

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable D. Craig Brown, Circuit Court Judge

IN THE MATTER OF THE CARE AND  
TREATMENT OF THOMAS GRIFFIN,

**RECEIVED**

**Jun 22 2020**

**SC Court of Appeals**

APPELLANT

APPELLATE CASE NO. 2018-001975

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF Horry ) 2016-CP-26-06412

IN THE MATTER OF THE ) **TRANSCRIPT OF RECORD**  
CARE AND TREATMENT OF ) (Motion Hearing)  
THOMAS GRIFFIN, ) August 7, 2018

**B E F O R E:**

Honorable William H. Seals  
Horry County Courthouse  
Conway, South Carolina

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

James K. Falk, Esquire  
**Attorney for Thomas Griffin**

Christopher Andrew Morrow, Esquire  
**Attorney for State**

Kay H. Richardson  
**Circuit Court Reporter**

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E X H I B I T S

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(No Exhibits were marked or admitted.)

Care and Treatment of Thomas Griffin - 2016-CP-26-06412 3  
MOTION

1 **AUGUST 7, 2018 - 11:27 A.M**

2 MR. FALK: All right, Your Honor, so, three months ago or  
3 so, I filed a motion because we were supposed to have a trial  
4 date here and Mr. Griffin and in the motion I gave some  
5 information -- so, I'm not -- it's not just me thinking that  
6 my client might have some mental issues and certainly my  
7 observations were verified by what Dr. Gayle put in her report  
8 as far as schizophrenia and prior treatments. And when I had  
9 Dr. Mulbre (spelled phonetically) go up and talk to him, he  
10 was not really looking for that, he was more looking to do a  
11 sex offender assessment. So, he really wasn't doing that type  
12 of evaluation. All I can tell you from my observation, there  
13 were times when his answers made no sense relative to my  
14 questions. And because of that, I felt that he would be  
15 prejudiced by trying to have this trial where he could have a  
16 significant deprivation of liberty if he losses if he can't  
17 participate in his defense. And so that's why I filed this  
18 motion. I really don't know if I'm entitled to it under the  
19 law, but I did what I did.

20 **RULING OF THE COURT:**

21 THE COURT: I can tell you before hearing from the state,  
22 Code Section 44-48-100(b) says that a hearing on this issue  
23 must comply with all the procedures specified in this section.  
24 In addition, the Rules of Evidence applicable in criminal  
25 cases apply and all constitutional rights available to

1 defendants at criminal trials other than the right not to be  
2 tried while incompetent.

3 So, I think that's dead on the money in the statute.

4 MR. FALK: And that's -- and then I'm just ---

5 THE COURT: That's your answer.

6 MR. FALK: And I'm making my record and that's fine and  
7 so if you can give me a -- so that'll be part of the record in  
8 this case.

9 THE COURT: That's fine. I just -- the law clerk, first  
10 day on the job, found that in the midst of all that stuff.

11 MR. FALK: Okay. And then since we have resolved that  
12 quickly, then I still need to -- we need a trial date.

13 THE COURT: Okay. You just go through him. He'll get  
14 his computer Thursday. If you'll contact him, he'll set all  
15 that up for you.

16 MR. FALK: Very good. Thank you, Your Honor.

17 MR. MORROW: Thank you.

18 **ADJOURNED - 11:29 A.M.**

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20

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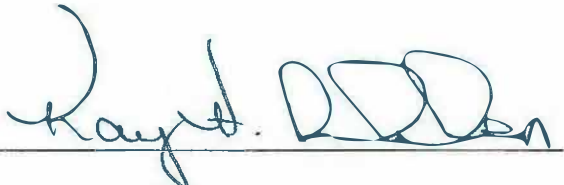
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the Matter of the Care and Treatment of Thomas Griffin, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on August 7, 2018.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson  
Official Court Reporter

August 21, 2019.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY ) 20 16-CP-26-64 12

In the Matter of the Care and )  
Treatment of Thomas Griffin, ) Transcript of Record  
)  
Respondent, ) October 22-23, 20 18

B E F O R E:

Honorable D. Craig Brown  
Horry County Courthouse  
Conway, South Carolina

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

Christopher Andrew Morrow, Esquire  
Attorney for State

James Kristian Falk, Esquire  
Attorney for Respondent

Dixie Eubank  
Circuit Court Reporter

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- S-1 Sentencing Sheet
- S-2 Warrant and Indictment
- D-1 Respondent's Second Motion for Competency
- C-1 Note from Jury

Voir Dire

4

1           (On the record, October 22, 2018. The following takes  
2 place in the presence of the jury venire.)

3           THE COURT: All right. Is the State ready to proceed?

4           MR. MORROW: Yes, Your Honor. The State is ready.

5           THE COURT: Mr. Falk, you ready, Defense counsel?

6           MR. FALK: Yes. We are.

7           THE COURT: All right. Ladies and gentlemen, I asked you  
8 some question downstairs to get you qualified for general jury  
9 qualification. I'm going to have to go through some  
10 additional questions to get you qualified to serve on this  
11 particular case. Okay?

12           Now, let me tell you a little bit about this case real  
13 quick. This case is a case that's been brought by the State  
14 of South Carolina pursuant to the South Carolina Sexually  
15 Violent Predator Act, Sections 44-48-10 of the South Carolina  
16 Code of Laws. As I said, the State of South Carolina has  
17 brought this case pursuant to that act, the Sexually Violent  
18 Predator Act, to determine whether or not the Defendant, Mr.  
19 Thomas Griffin -- bear with me just a second -- is deemed  
20 under South Carolina Law to be a sexually violent predator.  
21 I'll explain, if you're picked on this jury, I'll explain the  
22 law to you as it relates to that later.

23           Now, before, the State of South Carolina, ladies and  
24 gentlemen, let me tell you this, bears the burden of proving  
25 that. Okay? This is a civil case. It's not a criminal case.

1 It's a civil case where the State must prove the elements of  
2 this offense, again of which I -- this, of this -- what the  
3 action they've brought, I'll explain those elements to you,  
4 but the State has the burden of proving it by a preponderance  
5 of the evidence. You've heard before the term beyond a  
6 reasonable doubt. That's the burden of proof in a criminal  
7 case, in a criminal case, but again, this --

8 MR. MORROW: Your Honor --

9 THE COURT: -- it's beyond a reasonable doubt.

10 MR. MORROW: Yes, sir, Your Honor.

11 THE COURT: And I just caught myself in that. Even  
12 though this is a civil case, because it's under this Sexually  
13 Violent Predator Act the proof is beyond a reasonable doubt.  
14 Typically in a civil case it's by a preponderance of the  
15 evidence, but it is a civil action. It's a little bit  
16 different though. It's been a -- I think since I've been on  
17 the bench since 2010 I've tried three of these. This is my  
18 third one. Okay? But the State does bear the burden and, and  
19 I will explain to you the law if you're selected on this jury.  
20 I'm going to fully explain the law to you as well as the  
21 elements of what the State has to prove.

22 Now, before we go any further in selecting a jury, please  
23 listen very carefully. You've heard me say the Defendant or,  
24 or the -- in this case the Respondent. His name is Thomas  
25 Griffin. His name is Thomas Griffin.

Voir Dire

6

1           Is there any member of the jury panel ever been related  
2 by blood, connected by marriage, had a close personal,  
3 business, social relationship or in any capacity know Mr.  
4 Thomas Griffin? If so, please stand.

5           Tell me your name and number.

6           JUROR 152: I -- my name is --

7           THE COURT: Tell me your name and number first.

8           JUROR 152: 152, Kathy Harmon.

9           THE COURT: Yes, ma'am.

10          JUROR 152: I grew up with a Thomas Griffin in North  
11 Carolina. I don't know if that's -- should stay now or not,  
12 but I don't know anything about him now.

13          THE COURT: Where is the Respondent or Defendant from,  
14 Mr. Falk?

15          MR. FALK: Your Honor, he's from --

16          (Whereupon, a bench conference is held in the presence  
17 but out of the hearing of the jury venire.)

18          THE COURT: Can you approach a minute, please, ma'am?

19          JUROR 152: Yes.

20          (Whereupon, a bench conference is held with Juror Number  
21 152, counsel for the State and Respondent in the presence but  
22 out of the hearing of the jury venire.)

23          (The following takes place in open court.)

24          THE COURT: All right. Ladies and gentlemen, would the  
25 fact that Mr. Thomas Griffin has been convicted of a sexual

1 offense and has completed his criminal sentence related to  
2 that conviction in any way prevent you from being able to be  
3 fair and impartial juror to both the State and Mr. Griffin in  
4 this case? If so, please stand.

5 (No response.)

6 THE COURT: I asked you if you in any way or in any  
7 capacity knew Mr. Griffin. Let me ask this question as well.  
8 Does any member of the jury panel know anything about the  
9 sexual offenses for which Mr. Griffin or offense or offenses  
10 that Mr. Griffin was convicted of? If so, please stand.

11 (No response.)

12 THE COURT: All right. Is any member of the jury panel  
13 or any -- their immediate family or close personal friend been  
14 the victim of a sexual assault? If so, please stand.

15 Tell me your name and number, please, ma'am.

16 JUROR 335: Danielle West, 335.

17 THE COURT: Can you approach, please, ma'am?

18 JUROR 335: Sure.

19 (Whereupon, a bench conference is held with Juror Number  
20 335, counsel for the State and Respondent in the presence but  
21 out of the hearing of the jury venire.)

22 (The following takes place in open court.)

23 THE COURT: Tell me your name and number, please.

24 JUROR 210: Kellie Marselis, 210.

25 THE COURT: Can you come on up here, please, ma'am?

Voir Dire

8

1           (Whereupon, a bench conference is held with Juror Number  
2 210, counsel for the State and Respondent in the presence but  
3 out of the hearing of the jury venire.)

4           (The following takes place in open court.)

5           THE COURT: All right. Is there any member of the jury  
6 panel, close personal friend or relative ever been charged,  
7 ever been charged or convicted of a sexual offense? If so,  
8 please stand.

9           Come on up here, please, sir. Tell me your name and  
10 number.

11          JUROR 334: Timothy Welsh, 334.

12          THE COURT: Okay. Come on up here, please, sir.

13          (Whereupon, a bench conference is held with Juror Number  
14 334, counsel for the State and Respondent in the presence but  
15 out of the hearing of the jury venire.)

16          (The following takes place in open court.)

17          THE COURT: All right. Is there any member of the jury  
18 panel, ladies and gentlemen, have any training or experience  
19 in the fields of psychiatry, psychology or the law? If so,  
20 please stand.

21          JUROR 65: Did you say the law?

22          THE COURT: Or the law. Name and number, please.

23          JUROR 65: Erin Chriswell, Number 65.

24          THE COURT: Number 60?

25          JUROR 65: 65.

Voir Dire

9

1 THE COURT: Okay. I'm sorry. What area do you have  
2 experience in?

3 JUROR 65: I was a correctional officer in the Federal  
4 Bureau of Prisons and also I was a state constable.

5 THE COURT: All right. The fact that you stood in  
6 response to this question if you were selected as a juror in  
7 this case could you be fair and impartial both to the State  
8 and the Defense?

9 JUROR 65: Yes, sir.

10 THE COURT: Thank you. You may be seated.

11 All right. At this time I'm going to ask the attorney  
12 for the State followed by Defense counsel to introduce  
13 themselves, please.

14 MR. MORROW: My name is Christopher Morrow. I am from  
15 Columbia, South Carolina. I work for the South Carolina  
16 Attorney General's Office.

17 MR. FALK: Hi. My name is James Falk. I'm from  
18 Charleston. I get -- I have a contract with the State of  
19 South Carolina to represent people in -- who are in these  
20 sexually violent predator cases.

21 THE COURT: All right. Is there any member of the jury  
22 panel ever been related by blood, connected by marriage, had a  
23 close personal, business, social relationship, ever been  
24 represented by either one of these attorneys or know them in  
25 any capacity whatsoever? If so, please stand.

Voir Dire

10

1 (No response.)

2 THE COURT: All right. The following is a list of  
3 potential witnesses in this case: Dr. Marie Gehle, G-E-H-L-E.  
4 Any others?

5 MR. MORROW: No, Your Honor.

6 THE COURT: All right. All right. Is there any member  
7 of the jury panel that's ever been related by blood, connected  
8 by marriage, had a close personal, business, social  
9 relationship or know Dr. Gehle in any capacity whatsoever? If  
10 so please stand.

11 (No response.)

12 THE COURT: Any member of the jury panel previously or  
13 currently involved in any type of prison ministry, prison  
14 outreach program or any other program involving contact with  
15 incarcerated individuals? If so, please stand.

16 (No response.)

17 THE COURT: All right. Is there any member of the jury  
18 panel, a close personal friend or relative ever been subject  
19 to civil commitment proceedings or been voluntarily or  
20 involuntarily civilly committed? If so, please stand.

21 (No response.)

22 THE COURT: Can you all approach a minute?

23 (Whereupon, a bench conference is held in the presence  
24 but out of the hearing of the jury venire.)

25 THE COURT: All right. Is there any member of the jury

Voir Dire

11

1 panel have such strong beliefs about sexual abuse of any kind  
2 that would affect your ability to be fair and impartial both  
3 to the State and the Defense in this case? If so, please  
4 stand.

5 Can you all approach again? I think this is a misprint.

6 (Whereupon, a bench conference is held in the presence  
7 but out of the hearing of the jury venire.)

8 THE COURT: Ladies and gentlemen, I previously asked you  
9 about whether you, close personal friend or a family member  
10 ever been the victim of an offense, a sexual -- an offense  
11 that was sexual in nature. Let me ask this question, is there  
12 any member of the jury panel, your immediate family, close  
13 personal friend ever been the victim of a violent crime? If  
14 so, please stand.

15 Tell me your name and number again, please.

16 JUROR 334: Timothy Welsh, 334.

17 THE COURT: 334. All right. The fact that you stood in  
18 response to that question, if you were selected as a juror in  
19 this case could you be fair and impartial both to the State  
20 and the Defense?

21 JUROR 334: Yes, sir.

22 THE COURT: Thank you. You may be seated.

23 JUROR 335: Did you want me to stand for this one again?

24 THE COURT: Tell me your name and number again.

25 JUROR 335: Danielle West, 335.

Voir Dire

12

1 THE COURT: All right. I've already set you aside for  
2 this trial. Thank you though.

3 All right. Does any member of the jury panel believe  
4 that someone who suffers from pedophilia can never be cured?  
5 If so, please stand.

6 (No response.)

7 THE COURT: Does any member of the jury panel believe  
8 that it is impossible to rehabilitate persons that were  
9 convicted of committing sexual crimes against children? If  
10 so, please stand.

11 (No response.)

12 THE COURT: Any member of the jury panel that's ever  
13 worked for in any way or in any way been connected or  
14 associated with any social services agency, guardian ad litem  
15 program, foster care program and any other entity whether it's  
16 private or governmental that investigates or counsels victims  
17 of rape or sex -- sexual assault? If so, please stand.

18 (No response.)

19 THE COURT: Is there any member of the jury panel or  
20 spouse or immediate family currently or ever worked with any  
21 law enforcement agency whether it be city, county, state or  
22 federal? If so, please stand.

23 Tell me your name. Sir, tell me your name and number,  
24 please.

25 JUROR 38: Dillon Brown, 38.

Voir Dire

13

1 THE COURT: All right. The fact that you stood in  
2 response to that question, if you were selected as a juror in  
3 this case could you be fair and impartial both to the State  
4 and the Defense?

5 JUROR 38: Yes, sir.

6 THE COURT: Thank you. You may be seated.

7 JUROR 38: Yes, sir.

8 THE COURT: Tell me --

9 JUROR 65: Erin Chriswell, 65.

10 THE COURT: All right. You previously told me that you  
11 worked with -- as a correction officer, the Federal Bureau of  
12 Prisons. Anything else?

13 JUROR 65: And I was a South Carolina State Constable.

14 THE COURT: All right. The fact that you stood in  
15 response to that question, if you were selected as a juror in  
16 this case could you be fair and impartial both to the State  
17 and the Defense?

18 JUROR 65: Yes, sir.

19 THE COURT: Thank you. You may be seated. Name and  
20 number, please, ma'am?

21 JUROR 152: 152, Kathy Harmon, Katherine Harmon. I  
22 worked for the North Carolina State Bureau of Investigation as  
23 a private -- as a secretary for the violent crimes task force.

24 THE COURT: All right. The fact that you stood in  
25 response to this question, if you were selected as a juror in

Voir Dire

14

1 this case could you be fair and impartial both to the State  
2 and the Defense?

3 JUROR 152: Yes.

4 THE COURT: Thank you. You may be seated.

5 All right. Is there any member of the jury panel, close  
6 personal friend or relative ever worked for or currently work  
7 with the 15<sup>th</sup> Circuit Solicitor's Office, which is the Horry  
8 County Solicitor's Office and Georgetown County? If so,  
9 please stand.

10 (No response.)

11 THE COURT: All right. Is there any member of the jury  
12 panel or their immediate family currently or previously worked  
13 for any sort of county, state or federal correctional  
14 facility? I know Juror 65 has stood for me. Anybody --  
15 anyone else?

16 (No response.)

17 THE COURT: All right. Has any member of the jury panel,  
18 their immediate family or close personal friend previously or  
19 currently work as an emergency medical technician, voluntary  
20 -- volunteer fire person or in any occupation that can be  
21 described as a first responder? If so, please stand.

22 Name and number, please, ma'am?

23 JUROR 197: Sherry Leonard, 197.

24 THE COURT: Tell me your name and number, please, sir.

25 JUROR 259: Randall Purcell, Number 259.

1           THE COURT: All right. The fact that each of you all  
2 stood in response to that question, if you were selected as a  
3 juror in this case could you be fair and impartial both to the  
4 State and the Defense, Number 197?

5           JUROR 197: Yes.

6           THE COURT: 259?

7           JUROR 259: Yes.

8           THE COURT: Thank you. You all may be seated.

9           All right. Is any member of the jury panel, their  
10 immediate family or close personal friend associated with any  
11 crime prevention group or victims' rights groups or any  
12 criminal or law enforcement organization such as neighborhood  
13 watch groups, Citizens Against Violent Crime, People Against  
14 Rape, Rape Crisis Hotline, Darkness to Light or anything of  
15 that nature? If so, please stand.

