: Any voir dire?

15 MR. BOGLE: No objection, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, I
17 remind you what I told you earlier about expert witness
18 testimony. This witness has been determined and
19 stipulated to be an expert in the field of forensic
20 psychology.

21 All right, sir.

22 BY MR. LAWRYMORE:

23 Q Dr. Gehle, when did you evaluate Mr. Bearden?

24 A I evaluated him on two dates, in April of 2017 and
25 May 2017.

1 Q Was anyone other than yourself and Mr. Bearden
2 present during the interview?

3 A Yes. A psychologist who works for the forensic
4 evaluation service observed the evaluation, the interview.

5 Q And what roll did that person play in the interview
6 itself?

7 A He just observed.

8 Q Did anyone perform any tests or make any observations
9 that have become the subject of your opinions other than
10 you?

11 A No. I do these evaluations independently.

12 Q Okay. Just so I understand, nobody does the test for
13 you subject to your subsequent interpretation.

14 A No. If I do psychological testing, I do that myself.

15 Q And what psychological tests did you perform as it
16 pertains to Mr. Bearden?

17 A I completed a Static-99R risk assessment, actuarial
18 risk assessment tool.

19 Q Okay. And tell us about how you go about conducting
20 that Static-99 evaluation.

21 A Well, that's a ten-item test. So I look through the
22 records, I look through his responses and then I score it
23 in accordance the Static-99R manual and I follow the rules
24 that are in that guide.

25 Q And after conducting that analysis, what score did

1 you arrive at for Mr. Bearden?

2 A An 8.

3 Q And what does that score relay to you?

4 A Well, it's a score -- it was consistent with
5 Dr. Gottfried's, so it's consistent with the testimony
6 that she offered in that regard. Let me find that part in
7 my report here.

8 So a score of 8 is in the well above average
9 category, and it corresponds to 35.1 percent of people
10 with a score of 8 will reoffend, be charged with or
11 convicted of a sexual offense within five years.

12 Q As to Mr. Bearden specifically, what does a score of
13 8 mean in terms of his future risk of committing sexually
14 violent acts?

15 A Well, it means that, you know, he's well above
16 average compared to the general sex offender to commit sex
17 offenses. The Static-99R is not estimating the likelihood
18 that somebody will commit sexually violent offenses. It's
19 estimating the likelihood that somebody will commit sexual
20 offenses of all types that are considered sexually violent
21 and those that are not considered sexually violent.

22 Q Are offenses that are not classified as ones of
23 sexual violence of concern to you in rendering your
24 opinions as they pertain to Mr. Bearden?

25 A So sexual offenses that are not sexually violent are

1 considered at different points in the risk assessment.
2 They're considered in diagnosis. But in the ultimate
3 opinions, I look for whether the disorder is going to lead
4 to sexually violent offending, not to just general sexual
5 offending.

6 Q Okay. In what ways did you employ the Static-99 test
7 in rendering your determinations as to whether
8 Mr. Bearden's condition was such that he was in need of
9 ongoing mental health treatment?

10 A Well, the Static-99 is the risk assessment portion.
11 It's the portion that helps me decide whether somebody is
12 likely to commit acts of sexual violence, but that
13 likelihood needs to be connected to a mental abnormality
14 or a personality disorder. So there's several questions
15 when I'm doing these evaluations. I'm looking at does the
16 person have a mental abnormality or a personality disorder
17 that predisposes them to commit acts of sexual violence.
18 So the Static-99 doesn't talk to that piece.

19 Q Okay. What other tests did you employ in evaluating
20 Mr. Bearden?

21 A I did a standard interview of him, and that's how I
22 typically do these evaluations.

23 Q Okay. Other than an interview and the Static-99
24 test, did you employ any investigative tools or conduct
25 any tests that we might have talked about today?

1 A I did not do other, I guess, assessments that were
2 talked about earlier in Dr. Gottfried's testimony, but I
3 looked through the records very thoroughly. I do a very
4 comprehensive interview. I interviewed him for almost
5 seven hours. That's typically how I do these evaluations.

6 Q And what records did you review in the course and
7 scope of your evaluation?

8 A I have the petition that the Attorney General's
9 Office filed in this case; the multidisciplinary team
10 records; his criminal history report; I looked to see if
11 he had Department of Mental Health records, and he did
12 not; I requested records from the Department of Probation,
13 Pardon and Parole and were given some records; I had legal
14 records in terms of warrants, indictments, sentence
15 sheets; police reports when available; school records. I
16 requested some records that were not available such as
17 records from the Department of Community Supervision in
18 Georgia, department records from the Georgia Youth
19 Academy. And I did not receive all of the records from
20 the Department of Corrections until after my evaluation
21 was finished.

22 Q Which of those records that you've just discussed
23 were instrumental in compiling your findings and
24 recommendations as to Mr. Bearden?

25 A Well, the majority of those records were important.

1 The things that are most important in these cases are the
2 criminal history records, the police reports, the
3 warrants, indictments, those legal records.

4 Q Okay. And which legal records did you review
5 specifically with regard to Mr. Bearden?

6 A I had a final disposition for an indictment for
7 failure to register; an indictment -- an indictment for
8 failure to register; a grand jury indictment for public
9 indecency and child molestation; a warrant for child
10 molestation; a warrant for public indecency; a warrant for
11 failure to register; a warrant for probation violation, a
12 couple of those; Greenwood Police Department incident and
13 supplemental reports; an indictment for criminal sexual
14 conduct in the third degree, a sentence sheet for that,
15 for an indictment for criminal sexual conduct in the third
16 degree.

17 Q And based on your review of those records, what
18 diagnoses did you render as they pertain to Mr. Bearden?

19 A I diagnosed him with mild cannabis use disorder in a
20 controlled environment, generalized anxiety disorder and
21 posttraumatic stress disorder.

22 Q Why did you diagnose him with mild cannabis use
23 disorder?

24 A It was based on his self-reported symptoms related to
25 his cannabis use.

1 Q Does that diagnosis have any bearing on his
2 propensity to commit future sexually violent acts?

3 A No. This disorder would not predispose him to commit
4 sexually violent offenses.

5 Q And would you refresh my collection as to what your
6 second diagnosis was?

7 A Generalized anxiety disorder.

8 Q And what is the framework for making a diagnosis for
9 that disorder?

10 A Well, this was largely based on his self-report, his
11 self-reported symptoms of excessive worry, worrying
12 without reason, feeling restless, keyed-up, on edge,
13 difficulty concentrating, increased fatigue, muscle
14 tension, sleep disturbance, irritability, and his
15 subjective impression that he was distressed by these
16 things so they caused him impairment. And he reported
17 that those symptoms had occurred most days for several
18 years. And so based on that information, I made that
19 diagnosis.

20 Q And what was the basis for your final diagnosis?

21 A That was also based on his self-report for
22 posttraumatic stress disorder. He said that he had
23 witnessed many distressing events and traumatic events
24 while incarcerated, and he reported periods of time where
25 he was having nightmares related to those traumas,

1 flashbacks of the events he witnessed, feeling detached
2 from others, having problems with concentration, having
3 sleep disturbance, irritability and hypervigilance. So
4 that's how he met the criteria for that disorder.

5 Q What was your final conclusion as to whether
6 Mr. Bearden needs to be -- whether you thought Mr. Bearden
7 met the statutory definition of a sexually violent
8 predator?

9 A My opinion is that he doesn't have a mental
10 abnormality or personality disorder that's relevant to
11 sexually violent offending.

12 Q What criteria must be met in order for you to
13 determine that an individual meets the definition of a
14 sexually violent predator?

15 A They have to -- they have to have been convicted of a
16 sexually violent offense, they have to have a mental
17 abnormality that predisposes them to committing acts of
18 sexual violence or a personality disorder that makes them
19 likely to commit acts of sexual violence if not confined
20 in a secure facility for controlled care and treatment.

21 Q Okay. Did you diagnose Mr. Bearden with having any
22 mental abnormalities that may make him likely to reoffend?

23 A No.

24 Q Did you diagnose Mr. Bearden as having any
25 personality disorders whatsoever?

1 A No.

2 Q What sources do you rely upon in rendering a
3 diagnosis as to whether someone suffers from a general
4 personality disorder?

5 A Well, in large part it is how they come across in the
6 interview, their presentation. That's why I spend --
7 that's part of the reason why I spend so many hours with
8 them to see how they handle that stressful environment.
9 There's a lot of questions that are asked. I throw a lot
10 of challenges at them. Sometimes I am more
11 confrontational with them to see how they handle that
12 stuff. Then I also look at the records.

13 Q Okay. Are there any industry standards or other type
14 of scholarly writings that aid or assist your diagnosis of
15 personality disorders?

16 A There's a lot of things that you can read about
17 personality disorders that I've read in graduate school
18 or, you know, just in studying in general. Typically, I
19 rely on the Diagnostic and Statistical Manual.

20 Q What does the Diagnostic and Statistical Manual list
21 as the general symptoms of a personality disorder?

22 A I think I gave you my book earlier, so if I could
23 have that, I could reference it.

24 Q Would this book refresh your memory?

25 A Yes. Thank you.

1 MR. LAWRYMORE: May I approach?

2 THE COURT: Yes, sir.

3 BY MR. LAWRYMORE:

4 Q Dr. Gehle, is what I just handed you a true and
5 accurate copy of the Diagnostic and Statistical Manual 5?

6 A Yes.

7 Q And how do you know that's a true and accurate copy?

8 A That's a good question. It's the one that I received
9 from the Department of Mental Health, but it has
10 information in the front as to who published it, things of
11 that nature. And it looks like every other copy that I've
12 ever seen.

13 Q Is that, in fact, your copy of the DSM?

14 A This is my copy, yes.

15 Q And what does the DSM say about the criteria for
16 diagnosing an individual with a general personality
17 disorder?

18 A So a general personality disorder is an enduring
19 pattern of inner experience and behavior that deviates
20 markedly from expectations of the individual's culture.
21 This pattern is manifested in two or more of the following
22 areas. So the first is cognition. That's ways of
23 perceiving and interpreting self, other people and events.
24 The second one is affectivity. That's the range,
25 intensity, the ability and appropriateness of emotional

1 response. Third one is interpersonal functioning. Fourth
2 one is impulse control.

3 And there's an enduring pattern that's inflexible and
4 pervasive across a broad range of personal and social
5 situations. The enduring pattern leads to clinically
6 significant distress or impairment in social, occupational
7 or other important areas of functioning. The pattern is
8 stable and of long duration, and its onset can be traced
9 back to at least adolescence or early adulthood. The
10 enduring pattern is not better explained as a
11 manifestation or consequence of an other mental disorder.
12 And the enduring pattern is not attributable to
13 physiological effects of a substance such as drug abuse or
14 medication or another medical condition such as head
15 trauma.