16           (No response.)

17           THE COURT: All right. Any member of the jury panel that  
18 personally knows anyone that works in the Horry County  
19 Solicitor's Office or the South Carolina Attorney General's  
20 Office or had any recent contact or communication with either  
21 of those agencies? If so, please stand.

22           (No response.)

23           THE COURT: All right. Is there any member of the jury  
24 panel that's related by blood or connected by marriage to any  
25 other juror on this panel? If so, please stand.

Voir Dire

16

1 (No response.)

2 THE COURT: All right. Is any member of the jury panel  
3 that's formed or expressed any opinion or -- on any issues or  
4 matter involved in this case that would prevent you from being  
5 fair and impartial both to the State and the Defense? If so,  
6 please stand.

7 (No response.)

8 THE COURT: All right. Does any member of the jury panel  
9 know of any reason, any reason whatsoever why he or she should  
10 not serve as a juror in this case with particular emphasis  
11 being placed upon your ability to be fair and impartial to  
12 both the State and the Defense? If so, please stand.

13 (No response.)

14 THE COURT: All right. Any further requested voir dire  
15 from the State?

16 MR. MORROW: Nothing from the State, Your Honor.

17 THE COURT: Defense counsel?

18 MR. FALK: Your Honor, I believe you covered my question  
19 16 but could you just.

20 THE COURT: Let me see. Yes, sir.

21 (Whereupon, a bench conference is held in the presence,  
22 but out of the hearing of the jury venire.)

23 THE COURT: All right. Anything further from Defense  
24 counsel?

25 MR. FALK: No, Your Honor.

## Jury Selection

17

1 THE COURT: All right.

2 (Clerk and Court confer.)

3 THE COURT: One alternate sufficient for the State or  
4 two?

5 MR. MORROW: Two, Your Honor, would be what we would  
6 prefer.

7 THE COURT: Okay. Two all right with you, Mr. Falk?  
8 Two.

9 (Court and clerk confer.)

10 THE COURT: Can the lawyers approach a minute, please,  
11 for the jury list?

12 (Whereupon, a bench conference is held in the presence,  
13 but out of the hearing of the jury venire.)

14 THE COURT: All right. The State ready to proceed?

15 MR. MORROW: The State is ready, Your Honor.

16 THE COURT: Defense counsel?

17 MR. FALK: We are, Your Honor.

18 THE COURT: All right. Madam Clerk.

19 THE CLERK: We'll start with the Plaintiff. Please  
20 strike, strike the numbers one through 20 on the left.

21 MR. MORROW: The State strikes Juror Eight.

22 THE CLERK: Plaintiff strikes Number Eight.

23 THE COURT: Respondent.

24 MR. FALK: Your Honor, Respondent strikes Juror Five.

25 THE CLERK: Respondent strikes Number Five.

## Jury Selection

18

1 MR. MORROW: The State strikes Juror 17.

2 THE CLERK: Plaintiff strikes 17. Respondent?

3 MR. FALK: Respondent strikes Number Six.

4 THE CLERK: Respondent strikes Number Six.

5 MR. MORROW: State strikes Juror Five. I'm sorry, Juror  
6 Four.

7 THE CLERK: Plaintiff strikes Number Four.

8 THE COURT: Respondent?

9 MR. FALK: Strike Juror Number One.

10 THE CLERK: Respondent strikes Number One.

11 MR. MORROW: State strikes Juror 15.

12 THE CLERK: Plaintiff strikes Number 15. Respondent?

13 MR. FALK: Respondent strikes Juror 19.

14 THE CLERK: Respondent strikes Number 19. First  
15 alternate, please.

16 MR. MORROW: State strikes Juror 22.

17 THE CLERK: Plaintiff strikes Number 22. Respondent?

18 MR. FALK: 24.

19 THE CLERK: Respondent strikes Number 24. Your second  
20 alternate, please.

21 MR. MORROW: State strikes Juror 26.

22 THE CLERK: Plaintiff strikes 26. And Respondent?

23 MR. FALK: Respondent strikes 27.

24 THE CLERK: Respondent strikes 27. May we review your  
25 strikes, please? The Respondent strikes Number One, Number

## Jury Selection

19

1 Five, Number Six, Number 19, Number 24 and Number 27.

2 MR. FALK: That's correct.

3 THE CLERK: The Plaintiff strikes Number Four, Number  
4 Eight, Number 15, Number 17, Number 22, Number 26.

5 MR. MORROW: That's correct.

6 THE COURT: All right. Are there any matters of law that  
7 we need to take up with regards to jury selection from the  
8 State?

9 MR. MORROW: None from the State, Your Honor.

10 THE COURT: And Respondent?

11 MR. FALK: Nothing from Respondent, Your Honor.

12 THE COURT: All right. Madam Clerk.

13 THE CLERK: As I call your number please come and be  
14 seated in the jury box.

15 Brenden Blaschke, Juror Number 28; Charles Jacobs, Number  
16 171; Sherry Leonard, Number 197; Christopher English, Number  
17 112; Gary Crowder, Number 83; Timothy Lordi, Number 204; James  
18 Dennis, Number 94; Anne Miner, Number 223; Rose Marie  
19 Paterchak, Number 244; Patrick Davis, Number 91; Lori Stewart,  
20 Number 299; David Cooksey, Number 75; Randall Purcell, Number  
21 259; Michael Hardwick, Number 151.

22 (Remaining panel released by Court and given call-back  
23 instructions.)

24 THE COURT: Mr. Falk, Mr. Morrow, can you all approach  
25 just a second, please?

## Opening Instructions by Court

20

1           (Whereupon, a bench conference is held in the presence,  
2 but out of the hearing of the jury.)

3           THE COURT: All right. Ladies and gentlemen, those that  
4 are -- those of you that are seated in the jury box you all  
5 have been selected as fair and impartial jurors to serve on  
6 this case. What I'm getting ready to do is I'm going to give  
7 you, I'm going to give you a lunch break. Okay? Before I do  
8 that I'm going to give you a few instructions here. Okay?

9           As you serve this week, ladies and gentlemen, please stay  
10 to yourself or with your fellow jurors. The lawyers have been  
11 -- always are instructed not to have any interaction with  
12 jurors. You all, innocent conversations, innocent  
13 conversations could be misconstrued. Okay? So my instruction  
14 to you all is either, one, stay to yourself or with your  
15 fellow jurors. If you see any, anyone involved in this case  
16 and they don't speak to you, they're not being unfriendly.  
17 They're following this Court's instructions because as I said  
18 we don't want innocent conversations to be misconstrued.  
19 Okay?

20           I'm going to give you a lunch break until -- I'm going to  
21 ask you to be back here at 2:30. There's some pretrial stuff  
22 that we have to take up that I have to deal with outside of  
23 your presence, and I'm going to try to go ahead and deal with  
24 that at this time.

25           We typically run court, just for informational purposes

1 for you, we'll start in the morning at 9 or 9:30. We'll go  
2 for about an hour and a half, take a mid-morning break and  
3 we'll typically go till about 1:00 o'clock before we take  
4 lunch. Okay? We'll typically take about an hour and 15  
5 minutes, maybe an hour and a half. It just depends on if I  
6 need to deal with some matters. I'm going to -- we'll  
7 typically resume about 2:15, 2:30. We'll go for about an hour  
8 and a half, take a mid-afternoon break and then go until  
9 approximately 5:00 o'clock. Now, I don't sit up here and  
10 watch the clock and as soon as it strikes five say, "All  
11 right. Stop. We're going home for the day." Okay. Not -- I  
12 don't do that. If there is a witness on this stand it will be  
13 my intention to finish that witness for the day. Okay?  
14 Having said that, if the lawyers tell me that, "Judge, this  
15 next witness may be lengthy," and it's 4:30 in the afternoon,  
16 we may break for the day at that point rather than keep you  
17 here beyond, you know, five, so to speak. Very rarely will  
18 you be here beyond 6:00 o'clock. There's always a chance, but  
19 very rarely will you be here beyond 6:00 o'clock if you --  
20 while you were serve with me. Okay? But again, there's a  
21 chance.

22 As you serve this week, not sure what the weather is  
23 outside right now. It was quite cool at my house this morning  
24 when I walked outside. I want you to be comfortable while  
25 you're serving in here. Some people are cold-natured. Some

## Opening Instructions by Court

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1 people are hot-natured. Quite frankly, I'm hot-natured.  
2 Okay? If I have anything to do with the thermostat it's going  
3 to be cool in here. All right? I sit up here, kind of, you  
4 know, they say heat rises. I'm sitting a little higher than  
5 you all. Okay? That's just the way, way it is, but I have an  
6 undershirt on, a dress shirt, a tie, and this robe, that's --  
7 which is part of my uniform, so to speak. Okay? And plus I'm  
8 hot-natured. So I want you to be comfortable. Again, I'm  
9 going to try to have it quite cool in here. So if you're  
10 cold-natured, bring a jacket or bring a little small blanket,  
11 whatever makes you comfortable. I don't, don't want you to  
12 bring a pillow and a blanket now, but bring a blanket if you  
13 need to. If you're hot-natured such as me, I'm not going to  
14 let you take off but so much clothes, but I'll let you layer  
15 up as much as you want to. Okay?

16 Anything from the State before I release the jury for  
17 lunch?

18 MR. MORROW: Nothing from the State, Your Honor.

19 THE COURT: Respondent?

20 MR. FALK: Nothing, Your Honor.

21 THE COURT: All right. I'm going to ask you be back at  
22 2:30. Do not -- you know very little about this case right  
23 now. Okay? But you're not to discuss what little you know  
24 about this case with anyone, friends, family, fellow jurors.  
25 You're not to discuss anything about this case at all, at all

1 until you're instructed to do so by the Court. Okay? Don't  
2 go do any independent investigation on your own at all. You  
3 are to decide this case based solely upon the testimony from  
4 this witness stand and/or exhibits that are introduced during  
5 the course of this trial. That is where your decision is  
6 confined to, testimony and evidence that's introduced during  
7 the course of this trial. Don't go out and try to find out  
8 anything. You've heard me mention this -- Mr. Griffin's name.  
9 You're forbidden from doing any research about him or anything  
10 as it relates to this case. All right. If you do -- if you  
11 don't abide by the Court's instructions you could be held in  
12 contempt of court. As I've said it's, it's -- in our system,  
13 in our judicial system it is vitally important that your  
14 decision as jurors be confined to what you hear in this  
15 courtroom. Okay? You all are free to go. My bailiff, my  
16 deputy will show you where you need to come back to, but be  
17 back at 2:30 and we will start as promptly at that time as  
18 possible. Okay?

19 (Whereupon, the following takes place outside the  
20 presence of the jury.)

21 THE COURT: All right. Is the -- is Mr. Griffin here?

22 OFFICER: Yes. He's down in detention, sir.

23 THE COURT: Can you all get him up here, please?

24 OFFICER: Would you like him now?

25 THE COURT: Yes, sir.



1 treatment and this would put an additional element on the  
2 State to prove that he's being held in a treatment facility.

3 THE COURT: All right. Mr. Falk.

4 MR. FALK: Your Honor, I don't plan on using the words  
5 death row or anything like that, but I do think that the jury  
6 is entitled to know that if he is convicted today he's going  
7 to be -- he's going to go to a secure facility not some type  
8 of mental hospital, that this is a secure facility. It's  
9 going to feel like prison certainly from his point of view,  
10 and he's not going to be, you know, the jury needs to know  
11 he's not going to be free to come and go. He's not going to  
12 be free to have visitors as he wants and --

13 THE COURT: In applying the definition of relevant  
14 evidence, what relevance does that have as far as to what the  
15 State has to prove? I mean, is it --

16 MR. FALK: It's going to be in your charge that, I mean,  
17 the definition of a sexually violent predator is somebody who  
18 has a mental abnormality or personality defect --

19 THE COURT: Right.

20 MR. FALK: -- makes it likely to reoffend, etcetera, if  
21 not confined. So certainly situations can come up where the  
22 State could certainly prove that he has a mental or has the  
23 psychological issue, but whether or not the -- I think it's  
24 relevant to the State's proof on, you know, does the treatment  
25 -- can the treatment be done outpatient, does the treatment

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1 have to be done at this facility.

2 THE COURT: Mr. Morrow.

3 MR. MORROW: Your Honor, the State has no problem with,  
4 with a characterization as -- of the, of the treatment unit as  
5 a secure facility or secure treatment unit. We just would --  
6 it, it is a treatment -- it's a secure treatment facility.  
7 It's, it's not a prison or he's not being incarcerated for  
8 life or on --

9 THE COURT: Well, and I think he agrees with that.

10 MR. MORROW: Yes.

11 MR. FALK: Yes.

12 THE COURT: It sounds to me like you got it worked out.

13 MR. FALK: I believe so.

14 THE COURT: Fair enough?

15 MR. MORROW: The -- yes, sir, Your Honor.

16 THE COURT: All right.

17 MR. MORROW: The second motion the State has, Your Honor,  
18 is that, that, that the details of further treatment are  
19 irrelevant in this case. Dr. Gehle's and what the State has  
20 to prove in this case is that he suffers a mental -- from a  
21 mental abnormality that makes him likely to, to reoffend and  
22 that he has been convicted of a sexually violent offense.  
23 Proving that future treatment would be effective or that what  
24 exactly that future treatment would be isn't -- would be  
25 posing a different -- an additional burden on the State and

1 that was not the evaluation that Dr. Gehle was assigned to do  
2 in this case.

3 THE COURT: Mr. Falk.

4 MR. FALK: To the extent that Dr. Gehle would have any  
5 information I would like to be able to ask her about -- I  
6 believe that there's a diagnosis that has two related but  
7 still separate mental health diagnoses, one being the  
8 schizophrenia and the other being the biastophilia and I -- to  
9 the extent that Dr. Gehle, no, but I would like to ask her  
10 whether or not the place he was going would he be able to get  
11 treatment for the schizophrenia. I think that's relevant and  
12 I believe the jury would want to know that.

13 THE COURT: Mr. Morrow.

14 MR. MORROW: Your Honor, again --

15 THE COURT: Well, I mean, does that -- let me stop you  
16 there. Does the schizophrenia play into the diagnosis of the  
17 mental abnormality?

18 MR. MORROW: Yes, Your Honor, and, and again, the State  
19 would not have, would not have an objection necessarily to, to  
20 the line of questioning I believe counsel is --

21 THE COURT: Well, and, and I mean, depending upon what  
22 her testimony is, if she's taking that into consideration for  
23 purposes of giving her opinion in this case, I think he  
24 certainly is entitled to ask her about that.

25 MR. MORROW: Yes, Your Honor.

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1 THE COURT: So I'll allow that.

2 MR. FALK: Thank you.

3 THE COURT: All right. What else?

4 MR. MORROW: Nothing further from the State, Your Honor.

5 MR. FALK: Your Honor, there is one quick one before we  
6 address my other motion, and I should have done this, but I  
7 don't think the State's going to be surprised by this, I would  
8 just ask that just like we're not going to talk about that  
9 this is a life sentence or whatever, I, I think it's also the  
10 other side of the coin is that we can't do a lot of talking  
11 about the fact that there's an annual review period and that  
12 he's eligible for release every year.

13 THE COURT: Mr. Morrow?

14 MR. MORROW: Your Honor, I was not planning to present  
15 any testimony to that effect. If, if counsel opens the door  
16 to that, that questioning, that, that's a different thing.

17 THE COURT: All right. Well, when, if, how and under  
18 what circumstances, I mean, I agree with Mr. Falk on that. I  
19 don't think that's relevant to what you got to put up and  
20 prove. However, you know, if you try to bring out, Mr. Falk,  
21 that you -- something along the fact that he's served his  
22 time, you know, that may open the door to some of that stuff.

23 MR. FALK: Yes, Your Honor.

24 THE COURT: You know, it's, it's almost as though you,  
25 albeit it's a civil matter, really would be no different

1 arguing parole eligibility to a jury which is --

2 MR. FALK: Yes, Your Honor.

3 THE COURT: -- you know, you know, so I don't think it's  
4 proper so. All right.

5 MR. MORROW: Thank you, Your Honor.

6 THE COURT: All right. Mr. Falk, what else?

7 MR. FALK: All right. Now, Your Honor, I have made a  
8 motion to have my client evaluated for competency to stand  
9 trial, and you know, you had asked me a question --

10 THE COURT: Well, let's do this because we've talked  
11 downstairs, which was not on the record --

12 MR. FALK: Right.

13 THE COURT: -- during jury qualifications. So for  
14 purposes of making sure the record is complete, why don't you  
15 just start from, from A, so to speak.

16 MR. FALK: Yes, sir. Your Honor, I think that there's  
17 certainly medical testimony to support the fact that my client  
18 suffers from schizophrenia and that the schizophrenia may or  
19 may not be related to the reason why he is here today. My  
20 client has a history of being able to and I believe the term  
21 is recompensate or become competent again, whatever the term.

22 THE COURT: Rehabilitated.

23 MR. FALK: Rehabilitated. In 1999, he had a criminal  
24 proceeding in which they -- he was evaluated for competency to  
25 stand trial. He was found to be not competent, which is a --

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1 sort of a general diagnosis, but that he was returned to  
2 competency and did stand trial. I can say, first of all, Dr.  
3 Gehle and in my motion for competency, which I filed in March  
4 of this year, I quoted some sections from Dr. Gehle's report.  
5 I'm sure she would testify to that, but I mean, she certainly  
6 testified to the fact that there were schizophrenic issues and  
7 that there was a problem that she had with some of his answers  
8 did not necessarily follow the questions that she was asking.  
9 So there clearly was a communication issue, and I guess,  
10 really -- puts us back up to square one. This case was on the  
11 trial docket at the beginning of this year. I believe it was  
12 in March, and I came up to speak with my client to get ready  
13 for it, and it was at that time when I spoke with him in the  
14 Horry County Detention Center, which I believe was about  
15 February this year, I had serious concerns about my ability to  
16 represent him because it was very difficult for me to  
17 communicate with him and to get answers that I thought were  
18 made sense to the questions that I was asking him. There was  
19 a -- assuming was a communication issue, and so I, I filed a  
20 motion for him to be evaluated for competency and that was  
21 before Judge McFaddin, and for whatever reason it took a  
22 period of time for Judge McFaddin to rule on that motion, and  
23 I know, you know, my client is in the Horry County Detention  
24 Center. He's not getting any better. There certainly was an  
25 urgency to move this case along, and so Mr. Morrow and I we

1 were in this courtroom I think at the beginning of the summer.  
2 Does that sound right to you when we asked Judge Seals to rule  
3 on it.

4 MR. MORROW: It was around August the 7<sup>th</sup>.

5 MR. FALK: Okay.

6 MR. MORROW: Of this year, we had, we had a, a trial,  
7 another of these trials in front of Judge Seals, and we, we  
8 heard some motions then and Judge Seals ruled.

9 MR. FALK: Okay.

10 MR. MORROW: That he -- that -- that there was no right  
11 to competency in these cases.

12 MR. FALK: I thought it made sense to talk to Judge Seals  
13 because he was the chief admin for Common Pleas, and so it  
14 sort of was maybe, but then the matter got a little bit more  
15 complicated with the beginning of last week Judge McFaddin  
16 said that he had ruled on my motion for an evaluation and  
17 asked Mr. Morrow to write up the order. So I mean,  
18 procedurally, I have a question as to where we stand. So  
19 that's one issue, but let me -- should I now go into my --

20 THE COURT: Well, I mean, what was Judge McFaddin's  
21 ruling?

22 MR. FALK: Judge McFaddin sent an email, which is my  
23 Exhibit B. It was incorrect in that he said that the State's  
24 motion for a competency evaluation. His email that he sent on  
25 October 16<sup>th</sup> was, [as read], "Regarding the State's motion for

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1 evaluation for competency to stand trial in the above  
2 referenced matter Judge McFaddin respectfully grants the  
3 motion. Mr. Morrow, please prepare a proposed order and  
4 upload it to e-file." He apologized for his delay. It was my  
5 motion for competency but --

6 THE COURT: Mr. Morrow.

7 MR. MORROW: Your Honor, and again, I'm not entirely sure  
8 what the processes and who -- which judge ruling is, is  
9 controlling in this matter; however, since we both agreed to  
10 have the, the matter heard before Judge Seals on August 7<sup>th</sup> I  
11 believe that, and Judge Seals ruled on the matter, I believe  
12 that that rule was control -- that ruling was controlling in  
13 this case. That's why we're here today. Again, it's still  
14 the State's position that he's, he's not entitled to a  
15 competency evaluation in this matter because both the statute  
16 contemplates such a, such a finding under 44-48-100(B). It  
17 anticipates a person being found, being charged with a  
18 sexually violent offense found incompetent to stand trial and  
19 about to be released, and it allows for a starting of the  
20 sexually violent predator process at that time, and, you know,  
21 and the, the purpose of the act is to commit individuals who  
22 suffer from a mental abnormality or personality disorder that  
23 makes them likely to reoffend to the Department of Mental  
24 Health for treatment. We would argue that that in and of  
25 itself, that mental abnormality or personality disorder might

1 prevent, you know, people from being competent. So --

2 THE COURT: Let me ask this, I mean, this hearing, Mr.  
3 Falk, do you agree to consented to let Judge Seals hear it?

4 MR. FALK: I'm not -- yes.

5 THE COURT: Okay. And was that something that was done  
6 on the record or in chambers or --

7 MR. FALK: It -- no, it was -- no, it was done in the  
8 courtroom on the record.

9 THE COURT: Okay. Well, I mean, I would think that if  
10 while Judge McFaddin initially heard it, if you all consented  
11 and agreed to have Judge Seals make the decision since you  
12 hadn't heard from Judge McFaddin, I mean, I would think that  
13 whatever --

14 MR. FALK: Your Honor --

15 THE COURT: -- Judge McFaddin did post that hearing was  
16 waived when you all agreed to let Judge Seals hear it.

17 MR. FALK: I --

18 THE COURT: Now, because I can't turn around another  
19 judge's, another Circuit Judge's order. I mean, I think Judge  
20 Seals had the final say so once you never got an order from  
21 Judge McFaddin and it was post after you all agreed for Judge  
22 Seals to hear it.

23 MR. FALK: Your Honor, I thought I needed to bring the  
24 procedures to the Court's attention.

25 THE COURT: Yeah. I just -- and, and you have and I'm

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1 not in any way disparaging in any way.

2 MR. FALK: Yeah.

3 THE COURT: I'm understanding the procedural side of it  
4 now and what I want it clear for the record.

5 MR. FALK: And again, from my point of view I think it  
6 trying to represent what I thought were my client's best  
7 interests his case was spinning --

8 THE COURT: Right.

9 MR. FALK: -- I did not believe he was getting any mental  
10 health care at all at the detention center.

11 THE COURT: Right.

12 MR. FALK: And I thought it made sense to get this thing  
13 moving.

14 THE COURT: Well, and I, I don't disagree with you at  
15 all. I understand that, and but Judge Seals denied that. So  
16 and I told you downstairs, it was off the record, you all had  
17 mentioned, I think you in particular had mentioned the Oxner  
18 [spelled phonetically] case that is currently pending in our  
19 State Supreme Court concerning this very issue, and you know,  
20 you wanted to make sure that your client's interest is  
21 protected as it relates to this issue, and I absolutely want  
22 to make sure that it's protected --

23 MR. FALK: Thank you.

24 THE COURT: -- for his sake as well and want you to put  
25 on the record whatever you feel like you need to to preserve

1 this issue --

2 MR. FALK: Thank you.

3 THE COURT: -- for your client. You know, I'm tasked  
4 with and responsible for enforcing what the law is right now,  
5 and I think both of you, you and Mr. Morrow agree that as it  
6 is right now the current law is that he's not entitled to it.  
7 Okay. Go ahead.

8 MR. FALK: Well, Your Honor, and you know, you had asked  
9 that question about how this might relate to a probate court  
10 matter, and I do have a -- I do have an answer which does  
11 reflect current South Carolina law, and I would invite the  
12 Court to look at In Re: Chapman which is the South Carolina  
13 Supreme Court case which found that a gentleman like my client  
14 have a right to, right to counsel, which includes a right to  
15 competent counsel. So I am not sure if that same right is  
16 reflected in a typical competency hearing and before a probate  
17 court judge, but my client has a right to counsel, which is  
18 found in Chapman. It's very similar to the right to -- after  
19 Chapman it really works pretty much like the right to counsel  
20 in a criminal proceeding and that's where I think it's a  
21 little bit different from, from our discussion before, and I  
22 do not believe the statute necessarily sets forth that he has  
23 -- the statute does not provide that he's not entitled to a  
24 competency evaluation to stand trial. The statute just does  
25 contemplate that it could happen, but it does not.

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1 THE COURT: Well, and I'm not trying to split words here  
2 with you. I'm going on what you just told me.

3 MR. FALK: Yeah.

4 THE COURT: Okay? Says that in Chapman the Court said  
5 that the Defendant in that case?

6 MR. FALK: Respondent.

7 THE COURT: Respondent was entitled to competent counsel,  
8 that it -- and I hadn't seen the case. I hadn't looked at the  
9 case, and that referred to --

10 MR. FALK: Sexually violent predator proceeding.

11 THE COURT: Well, I mean, did it refer to competent  
12 counsel referring to counsel --

13 MR. FALK: Oh, no, no. There --

14 THE COURT: -- or the competent Respondent because the  
15 way you said it was --

16 MR. FALK: Yes, Your Honor.

17 THE COURT: -- made me lead to believe, well, maybe the  
18 lawyer was incompetent such as a PCR proceeding, so to speak.

19 MR. FALK: That's exactly what it was.

20 THE COURT: Okay.

21 MR. FALK: It was a PCR proceeding. It was -- and, and  
22 they've sort of suggested that the way that people in that  
23 situation would go forward would be through a habeas corpus  
24 proceeding so, but my point being that I think once we start  
25 looking at the right to counsel it's very difficult for me to

1 be effective counsel when I can't communicate with my client.

2 THE COURT: Right. And, and I don't disagree with you at  
3 all. The statute doesn't specifically address competencies in  
4 these types of cases. That Oxner case is currently pending  
5 and is in our State Supreme Court. Even if, even if for  
6 argument sake I agreed with you, okay, I, I don't think I have  
7 authority to overrule what Judge Seals has done. He's already  
8 decided. So I think you've raised the issue again to make  
9 sure that your client's interest is protected, which I want  
10 you to do, so if me not deciding something different --

11 MR. FALK: Sure.

12 THE COURT: -- than Judge Seals or if Judge Seals was  
13 wrong, make sure your client's interest, that issue is  
14 preserved for appellate purposes. Okay?

15 MR. FALK: Yes, Your Honor. And so as I just, to make it  
16 clear, is that we think that it's a -- it's a right that's  
17 found in the due process guarantees under the South Carolina  
18 Constitution, under the United States Constitution whether  
19 it's the 14<sup>th</sup> amendment, the 5<sup>th</sup> amendment. We believe that  
20 it's found in his right to counsel, his 6<sup>th</sup> Amendment right to  
21 counsel, the fact that if he's being put into a proceeding  
22 which is going to have a significant impact on his civil  
23 liberties and that he could wind up being detained for an  
24 indeterminate period of time, he certainly has the -- he  
25 certainly has the need to have competent counsel, somebody who

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1 can represent him in this action. The -- I think this  
2 argument would be more difficult for me if it weren't for the  
3 fact that there is a track record here in this case of him  
4 being able to be returned to competency when he stays on his  
5 psychiatric medicines. So anticipating the question is, well,  
6 what difference would it make if he is -- if he goes back to  
7 the SVP program he presumably would be getting treatment.  
8 However, like -- what I believe is that the diagnosis that Dr.  
9 Gehle made that he suffers from biastophilia, which in  
10 laymen's terms is somebody who gets sexually aroused by  
11 forcing themselves to have sex with another person, sort of as  
12 a rape, rape interest, that's a diagnosis that's very  
13 difficult for me to respond to unless I could put my client up  
14 on the stand to testify. My client in his current state is in  
15 no condition to testify. The only times I have won these cases  
16 is when I've been able to put my client up on the stand and  
17 the client's been -- and the jury's been able to look at the  
18 client and be able to decide whether or not they want this  
19 person in their backyard. I mean, that's just the reality of  
20 it. I don't think these cases are winnable. I've had -- the  
21 only -- as I said, the only ones I've won is when I've been  
22 able to put my client on the stand. I cannot put this client  
23 on the stand because I have no anticipation that he would  
24 answer my questions truthfully or would even make a, a logical  
25 response to the questions that I asked. I've given -- not been

1 able to speak with him, do the type of preparation that I  
2 would need in order to talk to him about some of these victims  
3 that he was alleged to have assaulted. So I, I, I think he's  
4 got, as I say, due process rights. I think he has a right to  
5 counsel rights that are -- that he's not going to be able to  
6 enjoy if he has -- if he were forced to go forward today  
7 without him being evaluated and without him being returned to  
8 competency because I -- I'm just -- I can say that I've had  
9 four meetings with my client and his mental state has  
10 significantly deteriorated from each meeting. At the probable  
11 cause hearing everything was fine. We were able to  
12 communicate. The first time I went to talk to him in the  
13 Horry County Detention Center was a little iffy. The second  
14 time was worse, and then this last time I was able to speak to  
15 him for about eight and a half minutes, and it just wasn't  
16 making any sense. My -- if I look at just the quality of the  
17 correspondences I've received from him, the first ones are  
18 articulate and well lettered and well -- good handwriting and  
19 to the end ones looks like they've been written with a pencil  
20 with your left hand, just kind of scratching it out. I mean,  
21 I, I --

22 THE COURT: How did it, how did it get addressed to you?

23 MR. FALK: What's that?

24 THE COURT: How did the letter get addressed to you?

25 MR. FALK: He had my card. So maybe somebody addressed

Motions

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1 the envelope. I, you know, I don't know.

2 THE COURT: All right. Anything else, Mr. Morrow?

3 MR. MORROW: And again, the State would just cite that  
4 the statute, Your Honor, also, Council v. Catoe, the Supreme  
5 Court looked at a PCR case with similar, similar results, and  
6 in other jurisdictions, in Wisconsin they've looked at this  
7 issue in In Re: Commitment of Luttrell, which is 312 Wis. 2d  
8 695, and in that case that they ruled that, that a person  
9 civilly committed did not have the right to, to have  
10 competency or would not have the right to be competent in  
11 civil commitment proceeding. There also was similar findings  
12 in Iowa in Iowa v. Cabbage, which was 671 N.W.2d 442, but  
13 again, Your Honor, I would argue that in this -- in our  
14 statute in this state incompetency was, was anticipated and  
15 thought of and was included in the statute and --

16 THE COURT: Okay. All right. Well, the issue I think  
17 has already been ruled upon by Judge Seals, has already been  
18 ruled upon by Judge Seals, but certainly want Mr. Falk to make  
19 the record to protect that interest for his client.

20 MR. FALK: Your Honor, if I could, this is -- the motion  
21 that I have I got to file it with the Clerk of Court, but  
22 could we file it as an exhibit, Court's Exhibit to these  
23 proceedings?

24 THE COURT: That's fine.

25 MR. FALK: It just makes it easier to move along.

1 THE COURT: That's fine. Any objection to that, Mr.  
2 Morrow?

3 MR. MORROW: No, nothing, no, Your Honor.

4 THE COURT: Okay. Very well.

5 MR. FALK: Thank you.

6 THE COURT: Anything else?

7 MR. FALK: Not at this time.

8 THE COURT: Mr. Morrow, anything else?

9 MR. MORROW: Your Honor, the State noticed last night in  
10 looking over our, our jury charge there was a -- there's an  
11 error on page eight. I brought three copies because I didn't  
12 have access to, to email, to email a new charge to you, but on  
13 page eight of the charge it was, it was listed criminal sexual  
14 conduct with a minor in the second degree, and in this case  
15 it's assault with intent to commit criminal sexual conduct  
16 with a minor second degree.

17 THE COURT: All right. If you'll give me a copy and Mr.  
18 Falk a copy.

19 MR. MORROW: Thank you, Your Honor.

20 THE COURT: Thank you. All right. 2:30.

21 MR. FALK: Thank you.

22 OFF THE RECORD

23 (On the record. The following takes place outside the  
24 presence of the jury. A bench conference is held.)

25 THE COURT: Real quick before I bring the jury in, you

## Opening Instructions by Court

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1 know, we have this introductory statement that we give to the  
2 jury on the case.

3 MR. MORROW: I'm sorry, Your Honor?

4 THE COURT: This introductory statement that we give to  
5 the jury before you all start --

6 MR. FALK: Yeah.

7 THE COURT: -- I'm going to just give them the one from  
8 the civil side of it just because it's a little bit different  
9 than the criminal one. If there's any issues in there  
10 concerning burden of proof I'll address it accordingly.

11 MR. MORROW: Okay, Your Honor.

12 THE COURT: Okay.

13 MR. FALK: Okay. All right. Is the jury here? Can you  
14 tell them to bring them in?

15 (Whereupon, the following takes place in the presence of  
16 the jury.)

17 THE COURT: All right. Good afternoon, ladies and  
18 gentlemen. I hope you all had a nice lunch and are ready to  
19 proceed this afternoon. As you all come in and out of the  
20 courtroom, Mr. Purcell, where are you, sir? All right. And  
21 Mr. Hardwick, where are you, sir? Okay. Mr. Purcell, can you  
22 switch places with this gentleman at the end here in the blue  
23 sweater? All right. Mr. Purcell and Mr. Hardwick, you all  
24 are the only ones right now that have assigned seats. If you  
25 all will stay in those seats as you come in and out of the

1 courtroom I'd appreciate it. Okay?

2       The rest of you, as you come in and out of the courtroom,  
3 you do not have an assigned seat at this time. Later during  
4 the course of this trial a foreperson will be selected by you  
5 all. I'm going to let you pick a foreperson here later, and  
6 they will sit where this gentleman is in the grey Adidas  
7 pullover. All right. That will be the foreperson's assigned  
8 seat throughout the remainder of the trial. Other than those  
9 three, nobody else has any assigned seats. Okay?

10       THE COURT: All right. Before we begin will you swear  
11 the jury, please?

12       (Jury sworn by clerk.)

13       THE COURT: All right. Ladies and gentlemen, we're about  
14 to try the case as it relates to Mr. Thomas Griffin. As I  
15 told you earlier this is a case that's been brought by the  
16 State of South Carolina pursuant to statute to determine  
17 whether or not Mr. Griffin is deemed under the law to be a  
18 sexually violent predator as defined by the statute.

19       Now, ladies and gentlemen, before we begin the trial of  
20 this case I want you to understand that it will probably be  
21 different from what you might expect. Many people do not have  
22 the opportunity or the chance to attend actual court sessions  
23 as you're doing now and may think from watching TV, movies or  
24 reading books that trials are always full of high drama,  
25 intense action and riveting circumstances. Now, while those

## Opening Instructions by Court

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1 things may be true at times, this trial, ladies and gentlemen,  
2 is not for entertainment. It is a fundamental part of our  
3 democracy, an effort to make sure that justice is done between  
4 the parties before the Court. Now, making sure that justice  
5 is done, the process is often slow, deliberate and repetitive,  
6 the opposite, the opposite of what you may have seen on  
7 television, in movies or read in books. This courtroom,  
8 ladies and gentlemen, is a place of honor, dedicated to the  
9 protection and preservation of citizens' rights through what  
10 many have called the greatest justice system ever created.

11 The attorneys appearing before you, ladies and gentlemen,  
12 are advocates for the parties that they represent, but first  
13 and foremost they are officers of the court, sworn to uphold  
14 the integrity and fairness of our judicial system. You should  
15 expect them to be professional, competent and ethical in the  
16 representation of their clients' interests.

17 Now what I will now say to you, ladies and gentlemen, is  
18 intended to serve as an introduction to the trial of this  
19 case. These remarks are not a charge on the law in this case.  
20 I will instruct you on the law applicable to this case at the  
21 end of the trial before you retire to consider your verdict.  
22 This is merely an explanation of the procedure that we will  
23 follow during the course of this trial so you may better  
24 understand what may be happening.