16 Q Why did you not diagnose Mr. Bearden as suffering
17 from a general personality disorder?

18 A Well, when I met him, his thinking was flexible, he
19 was willing to consider other perspectives, he admitted to
20 many of his flaws, he recognized that he tended to be
21 defensive and on guard, he reported consistent with his
22 records his problems in school. He took responsibility
23 for some of his behavior, not all, but he generally took
24 responsibility for his childhood and adolescent behavior,
25 and he had more trouble talking about taking

1 responsibility for his sexual behavior, although he did
2 take responsibility for some of it. His affect was
3 normal, so he expressed emotions in a normal way. He was
4 generally polite and corporative. He answered questions.
5 He handled challenges well. He could consider all those
6 different like reasons because I'll ask him about that
7 stuff in the interview, and he just was generally
8 adaptable and flexible.

9 Q Are there any other more specific personality
10 disorders that would fall under the auspices of a general
11 personality disorder?

12 A Yes. There's several.

13 Q And what are those?

14 A Paranoid personality disorder, schizoid personality
15 disorder, schizotypal personality disorder, antisocial
16 personality disorder, borderline personality disorder,
17 histrionic personality disorder, narcissistic personality
18 disorder, avoidant personality disorder, dependent
19 personality disorder, obsessive-compulsive personality
20 disorder, personality change due to another medical
21 condition, and other specified personality disorder and
22 unspecified personality disorder.

23 Q Why did you not diagnose Mr. Bearden with any of
24 those more specific personality disorders?

25 A I didn't think that he met criteria for that general

1 personality disorder based largely on his presentation in
2 the interview.

3 Q Okay. So am I understanding you correctly that if
4 someone does not meet the diagnostic criteria for a
5 general personality disorder, they do not, in turn, meet
6 the diagnostic criteria for a specific personality
7 disorder?

8 A Yes. The general criteria for a personality disorder
9 is a way that you can understand how personality works.
10 Because a personality disorder is not just a description
11 of behavior, it has a lot to do with the way the person
12 thinks and perceives the world and the way they interact
13 with the world.

14 Q Okay. In what ways did Mr. Bearden's affect during
15 your investigation with you influence your diagnosis of
16 him?

17 A Well, his affect was normal, so that influenced it
18 because it was normal.

19 Q Are there any other diagnoses that you ruled out
20 during the course and scope of your investigation of
21 Mr. Bearden?

22 A Yes.

23 Q And what diagnoses were those?

24 A I ruled out that he had pedophilic disorder, so he
25 did not meet criteria for that.

1 Q Why did you rule out pedophilic disorder?

2 A Because he did not offend in a way that met the
3 six-month time criteria.

4 Q And what evidence did you rely upon in rendering that
5 determination?

6 A Well, that disorder is based on sexual arousal
7 towards a prepubescent victim. So prepubescent means
8 they've not at all started puberty, no level of sexual
9 development, no breast development and no pubic hair
10 development. And absent other information, we'll base
11 that on age. He had one 8-year-old victim, and that was
12 the only victim that would have been in the age range of a
13 prepubescent victim.

14 Q Okay. And what evidence was provided to you in
15 rendering that determination?

16 A Well, I had the police reports, the warrants,
17 indictments and sentence sheet. So that period of
18 offending with that victim was not -- was not near six
19 months.

20 Q So if the period doesn't exceed six months, that
21 diagnosis is conclusively excluded?

22 A Yes.

23 Q Did you rule out any other potential diagnoses for
24 Mr. Bearden?

25 A Yes.

1 Q And what diagnoses were those?

2 A In my evaluation, I ruled out exhibitionistic
3 disorder. But after listening to Dr. Gottfried's
4 testimony, I would believe that he does meet criteria for
5 that disorder.

6 Q Okay. And why do you think he meets criteria for
7 that disorder?

8 A Because he would have a six-month pattern of that
9 behavior of exposing his genitals to unsuspecting persons.

10 Q What impact, if any, does that have on his proclivity
11 or tendency to commit subsequent similar offenses?

12 A Well, that disorder predisposes him to commit like
13 indecent exposure type offenses which are not sexually
14 violent. So it would lead him to commit sex offenses that
15 are not considered sexually violent under the Sexually
16 Violent Predator Act.

17 Q So even if we assume that he does suffer from
18 exhibitionistic disorder, that does not make him likely to
19 commit offenses that would qualify him for treatment of
20 the Sexually Violent Predator Act.

21 A That's correct.

22 Q Have you formed an opinion to a reasonable degree of
23 certainty in the field of forensic psychology as to
24 whether Mr. Bearden has a mental abnormality or
25 personality disorder that makes him likely to engage in

1 acts of sexual violence?

2 A Yes. I formed an opinion to that question.

3 Q And to a reasonable degree of certainty in the field
4 of forensic medicine, what is your opinion with regard to
5 whether he suffers from a mental abnormality that makes
6 him likely to reoffend?

7 A My opinion is that he doesn't suffer from a mental
8 abnormality or personality disorder that predisposes him
9 to sexually violent offending.

10 MR. LAWRYMORE: A moment of the Court's indulgence,
11 Your Honor.

12 THE COURT: Yes, sir.

13 MR. LAWRYMORE: No further questions at this time,
14 Your Honor.

15 THE COURT: Okay, sir.

16 Cross-examination?

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

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. BOGLE:

22 Q Good afternoon, Dr. Gehle.

23 A Good afternoon.

24 Q Just one of the early questions at the beginning was
25 the types of hearings or testimony you've given under the

1 Sexually Violent Predator Act. And as I understand it,
2 you've testified a number of times at commitment hearings
3 like this one, correct?

4 A Yes.

5 Q Both -- and as a court-appointed witness, you've been
6 called by the State in most of them, sometimes called by
7 the defense in these types of hearings, correct?

8 A Yes.

9 Q And you've also testified at what's called annual
10 review hearings where there's an annual review of a guy
11 who's already been committed to see whether or not he's to
12 stay committed, correct?

13 A That's correct.

14 Q And then you testified there's a time when your
15 opinion that concluded a guy was not a sexually violent
16 predator would still have a live, in-person testimony
17 summary judgment hearing ---

18 A That's correct.

19 Q --- where you testify about your opinion and how it's
20 factually based that he's not going to reoffend. So
21 you've testified at a few of those in the past.

22 A Yes.

23 Q Okay. And then finally, there would have been
24 hearings where a guy was being released because he's
25 completed enough treatment to where his mental condition

1 had so changed that he was safe to be at large, and you
2 would have testified at some of those; is that correct?

3 A Yes. That's correct.

4 Q Okay. So looking at your report on this guy, do you
5 got a copy in front of you?

6 A Yes.

7 Q Starting at the top, you mention on page 5 trouble,
8 stuff that appear to be criminal activity beginning as
9 early as sixth grade. I think you said at 7 years of age
10 he called 9-1-1 and asked the operator for a date. That's
11 on page 5 of your report.

12 A Yes.

13 Q And deceit and theft, you mention that on page 5 as
14 well at an early age.

15 A Yes.

16 Q Fighting at school on page 6, correct?

17 A Yes.

18 Q And then theft that got him suspended or expelled
19 from school in the ninth grade. That's on page 6. And
20 the first sexual activity he told you about, the first
21 time he had sexual activity, he was 17 and the girl was
22 14, that's on page 11, which would be illegal, but not
23 sexually violent, right? It's illegal but not deviant,
24 right?

25 A It would depend where that happened and what the laws

1 were in that state.

2 MR. LAWRIK: Objection, Your Honor. That calls
3 for a legal conclusion.

4 MR. BOGLE: Okay.

5 THE COURT: Sustained.

6 BY MR. BOGLE:

7 Q And then we have the sexual offenses you mentioned in
8 your report on page 13, charged with four, convicted of
9 three. And of the three, the ones we're really talking
10 about today, you mention a 13-year-old female stranger.
11 That would be the case in Georgia, correct?

12 A Yes.

13 Q And then the 8-year-old female acquaintance, the girl
14 here in Greenwood County.

15 A That's correct.

16 Q Okay. And multiple probation violations in 2008, I
17 think once or twice, also once or twice in 2009. And for
18 some of those he was allowed to stay on probation,
19 correct, and some he got revoked?

20 A Yes.

21 Q Okay. So he seems to have trouble -- is it safe to
22 say he has trouble -- on probation you've got a suspended
23 sentence of sort or the balance of your criminal
24 sentencing hanging over your head, right?

25 A Yes. Typically, yes.

1 Q And so if you misbehave, you're liable to be pulled
2 back into prison, correct?

3 A That's correct.

4 Q Okay. And on these types of cases, not just this one
5 but all of them, one of the things you're looking for to
6 get ready to write your report is all the documentation
7 you can get about the guy, prison records, conviction
8 records, witness statements, police statements,
9 indictments, sentencing sheets, all the background
10 information on the crimes, correct?

11 A Yes.

12 Q Okay. And if he offended while he was in prison,
13 that's a fact you look for because you mentioned that once
14 in your report about him offending while at SCDC.

15 A Yes. That's something I consider.

16 Q Okay. And to get there, you have to get the records
17 from the Department of Corrections, which I think our
18 office sends you, or you ask for them and we get them,
19 and those records from the Department of Corrections set
20 forth what kind of offense was the guy might have done,
21 right?

22 A Yes. What kind of infractions.

23 Q Okay. And in all of these cases, both the crimes he
24 was convicted of as well as the things he did in prison,
25 it's not your job to independently investigate this, is

1 it?

2 A That's correct.

3 Q It's not your job to contact the people who wrote the
4 report and say did this really happen or let me talk to
5 the guy who saw it. You don't do that.

6 A I typically do not.

7 Q Okay. And the same thing with contacting the victims
8 in cases. Isn't it true that most of -- 90 percent of the
9 time in your profession, y'all don't reach out to the
10 victim to talk to a victim of a crime where the guy was
11 already convicted many years ago, do you?

12 A Yes. I don't talk to victims unless they want to
13 talk to me.

14 Q Right, right. Okay. And in this case, let's see.
15 In the disciplinary actions mentioned in your report, you
16 mentioned one at the Department of Corrections. That's
17 about page 19 or so. And you've since learned about all
18 this stuff he did at Greenwood, right?

19 A Yes. And in Georgia.

20 Q Okay, okay. In fact, your report was issued on
21 April 3rd of 2018; is that right?

22 A Yes.

23 Q And you had asked for but we had not yet been able to
24 obtain the records from the Department of Corrections in
25 Georgia, correct?