25 You, ladies and gentlemen, have been selected as fair and

1 impartial jurors, whose purpose is to find and determine the  
2 facts in this case. You are the sole judge of the facts. If  
3 at any time I make any comment regarding the facts, you must  
4 disregard it. You are to determine the facts from the  
5 testimony that you hear and any other evidence that is  
6 presented. You should not be influenced by any opinions or  
7 statements that you may have heard outside of this courtroom.  
8 It is especially important that you perform your duty of  
9 determining the facts diligently and conscientiously because  
10 ordinarily there is no way to correct an erroneous  
11 determination of the facts by a jury.

12 Now, when you comply, ladies and gentlemen, with your  
13 oath to impartially determine the facts of this case you'll  
14 have fulfilled your duty as jurors and no one will have the  
15 right to criticize your verdict. Now, on the other hand and  
16 with equal emphasis, the law that makes you the facts [sic]  
17 makes me the judge of the law in this case. The law as given  
18 by the Court is the only law that you may consider. You must  
19 accept and follow it even though you may disagree with it. I  
20 cannot tell you, ladies and gentlemen, what the facts are in  
21 this case, and you cannot disagree with me about what the law  
22 is or what it should be. Your job is to take the law as I  
23 give it to you and apply it to the facts as you find them from  
24 the testimony of the witnesses and any other evidence that is  
25 presented. After doing that you will render your verdict

## Opening Instructions by Court

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1 under the solemn oath that you just took as jurors.

2 Now, till I advise you to begin your deliberations,  
3 ladies and gentlemen, you must not, you must not discuss this  
4 case with anyone, including your fellow jurors, friends,  
5 family members and anyone involved in the case. The attorneys  
6 and parties have been advised that they are not to talk to you  
7 at all. So if you see them, as I told you earlier, if you see  
8 them and they don't talk to you, they are not being  
9 unfriendly. They're simply following this Court's  
10 instructions.

11 Now, during your deliberations, ladies and gentlemen, you  
12 may only discuss this case in the jury room with your fellow  
13 jurors because they have seen and heard the same evidence that  
14 you have. You must not discuss the case with anyone other  
15 than your fellow jurors until you have returned a verdict and  
16 the case is at an end. I remind you that you must decide this  
17 case based solely on the evidence presented here in this  
18 courtroom. This means that during the trial you must not  
19 conduct any independent research about the case, the facts of  
20 the case, the evidence presented in the case or the people or  
21 organizations involved in any way in the case. Please do not  
22 try to find out information from any source outside of this  
23 courtroom. In other words, you must not look at dictionaries  
24 or other reference materials, search the internet, websites or  
25 blogs or use any other electronic tools to get information

1 about this case to help you decide the case. You may not use  
2 computers, telephones, cell phones, smartphones, tablets, the  
3 internet or other tools of technology with communication  
4 capabilities at any time while you are in the courtroom or  
5 during your deliberations. Now, during your breaks for meals  
6 or overnight, if necessary, you may use those devices.  
7 However, you may not use those devices to communicate with  
8 anyone about the case until the case is over. This means that  
9 you must not use text messages, emails, phone calls, instant  
10 messages, Twitter or any blog, chat room or website, including  
11 facebook, Google Plus, Myspace, Linked, YouTube or any, any  
12 social media websites to send or receive information about  
13 this case. This includes information about a party, a  
14 witness, an attorney or a court officer, news accounts about  
15 the case, research on topics raised, any topics that you may  
16 think would be helpful in deciding the case or any testimony  
17 presented by any witness. During the trial I don't think  
18 you're going to see any but you're instructed not to read,  
19 listen to or watch any news reports about the case. This  
20 includes anything that may be in the newspaper or on the  
21 internet, radio or television. You must not, ladies and  
22 gentlemen, consider anything that you may have heard or read  
23 about this case, whether before or during the trial.  
24 Information from other sources might be wrong or incomplete.  
25 In our judicial system it is important that you are not

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1 influenced by anything or anyone outside of this courtroom.  
2 If you become aware of another juror's violation of these  
3 instructions, please, please inform the Court immediately. It  
4 is important, ladies and gentlemen, that you keep an open mind  
5 and not decide any issue in this case until all the evidence  
6 has been presented, the parties have made their closing  
7 arguments and I have instructed you on the law applicable to  
8 this case.

9 Now, in just a moment the attorney for the Plaintiff will  
10 make what is called an opening statement, the attorney for the  
11 State will make an opening statement. What the attorneys tell  
12 you during their opening statements is not evidence in this  
13 case. It is simply their contention as to what the issues  
14 are. The evidence in this case, as I've told you, is going to  
15 come from this witness stand and/or by exhibits from sworn  
16 testimony from witnesses or by evidence that's introduced  
17 during the course of the trial.

18 From time to time, ladies and gentlemen, you may hear one  
19 of the attorneys say something like, "Your Honor, I believe  
20 that we have a question of law or a matter of law to discuss  
21 with you," or, "Your Honor" they may -- or they may say, "Your  
22 Honor, may we approach," or sometimes I myself might find it  
23 necessary to excuse you from the courtroom while the attorneys  
24 and I discuss a matter of law. Now, the reason that I would  
25 excuse you all from the courtroom is sometimes when I am

1 making a decision as to whether or not a particular law  
2 applies it may be necessary that I make some comment regarding  
3 the facts. I am not in any way supposed to tell you what I  
4 think the facts are. So I will excuse you from the courtroom  
5 while those discussions take place so that in no way, in no  
6 way will you be influenced by anything that I might say or do  
7 in connection with the facts.

8 Now, in determining what the facts are in this case, you,  
9 ladies and gentlemen, must decide whether or not the testimony  
10 of the witnesses is believable. It will be my responsibility  
11 to rule as a matter of law as to whether certain testimony is  
12 admissible or not, but once the testimony is admitted whether  
13 or not you believe it is solely for you to determine. In  
14 deciding whether to believe a witness you have the right to  
15 consider the interest of any witness, the bias of any witness,  
16 the prejudice of any witness, the opportunity for the witness  
17 to have seen the matters and things about which the witness  
18 may testify and the way the witness acts on the stand, witness  
19 stand. You have the right to consider anything, anything that  
20 is in the record that will help you evaluate the testimony of  
21 the witnesses. That means, ladies and gentlemen, it is your  
22 duty to pay close attention to these witnesses, to observe the  
23 witnesses, to listen to the witnesses and to pay close  
24 attention to the attorneys and to the Court. Please do not  
25 let your thoughts wander but give strict attention to the

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1 testimony in this case so that at the end of all the testimony  
2 after the arguments of counsel and the charge on the law by  
3 the Court you will then be in a position to determine what the  
4 facts are in the case and apply the law to those facts and  
5 thus render a verdict. Now, later during the course of this  
6 trial, a foreperson will be selected to preside over  
7 deliberations in the jury room. The foreperson's  
8 responsibility will also be to be the spokesperson here in  
9 court if necessary. I will -- it will also be the  
10 foreperson's responsibility to write the verdict on the  
11 verdict form, but I will give further instructions at the  
12 conclusion of the case.

13 Now, in order to preserve everyone's rights, any  
14 exceptions, objections to anything that I've said to the jury  
15 from the State?

16 MR. MORROW: Nothing from the State, Your Honor.

17 THE COURT: Mr. Falk, Defense counsel, in response?

18 MR. FALK: Nothing from the Respondent, Your Honor.

19 THE COURT: All right. All right. The State's  
20 recognized.

21 MR. MORROW: Thank you, Your Honor. If it please the  
22 Court.

23 MR. MORROW: Good afternoon, ladies and gentlemen. My  
24 name is Christopher Morrow, and I am with the South Carolina  
25 Attorney General's Office. I live in Columbia with my wife

1 Kate and our kids, and I, like I said, I work for the South  
2 Carolina Attorney General's Office. Now, you might be  
3 wondering to yourself why am I here today, why isn't somebody  
4 more local handling this case, and the simple answer to that  
5 question is when the Sexually Violent Predator Act was passed  
6 20 years ago they assigned all sexually violent predator cases  
7 to the South Carolina Attorney General's Office. So that's  
8 why I'm here.

9 Now, the case today has been brought by the State under  
10 the Sexually Violent Predator Act. We're here because the  
11 State is seeking the civil commitment of Thomas Griffin as a  
12 sexually violent predator to a secure facility for treatment.  
13 Now, what is a sexually violent predator? About 20 years ago  
14 the South Carolina General Assembly passed the Sexually  
15 Violent Predator Act, and they found that a sexually violent  
16 predator is a person who has been convicted of a sexually  
17 violent offense, at least one, and suffers from a mental  
18 abnormality or personality disorder that makes them likely to  
19 commit acts of sexual violence if not confined for treatment.

20 The State contends that Mr. Griffin is one of those  
21 individuals, and to prove that Thomas Griffin is a sexually  
22 violent predator, the State must prove to you two basic  
23 elements: first, that he's been convicted of a sexually  
24 violent offense. Thomas Griffin has been convicted of a  
25 sexually violent offense, and I don't think the Defense is

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1 going to contest that. You will hear about his sexual  
2 offending history, and you'll hear a little bit about what  
3 happened to his victims.

4 The second element the State has to prove to you is that  
5 Thomas Griffin suffers from a mental abnormality or  
6 personality disorder that makes him likely to commit future  
7 acts of sexual violence if not confined for long-term care,  
8 control and treatment, and to that effect, the State is going  
9 to present to you the testimony of Dr. Marie Gehle, a  
10 psychologist with the Department of Mental Health who's  
11 diagnosed him with other specified paraphilic disorder,  
12 biastophilia and schizophrenic disorder, schizophrenia,  
13 rather. You'll hear the testimony from which you can decide  
14 whether Thomas Griffin lacks control over his mental  
15 abnormalities and -- or mental abnormalities and whether those  
16 disorders make him likely to commit acts of future sexual  
17 violence.

18 Now, Dr. Gehle is a chief psychologist for the Department  
19 of Mental Health who's testified in hundreds of sexual  
20 predator cases. You will hear how Dr. Gehle spent a  
21 significant amount of time reviewing Mr. Griffin's case file,  
22 which include reviewing all of the records in this case,  
23 conducting an actuarial assessment of Thomas Griffin and his  
24 risk and interviewing Thomas Griffin. She'll tell you that he  
25 suffers from other specified paraphilic disorder and

1 schizophrenia, and based on her thorough evaluation she  
2 believes that Mr. Griffin is likely to commit acts of sexual  
3 violence if not confined for treatment.

4       So the question at the end of the day after you --  
5 assessing the credibility of the witnesses who testify today  
6 and the, and the strength of the State's evidence has the  
7 State met its burden of proof beyond a reasonable doubt. So I  
8 want you to keep in mind and the Judge will instruct you what  
9 reasonable doubt is later on, but proof beyond a reasonable  
10 doubt is not proof beyond all doubt or any doubt or any  
11 conceivable doubt. It's proof that leaves you firmly  
12 convinced.

13       These cases, by their very nature, are going to contain  
14 disturbing facts, and this, this case is certainly no  
15 different in that regard, but I ask you that you listen to the  
16 evidence in this case, and at the end of the day as you listen  
17 to the evidence the verdict you should render will become  
18 clear, that Thomas Griffin is a sexually violent predator and  
19 should be committed to the Department of Mental Health's  
20 Sexually Violent Predator Treatment Unit. Thank you.

21       THE COURT: Mr. Falk.

22       MR. FALK: May it please the Court, Mr. Morrow. Ladies  
23 and gentlemen, my name is Jim Falk. I'm the attorney for  
24 Thomas Griffin. As I said, I'm, I'm a private lawyer in  
25 Charleston, South Carolina, but I have a contract with the

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1 State, and I represent a lot of these people who are -- get  
2 caught up in the sexually violent predator treatment, sexually  
3 violent predator commitment proceedings, and so that's how  
4 I've come to represent Mr. Griffin today.

5 Now, I will tell you that at the end of the day I think  
6 you're going to be convinced that Mr. Griffin has a mental  
7 health issue. I'm not a mental health expert. I do speak  
8 with a lot of people, and I think that we're going to find out  
9 that Mr. Griffin suffers from schizophrenia. He's suffered  
10 from it in the past. I know that's kind of an umbrella term  
11 and the expert will, will do the testifying, but what I think  
12 we're going to find out is that Mr. Griffin is -- has moments  
13 when he is, he is not in his right self, and he's had -- and  
14 it's -- a lot of it is because he is unable to, is unwilling  
15 to or is not being offered his medicines for schizophrenia,  
16 and he has a history of -- I think the term is decompensating.  
17 You assume that somebody's competent to stand trial, then at  
18 some point they, they call it decompensating. It's a medical  
19 term for just sort of becoming less aware of what's going on,  
20 and there have been times when he has -- we -- the State's not  
21 been able in some of his underlying convictions there have  
22 been times when they haven't been able to go forward with the  
23 case because my client was ruled to be incompetent to stand  
24 trial, he didn't understand what was going on in the case. He  
25 didn't understand what the parties were. He didn't understand

1 the process just because of his mental disease, and so there  
2 was a period that, that he went to a mental health facility.  
3 He was restored to competency by taking his medicine.

4       So I have no problem with you all thinking that my client  
5 had that mental illness. The issue I think is going to be  
6 whether or not it's the second diagnosis that Dr. Gehle is  
7 going to use and that is that he has a paraphilic disorder  
8 that's sort of under a subheading that's called biastophilia  
9 and that's kind of one of these big terms, and there used to  
10 be -- in the literature there's another definition for this  
11 kind of syndrome. It's coercive paraphilic disorder, which  
12 that doesn't help you, but I think at the end of the day the  
13 expert's going to testify that it is somebody who, who derives  
14 sexual arousal from the act of forcing themselves on somebody.  
15 So that's what, that's what this biastophilia is. It's  
16 somebody who enjoys pleasure from forcing themselves on  
17 somebody, and that really brings you back around to kind of a  
18 whole 'nother thing which is really an issue here is that  
19 there's criminal conduct, and somebody who forces themselves  
20 on another sexual partner that he is committing a crime and  
21 that's the crime of rape. As we all know in South Carolina  
22 that's called criminal sexual conduct, and that's a crime, and  
23 in South Carolina people who are convicted of that are  
24 sentenced and they do, they do terms in the South Carolina  
25 Department of Corrections. That's a criminal, but what the

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1 State wants to prove today is that he goes beyond that. It's  
2 not that he just had a criminal mindset and committed crimes.  
3 It's that he has something wrong with him, a mental  
4 abnormality or a personality defect that compels him to commit  
5 this particular crime. Now, that's, that's kind of a  
6 different thing, and I mean, a real simple explanation, a real  
7 simple analogy would be somebody who walks into a, a store and  
8 they steal a candy bar and then walks out. Well, that person  
9 who stole the candy bar might not -- might have wanted some  
10 candy just didn't have enough money in his pocket and stole  
11 it. That person might really like chocolate and was going to  
12 do anything to, you know, really likes chocolate. So he'd  
13 want to steal that candy bar or he's one of these people that  
14 suffers from a mental disease where they enjoy stealing. It's  
15 not that they want the candy, but they get, they get pleasure  
16 from the act of stealing. That's, that's kind of a term  
17 everybody knows, kleptomania, and that's what I want you all  
18 to think about here is whether or not -- my client has  
19 committed some crimes, and you know, normal people don't  
20 commit crimes, and I get that, and it's very easy to say,  
21 "Well, you know, if he committed a crime he's, you know, he's  
22 not normal and" -- but that's not what we're talking about  
23 here. You have to decide whether or not he has a mental  
24 disease and that this mental disease makes him compelled to  
25 commit crimes where he forces himself on other victims.

1 That's what this case is about, and it's kind of -- it'd be  
2 real easy to sort of sit back and hear about what my client's  
3 been convicted of, and it's going to be real easy to say,  
4 "Let's just send this guy away," but I don't think you're  
5 doing your job if you just do that. I want you to consider  
6 whether or not you think he has a mental disease and that the  
7 mental disease is what caused him to commit the crimes, and  
8 only if you get to that point would you be justified in  
9 committing him.

10 I think at the end of the day you're going to hear  
11 testimony that there's going to be some mental disease, but he  
12 doesn't have this compulsion to commit rapes, and he may need  
13 some type of treatment, but he doesn't need to go to the  
14 sexually violent predator treatment program in Columbia.  
15 Thank you.

16 MR. MORROW: Your Honor, at this time the State would  
17 call Dr. Marie Gehle to the stand.

18 Whereupon, Marie Gehle is called to the stand, duly sworn  
19 by the clerk and testified as follows:

20 THE CLERK: Just state your name for the Court.

21 MS. GEHLE: My name is Marie Gehle, spelled G-E-H-L-E.

22 DIRECT EXAMINATION

23 BY MR. MORROW:

24 Q Dr. Gehle, what is your occupation?

25 A I'm a chief psychologist at the South Carolina Department

Marie Gehle - Direct by State

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1 of Mental Health.

2 Q And how long have you worked in that capacity?

3 A I have worked there since November of 2009, so about nine  
4 years.

5 Q And what advance degrees do you possess?

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

9 Q Dr. Gehle, what is psychology?

10 A It's the study of human behavior and the mind.

11 Q And what is clinical psychology?

12 A Clinical psychology is a subspecialty of psychology  
13 concerned with the assessment and treatment of mental illness,  
14 abnormal behavior and kind of other problems in life.

15 Q Dr. Gehle, what is forensic psychology?

16 A Forensic psychology is taking clinical psychology  
17 principles and applying it to matters of the court. Forensic  
18 psychologists do things like competency to stand trial  
19 evaluations, determining if somebody is not guilty by reason  
20 of insanity. We do personal injury cases and risk assessments  
21 and sexually violent predator cases.

22 Q Dr. Gehle, have you had any additional specialized  
23 training or experience within the field of forensic psychology  
24 beyond your Doctorate Degree?