1 A Yes. I requested those records, and what I got was
2 medical records from Georgia. And I think like several
3 weeks after I finished my evaluation and sent off the
4 report, then I receive further information from Georgia.

5 Q Well, I've got a -- who is Kathy Garner? Is she a
6 paralegal at Mental Health?

7 A Yes.

8 Q And she was the contact person to send stuff to her
9 to get it to the doctors who were evaluating people,
10 right?

11 A Yes.

12 Q Okay. And do you remember an email of
13 April 27, 2018, about three weeks after your report was
14 issued, sending some 27 files from the Georgia Department
15 of Corrections including disciplinary records,
16 segregation, isolation, reports, treatment responsibility?
17 Do you remember getting all of those to review?

18 A I don't know about the email, but yes, I did get the
19 records.

20 Q Okay. We emailed -- we got it from Georgia, emailed
21 it to Kathy. You looked at it to see if it might change
22 your opinion, right?

23 MR. LAWRYMORE: I'm going to object, Your Honor.
24 These are statements by counsel. These aren't evidence.

25 THE COURT: Rephrase the question, please, sir.

1 BY MR. BOGLE:

2 Q Did we, did our office obtain these records from the
3 Department of Corrections after you finished your report?

4 A I don't know.

5 Q Well, did our office submit these records to you via
6 Kathy Garner to look at?

7 A I don't know.

8 Q Would you like to see the email?

9 A Sure.

10 MR. LAWRYMORE: Can I take a look at that, Jim?

11 THE COURT: Would you show it to Mr. Lawrimore,
12 please, sir.

13 THE WITNESS: Yes. This is the first time I've seen
14 this email.

15 BY MR. BOGLE:

16 Q Okay. Do you deny seeing all the -- there's
17 27 attachments to it from the Department of Corrections.
18 Were those records forwarded to you to open and look at?

19 A Well, I know that I received records, but I don't
20 know where they came from. Kathy just would have told me
21 that the records existed and I know that they're -- I saw
22 them in the records when I looked at the file yesterday.

23 Q Okay. Well, would you agree that the categories
24 included things such as disciplinary records from Georgia
25 Department of Corrections?

1 A Yes.

2 Q Segregation, isolation reports?

3 A Yes.

4 Q Sex offender registration?

5 A I believe so, yes.

6 Q Okay. Compass risk assessment documents, wasn't that
7 some program he went through or was assessed in Georgia,
8 an evaluation done of him?

9 A I believe so.

10 Q Okay. So in your report you also diagnose or scored
11 him on the Static-99R and got the same score Dr. Gottfried
12 did, an 8, right?

13 A Yes.

14 Q And that's about a 35.1 percent chance of committing
15 a sexual crime again.

16 A That's not exactly how it's ---

17 MR. LAWRIK: Objection. Mischaracterization.

18 BY MR. BOGLE:

19 Q Well, what is it? 35.1 percent of what?

20 A People who scored an 8, 35.1 percent of them
21 reoffended. They were charged, reoffended being defined
22 as charged or convicted of a sexual offense within five
23 years.

24 Q Okay. I'm not trying to say that he will, but based
25 on the study, just like if I went to a doctor and he found

1 eight things wrong with me, he can't say I'm going to die
2 early, but if the studies show that people with those
3 eight things are going to die early, he'll predict it for
4 me, won't he?

5 A Yes.

6 Q And that's kind of what this is.

7 A Yes.

8 Q Okay. And there was also some talk about him being
9 in the 99th percentile. Do you remember that?

10 A Yes. I heard Dr. Gottfried testify to that.

11 Q Is that what it is, he's in the 99th percentile about
12 reoffending?

13 A His score is, yes.

14 Q His score. His score is. I'm sorry. Not him, but
15 his score.

16 A Yes. When compared to Canadian offenders.

17 Q Okay. Well, isn't it true the Static-99R is based
18 upon studies of offenders over different countries, not
19 just Canada?

20 A Yes. But that particular statistic is based on
21 Canadian offenders only.

22 Q Okay. Now, in addition to static unchangeable things
23 about his live which the Static-99 looks at, there's also
24 a dynamic risk factor, things that are being addressed in
25 treatment, correct?

1 A Things that he could address in treatment, yes.

2 Q Okay. And on page 25, you listed the things that
3 this guy seems to have, correct?

4 A Yes.

5 Q Such as a preference for prepubescent or pubescent
6 children, that's one of them, correct?

7 A Well, I said that that's possible.

8 Q Okay. Lifestyle impulsiveness based on this
9 lifestyle, the way he described it to you, correct?

10 A Based on, yes, his unrealistic long-term goals,
11 substance use history.

12 Q Why were his long-term goals unrealistic?

13 A Well, he told me that his plans when he was released
14 was to get back together with the mother of his child who
15 was married at the time, and that was apparently something
16 that she wanted as well, but it seemed very, very
17 complicated to me and very unrealistic.

18 Q By "she wanted as well," she wanted as well to stay
19 married or to get with him?

20 A He conveyed it to me that she wanted to be with him,
21 and when he gets out of prison, if he came to where she
22 lived, then she would leave her husband and be in a
23 relationship with him.

24 Q Okay. And somehow, these -- looking at his -- one of
25 the things you ask these guys is what are their plans if

1 they get released, correct?

2 A Yes.

3 Q And one of your assessments in all of these cases is
4 given the guy's history, his personal history, the crimes
5 he's committed the stuff he's done, are these plans
6 realistic? Are they a good idea? You look at that, don't
7 you?

8 MR. LAWRYMORE: Objection. Speculative.

9 MR. BOGLE: She testified ---

10 THE COURT: Overruled. Go ahead.

11 BY MR. BOGLE:

12 Q Okay. And so in this case, you're looking to see if
13 his plans, his release plans are realistic, and I believe
14 you found they didn't seem to be.

15 A Yes. In that regard, they were not.

16 Q Okay. And there was also low self-control. I
17 mentioned that earlier. I talked about unrealistic
18 long-term goals. Poor problem-solving, that was another
19 dynamic or changeable factor you found, correct?

20 A Yes.

21 Q And then a thing of substance abuse history. He's
22 got a bit of that ---

23 A Yes.

24 Q --- with -- certainly with marijuana.

25 So the bottom line is, to be committed, you've got to

1 be convicted of a sexually violent crime, correct?

2 A Correct.

3 Q He's got one of those. No question about that.

4 A That's correct.

5 Q He's got to have a mental abnormality or a
6 personality disorder that he cannot control, and it has to
7 be diagnosed, correct? It makes him likely to commit
8 crimes of sexual violence unless confined for long-term
9 control, care and treatment, right?

10 A Yes.

11 Q And you cannot find a mental abnormality. You looked
12 for it. You tried to find pedophilia, but you couldn't
13 make the six months.

14 A That's correct.

15 Q For pedophilic disorder to be diagnosed, the conduct
16 has to have lasted at least six.

17 A That's correct.

18 Q You couldn't get six months with just one victim,
19 maybe a short length of time that he offended.

20 A That's correct.

21 Q Although he appeared to have a preference for either
22 pubescent or pre-pubescent girls, right?

23 A He has a possible preference. And I include that
24 risk factor anytime somebody has a child victim.

25 Q Okay. So you couldn't find the mental abnormality of

1 pedophilic disorder, and there weren't any others that
2 fit. And you also didn't find a personality disorder such
3 as antisocial.

4 A That's correct.

5 Q Okay. So -- but he is likely -- very, very likely to
6 reoffend sexually, either nonsexually violent crimes or
7 just regular sexual crimes, right?

8 A Yes. His risk is substantial.

9 Q It's pretty high, isn't it? On the greater scheme of
10 things, 8's a pretty high score, isn't it?

11 A Yes, it is.

12 Q Safe to say that maybe of the times you've testified
13 in a pre-commitment hearing, you had maybe of those 40 or
14 so times, maybe two or three guys that had an 8 or higher?

15 MR. LAWRYMORE: Objection. Relevance.

16 THE COURT: Overruled. Go ahead.

17 BY MR. BOGLE:

18 Q Is that safe to say?

19 A I don't know. I mean, what I see is typically when
20 I'm recommending commitment, it's typically a score of 4
21 or 5 or higher. 4 is a little bit iffy, but 5 and higher
22 is sort of where I will consider likely based on the
23 Static-99R. There are other considerations in that mix.

24 Q Okay. And so we have the Static-99R and the results
25 of your in-depth personal interview with the guy; is that

1 right? That's where you came to your ultimate
2 conclusions.

3 A Yes.

4 Q Plus looking at the records.

5 A Yes.

6 MR. BOGLE: Okay. Thank you.

7 Nothing further, Your Honor.

8 THE COURT: Redirect?

9 MR. LAWRYMORE: Very briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. LAWRYMORE:

12 Q Dr. Gehle, there were some questions Mr. Bogle asked
13 you with regard to records you may or may not have
14 received from the Georgia Department of Corrections.

15 A That's correct.

16 Q Would receipt of those records have made any
17 difference with regard to the opinions you issued in your
18 report originally?

19 A Not to my ultimate opinion. It may have changed the
20 opinion in terms of whether he meets criteria for
21 exhibitionistic disorder, but because that disorder
22 doesn't lead to sexually violent offending, it wouldn't
23 change my opinion that he doesn't meet the criteria as a
24 sexually violent predator.

25 Q In conducting your Static-99 analysis, why did you

1 not include the data from the Canadian sources that
2 Mr. Bogle mentioned to you?

3 A Because Canadians are very different from Americans.
4 And I used to include that statistic when it was of a
5 mixed-country sample, but when they made an update, it
6 might have been in 2015 when they updated that particular
7 table, it moved to an all-Canadian sample, and so I
8 stopped reporting that statistic. I think that Americans
9 have to be represented in the sample for it to be relevant
10 for use here in the United States.

11 Q Okay. And what are some of the differences between
12 Americans and Canadians that make that distinction so
13 important to you?

14 A Well, Americans are just more likely to have criminal
15 records than Canadians. There's a lot of cultural
16 differences. Their criminal justice system is different.
17 Things like that go into it.

18 Q What percentage of Americans, to the best of your
19 knowledge, have criminal records?

20 A I read a recent study that said a third of all
21 Americans, even when you consider women and children, have
22 criminal records.