25 A I've had a lot of experience and training. I completed a

1 postdoctoral fellowship in forensic psychology after I  
2 finished my doctorate. I did that at a, at a psychiatric  
3 hospital that was dealing with criminals, and I did  
4 evaluations of people related to legal issues. I've also done  
5 a lot of reading of research. I've been supervised to do  
6 these evaluations. I've attended countless workshops,  
7 seminars, things like that related to the issues that come up  
8 in sexually violent predator cases.

9 Q Dr. Gehle, do you have any memberships in any  
10 professional organizations?

11 A I am a member of the American Psychological Association,  
12 the American Psychology and Law Society and the Sex Offender  
13 Civil Commitment Program Network.

14 Q Dr. Gehle, does your work allow you to do forensic  
15 evaluations of individuals?

16 A Yes.

17 Q And do you have any experience working directly with sex  
18 offenders?

19 A Yes.

20 Q How long have you worked with sex offenders?

21 A I've worked with sex offenders in various capacities for  
22 18 years.

23 Q Approximately how many sex offenders have you evaluated?

24 A I have evaluated I'd have to guess probably about 350 sex  
25 offenders. I know that I have evaluated about 250 sex

Marie Gehle - Direct by State

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1 offenders under the Sexually Violent Predator Act.

2 Q And Dr. Gehle, can you briefly talk about your experience  
3 in relation to, to sex offenders?

4 A Yes. I began working with sex offenders at a community  
5 mental health center in 2000. I worked with -- during my  
6 internship, before I finished my doctorate, I did a rotation  
7 at a sexually violent predator program in Washington State  
8 where I did group and individual therapy with people there who  
9 were committed to that program. I became involved in the  
10 South Carolina Sexually Violent Predator Program in 2009.  
11 Between 2009 and 2011 I supervised the treatment in the  
12 program and I also evaluated people in -- under the Sexually  
13 Violent Predator Act, and in, in 2011 I switched positions and  
14 just became an evaluator. I do the pre-commitment evaluations  
15 and occasionally I'll do other types of evaluations under the  
16 Sexually Violent Predator Act.

17 Q Dr. Gehle, have you ever testified for the Respondent in  
18 sexually violent predator cases?

19 A Yes.

20 Q Approximately how many times?

21 A I have testified for the Respondent around 45 times.

22 Q And have you ever -- and you testify for the State as  
23 well; is that correct?

24 A Yes.

25 Q How many times have you testified for the State?

1 A Around 66 times, I believe, but some of those were when I  
2 was called by the State, but they were summary judgment  
3 hearings that actually benefited the Respondent.

4 Q Dr. Gehle, about what percentage of the time do you  
5 recommend commitment in sexually violent predator cases?

6 A About a third of the cases that I do I recommend  
7 commitment.

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

11 A Yes.

12 Q Approximately how many times?

13 A About 115 times.

14 Q Okay.

15 MR. MORROW: At this time, Your Honor, I move for Dr.  
16 Gehle to be recognized as an expert in the field of forensic  
17 psychology.

18 THE COURT: Mr. Falk?

19 MR. FALK: No objection.

20 THE COURT: All right. Let me give you all a brief  
21 charge. Ladies and gentlemen, normally a person cannot give  
22 opinion testimony. Normally when a person testifies they must  
23 testify as to what they either saw, heard or sensed by smell  
24 or something of that nature. However, there is an exception  
25 when someone's qualified because of education or experience.

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1 They are permitted to give opinion testimony. This witness is  
2 being qualified as an expert in the field of forensic  
3 psychology to give opinion in that area. Now, ladies and  
4 gentlemen, that does not mean that you must accept the opinion  
5 but is evidence for you to use in any way that you deem  
6 appropriate. All right. You may continue.

7 BY MR. MORROW:

8 Q Dr. Gehle, how did you become involved in this case?

9 A I was appointed by the court to evaluate Mr. Griffin.

10 Q Now, Dr. Gehle, will you be paid to conduct your  
11 evaluation in this case or were you paid to conduct your  
12 evaluation?

13 A I'm paid a salary by the Department of Mental Health.  
14 I'm an employee there.

15 Q And would you have been paid any differently if you did  
16 not recommend committal?

17 A No.

18 Q Now, what type of evaluation did you conduct in this  
19 case?

20 A A precommitment evaluation.

21 Q And when you're doing a precommitment evaluation what are  
22 you asked to do? What is the precommitment evaluation?

23 A Well, I'm asked to give my expert opinion as to whether  
24 Mr. Griffin or the person that I'm asked to evaluate has a  
25 mental abnormality or a personality disorder that makes him

1 likely to engage in acts of sexual violence if not confined in  
2 a secure facility for long-term control, care and treatment.  
3 Basically, I'm asked to determine if Mr. Griffin has mental  
4 health problems, and if so do these mental health problems  
5 affect him in a way that makes him likely to commit sexually  
6 violent offenses if he's released to the community.

7 Q Dr. Gehle, could you please describe the method by which  
8 you conduct a precommitment evaluation?

9 A Well, the way that I do these evaluations is I review the  
10 records I receive. I request additional records. I  
11 interviewed Mr. Griffin. During that interview I completed a  
12 formal mental status examination of him. I scored an  
13 actuarial sex offender risk assessment tool, and I took all  
14 the information that I got from the records and from him and I  
15 summarized my findings and gave an opinion.

16 Q Now, Dr. Gehle, you mentioned as part of your evaluation  
17 did you meet with and interview Mr. Griffin?

18 A Yes. I did.

19 Q And was that interview part of the basis of your expert  
20 opinion?

21 A Yes.

22 Q And how long did you interview Mr. Griffin?

23 A I met with him for three hours and 50 minutes.

24 Q And is the man that you met with in the courtroom today?

25 A Yes.

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1 Q Where is he?

2 A He's in the red shirt over there at the table.

3 MR. MORROW: Your Honor, may the record reflect that Dr.  
4 Gehle identified Mr. Griffin?

5 THE COURT: So noted.

6 BY MR. MORROW:

7 Q Did you explain the purpose of your evaluation to Mr.  
8 Griffin?

9 A Yes.

10 Q And did he consent to the evaluation?

11 A Yes.

12 Q Dr. Gehle, in addition to meeting with and interviewing  
13 Mr. Griffin, what information did you rely upon or receive to  
14 aid you in conducting your evaluation?

15 A Well, I looked at his national criminal history report,  
16 police reports, investigative records, witness statements,  
17 statements Mr. Griffin made to investigators, warrants,  
18 indictments, conviction and sentence sheets, prison records,  
19 mental health records. I spoke to his sister, and I contacted  
20 somebody from the South Carolina Department of Probation,  
21 Parole and Pardon Services.

22 Q And Dr. Gehle, how did you receive that information or  
23 obtain that information that you relied upon?

24 A I received the records through the petition that was  
25 filed under the Sexually Violent Predator Act which comes from

1 the Attorney General's Office, also from the Department of  
2 Corrections, and then I also requested information directly  
3 from sources like schools and things like that.

4 Q Dr. Gehle, is the type of information that you listed for  
5 the jury a moment ago the type that is typically and  
6 reasonably relied upon by other experts in your field?

7 A Yes.

8 Q Did you consider and rely upon that information that you  
9 listed for the jury a moment ago and upon your interview with  
10 Mr. Griffin in rendering your opinion in this matter?

11 A Yes.

12 Q Can you explain how an individual's past sexual offense  
13 behavior relates to his future sexual offense behavior?

14 A Well, a person's past sexual behavior is the best  
15 indicator of their future sexual behavior because what a  
16 person's sexually aroused by tends to remain consistent over  
17 time, especially when it's deviant.

18 Q Dr. Gehle, based on your interview with Thomas Griffin  
19 and your review of his -- of the records in this case, could  
20 you tell if at, at the time of your interview he had been  
21 convicted of a sexually violent offense?

22 A Yes.

23 Q In addition to looking at convictions, did you also look  
24 at charges that did not result in convictions?

25 A Yes.

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1 Q And why is it important or why do experts like yourself  
2 look at those charges that did not result in a conviction?

3 A Well, it's important to understand a person's entire  
4 history. Their criminal history helps determine the timeline  
5 of their life, when they were in the community, when they were  
6 incarcerated. It helps determine if they have a variety of --  
7 helps me figure out what kind of offenses they commit, if any.  
8 It can indicate that there's possible mental health problems  
9 or personality disorders, and their criminal history is really  
10 important for the consideration of risk to commit future sex  
11 offenses. I also like to look at how soon after someone was  
12 released from prison did they reoffend, if they did, how long  
13 they spent in prison, things like that. It's really  
14 important.

15 Q And Dr. Gehle, when you're looking at all of this  
16 criminal history, are those the -- is that the type of  
17 information that is typically and reasonably relied upon by  
18 other experts in your field?

19 A Yes. It is.

20 Q Dr. Gehle, did -- in addition to his conviction from  
21 South Carolina that qualifies as a sexually violent offense  
22 under, under the statute, were you able to look at the records  
23 and determine if Mr. Griffin had any other convictions for  
24 sexual offenses?

25 A Yes.

1 Q And what did you find?

2 A Well, his -- one of his earliest convictions was in 1972,  
3 and he was convicted in North Carolina with assault with  
4 intent to commit rape.

5 Q So you found he was convicted in 1972 of assault with  
6 intent to commit rape?

7 A That's correct.

8 Q Did you -- Dr. Gehle, I'm also going to show you some  
9 documents here. I want you to take a moment to look at those  
10 documents and see if you recognize them. Okay?

11 MR. MORROW: Your Honor, may I approach?

12 THE COURT: Yes.

13 A I've seen copies of these documents.

14 Q And Dr. Gehle, are those documents the type that are  
15 typically and reasonably relied upon by experts in your field?

16 A Yes.

17 Q What are they?

18 A Well, the first one is a sentence sheet for assault with  
19 intent to commit criminal sexual conduct with a minor in the  
20 second degree. It's from Horry County. The second one is a  
21 warrant for assault and battery of a high and aggravated  
22 nature from Horry County, and the third document is an  
23 indictment for assault with intent to commit criminal sexual  
24 conduct and that's from Horry County.

25 Q And that offense was in 1996; is that correct?

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1 A That's correct.

2 Q And you consider that offense as part of your evaluation

3 --

4 A Yes.

5 Q -- in this case? Is there anything on those documents to  
6 indicate their authenticity?

7 A Yes. They're all stamped by the Clerk of Court.

8 Q And they were part of the basis of your expert opinion?

9 A Yes.

10 MR. MORROW: At this time, Your Honor, the State would  
11 enter State's Exhibit One into evidence.

12 THE COURT: Any objection?

13 MR. FALK: If I could just look at it briefly.

14 THE COURT: Yes, sir.

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

16 (Whereupon, a bench conference is held in the presence,  
17 but out of the hearing of the jury.)

18 MR. FALK: Your Honor, I would object to the arrest  
19 warrant going back. I don't think that's relevant, and it  
20 contains hearsay information. I think that they --

21 THE COURT: Hold on a minute.

22 MR. FALK: -- still can make their point with just the  
23 sentencing sheet.

24 THE COURT: Can you approach a minute?

25 (Whereupon, a bench conference is held in the presence,

1 but out of the hearing of the jury.)

2 THE COURT: All right. All right. I'll sustain the  
3 Defendant's objection to this. Let that in.

4 MR. MORROW: Thank you, Your Honor.

5 THE COURT: State's Exhibit Number One, Madam Court  
6 Reporter.

7 REPORTER: You want them all marked as one?

8 THE COURT: Yeah. All marked as Number One. Is that all  
9 right with you all?

10 MR. MORROW: Yes, Your Honor.

11 THE COURT: All right. State's Exhibit Number One will  
12 consist of three pages.

13 (State's Exhibit Number One [Sentencing Sheet] admitted  
14 into evidence and appropriately marked.)

15 THE COURT: Go ahead, sir, Mr. Morrow.

16 BY MR. MORROW:

17 Q Dr. Gehle, Mr., Mr. Griffin pled guilty on June 14<sup>th</sup>,  
18 1999; is that correct?

19 A Yes. I believe so.

20 THE COURT: Hold on a minute. Hold on a minute. Ms.  
21 Dixie, you done marking?

22 REPORTER: I'm good, Judge. You can go ahead.

23 THE COURT: Well, hand him that exhibit back, please.  
24 All right. Mr. Morrow, you may continue.

25 BY MR. MORROW:

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1 Q What date --

2 A Yes. He, he, he was convicted on June 14<sup>th</sup>, 1999.

3 Q Dr. Gehle, could you please describe or why is it  
4 important to look at the details or underlying facts of a  
5 conviction?

6 A Well, I need to look at the age of the victim because  
7 that can be relevant to determine if somebody is a pedophile  
8 or if it -- depending on the age and the sexual development of  
9 the victim. I look at the gender. I look at things like what  
10 were the conditions under which this person offended, how much  
11 did the victim fight, how much did they have to overcome, were  
12 there weapons used, things like that.

13 Q And that is important to your diagnosis?

14 A Yes.

15 Q Did you consider all of that information as part of your  
16 diagnosis in this case?

17 A Yes.

18 Q Dr. Gehle, would you please describe for the jury the  
19 details and underlying facts of Mr. Griffin's 1999 conviction  
20 for assault with intent to commit criminal sexual conduct in  
21 the second degree?

22 A Yes. The offense happened on December 19<sup>th</sup>, 1996, and  
23 this was about a month after Mr. Griffin was released from the  
24 Department of Corrections in North Carolina. So he was out in  
25 the community for a month, and he went to the Dixie Dollar

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1 Amusement Store in Horry County. He went to the restroom, and  
2 there was a 12 year old girl in the restroom. He knocked on  
3 the door. She told him to hold on.

4 MR. FALK: Objection, Your Honor, hearsay.

5 THE COURT: Can you all approach a minute?

6 (Whereupon, a bench conference is held in the presence,  
7 but out of the hearing of the jury.)

8 THE COURT: Restate your question.

9 BY MR. MORROW:

10 Q Dr. Gehle, without stating what any one, one individual  
11 said, could you tell from the records involved in this case  
12 what the underlying facts regarding his 1999 conviction were?

13 A Yes.

14 Q And what were those facts?

15 A He approached a 12 year old stranger, female at a, at a  
16 -- an amusements park kind of store, knocked on the door. The  
17 girl came out of the restroom thinking that she was going to  
18 walk on. He presented a knife, pushed her back into the  
19 bathroom and said that he had not had sex in three years, he  
20 had three dollars. She screamed for her father and then ran,  
21 and while the girl was telling her father what occurred Mr.  
22 Griffin fled the store. He had left his sister in the store.  
23 He had went to the store with his sister, but he fled.

24 Q And Dr. Gehle, what sentence did Mr. Griffin receive for  
25 that conviction?

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1 A He received 20 years of incarceration.

2 Q So that, that offense that we were just talking about  
3 occurred in 1996; correct?

4 A That occurred in 1996. Yes.

5 Q Now, Dr. Gehle, did you find that Mr. Griffin was charged  
6 with any offenses between his arrest in 1996 and his  
7 conviction in 1999?

8 A Yes.

9 Q And why is it necessary to review charges that do not  
10 necessarily result in convictions?

11 A Well, it's important, again, to see their timeline, when  
12 did this happen in relation to all the other offenses, but in  
13 this particular case Mr. Griffin told investigators that he  
14 committed the offense, and he also told me that he committed  
15 this other offense.

16 Q And what, if anything, did you find significant about the  
17 charge Mr. Griffin picked up while out on bond for his 1996  
18 offense?

19 A It was another sex offense involving a 12 year old  
20 female, a stranger. It was, it was in many ways similar to  
21 this offense that happened in South Carolina. This one  
22 happened -- the other one happened in North Carolina. He was  
23 on bond for this offense at the time that he committed the  
24 subsequent offense. In this case he actually sexually  
25 assaulted a girl that he saw leaving her classroom. She had

1 to go outside of her classroom to go to the bathroom at her  
2 school and she had left her classroom and was on the way to  
3 the bathroom when Mr. Griffin approached her, asked her if she  
4 had any crack cocaine, asked her if she had any money and she  
5 said no. Then she remembered that she did have a dollar or so  
6 and she gave that to him and then she went to the bathroom.  
7 Well, he followed her into the bathroom. She's in -- locked  
8 in a stall, and he comes into the bathroom and reaches over,  
9 over the stall door, unlocks it and presents a knife and says  
10 that he wants to have sex and that if she complies he will not  
11 hurt her. He performed oral sex on her. He digitally  
12 penetrated her vagina. He fondled her breasts. He fondled  
13 her vagina. In the middle of this activity another student  
14 walked into the bathroom, saw what was happening and turned  
15 around and walked away, and at that point Mr. Griffin allowed  
16 her to get up and get dressed and he said that he was going to  
17 take her to his house and that was the plan and when -- that  
18 he had a gun and that she needed to go with him, and when they  
19 left the bathroom she broke away and ran to a classroom, got  
20 away from him.

21 Q Dr. Gehle, did you discuss these charges in your  
22 interview with Mr. Griffin?

23 A Yes. I did.

24 Q And what if anything did he have to say about these  
25 charges during your interview?

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1 A Well, what he said was interesting. For the first one,  
2 for the one that occurred in South Carolina he said that he  
3 found the victim in the men's restroom, she was standing on  
4 the toilet drinking beer and that she just ran from the  
5 restroom and approached her dad and that he fled because he  
6 believed that they were going to hurt him.

7 With the other offense he told me that it happened  
8 exactly as the victim said. He, he said that it -- that what  
9 she said was basically true and that he couldn't have sex with  
10 her because she was too tight, but he tried and that's also  
11 what the victim said.

12 Q This, this is the North Carolina offense?

13 A That's correct.

14 Q Okay. These -- this North Carolina charge happened in  
15 May of 1997; is that correct?

16 A Yes.

17 Q And Dr. Gehle, Mr. Griffin was released on bond in  
18 February of 1997; is that correct?

19 A February 15<sup>th</sup>, 1997.

20 Q Dr. Gehle, did you review Mr. Griffin's other prior  
21 criminal offenses that were not sexually violent offenses?

22 A Yes.

23 Q Why is it necessary to look at offenses that are  
24 considered -- that are not necessarily considered sexually  
25 violent?

1 A Well, it's important to, to look at those things to see  
2 what other types of behavior he engages in. It helps just to  
3 establish a timeline how much time he spent in prison. It, it  
4 can help, especially violent charges that are non-sexual can  
5 -- are related to increased risk for sexual offending. I also  
6 ask the person that I'm interviewing about all those charges,  
7 all the charges that are in their criminal history.

8 Q And were those, those offenses or convictions part of the  
9 bases of your expert opinion?

10 A Yes.

11 Q And did you find any convictions for offenses that were  
12 not necessarily sexually violent?

13 A Yes.

14 Q And what were those offenses?

15 A In 1973 he was convicted in North Carolina of kidnapping,  
16 damage to personal property and breaking and entering and  
17 larceny. He got between 20 and 40 years of confinement for  
18 that. In 1978 presumably while he was in prison he was  
19 convicted of assault with a deadly weapon. In 1998 in Horry  
20 County he was charged with assault upon an employee of a  
21 correctional institution. That charge was nolle prossed,  
22 dismissed. In May of 1999 he was charged with throwing of  
23 body fluids by a prisoner. That charge was dismissed. In  
24 1999 he was also charged with assault upon an employee of a  
25 correctional institution. That was dismissed. In 1998 he was

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1 charged with simple assault and battery, and he was convicted  
2 of that in 2004. In 2002 he was charged with two counts of  
3 assault and battery of a high and aggravated nature, and the  
4 original charge for that was throwing bodily fluids on an  
5 employee at the Department of Corrections. He was convicted  
6 of those offenses.

7 Q Dr. Gehle, what if anything did you find significant  
8 about his, his other criminal history?

9 A Well, he's committed a lot of violent offenses in which  
10 he caused a lot of harm to other people.

11 Q Dr. Gehle, did you also review Mr. Griffin's disciplinary  
12 history while he was incarcerated as part of your evaluation?

13 A Yes.

14 Q And why, why do you look at an individual's behavior  
15 while in prison while conducting these evaluations?

16 A I just want to see how they act in a really highly  
17 structured, controlled environment.

18 Q And Dr. Gehle, are records like those you reviewed in  
19 this case the type of -- that other experts in your field  
20 reasonably and typically rely on?

21 A Yes.

22 Q Did you use them in forming part of the basis of your  
23 opinion in this case?

24 A Yes.

25 Q What did you find when you reviewed his prison

1 disciplinary history?

2 A Well, he had many behavioral infractions in prison. He  
3 repeatedly assaulted staff members and other inmates. He used  
4 homemade weapons in some of those assaults. He also did  
5 things like threw liquids, including feces, on staff members.  
6 He flooded his cells. He was convicted of criminal offenses  
7 during his period of incarceration, and he had 29 disciplinary  
8 infractions that he was convicted of. He was also frequently  
9 hospitalized for mental health reasons.

10 Q Dr. Gehle, were any of his infractions of a sexual  
11 nature?

12 A Yes.

13 Q And what happened?

14 A Well, he had one, one sexual misconduct. That, that's  
15 the name of the infraction, and that was in, that was in 2000,  
16 and he was caught having anal intercourse with another inmate.  
17 It was unclear from the records whether that was consensual,  
18 but that behavior is an infraction in the prison setting.  
19 There was also two incidents that involved sexually  
20 inappropriate behavior or nonconsensual sexual behavior, but  
21 the records were unclear. One was in 2015 and one was in  
22 2016.

23 Q What if anything, Dr. Gehle, did you find significant in  
24 regards to his disciplinary infractions while in prison?

25 A There was a lot of violence. There was a lot of

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1 difficulty controlling his behavior and some of the, some of  
2 the incidents were sexual.

3 Q Dr. Gehle, did you review prior treatment records as part  
4 of your evaluation in this case?

5 A I had very limited treatment records, but I reviewed  
6 whether he had been to sex offender treatment, and I reviewed  
7 some of the mental health records.

8 Q And of the records that you reviewed relating to that,  
9 were they the type of records that are reasonably and  
10 typically relied upon by experts in your field?

11 A Yes.

12 Q Did you consider Mr. Griffin's prior treatment records as  
13 part of the basis of your expert opinion?

14 A Yes.

15 Q And what if anything did you find significant to your  
16 opinion about Mr. Griffin's sex offender treatment that he  
17 received at the South Carolina Department of Corrections?

18 A Well, he completed the first phase of sex offender  
19 treatment at the Department of Corrections in 2008.

20 Q And did you find his progress in treatment -- in the sex  
21 -- in sex offender treatment to be enough to preclude him from  
22 committing acts of sexual violence in the future?

23 A No.

24 Q Why not?

25 A Well, in his case he retained very little knowledge of

1 it. He told me that his four months of treatment entailed  
2 being shown a film. He said that he didn't understand what he  
3 was doing when he committed the offenses and that he was  
4 through with all of that, but when asked about the treatment  
5 all he really told me was that he was shown a film and then  
6 his answer was apart from that. He didn't know anything about  
7 treatment terms like risk factors or things like that that I  
8 would expect somebody to have learned in treatment.

9 Q In your interview with Mr. Griffin did you discuss his  
10 plans if he's released?

11 A Yes.

12 Q And why'd you consider that information?

13 A Well, I want to see if their plans are feasible, if  
14 they're making good judgments, if they actually do have a  
15 plan, things like that.

16 Q And what is Mr. Griffin's plan if he's not confined for  
17 treatment?

18 A Well, he said that he was going to go to church and sit  
19 in the back row and get his big money and look out for his  
20 great, great grandchildren. He said that he will receive or  
21 has received, he, he fluctuated then how he presented that  
22 throughout the interview, but he was adamant that he has  
23 earned \$1,997,000 from Social Security for taking his mental  
24 health medications, and he said that he was going to, you  
25 know, enjoy that money. He might live with his family, planned

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1 to buy a piece of land and buy a mobile home and he wanted --  
2 and his sister wanted him to take care of her grandchildren.

3 Q Now, Dr. Gehle, will there be any authority monitoring  
4 Mr. Griffin?

5 A No. His sentence was completed on September 15<sup>th</sup>, 2018.

6 Q And Dr. Gehle, did you find his plans to avoid re-offense  
7 would prevent him from committing future acts of sexual  
8 violence in the community?

9 A No.

10 Q And why not?

11 A His plans aren't really practical. I spoke to his sister  
12 and she said that that, you know, that the money that, the  
13 money that he says he received from Social Security that that  
14 is inaccurate. He told me that he was -- he actually  
15 committed that sex offense in North Carolina because he wanted  
16 to go back to prison or it was the one in South Carolina. I'm  
17 not -- I'd have to look up and see which exactly one it was,  
18 but one of those offenses he said that he wanted to go back to  
19 prison because his family was trying to kill him because of  
20 this money. So he had some delusions and just some odd  
21 beliefs about that, and so that was really concerning.

22 Q Dr. Gehle, in your evaluation of Mr. Griffin were you  
23 able to diagnose him with a relevant mental abnormality or  
24 personality disorder?

25 A Yes.

1 Q What diagnosis did you assign to Mr. Griffin?

2 A I diagnosed him with other specified paraphilic disorder,  
3 biastophilia and with schizophrenia continuous.

4 Q Dr. Gehle, what is other specified paraphilic disorder,  
5 biastophilia?

6 A Well, a paraphilia is any intense or persistent sexual  
7 interest other than sexual interest in genital stimulation or  
8 preparatory fondling with phenotypically normal physically  
9 mature consenting human partners. So that means that it is  
10 typical sexual behaviors. It's not fetish behaviors such as  
11 being sexually aroused by touching feet or by things like  
12 that. So that -- that's where that sexual interest in genital  
13 stimulation or fondling with people who are of a normal  
14 sexually developed age who are physically mature, so they're  
15 sexually developed, and they consent. So when somebody is  
16 sexually aroused to things outside of that parameter it's  
17 called a paraphilia, and if they have a pattern of this kind  
18 of arousal over a period of at least six months then it can be  
19 a paraphilic disorder. If they've acted on it and they or  
20 they're distressed by this arousal pattern then it's  
21 paraphilic disorder. Biastophilia is a type of paraphila,  
22 paraphilia in which the individual is sexually aroused by  
23 engaging in coercive sexual acts with a non-consenting person.

24 Q Dr. Gehle, are you familiar with the, with the Diagnostic  
25 and Statistical Manual of Mental Disorders, Fifth Edition?

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- 1 A Yes.
- 2 Q And that's otherwise known as the DSM-5.
- 3 A That's correct.
- 4 Q What is the DSM-5?
- 5 A Well, it's a manual that's used by mental health  
6 professionals such as psychologists and psychiatrists to  
7 diagnose mental illnesses. The manual includes a summary of  
8 diagnostic categories and information about each of the  
9 diagnoses. It lists symptoms, and there's guidelines on what  
10 kind of symptoms and other conditions must exist for someone  
11 to meet criteria for a mental illness.
- 12 Q And Dr. Gehle, is the DSM-5 is that a learned treatise in  
13 your field?
- 14 A Yes.
- 15 Q Do other evaluators use the DSM-5?
- 16 A Yes. Everybody uses the DSM-5 in the mental health  
17 field.
- 18 Q Does other specified paraphilic disorder appear in the  
19 DSM-5?
- 20 A Yes.
- 21 Q And why was the other specified paraphilic disorder  
22 category created?
- 23 A Well, it's really because there are hundreds of  
24 paraphilias and not all of them could be specifically  
25 described in the manual. Eight paraphilic disorders are

1 described in the manual. So not all of them are included, but  
2 many common paraphilias are not included. Paraphilias share  
3 characteristics that make it really kind of unnecessary to  
4 include all of the paraphilias in that manual because they all  
5 involve a six-month pattern of deviant sexual arousal that's  
6 been acted on with a non-consenting person or that causes  
7 distress or impairment.

8 Q And now the DSM-5 lists several modifiers to other  
9 specified paraphilic disorder; is that correct?

10 A Modifiers are types. Yes.

11 Q And is biastophilia one of those listed modifiers?

12 A No.

13 Q And why is that?

14 A Well, again, they didn't list all of them. There is some  
15 controversy in the field about biastophilia or a paraphilia  
16 with non-consent because there's the concern that if that is  
17 included specifically in the manual that all rapists could be  
18 classified as mentally ill. Rapists could then claim that  
19 they're not guilty by reason of insanity because of this  
20 mental illness that they're -- that they can't help it, that  
21 they can't control their behavior. Any rapist then could be  
22 subject to civil commitment. So those are some of the reasons  
23 that it's not specifically included, but there are many common  
24 paraphilias that are also not specifically included.

25 Q Now, Dr. Gehle, you diagnosed him with other specified

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1 paraphilic disorder, biastophilia. Why did you do so even  
2 though this controversy exists?

3 A Well, I take care when diagnosing that, and in his case  
4 there was evidence that he was sexually aroused, he had sex  
5 with, he engaged in sexual acts with, tried to engage in  
6 sexual acts with the victim after presenting a weapon. When  
7 you present a weapon to somebody that is because you want to  
8 get control of them. You want to cause them fear. You know  
9 that if you present a weapon to somebody and say, "I want  
10 sex," it's not going to get you a consenting victim. So he  
11 has no -- he did not want a consenting victim. People that  
12 want to have sex with a stranger would have other tactics in  
13 order to get a compliant, consenting victim, and it's abnormal  
14 to be sexually aroused when the person is not consenting.

15 Q Dr. Gehle, is other specified paraphilic disorder,  
16 biastophilia a recognized diagnosis in your field?

17 A Yes.

18 Q And how does Mr. Griffin meet the criteria for other  
19 specified paraphilic disorder, biastophilia?

20 A Well, he was convicted of two attempted sexual assaults.  
21 He was charged with and confessed to a third sexual assault.  
22 He attempted to sexually assault the 12 year old using a  
23 knife. He was on bond for one of the offenses when he was  
24 used the last one. He presented a knife to her. He told her  
25 that he had also a gun. These incidents occurred over more

1 than a six-month period. Using that weapon is just meant to  
2 scare, intimidate, threaten someone, and there's very little  
3 evidence that he was having sex in other ways. He has very  
4 few sexual partners, and so in my opinion he has a preference  
5 for a non-consenting coercive sex.

6 Q Now, Dr. Gehle, you mentioned or you also diagnosed Mr.  
7 Griffin with schizophrenia. Is that correct?

8 A Yes.

9 Q And what is schizophrenia?

10 A Schizophrenia is a psychotic disorder that includes  
11 delusions, which are fixed false beliefs, hallucinations,  
12 those are perception like experiences without an external  
13 stimulus. It's seeing things that aren't there, hearing  
14 things that aren't there, disorganized thinking which is  
15 evidenced by speech that's tangential or jumping topics or  
16 when you ask a question it's only -- the answer is only  
17 loosely associated with what you asked or speech that's very  
18 incoherent. It's also grossly disorganized or abnormal  
19 behavior. So people's behaviors can go from a childlike  
20 silliness to unpredictable agitation. They just act in very  
21 odd, abnormal ways, and there's also negative symptoms, which  
22 is a decrease in facial expressions, so a flat voice, a flat  
23 facial expression, loss of interest in pleasurable activities,  
24 loss of interest in social interaction. So you have to have a  
25 couple of these types of symptoms in order to meet criteria

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1 for schizophrenia.

2 Q Dr. Gehle, how does Mr. Griffin meet the criteria to be  
3 diagnosed as suffering from schizophrenia?

4 A Well, he's been diagnosed with schizophrenia or psychotic  
5 disorders for a number of years. All of the records I looked  
6 at had, had diagnoses in that category of psychotic disorders  
7 and schizophrenia is a specific type of psychotic disorder.  
8 He exhibited delusions and disorganized speech in my  
9 evaluation of him. He told me that he had a history of  
10 auditory and visual hallucinations when he wasn't taking his  
11 antipsychotic medication. He has a history of decompensation,  
12 so becoming more psychotic when he is noncompliant with his  
13 medications. These symptoms occurred over a period of  
14 decades. His delusional thinking and disorganized thinking  
15 have remained present even when he is on psychotic medications  
16 and so that's the basis of, of, of the diagnosis for him.

17 Q Dr. Gehle, could you give some examples of his delusional  
18 or disorganized thinking?

19 A Yes. Refer to my report here. Well, one of the primary  
20 delusions that he had was that he had gotten or will get \$1.9  
21 million from the government, Social Security, which his sister  
22 said was not true, that his family was trying to kill him in  
23 order to get that money. That was a big delusion that he had.  
24 He also had delusions related to sex. He told me that he was  
25 teaching others in prison to stop eating sweets and meat and

1 milk because then they won't have to masturbate. He said that  
2 those foods stimulate the glands and make you want to  
3 masturbate, and he gave me the example of when a, when a  
4 rabbit eats a carrot that rabbit will then go out and be on  
5 top of all the other smaller rabbits because carrots have  
6 sweeteners in them that cause, causes the rabbit to be very  
7 sexually stimulated. He said things about if -- you can be  
8 born again if you stop eating meat or pork for three days and  
9 that your third eye will open up. He said that a bunch of the  
10 women in prison were talking about him, that one of the guards  
11 was interested in a relationship with him. He said that a  
12 female guard had a girlfriend in the streets but that she  
13 wanted a part-time boyfriend and she was interested in him.  
14 Those were some of his delusions that I came across.

15 Q Dr. Gehle, in your report you used the modifier continue  
16 -- continuous. What does that mean in relation to Mr.  
17 Griffin's schizophrenia?

18 A That means that he has -- that he experiences psychotic  
19 symptoms almost all the time, even when medicated.

20 Q What is the presence of these two mental abnormalities in  
21 Mr. Griffin mean for his risk to offend sexually?

22 A Well, the other specified paraphilic disorder,  
23 biastophilia means he has deviant sexual interests involving  
24 coercive sexual acts with non-consenting persons. Those type  
25 of interests if acted upon can result in new criminal

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1 behavior, sexually violent offending. Then in conjunction  
2 with his schizophrenia he has delusional and disorganized  
3 thinking and that impairs his judgment. It impairs his  
4 impulse control. He has paranoid delusions that are related  
5 to physical violence and things like that against women. He  
6 has delusions related to sexual functioning. He said that he  
7 committed one sex offense because he wanted to return to  
8 prison in order to avoid his family from killing him for that  
9 money and that he said he had ongoing problems with, with his  
10 family because of that money. These things just impair his  
11 judgment and increase his risk that he'll commit another  
12 sexual offense.

13 Q Now, Dr. Gehle, you looked at Mr. Griffin's risk to  
14 reoffend sexually as part of your evaluation; is that correct?

15 A Yes.

16 Q Okay. How do experts such as yourself measure risk?

17 A We typically use actuarial risk assessment tools and look  
18 at the presence or absence of dynamic risk factors.

19 Q So an actuarial risk assessment tool that looks at -- are  
20 there -- are they called static risk factors? Is that what  
21 looks at?

22 A Yes.

23 Q And what are static risk factors?

24 A Those are historic and demographic factors that increase  
25 the risk that someone's going to commit another sex offense,

1 and those factors typically do not change with treatment.

2 They're just based on the person's history and demographics.

3 Q And Dr. Gehle, when you were -- when you were conducting  
4 this actuarial assessment of Mr. Griffin, what actuarial  
5 assessment did you use?

6 A I used the Static-99R.

7 Q And what is the Static-99R?

8 A It's an instrument that is designed to assist in the  
9 estimation of sexual and violent recidivism for sex offenders.  
10 It's the most widely used measure of sexual recidivism, and it  
11 estimate -- the estimates were derived from new charges and  
12 reconvictions of groups of individuals. So we're comparing  
13 Mr. Griffin to groups of sex offenders.

14 Q So Dr. Gehle, could you -- how, how does the Static-99R  
15 measure risk? Could you explain or give an explanation of it?

16 A Well, they looked at, the researchers that compiled this  
17 looked at a large sample of sex offenders, and they looked at  
18 a variety of different demographic information and historical  
19 information, so their age, what kind of -- how many crimes  
20 they have committed, have they had non-sexual violent crimes,  
21 how many sentencing dates, what type of victims, male victims,  
22 stranger victims, non-family victims, any contact offenses or  
23 noncontact offenses, things like that. They looked at that,  
24 at that whole group of sex offenders and then they wanted to  
25 see who went on to reoffend. So they wanted to see with that

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1 group that went on to commit another sex offense are they more  
2 likely to have these factors, and what they found was those  
3 are the factors that can help differentiate the groups of  
4 offenders who go on to reoffend and those that don't.