23 Q Did you identify any static or dynamic changes
24 Mr. Bearden need to modify?

25 A That he needs to modify?

1 Q Yes.

2 A He can't really modify the static changes or the
3 static risk factors. Those things are static. They are
4 what they are. Besides him aging, those won't change.
5 They could get worse, but they won't change. But he could
6 work on some things in his background. It would be good
7 for him to get treatment for the exhibitionistic disorder.
8 That could change when he's outside of the prison
9 environment because that is a common behavior in the
10 prison environment. And he could work on things like
11 relationship and kind of that stuff, like how to be in
12 relationships and how to be better about that. And he
13 identified that he could work on some anger control.

14 Q Do you have an opinion to a reasonable degree of
15 certainty in the field of forensic psychology that he
16 would be a danger to commit several offenses in the future
17 if he does not receive any sort of treatment along those
18 lines?

19 A Well, I think that he has a significant risk to
20 reoffend sexually, but that risk is not tied to a mental
21 abnormality or a personality disorder.

22 MR. LAWRYMORE: Those are all the questions I have.
23 Thank you.

24 THE COURT: May this witness be excused?

25 MR. BOGLE: No objection from us.

1 MR. LAWRYMORE: None from the respondent.

2 THE COURT: Thank you, ma'am. You're excused.

3 THE WITNESS: Thank you.

4 THE COURT: All right. Mr. Lawrimore, will you call
5 your next witness?

6 MR. LAWRYMORE: I rest my case, Your Honor.

7 THE COURT: Very good.

8 Any reply?

9 MR. BOGLE: Nothing in reply. Thank you.

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen of the jury, respondent has stated that he
12 rests, so he's presented his case in chief. That is all
13 the evidence that's going to be presented in this case.

14 Remember when I told you we'd have opening statements
15 to the presentation of the evidence. I have a meeting to
16 do with these attorneys about the law that I'm going to
17 charge, and then we'll bring you back out here for closing
18 arguments.

19 If you'd go back to the jury room, we'll get you back
20 out here shortly.

21 (WHEREUPON, the jury exits the courtroom at 3:44 p.m.)

22 JURY CHARGE CONFERENCE

23 THE COURT: All right. Gentlemen, it would be my
24 intent with regard to the charge in this matter to charge
25 the substantive law that Mr. Bogle gave me in his proposed

1 jury charge but use my standard format that I have
2 plagiarize from Judge Hill a while back.

3 In the other aspects of the charge, that charge is in
4 three parts. The first part are the duties that define
5 and control the jurors' responsibilities. I will then go
6 to the substantive law in the proposed charge from
7 Mr. Bogle. I would go over a few points for the jury's
8 consideration in their deliberations, and then I would go
9 over the verdict form with the foreman. And at the
10 verdict form that I would propose at this juncture would
11 be, again, that was presented to us by Mr. Bogle.

12 First, since you are the respondent, do you have any
13 objections to that proposed procedure?

14 MR. LAWRIK: I don't, Your Honor. I'm familiar
15 with Judge Hill's instructions. I think they're plenty
16 adequate for our purposes today.

17 I did submit a few redlined additions to the -- or
18 amendments rather to Mr. Bogle's proposed jury charges,
19 which, generally speaking, I am okay with.

20 THE COURT: Okay. Let me just say this. What I am
21 specifically referring to with regard to Mr. Bogle's
22 proposed charge would start on page 9 and go to the top of
23 page 11. In other words, just the substantive law. I
24 have the others in my standard charge.

25 MR. BOGLE: Right. The only concern we had, and,

1 again, the charge we sent you was the same one you saw in
2 Walterboro.

3 THE COURT: I don't like it a whole lot, but go
4 ahead.

5 MR. BOGLE: But it hasn't changed much. The only
6 thing we did a couple years ago when the Supreme Court had
7 the opinion about truthfulness and truth, we had to take
8 all that out.

9 THE COURT: Yeah. I did that. I also asked my law
10 clerk to get me the circumstantial evidence that I give in
11 a criminal case ---

12 MR. BOGLE: Right.

13 THE COURT: --- since this is a quasi-criminal case
14 regardless of what the cases say.

15 MR. BOGLE: The Argument of Counsel paragraph that's
16 in my charge, that's new.

17 THE COURT: What is that, please.

18 MR. BOGLE: There's a section called Argument of
19 Counsel, telling the jury what -- it's on page -- the top
20 of page 4. That came from Judge Newman's charge in the
21 Slager case down in Charleston, the murder case down there
22 involving the police officer. It came word-for-word from
23 his charge there, and I've just kept it ever since.

24 THE COURT: I've got that included in my standard
25 charge. I've got something along those lines. When I say

1 -- I give them a definition of what the evidence is in
2 this case, what's not evidence. And when I go over what's
3 not evidence, I say your arguments, your opening, closing
4 your questions themselves is not evidence or any
5 objections. So I go over that.

6 MR. BOGLE: Some of the changes that Mr. Lawrimore
7 suggested in the jury charge he sent me about the
8 defendant, he's calling him the defendant. I think it
9 looks like a criminal charge, about the defendant not
10 being required to prove his innocence. Well, this is a
11 civil case, and there's a case called In the Matter of
12 Cannupp.

13 THE COURT: Just one sec. I don't have your proposed
14 charges. I've not seen them.

15 MR. LAWRYMORE: I submitted them to the Court last
16 Friday, but I ---

17 THE COURT: Did you? Somehow they didn't make it to
18 my queue. Do you mind passing it forward?

19 MR. LAWRYMORE: Not at all, Your Honor.

20 THE COURT: I didn't mean to interrupt you, Jim. Let
21 me take a look at that right quick, please.

22 MR. LAWRYMORE: And you'll see they are bold,
23 underlined in there. I think the amendments I made were
24 towards the very end. And then I like "that which would
25 cause a reasonable person to hesitate" charge on

1 reasonable doubt.

2 THE COURT: I have that.

3 MR. BOGLE: Is his page numbers the same as the ones
4 you emailed me?

5 MR. LAWRIK: Correct. That's an identical copy of
6 what I emailed you.

7 MR. BOGLE: Okay.

8 THE COURT: I have my reasonable doubt charge. Do
9 you have a problem with me saying "presumption of
10 innocence," in that's a criminal concept?

11 MR. BOGLE: That's criminal.

12 What I'm getting at is, in the Cannupp case cited by
13 the Court of Appeals in 2008, the respondent -- it's an
14 SVP case, the respondent there sought a jury charge about
15 right to decline to testify not being held against him,
16 and the Court of Appeals said no, it's not a criminal
17 case. It's a civil case. That doesn't apply. So
18 anything about him not required to prove his innocence,
19 which is in this suggested changes, are being -- they
20 can't -- dealing with the issue of right not to testify,
21 that's a criminal case, and the Supreme Court -- the Court
22 of Appeals ruled that way back in 2008.

23 THE COURT: I agree.

24 MR. BOGLE: And then at the very end of his proposed
25 charges, on page 12 where it talks about unanimity of

1 verdict, again, he's drawing from criminal charge. He
2 talks about ---

3 THE COURT: Let me just tell y'all again. This is
4 what I'm going to do. I'm going to charge your
5 substantive law, pages 9 through 11.

6 MR. BOGLE: Right.

7 THE COURT: I'm going to charge my charge for the
8 rest of it. And I'm going to go over your verdict form.
9 That's what I'm going to do.

10 MR. BOGLE: We're good.

11 THE COURT: Is there any parts to your charge,
12 Mr. Lawrimore, that you specifically think I need to
13 include in here? If so, would you come point it out for
14 me so I can look at it?

15 MR. LAWRYMORE: Certainly. Glad to, Your Honor.

16 THE COURT: Yes, sir.

17 MR. LAWRYMORE: Specifically and most notably this
18 reasonable doubt language at the top of page 5.

19 THE COURT: That is the reasonable doubt charge in a
20 criminal case. I am not going to charge that, but you can
21 make it part of the record.

22 MR. LAWRYMORE: Okay. Thank you.

23 THE COURT: And that way, if I'm incorrect, I will be
24 corrected. All right?

25 MR. LAWRYMORE: Okay. Thank you.

1 THE COURT: Yes, sir.

2 (WHEREUPON, Court's Exhibit Number 4 was marked for
3 identification.)

4 THE COURT: Would you bring the jury in, please.

5 (WHEREUPON, the jury entered the courtroom at 3:54 p.m.)

6 THE COURT: All right. Mr. Foreman, I'm going to
7 give you your first administrative task, okay? It is now
8 five minutes until 4:00. I've consulted with counsel. If
9 we go forward at this juncture, we'll run beyond 5 o'clock
10 in the afternoon. Two concerns there. One, you have
11 lives outside of being jurors and you may have some
12 conflicts that you can't avoid. Number two, I don't want
13 the jury to be in a rush to judgment. I want them to take
14 their time, listen to the evidence, consider all the
15 evidence before they reach a verdict.

16 So the question I pose to you is does the jury want
17 to continue on today and hopefully get this case finished
18 today, or would the jury prefer to come back tomorrow and
19 have closing arguments, charge on the law and
20 deliberations then? You can take your jury back to the
21 jury room, that way we're not breathing down your neck,
22 and you can have some honest discussion about it.

23 Okay. Sir, if you'll go with the bailiff.

24 (WHEREUPON, the jury exits the courtroom at 3:55 p.m.)

25 (WHEREUPON, the jury entered the courtroom at 3:56 p.m.)

1 THE COURT: All right then has the jury made a
2 decision?

3 JURY FOREPERSON: Yes, we have. We will stay.

4 THE COURT: You'd like to proceed?

5 JURY FOREPERSON: Yes, sir.

6 THE COURT: All right. Now, would you give me your
7 assurances and that of the jury that you will use time and
8 patience to review this evidence and not rush to judgment?

9 JURY FOREPERSON: Absolutely.

10 THE COURT: Absolutely. All right.

11 Is the State ready?

12 MR. BOGLE: Yes, Your Honor.

13 THE COURT: Is defense ready -- or the respondent
14 ready?

15 MR. LAWRYMORE: We are, Your Honor.

16 THE COURT: Okay, sir.

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

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENTS

21 MR. BOGLE: Mr. Lawrimore.

22 I am not one of these television lawyers. I have to
23 look at notes, so please bear with me.

24 Okay. Like I said, this probably wasn't the type of
25 case you were expecting. It's a little bit different.

1 It's a civil commitment case. And, again, when the
2 General Assembly wrote this thing back in 1998, they
3 talked about this mentally abnormal and dangerous people
4 they called sexually violent predators. I talked about
5 that earlier.

6 The burden is on the State to show, number one, is
7 Mr. Bearden convicted of a sexually violent crime. He has
8 sitting right here criminal sexual conduct with a minor in
9 the third degree involving an 8-year-old girl here in
10 Greenwood.