5 Q And Dr. Gehle, when you're describing these, these groups  
6 in this research, was, was, was this a large study?

7 A Yes. Thousands of people, many studies.

8 Q And has the data been updated throughout its existence?

9 A Yes.

10 Q And what was Mr. Griffin's score on the Static-99R?

11 A He has a score of four.

12 Q And what does a score of four on the Static-99R indicate  
13 to you about Mr. Griffin's risk for re-offense?

14 A Well, his score of a four means that -- so when I take --  
15 when I get that score I can look at various different like  
16 ways to look at it. So it is -- if we look at --- people with  
17 a score of four, 11 percent of them went on to reoffend within  
18 five years. It also makes him 1.94, almost two times more  
19 likely to commit another sex offense compared to just the  
20 average sex offender. So the average score on the static is  
21 two, and they range from negative three to 12, and hardly  
22 anybody scores over a seven. So a seven is a very, very high  
23 score, and his is four.

24 Q And did you also look at dynamic risk factors as part of  
25 your evaluation in this case?

1 A Yes.

2 Q What are dynamic risk factors?

3 A They're psychological or behavioral features that are  
4 related to an increased risk to reoffend and that are  
5 potentially changeable in treatment.

6 Q And what if any dynamic risk factors did you find applied  
7 to Mr. Griffin?

8 A He has a preference for pubescent children, offense  
9 supportive attitudes, sexualized violence, lack of emotionally  
10 intimate relationships with adults, poor problem solving  
11 abilities, lifestyle impulsiveness and resistance to rules and  
12 supervision.

13 Q Okay. Let's, let's just go through those real quick, Dr.  
14 Gehle, so I -- and I want to understand better what those are.  
15 So an attraction to pubescent children, what does that mean?

16 A He has two victims that were age 12. By their age  
17 they're likely in the very early stages of puberty.

18 Q And what was the second one?

19 A Offense supportive attitudes.

20 Q Well, how does he, how does he exhibit offense supportive  
21 attitudes?

22 A He does not recognize how a victim could be harmed by his  
23 sexual behavior, and he just puts his own desires in front of  
24 others and, and gives very minimal, if no regard, for the  
25 victims.

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1 Q You also mentioned, I believe, it was a preference for  
2 sexualized violence. How did you reach that?

3 A Yes. Just based on his use of weapons and threats to  
4 gain, you know, in his sexual activity, I guess.

5 Q And you also said poor problem solving ability; is that  
6 correct?

7 A Yes.

8 Q And how does Mr. Griffin meet that dynamic risk factor?

9 A He reportedly committed sexual assault behaviors to get,  
10 to get secondary gain. So he said that he was having problems  
11 with his family and that he committed this sex offense in  
12 order to go back to prison instead of being killed by his  
13 family. He also reportedly inappropriately touched another  
14 inmate in the prison in order to move living units. So those  
15 were a couple of examples of, of him just using poor problem  
16 solving. His schizophrenia really interferes with his problem  
17 solving abilities.

18 Q You also mentioned lifestyle impulsiveness or low self  
19 control. What does that mean?

20 A Yes. He really has low self control. He has repeated  
21 acts of violence that he's engaged in in the community and in  
22 the correctional setting, lots of irresponsible decision  
23 making. He's been noncompliant with medication, sexually  
24 inappropriate behavior in the prison and criminal activity in  
25 the prison. He has unrealistic goals. He told me, for

1 example, that he was going to get married in two or three  
2 weeks of release from prison despite him having never been in  
3 a relationship before, and then he just, just engages in lots  
4 of repeated violence, assaulting other people and behavioral  
5 infractions in the prison.

6 Q And that, that final dynamic risk factor that you talked  
7 about I think I'm at the final one is resistance to rules and  
8 supervision; is that --

9 A There's one other, but --

10 Q Oh, okay.

11 A Yes.

12 Q Well, what was the other one then?

13 A The other one was a lack of emotionally intimate  
14 relationships with adults.

15 Q And how does Mr. Griffin meet that criteria?

16 A He's had no long-term romantic relationships, really no  
17 romantic relationships to speak of, and he's never been  
18 married. He's never lived with a partner, and that's what  
19 that risk factor speaks to. The last one is resistant to  
20 rules and supervision, and that is he has defiant attitudes  
21 towards authorities, multiple instances of throwing substances  
22 on prison staff, physical assaults on staff members,  
23 violations of the conditions of bond and committing that new  
24 offense while he was on bond, and he's also had some failure  
25 to appear for court dates in his criminal history.

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1 Q Dr. Gehle, how do these static and dynamic risk factors  
2 relate to Mr. Griffin's risk for reoffending sexually if not  
3 confined to a secure facility for treatment?

4 A Well, all of these factors indicate that he's likely to  
5 commit another sexually violent offense if he's released to  
6 the community.

7 Q Dr. Gehle, to be clear, it is your expert opinion that  
8 Mr. Griffin suffers from two mental abnormalities; is that  
9 correct?

10 A Yes.

11 Q Those mental abnormalities are other specified paraphilic  
12 disorder, biastophilia and schizophrenia continuous?

13 A Yes.

14 Q And do you have an opinion as to whether Mr. Griffin's  
15 other specified paraphilic disorder, biastophilia and  
16 schizophrenia continuous causes him serious difficulty in  
17 controlling his behavior?

18 A Yes. I believe they do.

19 Q Do you have an opinion as to whether Mr. Griffin is  
20 likely to commit acts of future sexual violence if not  
21 confined for treatment?

22 A Yes.

23 Q Dr. Gehle, do you have an opinion as to whether Mr.  
24 Griffin's other specified paraphilic disorder, biastophilia  
25 and schizophrenia continuous make him likely to engage in acts

1 of sexual violence if not confined to a secure facility for  
2 long-term control, care and treatment?

3 A Yes. I believe that those disorders make him likely.

4 Q Dr. Gehle, do you have an opinion as to whether Mr.  
5 Griffin meets the criteria to be found a sexually violent  
6 predator under the statute?

7 A It's my opinion that he meets the criteria of a sexually  
8 violent predator.

9 Q And are all these opinions and conclusions based on a  
10 reasonable degree of psychological certainty?

11 A Yes.

12 Q Dr. Gehle, please answer any questions that Mr. Falk or  
13 the Court may have for you.

14 THE COURT: All right. All right. Ladies and gentlemen,  
15 we've been going about an hour and a half. I'm going to let  
16 you step to the jury room. Do not discuss the case at all  
17 while you're back there. If you all will select a foreperson,  
18 reduce it to writing, give it to my deputy here. When you all  
19 come back he'll give that piece of paper to me and that  
20 foreperson will sit where this gentleman is in the grey  
21 pullover. All right. Step to the jury room. Do not discuss  
22 the case. I'll get you back out here in a few minutes.

23 (Whereupon, the following takes place outside the  
24 presence of the jury.)

25 THE COURT: Mr. Falk, just for planning purposes how long

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1 do you anticipate cross examination?

2 MR. FALK: Probably not as long as typical, but it's  
3 probably going to be at least 40 minutes.

4 THE COURT: Okay. And this is the only witness the State  
5 has?

6 MR. MORROW: That's correct, Your Honor.

7 MR. FALK: No witnesses.

8 THE COURT: All right. Well, let's try to get -- let's  
9 try to finish with testimony today. We can argue and charge  
10 in the morning. Sound fair enough?

11 MR. FALK: Yes, sir. Sounds fair enough.

12 MR. MORROW: Sounds fair enough, Your Honor.

13 THE COURT: Dr. Gehle, I'm going to let you step down,  
14 but do not discuss your testimony, and when we reconvene I'll  
15 get you back up here before I bring the jury in and you'll be  
16 seated there.

17 A Can I use the restroom?

18 THE COURT: That's what we're going all to do if you need  
19 to. All right.

20 A All right. Thank you.

21 THE COURT: We'll stand down for a few minutes.

22 OFF THE RECORD

23 (The following takes place outside the presence of the  
24 jury. A bench conference is held.)

25 THE COURT: Will you check and see if the jury is ready?

1 Is he bringing them? Okay. Thank you.

2 (The following takes place in the presence of the jury.)

3 THE COURT: All right. Ladies and gentlemen, got all the  
4 jurors back. Juror Number 83, Mr. Crowder, you're my foreman.  
5 That'll be your seat throughout the remainder of this trial.  
6 Okay?

7 JUROR 83: Yes, sir.

8 THE COURT: Madam Court Reporter, will you mark that as a  
9 Court's Exhibit, please?

10 (Court's Exhibit Number One [Foreperson Selection]  
11 appropriately marked.)

12 THE COURT: All right. Cross examination.

13 CROSS EXAMINATION

14 BY MR. FALK:

15 Q Dr. Gehle, can you just discuss a little bit more about  
16 the interview? You said it take -- it lasted six hours?

17 A No. I believe it lasted three hours and 50 minutes.

18 Q Okay. And a lot of -- part of your, your opinion is  
19 based, really, on information that he self-reported; is that  
20 not correct?

21 A Part of it is. Yes.

22 Q For example, talking about whether or not he had romantic  
23 partners, whether he had lived with anybody for over a period  
24 of time, that would -- your information for that is basically  
25 on the self-report. Is that correct?

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1 A That came from him and came from his sister. His sister  
2 told me that she had never known him to be involved in any  
3 kind of relationship.

4 Q I'm just -- there were times when -- well, you said he,  
5 he had some -- some of his answers did not make sense --

6 A That's correct.

7 Q -- his response to the question; is that correct?

8 A Yes.

9 Q Do you have any concerns that you were getting accurate  
10 answers to that?

11 A Well, of course, that is a concern in some areas. I tend  
12 to open -- or ask open-ended questions so that I can get just  
13 whatever they want to offer and then questions will typically  
14 narrow down from there.

15 Q Okay.

16 A So I'll clarify to make sure that I'm understanding what  
17 he's saying. I'll ask for him to repeat himself. I'll  
18 sometimes ask for him to spell words so that I can understand  
19 because he tended to mumble. So some of his speech was  
20 difficult to understand.

21 Q How was his spelling?

22 A It was not terrible I don't think. I don't think that --  
23 like intelligence-wise there's probably a little bit of  
24 impairment but it's hard to tell if that is related to his  
25 schizophrenia or if he has an intellectual disability.

- 1 Q Well, that was really kind of into my next question. Did  
2 you give him any type of IQ test?
- 3 A No.
- 4 Q So he suffers from schizophrenia; is that correct?
- 5 A Yes.
- 6 Q And in his record -- his medical history which shows that  
7 he suffered from that for a long period of time; is that not  
8 right?
- 9 A Yes.
- 10 Q Is he taking medication for the schizophrenia? Well, let  
11 me ask a better question. Was he ever prescribed medication  
12 for the schizophrenia?
- 13 A Yes.
- 14 Q And what type of medication was that?
- 15 A He's been prescribed antipsychotic medications and then  
16 medications that accompany that to control side effects.
- 17 Q Is he -- do you have an opinion on his functioning when  
18 he is on his medication?
- 19 A I believe that when I saw him he was on his medication,  
20 and he has some symptoms, but he doesn't have hallucinations.  
21 He still has delusional thinking, and he still has like  
22 disorganized thinking as evidenced by his speech.
- 23 Q And what's the difference between the delusions and  
24 hallucinations?
- 25 A Delusions are fixed false beliefs, things like "I think

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1 I'm God," or things like "I think I'm receiving special  
2 messages through the TV that's telling me I'm super  
3 important," things like that, "Women are attracted to me," all  
4 that kind of stuff. Hallucinations are seeing, hearing,  
5 tasting, smelling, feeling things that aren't there. So  
6 you're having a perception, a sensation, but you don't have  
7 any external stimuli that's causing it. So it's coming from  
8 inside your brain.

9 Q So in your report you show the time that in 1999 he was  
10 evaluated for competency to stand trial; isn't that correct,  
11 around that time?

12 A Yes. I believe so. Yes.

13 Q Late 90s?

14 A It was 1999.

15 Q And your record shows that he was returned to competency  
16 or rehabilitated?

17 A Well, he was diagnosed with psychotic disorder not  
18 otherwise specified. He was deemed incompetent. He was  
19 hospitalized at a psychiatric facility for competency  
20 restoration, treatment, and he was then, with treatment he was  
21 found competent to stand trial. So after a period of  
22 treatment he was then reevaluated and found competent to stand  
23 trial.

24 Q Okay. So it would appear that he could go to a -- what  
25 type of facility did you say he went to for restoration?

1 A He would have went to a forensic psychiatric hospital.

2 Q Okay. And he was able to be rehabilitated so that he  
3 could stand trial? At least that's what his record shows?

4 A He was able to -- his symptoms decreased to the point  
5 that he could understand the nature of the charges against him  
6 and assist his attorney in his own defense. That's the  
7 standard for competency.

8 Q Do you know, and if you don't know that's fine, but is  
9 the sexually violent predator treatment program, that  
10 facility, is that a forensic hospital?

11 A It's not a forensic hospital per se. No.

12 Q So he would -- if he was going to be returned to  
13 competency or be rehabilitated he would go to a forensic  
14 hospital?

15 A Okay. Return to competency and rehabilitated, I, I would  
16 consider those things different. So if, if he wanted to go to  
17 or if he was incompetent to stand trial on a criminal case, if  
18 the Judge found that he was incompetent he would get a 60-day  
19 period of restoration in the forensic hospital in Columbia.  
20 It's on the same campus where my office is. He would get up  
21 to 60 days. At the end of the 60-day period or if he was  
22 improving before then, which with his condition would be  
23 unlikely, so he would be reevaluated and they would make  
24 another opinion that they would present to the Court and the  
25 Court would make a decision.

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1 Q Okay. Yeah. But I meant rehabilitated. I meant for  
2 rehabilitated to competency, not any other type of --

3 A So he'd be restored to competency?

4 Q Restored to competency --

5 A Yes.

6 Q -- is a better term. Thank you. When you -- what time  
7 of -- when did you speak with him? When was your evaluation?

8 A I interviewed him on May 2<sup>nd</sup> of 2017.

9 Q Okay. Did you -- part of your evaluation did you ever  
10 look at the -- his medical records from the, the J. Reuben  
11 Long Detention Center, the Horry County Detention Center?

12 A I did not look at those records until you provided them  
13 to me today.

14 Q Okay. And so I showed you some records that I had gotten  
15 from the Horry County Detention Center?

16 A That's correct.

17 Q And did you have a chance to look over them?

18 A I, I looked over them for -- to answer some questions  
19 that you had.

20 Q Okay. And did -- and do they look like medical records?

21 A Yes. And it's a medical administration record.

22 Q Okay. Could you see in there whether or not he was  
23 receiving the medicine? Could you have testified that he was  
24 -- been diagnosed medicine to treat the schizophrenia; is that  
25 correct?

1 A Yes. In the prison when I saw him I believe that he was  
2 taking medication.

3 Q Okay. Does -- do you have an opinion whether or not he's  
4 still taking medication based on those records that you have?

5 A Yes. It appears from these records that he stopped  
6 taking medication in the middle of January of, I believe,  
7 2018. Yes. He's -- his medication compliance, so whether he  
8 was taking it was somewhat sporadic, and then on, I believe,  
9 January 12<sup>th</sup>, 2018, the doctor discontinued his medications  
10 because he was being noncompliant with taking them.

11 Q Okay. How would somebody respond if they were on  
12 psychiatric medications for schizophrenia and then they went  
13 off of them abruptly? What type of symptoms, what type of  
14 physical manifestations would he show?

15 Q Well, abruptly is not a huge concern for psychotic  
16 medications. There's not a huge withdrawal syndrome with  
17 going off those medications abruptly or just, you know, taking  
18 them and then not taking them, but you would expect the  
19 symptoms that they had before taking medications to come back.

20 Q Okay. Can somebody have a diagnosis of schizophrenia  
21 without being diagnosed as a sexually violent predator?

22 A Yes.

23 Q Okay. Is there any other evidence in his medical records  
24 that he's gone from periods of being on his medicine to  
25 decompensating and then being restored?

Marie Gehle - Cross by Respondent

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- 1 A Yes.
- 2 Q Okay. So is it more than once?
- 3 A Yes. I believe so.
- 4 Q Now, you had diagnosed him with having biastophilia, and  
5 I know Mr. Morrow talked to you a little bit about that. I  
6 cannot -- this is -- we all consider this the bible of -- in  
7 your field, forensic psychiatry, forensic psychology.
- 8 A Well, it's really just in psychiatry and psychology and  
9 mental health, not necessarily forensics.
- 10 Q Okay. So in the fields of psychology and psychiatry this  
11 is a book that you always rely on?
- 12 A Yes.
- 13 Q Okay. And biastophilia, I can't even find that in the  
14 index; can you?
- 15 A I, I don't -- it's probably not in the index. That would  
16 be correct I would say.
- 17 Q And you talked a little bit about the -- there's been  
18 some controversy in the past about whether or not biastophilia  
19 or in it's -- and in some of the conferences they use a  
20 different terminology for that. Wasn't there a coercive  
21 pedophilic or paraphilic disorder? Wasn't that also another  
22 term used?
- 23 A Term used by --
- 24 Q To, to diagnose -- let me, let me ask a better question.  
25 There was a DSM-4 that was before this; is that correct?