11 The next thing is to show whether or not he's got a
12 mental abnormality or a personality disorder that makes
13 him likely to commit the same type of offenses unless he's
14 confined for long-term control, care and treatment. So
15 let's not mince words here. This is about Mr. Bearden's
16 liberty. What we're asking for, we would submit to you
17 that the evidence shows beyond a reasonable doubt that he
18 is such a danger likely to commit these types of crimes
19 again. He needs to be confined for treatment.

20 Now, you might be thinking or maybe thinking, let's
21 see, we've got these two experts, okay, both qualified by
22 the judge to be experts in their field, both qualified to
23 give opinions about the case. They looked at the same
24 stuff, they saw the same guy and yet they've got two
25 different opinions. So by definition wouldn't that be

1 reasonable doubt? And I would suggest to you, you've got
2 to look beyond that. You've got to look carefully at it.

3 Remember what the judge told you about expert
4 opinions. You as the jury are the ultimate finders of
5 fact. You decide what happened here regarding Mr. Bearden
6 and what should happen to Mr. Bearden. You can accept all
7 of what a witness says, be it an expert or not, you can
8 accept none of it, you can accept part of it, anything in
9 between. That is so totally your call, whether the person
10 is an expert witness or not. You've got to compare what
11 we have there and look what we've got.

12 I would suggest to you that while a number of tests
13 were administered by or had administered by Dr. Gottfried,
14 the question is this: Who looked at the most data points,
15 the most things about this guy to see where he was? She
16 had five or six different types of tests she ran, and
17 Dr. Gehle, to her credit, as good as she is in doing what
18 she does, she scored him on the stack and she interviewed
19 him, looked at the same police records that ultimately
20 Dr. Gottfried looked at.

21 And I found it interesting that Dr. Gehle even
22 amended her diagnosis to include, based on what she heard
23 about the guy's conduct at the different jails and prisons
24 he's been in, of the exhibitionistic disorder. So you've
25 got to look at the effort made and the number of data

1 points. That was a phrase Dr. Gottfried used, the number
2 of things she looked at to decide whether or not this guy
3 was the kind of threat the State contends he is.

4 What have we got? Is there a mental abnormality
5 here? No. Both doctors looked for it, they couldn't
6 reach pedophilic disorder, we haven't seen a likely one
7 since one of his victims was only 8 years old. Couldn't
8 get there because the conduct's got to last at least six
9 months.

10 At the same time, both doctors in common, I think,
11 recognize that one of his dynamic risk factors appears to
12 be a sexual preference for pubescent as well as
13 prepubescent children. So that's out there.

14 Now, then we go to the antisocial personality
15 disorder. Remember what the law says. The law says that
16 he has to have a mental abnormality or a personality
17 disorder. It can be both, it can be one, it can be the
18 other.

19 Dr. Gottfried diagnosed him with a personality
20 disorder called antisocial personality disorder. Now, I
21 didn't -- I write fast but not that fast. Think about
22 what she testified as to the criteria for that diagnosis.
23 It's not normative behavior. It's a disregard for the
24 rights of others going back to even prior to age 15. It's
25 conduct that could be grounds for arrest even though the

1 person never was formally arrested or convicted. That's
2 in the diagnostic manual. She talked about that earlier.
3 And the conduct has to start before age 15.

4 We have conduct from both doctors' opinions of this
5 guy doing stuff, expelled from school, stealing, calling
6 up 9-1-1 and making a false thing. That's a crime. He's
7 only 7 years old. He's stealing, getting expelled from
8 school, things that are bad things. He didn't get
9 prosecuted criminally. It was a disregard for the rights
10 of others. There's a pattern of behavior that started
11 well before the age of 15, and then continued into real
12 criminal behavior. He did get arrested for both in
13 Georgia and here, burglary, probation violations, the
14 criminal sexual conduct here of the exhibitionist or child
15 molestation in Georgia, things like that. So he's got the
16 criminal activity where he finally starts getting arrested
17 for this.

18 But the point is, to make that diagnosis, you've got
19 to have that type of conduct before age 15, and
20 Dr. Gottfried found it. So her diagnosis of antisocial
21 personality disorder is supported by the rules governing
22 the profession supported by the evidence. So we've got
23 that.

24 Also, both doctors talked about his score on the
25 Static-99R. I think Dr. Gottfried gave a good

1 explanation. Let's say you go to get life insurance like
2 she talked about. Okay. The life insurance may have you
3 get a physical, and during that physical, they're looking
4 at things that might be wrong with you that might lead you
5 to die younger than they want you to. Okay. You might
6 have a history of heart disease, you might be a smoker,
7 you might have a family history of heart disease or you
8 might have other physical problems with you that makes you
9 likely to die earlier than somebody else. And so what
10 will happen? The insurance company will charge you a
11 higher premium. It doesn't mean you will die early, but
12 it means people in studies who have those type of factors
13 are more likely to, and that's how they adjust their
14 premiums.

15 That's exactly what the Static is. It studied
16 thousands of sex offenders both in Canada and in other
17 countries and then come up with certain characteristics
18 they have. And the more they have, the greater their
19 percentage to reoffend, and reoffend sexually. These are
20 guys that have been convicted and then go out and reoffend
21 sexually again. It's not just their first rodeo.

22 And what did both doctors give him a score of? An 8,
23 which means he has a 35.1 percent chance of reoffending
24 sexually in five years. And Dr. Gottfried also tagged on
25 the 99 percentile score. Dr. Gehle discounted that. She

1 said that's only Canadians. I'm not sure if there's a
2 whole lot of difference between Canadians and us as far as
3 committing sexual crimes. I think they're the same on
4 both sides of the border. And I didn't hear any testimony
5 from Dr. Gehle about a particular expertise she has about
6 Canada like living there or testifying there or something
7 like that. But look at the numbers.

8 But let's go back a second. You're thinking or you
9 might be thinking, okay, the State has to prove this case
10 beyond a reasonable doubt. That's a pretty high burden.
11 35.1 percent, that's a high number in our business. Does
12 it seem that high to you? You're thinking, well, maybe
13 should it be 60 or 70 percent? But you also have to put
14 it in perspective. This is a 35.1 percent chance of
15 committing a sexual crime within five years, not holding
16 up a convenience store, not shoplifting, but another
17 sexual crime.

18 So what have we got? The criteria for antisocial
19 personality disorder, we've got a changeable or dynamic
20 risk factor both doctors agree on that he appears to have
21 a preference of pubescent or prepubescent girls, we had
22 the conviction for criminal sexual conduct in the third
23 degree involving the 8-year-old girl here in Greenwood
24 County, and we have the personality disorder showing a
25 difficulty in controlling his behavior.

1 Now, what else do we have about the difficulty to
2 control? Look at his history in the Department of
3 Corrections in Georgia, in the jail, the detention center
4 here in Greenwood exposing himself, masturbating, exposing
5 himself in front of female guards over and over again. So
6 we've got a difficulty of controlling behavior here. I
7 would submit to you that if you look at the entire
8 picture, the testimony, the crime, his history, you've got
9 the diagnosis, you've got the crime, we've got the
10 difficulty to control. This man is, indeed should be
11 classified as a sexually violent predator.

12 Thank you.

13 THE COURT: Mr. Lawrimore?

14 MR. LAWRYMORE: Thank you, Your Honor. May it please
15 the Court.

16 THE COURT: Yes, sir.

17 MR. LAWRYMORE: Mr. Bogle.

18 Ladies and gentlemen, I want to thank you for your
19 patience today. I know it's been a long day for all of
20 you just as it's been for us. I think Mr. Bogle actually
21 did a wonderful job impressing upon you the severity of
22 these proceedings. We are talking about liberty today.

23 At issue before you is whether Mr. Bearden, beyond a
24 reasonable doubt, suffers from a mental condition or
25 personality disorder such that he poses a serious risk of

1 reoffense.

2 You heard from two doctors today. The first one you
3 heard from is the second doctor to take a look at him.
4 And you heard that she's maybe testified at two to six of
5 these cases, only in instances where the State's own
6 expert has disagreed with the first.

7 You also heard from Dr. Gehle who's testified in
8 90 some of these cases, usually at the instance of the
9 State. Although I was tremendously fortunate to have a
10 witness as capable as Dr. Gehle testify today, know that
11 she was not the expert that got picked. Neither she nor
12 her office were provided with any sort of additional
13 consideration to be here today. In that regard, it's my
14 contention and that of Mr. Bearden as well that her
15 evidence is most likely to be neutral. She is an
16 impartial third party who's merely appointed by the Court
17 to determine whether Mr. Bearden needs to be in this
18 program or not.

19 It's unequivocal from her testimony that he does not
20 need to be confined long term civilly. We've conceded as
21 you saw that there were some qualifying convictions here.
22 We're not trying to lessen the severity of what happened.
23 Mr. Bearden was punished for what he did. He accepted
24 responsibility, he was incarcerated, deprived of his
25 liberty, and here we are today to determine whether --

1 based on the determinations and testing of two different
2 doctors whether he meets the definition that the Court's
3 about to read you.

4 You've heard about a lot of different tests today,
5 many of which were administered by Dr. Gehle. All of you
6 were there for my brief cross-examination, however, where
7 most of those tests had no bearing on anything. He's not
8 a psychopath, he doesn't have some sort of attention
9 deficit disorder, and for that matter, she didn't even
10 perform the tests. Granted, I will concede that she
11 reviewed them. Somebody else did it. She took a look at
12 it.

13 Dr. Gehle, however, as you heard had more one-on-one
14 interaction with Mr. Bearden. She of the two witnesses
15 you heard from today had the better opportunity to gauge
16 his characteristics, his misdemeanor, the way he affected
17 himself in conversations. Based on those things, it was
18 her opinion that he did not suffer from any sort of
19 personality disorder, much less some sort of specific
20 personality disorder.

21 Mr. Bogle made much ado about diagnosis before the
22 age of 15. That is certainly something that's before your
23 consideration today, and it's well within the range of
24 your discretion to find that people who may have made some
25 mistakes before they turned 15 years old may be a risk to

1 sexually reoffend when they become older, but just because
2 you're wearing a juror badge today doesn't mean you have
3 to leave your common sense at home. You are in the
4 position to determine the credibility of the witnesses and
5 the weight that you give their testimony.

6 Based on what's presented to you, no doctor has said
7 that he suffers from a conviction -- from a condition that
8 makes him at risk to commit violent sexual acts. You
9 heard a lot of testimony from both doctors about
10 exhibitionistic disorder. Finally got it after nine
11 tries. Even assuming worst-case scenario he is
12 susceptible to diagnosis of that condition, both experts
13 have said that the type of behaviors that may potentially
14 result in the future is not a sexually violent offense.
15 We've ruled that out.

16 Dr. Gehle has also completely ruled out any sort of
17 other mental disorders that would make him at risk to
18 reoffend.

19 In looking at the test that we've heard a lot about,
20 the Static-99, today, it's ten questions with answers of
21 how old you are, have you ever lived with somebody you're
22 not married to, have you ever been convicted of a crime
23 before. I would hate to see how I lined up on that test
24 if those are the criteria that you're to be considering in
25 determining whether my client is a sexually violent

1 predator.

2 Again, I would encourage you to look at the greater
3 weight of the evidence and give the most credibility to
4 those who had the best opportunity to spend time with
5 Mr. Bearden and to evaluate him. And for those reasons,
6 ladies and gentlemen, it's my contention to you today that
7 Mr. Bearden does not meet the statutory definition of a
8 sexually violent predator and that the State has
9 conclusively failed to prove that contention beyond a
10 reasonable doubt.

11 Thank you.

12 THE COURT: Any reply, Mr. Bogle?

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

14 CHARGE ON THE LAW

15 THE COURT: Very good.

16 All right. Ladies and gentlemen, now that you've
17 heard the arguments of the attorneys, the testimony that's
18 been presented in this case, it's my job to charge you on
19 the law that applies to this case.

20 My charge is going to be in three parts. The first
21 part will be the general rules that define and control
22 your duties as jurors, then I'll give you the substantive
23 law of the Sexually Violent Predator Statutes. That is
24 what the State has to make out to prove its case against
25 the defendant. I'll go over some considerations about

1 your deliberations. And then, Mr. Foreman, I'll go over
2 the verdict form with you. Okay, sir?

3 Now, let me tell you this. Lots of times in lots of
4 cases, juries ask me if they can hear additional -- or get
5 additional information, get additional evidence. At this
6 point all of the evidence that is going to be admitted has
7 been, so there'll be no more evidence at all. You have to
8 make your decision based on what's in the record before
9 you.

10 Also, our state constitution does not allow me to
11 interpret the evidence. I'm not allowed to comment on it,
12 have an opinion about the evidence, so you can't ask me
13 questions about what it means. If you have a question in
14 general, write it down, send it back to me, and we'll
15 respond to it, but I just wanted to tell you that in
16 advance.

17 Now, ladies and gentlemen, as I told you at the
18 beginning of this case, it your duty to find the facts
19 from the testimony and evidence that was presented during
20 the course of this case. To those facts as you find them
21 to be, you must apply the law as I give it to you now.
22 You may not and you shall not be concerned with what you
23 feel like the law should be, but only what it is. Again,
24 it will be a dereliction in your duty not to apply the law
25 as I give it to you. If I'm wrong, I'll be corrected by

1 the Supreme Court or the Court of Appeals, but you must
2 apply it as I give it to you.

3 Also, you may not be influenced by any personal
4 dislikes, opinions, prejudice or undue sympathy that you
5 may have for one side or the other in this case. And what
6 that simply means is you'll make your determination based
7 on the testimony and evidence that's presented here in
8 this courtroom and according to the law as I give it to
9 you now.

10 Also, in following these instructions, if you like
11 parts of them and you want to apply those, that's good,
12 but they're all equally important. Therefore, if you have
13 some aspects of this charge you do not like, you may not
14 disregard it because they're all equally as important.

15 Ladies and gentlemen, if I have said or done anything
16 throughout the course of this trial that seems to indicate
17 to you how you are to find facts, what I mean by that is
18 your verdict, the verdict you are to reach, I'm going to
19 ask but also charge you to disregard any statement,
20 comment or gesture I may have made. I have no feelings
21 one way or the other about the facts in this case. You
22 and you alone will determine what those facts are. And
23 you'll make that decision by evaluating and weighing the
24 evidence that you've heard here in the courtroom and
25 applying the law as I give it to you now.

1 Ladies and gentlemen, the burden in this case as I
2 told you at the beginning is on the State to prove its
3 case against the respondent by proof that satisfies you
4 that he is a sexually violent predator by proof beyond a
5 reasonable doubt. So I'm going to go over again with you
6 what reasonable doubt is.

7 A reasonable doubt is a kind of doubt that would
8 cause a reasonable, sincere and conscientious person to
9 hesitate to act in an important matter in their own
10 affairs. And as I told you, the State has the burden of
11 proving that the defendant is a sexually violent predator
12 by proof beyond a reasonable doubt. If you've ever sat on
13 a civil case where the burden of proof is by a
14 preponderance of the evidence or the greater weight of the
15 evidence, this burden is much stronger, it's much higher,
16 it is, in fact, the greatest burden of proof that we
17 recognize in our jurisprudence. Proof beyond a reasonable
18 doubt is proof that leaves you firmly convinced that the
19 defendant is a sexually violent predator.

20 Now, with that being said, there are very few things
21 in this world that we know with absolute certainty, and in
22 this case the State is not required to overcome every
23 possible doubt that may exist in this case. If, based on
24 your consideration of the testimony and the evidence and
25 by applying the law as I give it to you, you are firmly

1 convinced that the defendant is guilty -- excuse me -- the
2 defendant is a sexually violent predator, then you must
3 find him to be a sexually violent predator. On the other
4 hand, if you think there is a real possibility that the
5 defendant is not a sexually violent predator, then you
6 must give him the benefit of the doubt and find that he is
7 not a sexually violent predator.

8 The only evidence in this case that you may consider
9 as evidence are the responses by the witnesses on the
10 witness stand -- the questions by the attorneys to them is
11 not evidence. The responses are -- any exhibits that have
12 been admitted into evidence as evidence. In this case
13 that's the only thing that you may consider as real
14 evidence that's been presented to you.

15 So that leads me to what's not evidence. First, the
16 opening statements and closing statements by these
17 attorneys is not evidence. They have not been sworn.
18 They've not been subjected to cross-examination. It's
19 helpful and it helps you understand what their contentions
20 are, but it's not evidence. Likewise, their questions to
21 the witnesses is not evidence, whether it be on direct or
22 cross-examination. Also, their objection is not evidence.

23 Mr. Foreman, I'll remind you that when you begin your
24 deliberations, if one of your jurors tries to insert or
25 inject the issue of an objection and my ruling on that, it

1 will be your job to make sure that that is not a topic
2 that is discussed in your deliberations, okay, sir?

3 Now, finally, ladies and gentlemen, anything that any
4 of you may have seen in court that's not in session is not
5 evidence. Therefore, what you heard from the witness
6 stand and the exhibits is the only thing you can consider
7 in determining what the facts are and what your verdict
8 will be in this case.

9 Now, ladies and gentlemen, South Carolina recognizes
10 two types of evidence. There's direct evidence and
11 there's circumstantial evidence.

12 Direct evidence is pretty straightforward. It is
13 evidence that directly proves the existence of a fact and
14 does not require inference or deduction.

15 Circumstantial evidence is a little trickier. It is
16 this: it's proof of a chain of facts and circumstances
17 indicating the existence of a fact. In other words, you
18 have to infer something from a fact to reach a conclusion
19 about another fact.

20 For example, as far as direct evidence, if an issue
21 in the case was whether or not I threw a rock at a car, if
22 my law clerk said I threw the car at the car and she
23 testified to that extent, that would be direct evidence.
24 You don't have to infer anything about that. It
25 immediately establishes the fact of me throwing a rock at

1 a car.

2 In circumstantial evidence, if each of you were to go
3 to bed at night and have a fresh sheet of snow in your
4 yard, if you were to wake up in the morning and see tracks
5 in the snow, you can reasonably infer that someone or
6 something walked in your yard during the night, although
7 you did not see it. It does require deduction, it does
8 require inference. The only prohibition is that you
9 cannot reach a conclusion that is conjectural, speculative
10 or just surmise.

11 Now, ladies and gentlemen, cases may be proven by
12 circumstantial evidence just like they may be with direct
13 evidence. The law makes no distinction between the weight
14 or to the value to be given either direct or
15 circumstantial evidence. However, to the extent that the
16 State relies on circumstantial evidence, all of the
17 circumstances must be consistent with each other, and when
18 taken together, point conclusively to the fact that the
19 respondent is a sexually violent predator beyond a
20 reasonable doubt. If these circumstances merely portray
21 -- make it suspicious that he is a sexually violent
22 predator, the State's case will have failed. The State
23 has the burden of proving their case beyond a reasonable
24 doubt whether or not they use direct or circumstantial
25 evidence or a combination of the two.

1 Now, ladies and gentlemen, in determining what your
2 verdict or the facts are in this case, you will have to
3 determine credibility of the witnesses. What that simply
4 means is which testimony you want to believe and whether
5 or not there's any testimony you wish not to believe. You
6 have a right to believe all or part or none of any
7 witness's testimony who appeared before you. You have a
8 right to believe all of a witness's testimony.

9 In making this determination of what we refer to as
10 the credibility of the witnesses, you may take into
11 account a number of factors which would include was the
12 witness able to hear or see or know the things about which
13 they testified? How well were they able to recall the
14 subject of their testimony? You can consider their
15 demeanor while they're on the witness stand and whether
16 that witness had a bias or interest in the outcome of the
17 case, or whether or not they had an interest or bias
18 towards any party or matter involved in the case. You can
19 ask yourself how reasonable that witness's testimony was
20 in light of all the other testimony and whether that
21 witness had been contradicted by what they said at an
22 earlier time or by other testimony or by other evidence in
23 this case.

24 Mr. Foreman, you don't check your common sense at the
25 door when you become jurors, and you shouldn't in this

1 case. You should use those things in life -- in your
2 day-to-day lives that you find indicative of truthfulness
3 and indicative of lack of truthfulness in making this
4 determination of the credibility or the believability of
5 the evidence.

6 Now, again, ladies and gentlemen, you had experts
7 testify before you. Normally, people cannot give their
8 opinion in court unless they've been qualified as an
9 expert. Experts however, because of their education or
10 experience in a matter that may be helpful to you the jury
11 and it's reliable may testify as an expert. Now, you the
12 jury have a right to believe all or part or none of the
13 witness's testimony. It's up to you to determine what
14 credibility that you want to give to all or part or any
15 aspect of each of the expert's testimony.

16 Now, Mr. Foreman, those are the general rules that
17 define and control your duties as jurors. This next
18 aspect will be the substantive law that applies in this
19 case is the law of sexually violent predators under our
20 statutes. This is what the State must make out in order
21 to prove its case against the respondent.

22 The elements which the State must prove beyond a
23 reasonable doubt are, number one, that the respondent has
24 been convicted of a sexually violent offense. Now, I will
25 charge you, ladies and gentlemen, that the charge of

1 criminal sexual conduct with a minor in the third degree
2 is a sexually violent offense.

3 Next and second, the State must prove that the
4 respondent suffers from a mental abnormality or a
5 personality disorder that makes him likely to engage in
6 acts of sexual violence if not confined in a secure
7 facility for long-term control, care and treatment.

8 Ladies and gentlemen, inherent in these two elements
9 is that the State must prove beyond a reasonable doubt the
10 requirement that the respondent's mental abnormality or
11 personality disorder causes him serious difficulty in
12 controlling his behavior. In other words, the State must
13 prove beyond a reasonable doubt that the individual it
14 seeks to commit suffers from a mental illness which he
15 cannot sufficiently control without the structure and care
16 provided by a mental health facility rendering him
17 otherwise likely to commit a dangerous act.

18 In order for you to better understand the elements of
19 the State's cause of action, I'm going to define for you
20 some of the terms I've just used. First, mental
21 abnormality is defined as this: it's a mental condition
22 affecting a person's emotional or volitional capacity that
23 predisposes the person to commit sexually violent
24 offenses. This mental abnormality or personality disorder
25 must cause Mr. Bearden serious difficulty in controlling

1 his behavior.

2 Also, likely to engage in acts of sexual violence
3 means the person's propensity to commit acts of sexual
4 violence is of such a degree as to pose a menace to the
5 health and safety of others so that he is dangerous to
6 others.

7 Again, I remind you that the burden of proof is on
8 the State to prove to you by proof -- excuse me. I remind
9 you that the burden is on the State to prove to your
10 satisfaction beyond a reasonable doubt that the respondent
11 has been convicted of a sexually violent offense as I have
12 instructed and also suffers from a mental abnormality or
13 personality disorder that makes him likely to engage in
14 acts of sexual violence if not confined in a secure
15 facility for long-term control, care and treatment.

16 If the State carries its burden of proof and
17 convinces you beyond a reasonable doubt as to each of the
18 two elements of its cause of action, it is entitled to a
19 finding that Mr. Bearden is a sexually violent predator.
20 If the State does not meet the burden of proof as to one
21 of these two elements, the respondent is entitled to a
22 finding that he is not a sexually violent predator.

23 So, Mr. Foreman, that leads me to the final part of
24 my charge, and that is some considerations about your
25 deliberations. First, when you went through voir dire and

1 said that you could be fair and impartial to both the
2 State and to this respondent, you represented that you can
3 be a judge of the facts. That means you're not a
4 partisan, you're not an advocate for one side or the
5 other. You are judges of the facts. You'll make the
6 determination of whether or not this respondent is or is
7 not a sexually violent predator. You have no axes to
8 grind for or against the State or for or against
9 Mr. Bearden.

10 Now, you are to use those things in your day-to-day
11 lives that you find indicative of truthfulness and lack of
12 truthfulness. "Deliberations" is defined as this, it's a
13 careful consideration, weigh it up with a view to a
14 decision.

15 Now, ladies and gentlemen, I'm going to instruct you
16 that you are not to rush to a decision, but you are to
17 courteously, carefully and thoroughly listen to, talk
18 through all -- about all the evidence, listen to
19 everybody's views and their points of view. I do not want
20 you rushing to a decision. This is the State's and the
21 respondent's only day in court. They do not get a second
22 bite at the apple.

23 Now, I'm going to ask that you listen to other
24 people's decisions or their perspectives, rather, let them
25 tell you why they have their perspectives and to listen to

1 your perspectives, and hopefully y'all can come to a
2 unanimous decision. In order for it to stand, it will
3 have to be unanimous.

4 Do not be afraid to change your mind if the
5 deliberations convinces you that's the right thing to do.
6 On the other hand, do not change a firmly held belief as
7 to the weight of the evidence solely to appease your
8 fellow jurors.

9 Now, Mr. Foreman, if at any time the jury needs
10 anything, would you write it down, sign your name and give
11 it to the bailiff? He'll bring it to me and we'll respond
12 accordingly. If you have any questions, if you'll do the
13 same thing.

14 Once the jury has reached a verdict, you will need to
15 fill out the verdict form, okay? I have to put them in
16 some order, and so the order in which your options appear
17 is of no consequence, but this is the verdict form. It
18 says, "Has the petitioner, the State of South Carolina,
19 proved beyond a reasonable doubt Harlin A. Bearden is a
20 sexually violent predator under the South Carolina
21 Sexually Violent Predator Act?" And your responses are,
22 "We the jury unanimously answer the question as follows:
23 Yes. Harlin A. Bearden is a sexually violent predator."
24 If that's your unanimous decision, you will check that
25 option and sign your name. The second, "No. Harlin A.

1 Bearden is not a sexually violent predator." If that's
2 your option, you'll check that. And, again, sign your
3 name.

4 Once you have signed the document, fold it over,
5 crease it, keep it in your hands, knock on the door and
6 we'll receive your verdict here in the courtroom, okay?

7 Any additions or exceptions to the jury charge from
8 the State?

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

10 THE COURT: From the respondent?

11 MR. LAWRIK: None, Your Honor.

12 THE COURT: Okay. Very good. If you will go back to
13 your jury room, we'll send the exhibits and the verdict
14 form back shortly with word to begin your deliberations.

15 Now, our alternate, if you would come back out with
16 your personal things, ma'am.

17 (WHEREUPON, the jury exits the courtroom at 4:30 p.m., a
18 recess is taken and the jury begins their deliberations.)

19 THE COURT: Gentlemen, my understanding is we have a
20 verdict. Do we have everybody here? Good.

21 Would you bring them in, sir.

22 (WHEREUPON, the jury entered the courtroom at 5:16 p.m.)

23 THE COURT: Mr. Foreman, my understanding is the jury
24 has reached a verdict; is that correct?

25 JURY FOREPERSON: Yes, sir.

1 THE COURT: Is it unanimous?

2 JURY FOREPERSON: Yes, sir. It is.

3 THE COURT: Would you pass the verdict form to the
4 bailiff, please, sir. Thank you.

5 VERDICT

6 THE CLERK: The State of South Carolina, County of
7 Greenwood, in the matter of treatment for Harlin Bearden,
8 we the jury unanimously, yes, Mr. Bearden is a sexual
9 violent predator, signed by the foreperson, David
10 Blizzard, March 27, 2018.

11 THE COURT: All right. Mr. Foreman, ladies and
12 gentlemen of the jury, if that was your verdict in the
13 jury room and if that is your verdict in the courtroom,
14 would you raise your right hand? Let the record reflect
15 that all 12 responded in the affirmative.

16 All right. Ladies and gentlemen, that concludes your
17 service for this week, and more importantly, for three
18 more years in Circuit Court. I appreciate your
19 willingness to do your civic duty. The Court's never ever
20 concerned with what your verdict is but that you followed
21 your instructions. I watched you variously, all of you,
22 throughout the trial. You did just that, pay close
23 attention to the lawyers and testimony and even to my
24 boring charge, and so I appreciate that.

25 Does anybody have any questions at all? Does anybody

1 have any comments?

2 All right. Ladies and gentlemen, thank you so much.

3 Does anybody need a statement for their employer?

4 THE CLERK: I'll go out in the hallway and get it for
5 you.

6 THE COURT: Very good. Thank you, Madam Clerk.
7 Thank you, and thank you, Mr. Blizzard, for your service
8 and timeliness. I'll see you later. Take care.

9 (WHEREUPON, the jury exits the courtroom at 5:18 p.m.)

10 THE COURT: All right. Mr. Lawrimore, like I do in
11 all civil trials, I give you ten days to file post-trial
12 motions if that's what you'd like.

13 MR. LAWRYMORE: Yes, Your Honor. I'd prefer an
14 option of ten days rather than making them on the record
15 now.

16 THE COURT: I think that's a wise decision.

17 Okay. Ten days. And if you would, make sure you
18 copy Mr. Bogle with them.

19 MR. LAWRYMORE: I will, and I'll serve a copy upon
20 Your Honor.

21 MR. BOGLE: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 MR. LAWRYMORE: Email suit everybody?

24 THE COURT: Yeah, yeah. In fact, if you don't, I
25 don't know if it's been made. I think it's jurisdiction

1 of some kind.

2 MR. BOGLE: What will happen, I'll get this filed and
3 get it to -- is he serving time at SCDC now? Okay. We'll
4 give it to the Department of Corrections. Originally, we
5 thought Greenwood County still had him, but they don't.
6 And at such time as he finishes his time with ya'll,
7 they'll call Mental Health and set up a time to take him
8 there. You've got to call ahead.

9 THE COURT: Okay. All right.

10 MR. BOGLE: Thank you, Your Honor.

11 THE COURT: And, Mr. Bearden, after the posttrial
12 motions period, you'll have 30 days -- after I issue an
13 order on that, you'll have 30 days to appeal this
14 decision, okay, sir, after those ten days have run.

15 All right. Anything further from the State,
16 Mr. Bogle?

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

18 THE COURT: Mr. Lawrimore?

19 MR. LAWRYMORE: Those posttrial motions not
20 withstanding, nothing, Your Honor.

21 THE COURT: All right. I appreciate it. Gentlemen,
22 you've been very professional and you've presented your
23 cases very well. Thank you so much. And we are in
24 recess.

25 (WHEREUPON, proceedings concluded at 5:20 p.m.)

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENWOOD)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Greenwood County, South Carolina, on the
14 25th and 27th day of March, 2019.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17
18 August 7, 2019

19
20
21 Cheryl A. Smith

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

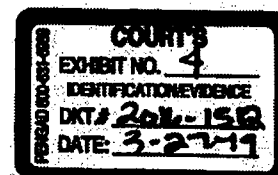
STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD)	EIGHTH JUDICIAL CIRCUIT
IN THE MATTER OF THE CARE)	CASE NO. 2016-CP-24-01512
AND TREATMENT OF)	RESPONDENT'S JURY CHARGES
HARLIN A. BEARDEN,)	
RESPONDENT.)	

INTRODUCTION:

Mr. Foreman and ladies and gentlemen of the jury, it is now my duty as the trial judge under the constitution of this State to charge and instruct you on the law applicable to this case. It is your duty as jurors to accept and apply the law as I will now state it to you.

The State has brought this case under the sexually violent predator law of South Carolina. The State seeks the civil commitment of **HARLIN A. BEARDEN**, the Respondent, for long-term control, care and treatment in a secure facility. This is not a criminal proceeding seeking incarceration, but rather is a proceeding seeking civil commitment.

The State of South Carolina alleges or claims that the Respondent, **HARLIN A. BEARDEN**, is a sexually violent predator under the law. Respondent denies that he is a sexually violent predator, and the burden of proof is therefore on the State to prove by evidence sufficient to satisfy each of you beyond a reasonable doubt that Mr. **BEARDEN** is a sexually violent predator. If the State is unable to meet that burden of proof as to one or more of the elements of this claim, the Respondent is entitled to a finding that he is not a sexually violent predator.



Ladies and gentlemen, I want to make sure that you understand that Mr. **BEARDEN** is not accused of committing a crime in this proceeding. As you heard from the testimony, he did have previous charges for which he was sentenced by the court. The Respondent has now completed his sentence for those charges, and the State is now alleging that Mr. **BEARDEN** is a sexually violent predator. The State has the burden of proof in this case, and must prove its case beyond a reasonable doubt. If you find that the State has not met this burden, Respondent will be released. If you find that the State has met its burden of proof, and find that the Respondent is a sexually violent predator, he will not be released, but will be committed to a secure treatment facility in Columbia operated by the South Carolina Department of Mental Health.

DUTIES OF JUDGE AND JURY:

Now, during this trial you and I have had separate duties to perform. As the trial judge, it is my responsibility to preside over this trial, and I also have the duty to rule upon the admissibility of the evidence offered during the process of this trial. In that regard, you are to consider only the competent evidence before you, and you are to disregard from your mind any testimony ordered stricken from the record of this case during the progress of this trial, if there was any. You are to consider only the testimony which has been presented from this witness stand, together with any exhibits admitted into the record of this case and any stipulations of counsel made into the record, if there were any.

Furthermore, I have the additional duty to charge you on the applicable law of this case and in that regard, I am the sole judge of the law of this case. It is your duty to accept and apply the law as I now state it to you. If you have any preconceived ideas as to what the law is, or what the law ought to be, and they do not agree with what I tell you the law is, you are obligated under your oath to abandon these preconceptions, because you are sworn to accept the law precisely as I now state it to you.

In this trial you are the sole and exclusive judge of the facts, and I am the judge of the law. Do not infer that I have any opinion about the facts in this case from anything I have said during the course of this trial in ruling upon the admissibility of evidence or otherwise, or from anything that I now say during the course of this charge to you. In this regard, the law simply does not permit me to have an opinion about the facts. As jurors, it is your duty alone to determine the effect, value, weight and accuracy of the evidence presented during the course of this trial.

ARGUMENT OF COUNSEL:

While argument of counsel is a beneficial part of every trial, you should remember that the statements made by counsel are not evidence. In presenting arguments, counsel often refer to the evidence. However, you should base your

verdict on the evidence as you remember it. Therefore, if there are any conflicts between the recollection of counsel about the evidence and your own recollection, you should rely upon your own understanding of the evidence.

BURDEN OF PROOF:

Ladies and gentlemen, in most civil cases tried in the court of common pleas, the burden of proving a claim is by the preponderance, or greater weight, of the evidence. However, in this type of case under this particular statute, the State's burden is greater than that: here it must be beyond a reasonable doubt.

As already stated to you, the State has the burden of proof. Under the law of this State, according to the sexually violent predator statute, the State must prove its case to the standard of proof beyond a reasonable doubt. If the State fails to meet this high burden, then you must find that Mr. **BEARDEN** is not a sexually violent predator.

REASONABLE DOUBT:

The State has the burden of proving the defendant guilty beyond a reasonable doubt. The State is required to prove every element of the charged offense by evidence which satisfies the jury of the guilt of the defendant beyond a reasonable doubt. The defendant is not required to prove his innocence. The burden of proof always remains upon the State of South Carolina to prove guilt beyond a reasonable doubt.

What is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. The term "reasonable doubt" should be given its plain and ordinary meaning. SC JJ CRIMINAL § 1-5

DIRECT AND CIRCUMSTANTIAL EVIDENCE:

Evidence may be direct or circumstantial. Direct evidence is testimony by a witness about what the witness personally saw, heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact. You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give any evidence.

CREDIBILITY OF WITNESSES:

In determining what the facts in this case are, you must judge the credibility, which simply means the believability, of the witnesses and the value or weight to

be given to their testimony. You alone must decide the force, effect and accuracy of the testimony. In making this decision there are many things you may, and should, take into consideration, such as:

- (1) The appearance and manner of the witness on the stand, a characteristic often referred to as the demeanor of the witness.
- (2) Was the witness forthright, or hesitant?
- (3) Was the witness' testimony consistent, or did it contain discrepancies?
- (4) What was the ability of the witness to know the facts about which he or she testified?
- (5) Was there some reason a witness would want to give testimony which would help or hurt one side or the other? In other words, was the witness biased or prejudiced?
- (6) Was the testimony of the witness reasonable when considered in the light of all the evidence in the case and in the light of your own experience and common sense?
- (7) Was the testimony of the witness corroborated or made stronger by other testimony and evidence, or was it made weaker or impeached by such other testimony and evidence?

As jurors please understand you have the right to believe a small portion of a witness' testimony and discard the larger portion, or vice versa. You may believe

all of a witness' testimony, or none. You may believe the testimony of a single witness against that of many witnesses, or the other way around.

And, of course, you do not determine the case merely by counting the number of witnesses presented by each side.

The fact that testimony is not controverted does not mean you must accept it as valid and undisputed. You still must gauge the credibility of the witness to determine the believability of the facts offered through the testimony.

In exercising your mental processes and attempting to decide the accuracy of testimony, the law simply requires that you exercise your good judgment, your common sense, your sense of logic and reason, and your experiences in life. You then apply these attributes to the evidence and apply the law as I am now going to state it to you, and thus arrive at a verdict.

EXPERT WITNESS:

During the course of this trial, you also heard the testimony of (an) expert witness(es). The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. Instead, they can testify as to facts they perceived, such as what they saw, smelled, heard or touched. However, an exception to this rule exists for a witness we call an "expert witness." A witness who has special knowledge, skill, experience, training, or education in a particular field may state an opinion as to relevant and material matters in which the witness claims to be an expert.

In determining the weight to be given to such an opinion, you should likewise consider the qualifications and credibility of the expert and the reasons given for the opinion. You are not bound by such opinion. Rather, you should give it the weight, if any, which you think it deserves.

The value and effect of expert testimony is a matter to be solely estimated by you, the jury. No opinion of an expert can be accepted, in and of itself, as accurate or reliable, but must be weighed by you and convince your judgment beyond a reasonable doubt and with the same force and effect as any other fact proved in this case before you can rely upon it.

You must consider expert testimony in the same manner as you do any other testimony and give to it such weight as you believe it to be entitled when considered with all the other evidence in this case. Such testimony is given for the purpose of helping you and not for the purpose of controlling your judgment.

SEXUALLY VIOLENT PREDATOR:

The elements which the State must prove beyond a reasonable doubt are:

1. That the Respondent has been convicted of a sexually violent offense. I charge you that **CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE THIRD DEGREE** is a sexually violent offense. AND,

2. That the Respondent suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

Inherent in these two elements is that the State must prove the requirement that the Respondent's mental abnormality or personality disorder causes him "serious difficulty in controlling his behavior."¹

In other words, the state must prove beyond a reasonable doubt that the individual it seeks to commit suffers from a mental illness which he cannot sufficiently control without the structure and care provided by a mental health facility, rendering him otherwise likely to commit a dangerous act.²

In order for you to better understand the elements of the State's cause of action, I am going to define for you some of the terms that I have just used.

1.) "mental abnormality" means a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses. This mental abnormality or personality disorder must cause Mr. **BEARDEN** serious difficulty in controlling his behavior.

2.) "likely to engage in acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others so that he is dangerous to others.

¹ *Kansas v. Crane*, 534 U.S. 407, 122 S.Ct. 867, 151 L.Ed.2d 856 (2002).

² *Id.* See also *In re Treatment and Care of Luckabaugh*, 568 S.E.2d 338 (S.C. 2002); *In re Treatment and Care of Harvey*, 584 S.E.2d 893 (S.C. 2003).

Again, I remind you that the burden of proof is on the State to prove to your satisfaction beyond a reasonable doubt that the Respondent has been convicted of a sexually violent offense as I have instructed you, **and** also suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

If the State carries its burden of proof and convinces you beyond a reasonable doubt as to each of the two elements of its cause of action, it is entitled to a finding that Mr. **BEARDEN** is a sexually violent predator. If the State does not meet that burden of proof as to one or both of these elements, the Respondent is entitled to a finding that he is not a sexually violent predator.

FAIR AND IMPARTIAL TRIAL

Mr. Foreman and ladies and gentlemen of the jury, as you retire to begin your deliberations, I wish to express the hope that each of you will be mindful of the importance of your responsibility. You are not called upon to serve as jurors very often, and the proper performance of the duty requires each of you to reach the height of freeing your mind of all improper influences.

As the presiding officer of this court, I am vitally concerned that whatever verdict you find will be the result of your going into that jury room and confining your consideration to the evidence and the law that you have heard in this

courtroom, weighing it fairly and impartially, as I have every confidence you will do.

Your verdict in this case cannot be based on sympathy, compassion, prejudice, or emotion or some other consideration not found in the evidence. Remember, your verdict must be unanimous. I will now explain the verdict form and possible verdicts.

Unanimity of Verdict

Under the Constitution of this State, the jury verdict must be unanimous. Unanimity is mandated. Every single juror must agree on the jury verdict. There cannot be any split or divided vote in any form or fashion, such as eleven to one, ten to two, nine to three.

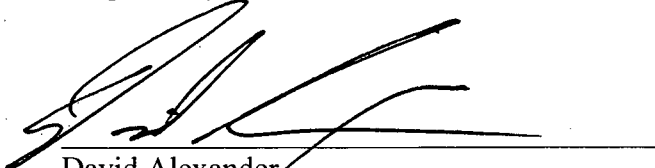
The foreperson is required to sign the jury verdict. When the foreperson writes the verdict and signs the name as the foreperson, that assures the court that the jury verdict is unanimous. Please do not sign the verdict form until every single juror agrees.

If you, the jury, unanimously find the defendant not guilty, all twelve agreeing, all twelve concurring, all twelve consenting, the foreperson should then write two words: not guilty and sign the foreperson's name. If the jury unanimously concludes the defendant is guilty, all jurors consenting, all jurors concurring, all jurors acquiescing, the foreperson should write one word: guilty and sign the foreperson's name.

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 February, 2020.