- 1 A A 4-TR.
- 2 Q Okay.
- 3 A A text revision so.
- 4 Q And wasn't there some question about whether or not the  
5 diagnosis of coercive paraphilic disorder would be included  
6 going into the DSM-5?
- 7 A Yes. They considered -- the people who write this book  
8 are the American Psychiatric Association. They, they have  
9 work groups for like each category of diagnosis. Each  
10 diagnostic category they assign a work group, and the work  
11 group for the paraphilias considered including something like  
12 biastophilia or non-consent or paraphilic coercive disorder.
- 13 Q And that work group when they were considering that then  
14 it was not put in the DSM-5.
- 15 A That's correct.
- 16 Q And -- well, how do you differentiate then -- not  
17 everybody who commits a rape suffers from a paraphilia; is  
18 that correct?
- 19 A That's correct.
- 20 Q How do you differentiate somebody who just has a -- who  
21 has committed a rape versus somebody who has a, a paraphilia  
22 that causes him to commit a rape?
- 23 A We look at the conditions under which they committed the  
24 rape, and we look at a variety of things like the use of  
25 weapons. That's the big one because the use of weapons

Marie Gehle - Cross by Respondent

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1 indicates that they're -- they did not want to talk themselves  
2 or talk this person into having sex with them. They didn't  
3 want to manipulate them. It was outright "I want you to be  
4 scared. I want you to comply. This is happening," kind of  
5 thing. There's no buildup. It's just immediate. Whether you  
6 are sexually offending strangers, whether you have a like --  
7 things like whether it was family members, males, females, I'm  
8 really blanking on some of the things that I consider, but  
9 whether they have a rape kit, whether they're offense pattern  
10 is similar, so are they, are they committing the same types of  
11 offenses or are they wildly different, how did the victim  
12 react to the offense and did the person -- was -- were they  
13 able to commit the offense in light of the victim fighting  
14 with them, with the victim crying, with the victim showing  
15 non-consent, things like that.

16 Q Now, you did not speak with any of the victims in this  
17 case; did you?

18 A That's correct.

19 Q So what do you know about the victims?

20 A I had to rely on the records.

21 Q Okay.

22 A And I know about two assaults. They were both 12 year  
23 old females, strangers.

24 Q But you don't know how mature the 12 year olds looked; do  
25 you?

1 A He told me that he, that he rubbed his fingers on the --  
2 one of the 12 year old girl's pubic hair, which means that she  
3 would have been in puberty if she had pubic hair, then she was  
4 in puberty.

5 Q Okay. You had talked earlier in your definition of  
6 paraphilia you used phenotypical partners. What was that  
7 term?

8 A Just give me a second here. I'll find that page. So  
9 phenotypically normal, physically mature, consenting human  
10 partners.

11 Q Well, you did not -- you did not diagnose Mr. Griffin as  
12 being a pedophile; is that correct?

13 A That's correct.

14 Q So in that context what does phenotypically normal mean  
15 for a 12 year old girl? I mean, that's clearly a crime;  
16 right, as a sexual partner?

17 A A 12 year old girl?

18 Q Yes.

19 A Yes. The age of consent is 16 in South Carolina.

20 Q But as far as whether or not she was old enough to get  
21 pregnant or be sexually -- I guess I don't -- I'm still  
22 fumbling with what phenotypically normal means.

23 A It means that somebody is like a normal gender. They are  
24 sexually mature. So they have passed through the stages of  
25 puberty.

Marie Gehle - Cross by Respondent

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1 Q Okay. So do you have any information that these girls  
2 were not phenotypically normal partners for him other than  
3 their obvious age?

4 A Other than the age, no, and that's why I didn't diagnose  
5 pedophilia. Yes.

6 Q Okay. Okay. So there was nothing -- because you would  
7 agree that there was nothing normal about an adult being  
8 sexually attractive to a six year old girl?

9 A Correct.

10 Q I mean, biology, whatever, just doesn't make any sense  
11 for reproduction or anything, a six year old girl?

12 A Correct.

13 Q But a 12 year old girl that's not necessarily -- but  
14 being attracted to a 12 year old girl is not necessarily a  
15 sign of any type of paraphilia; is that correct?

16 A It would depend on that 12 year old girl and their level  
17 of sexual development.

18 Q Okay. We were talking a bit -- well, first of all, on  
19 biastophilia, with the medication that he was prescribed would  
20 that affect his biastophilia? The medication -- first of all,  
21 is there medication that you can give somebody who suffers  
22 from what you're saying is biastophilia?

23 A Yes.

24 Q What would that medicine be?

25 A Those medications are things that decrease somebody's

1 sexual arousal. It is things like Depo-Provera, which is a  
2 birth control injection. It is things like drugs that are  
3 used to treat prostate cancer. Those things decrease arousal,  
4 and they can be used to treat impulsive sexual behavior like  
5 biastophilia.

6 Q But they would, they would treat all manner of sexual  
7 arousal; is that correct?

8 A That's correct.

9 Q Yes. So it's nothing that would target biastophilia?

10 A That's correct.

11 Q But the schizophrenia medicine sort of targets those  
12 symptoms? It can help people not have the delusions and the  
13 hallucinations?

14 A Yes.

15 Q What do you know about his medical history or at least as  
16 far as whether or not he was taking his schizophrenia medicine  
17 when he was out of custody prior to his arrest in 1997?

18 A I know that he was in prison right before that, and he  
19 told me that he took medication in prison, but I don't know if  
20 he was medication at the time of the offenses.

21 Q If he were brought back to competency and given the  
22 medicine for schizophrenia, can you say with any degree of  
23 medical certainty that that would not affect his biastophilia?

24 A From what I've seen in records with him, he decompensates  
25 and gets very ill, but when he's appropriately medicated he's

Marie Gehle - Cross by Respondent

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1 still ill. He still has impaired thinking, disorganized  
2 thinking and he still has delusions, and some of those  
3 delusions are sexual in nature.

4 Q Now, one of the tests that you -- one of the risk  
5 assessment measures you used was the Static-99.

6 A Yes.

7 Q And it's safe to say that the, the only variable on there  
8 that is not static is age; is that correct, because that  
9 changes, that will change over time?

10 A Yes. It's, it's something that changes, but other things  
11 change if somebody commits another offense and things like  
12 that.

13 Q But as far as the picture of who he was in 1997 when he  
14 went away to prison and who he is today, if you did a Static-  
15 99 back in prison the day he was sentenced, would it still be  
16 the same four other than the age?

17 A Let me find that because I think it would still be the  
18 same. Yes.

19 Q None of his prison time affected his Static-99 score?

20 A I did not include his prison conduct. Now, in -- it can  
21 be included. So if you can -- if you commit a sexual  
22 infraction in the Department of Corrections and you are  
23 punished for that it has to meet a minimum threshold per the  
24 scoring rules of the static, but that can become their index  
25 offense, so their most recent offense. With him I did not

1 include those charges because it was unclear to me if the  
2 sexual misconduct that he had was consensual sex, and there  
3 were other instances of sexually inappropriate behavior but I  
4 couldn't tie infractions to those. So I didn't know if he was  
5 punished for those things.

6 Q Okay. But as people age, once they're over 40, as people  
7 age, does the risk to reoffend go down as measured by the  
8 Static-99?

9 A Yes. The risk -- when we look at age, so you can get one  
10 point if you're between 18 and basically 35. You get zero  
11 points if you're between like 35 and about 40. You get  
12 negative one point if you're between 40 and basically 60, and  
13 when you're over 60 you get negative three points. So his  
14 score also reflects that negative three points.

15 Q Okay. But it also is a sign that -- it also shows the  
16 fact that there's a recognition that the older people get the  
17 less likely they are to reoffend.

18 A That's correct.

19 Q Once they get to an age of --

20 A Yes.

21 Q Okay. Can the Static-99 measure -- what would his  
22 untreated schizophrenia, how would that effect his risk to  
23 reoffend?

24 A Well, it has nothing to do with the Static-99R.

25 Q Right.

Marie Gehle - Cross by Respondent

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1 A But it does -- untreated schizophrenia can result in more  
2 impaired behavior, more impaired thinking, more delusions and  
3 that can cause somebody to act out in a variety of ways. One  
4 of them could be sexual. In his case it seems like that was  
5 part of his offense pattern.

6 Q Now, you had said that he has a risk of violent crimes  
7 and that there was a risk -- he posed a risk of committing an  
8 assault going forward. Was that not right?

9 A Well, I don't know that I, that I said anything about his  
10 violent crimes but like that are non-sexual but I believe that  
11 he does have a risk to do those things just based on his past  
12 history of doing them repeatedly over and over and over.

13 Q But the risk to commit an assault that wasn't a sexually  
14 violent crime does that make somebody a sexually violent  
15 predator?

16 A No.

17 Q Because what we're talking about is whether or not he has  
18 a risk to commit a crime of sexual violence going forward; is  
19 that correct?

20 A Correct.

21 Q And whether or not he has other assaultive conduct,  
22 that's not what we're talking about here today; is that  
23 correct?

24 A That's correct.

25 Q And, for example, he was doing something, throwing bodily

1 fluids that's not necessarily a sexual violent -- sexually  
2 violent offense; is that correct?

3 A That's not a sexually violent offense.

4 Q Okay. Now, you could have a high score on the static and  
5 also not be a sexually violent predator; is that correct?

6 A That's correct.

7 Q So there has to be some type of connection between the  
8 diagnosis and the risk?

9 A Well, you could have a very high score on the static, but  
10 you might not have a diagnosis, and therefore, you wouldn't  
11 meet criteria because you have to have a mental abnormality or  
12 a personality disorder that's making you likely.

13 Q And there has to be a connection between the mental  
14 abnormality and the risk?

15 A Yes. The mental abnormality or the personality disorder  
16 has to cause some volitional or emotional impairment.

17 Q Okay. The term I get sort of hung up on is likely to  
18 reoffend. You had said according to the static he had 11  
19 percent chance to reoffend within five years?

20 A That's not quite how it is portrayed. People with a  
21 score of 11 within five years, or I'm sorry, people with a  
22 score of four, his score, within five years 11 percent of them  
23 were charged with or convicted of a new sexual offense.

24 Q Okay. How's that different from what I said?

25 A Because it's not that we can just say he has an 11

Marie Gehle - Cross by Respondent

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1 percent chance.

2 Q Okay. All right. And so the next five years people with  
3 that same score, 11 percent of the people with that same score  
4 sexually reoffended in five years; is that correct?

5 A Yes.

6 Q So --

7 A They were caught for that. Yes.

8 Q -- he's 62 right now; is that right or is he 63?

9 Actually that was one of the issues that you had with his  
10 personal history; right, is not being able to --

11 A Yes. He told me -- I mean, he was not clear on how old  
12 he was. He was born in 1956.

13 Q Okay.

14 A So he should be 50 or 62.

15 Q All right. And five years from then he would be 67.

16 A Yes.

17 Q Okay. Does the, does the risk go down as, as you go out  
18 in years? I mean, if it's 11 percent in five years, what's it  
19 in ten years? If you go offense free for five years, what's  
20 it look -- you know, does the risk go up or down when you're  
21 going out to ten years?

22 A Yeah. So I compared him to a routine sample, and it  
23 doesn't give a ten-year rate, but there is some research out  
24 there saying that the longer you're out in the community  
25 offense free your risk decreases.

1 Q Uh-huh.

2 A There's a table in here, I think. I'll have to find it,  
3 but I couldn't tell you right off the top of my head like how  
4 much it decreases.

5 Q But it does decrease?

6 A Yes. In general when they look at the groups that would  
7 be the overall finding, but you have to be completely offense  
8 free, no violent or no sexual behavior within that time  
9 period. If you're out committing offenses that, that could  
10 land you even for a day in jail then it -- your risk to commit  
11 another sex offense actually doesn't decrease. That's what  
12 that research has shown.

13 Q I want to get back to the -- your definition of  
14 biastophilia. Doesn't the person have to get the arousal from  
15 the act of forcing somebody?

16 A Well, it's a six-month pattern of behavior in which the  
17 person is sexually aroused by engaging in coercive sexual  
18 activity with a non-consenting person so.

19 Q How do we -- how do we know he just wasn't aroused by the  
20 12 year old girl?

21 A Well, he started the offense by presenting a knife before  
22 he'd even really seen the 12 year old girl or, you know, maybe  
23 he'd seen her for a second. So, I would --

24 Q Sometimes that can be all it takes to -- if somebody's  
25 attracted.

Marie Gehle - Cross by Respondent

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1 A Perhaps, but especially the girl that was in the bathroom  
2 at the, at the, at the store he saw her for probably a split  
3 second. I mean, she opened that bathroom door and he pushed  
4 his way in and said he wanted sex, had a knife, held that  
5 knife out to her, and I mean that, that decision seems to me  
6 that it was preceding him seeing her or being sexually aroused  
7 by her.

8 Q But just saying that he wanted sex was not necessarily a  
9 sign that he had biastophilia.

10 A That is a sign when under those conditions with a  
11 complete stranger who he is not -- has not been stalking her  
12 that we know of, I mean, she was in the bathroom, he comes in.  
13 He goes to the bathroom, knocks on the door, hears her say  
14 something and hears that she's a female, that she's likely  
15 young. She was 12. So she probably sounded like a 12 year  
16 old and then when she comes out he pushes his way in and  
17 threatens her and sex is immediately what he wanted. So that  
18 is evidence of that sort of arousal pattern.

19 Q And that happened in 1996, '97?

20 A That was in 1996 after he had been out of prison for less  
21 than a month and he had been in prison on a very, very long  
22 sentence. He had been in there I believe for 23 years on a  
23 kidnapping charge.

24 Q So the last evidence that you have that he has -- that he  
25 has acted on any type of biastophilia is evidence that

1 happened in 1996?

2 A No. The other evidence that I definitely have is from  
3 the offense that he committed after he was out on bond for the  
4 1996 offense. He was not convicted of that offense because it  
5 was dismissed when he was extradited here, but I believe that  
6 they have a hold on him. So those charges could become  
7 active.

8 Q But that's still that same time period of 1996, '97, '98?

9 A That was, that was 90 -- that was '97. So I'm looking  
10 for a six-month pattern of behavior, and I have that. We also  
11 have the earlier offense from the 1970s, but I don't have a  
12 lot of information about that one. His sister told me that  
13 that that offense had to do with him having some sexual  
14 behavior with a neighbor, and he got charged with a sexual  
15 offense for that when he was 16.

16 Q But still we don't have anything this century, no conduct  
17 this century; right, nothing since 2000?

18 A There are some allegations and information in the  
19 Department of Corrections' records that he inappropriately  
20 touched another inmate in order to get moved to a different  
21 unit, and there is also information that he was being  
22 investigated under the Prison Rape Elimination Act for  
23 behavior that occurred in prison and that has definitely been  
24 in the last century. Those, those incidents were in 2015 and  
25 2016.

Marie Gehle - Cross by Respondent

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1 Q What discipline did he receive for those?

2 A Those are the incidents that I don't know if they were  
3 tied to disciplinary infractions.

4 Q So you don't know if they were -- that that was some type  
5 of consensual activity that was going on or whether or not  
6 that was a sign of somebody forcing themselves? You don't  
7 have information?

8 A So the quote that I, that I got from the records was that  
9 he reported he wanted to be removed from the step-down unit.  
10 So he inappropriately touched another resident, and then I  
11 know that Prison Rape Elimination Act investigations are when  
12 somebody alleges nonconsensual sexual contact. If he was just  
13 having sex with someone in the prison and it was consensual he  
14 could be charged with a sexual misconduct infraction, which he  
15 was in 2009, or maybe not 2009. That was in 2000 and that --  
16 the write-up, narrative on that offense appeared that the sex  
17 could have been consensual, but --

18 MR. FALK: One moment, Your Honor.

19 BY MR. FALK:

20 Q One, one little last area. You had said that he had  
21 schizophrenia and that's in the DSM-5?

22 A Yes.

23 Q And that's on page 99, and they list a lot of criteria  
24 there, diagnostic criteria.

25 A Yes.

1 Q Okay. And what does that term, diagnostic criteria,  
2 mean?

3 A Well, it's, it's symptoms or conditions that have to  
4 exist in order to meet criteria for this disorder.

5 Q And so this lists eight, one, two, three, four, five,  
6 six, seven different criteria that you have to meet; is that  
7 correct?

8 A Well, there, there are five different symptoms, that  
9 that's the hallucinations, delusions, disorganized speech,  
10 grossly disorganized or catatonic behavior, negative symptoms.  
11 They have to have two or more of those for a significant  
12 period of time during a one-month period or less if it -- if  
13 they've been treated, and they have to have -- at a minimum  
14 they have to have delusions, hallucinations or disorganized  
15 speech. That has to be one of the symptoms that they have.

16 Q And by -- oh, go ahead.

17 A Then the other criteria are other conditions, not  
18 necessarily symptoms. So it's time periods. It's -- if they  
19 have this disorder the symptoms could be because of that and  
20 you need to be like probably not diagnosed. It depends. It's  
21 a complicated diagnosis.

22 Q But is there -- is there uniformity in, in the  
23 psychiatric and psychological fields that these are the --  
24 this is the way you diagnose somebody with schizophrenia?

25 A Yes.

Marie Gehle - Cross by Respondent

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1 Q You follow these, these criteria?

2 A Yes.

3 Q So that if you talked to a doctor in California and said,  
4 "I have this guy. He's done, dut, dut, dut, dut," and you  
5 knocked off, you checked the boxes on some of these criteria  
6 he would possibly or she would possibly agree with you, right,  
7 because you all are using the same criteria for the diagnosis?

8 A Yes.

9 Q What are the diagnostic criteria for biastophilia?

10 They're not in this book; are they?

11 A Well, it's -- the diagnostic criteria are, for a  
12 paraphilia it's a six-month pattern of deviant sexual arousal  
13 or paraphilic arousal and that paraphilia is -- would go back  
14 to that same definition. So it's any intense or persistent  
15 sexual interest other than sexual interest in genital  
16 stimulation or preparatory fondling with phenotypically  
17 normal, physically mature consenting human, human partners.  
18 So a paraphilia is anything outside those conditions. So  
19 right there is consenting human partners. So if somebody is  
20 not consenting that's a paraphilia. A paraphilic disorder has  
21 to be a six-month pattern of that sexual arousal that the  
22 person has acted on with like non-consenting person or that  
23 causes them distress and impairment, like they're very upset  
24 about it. In his case he's acted on it.

25 Q Is there universal agreement in your -- in forensic

1 psychology that biastophilia is a paraphilia?

2 A Biastophilia is listed in all of the like lists of  
3 paraphilias that I've ever seen. I mean, there are, there are  
4 many paraphilias and really anything outside of that  
5 definition could be a paraphilia.

6 Q I have no further questions.

7 THE COURT: Any redirect?

8 MR. MORROW: Briefly, Your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MR. MORROW:

12 Q Dr. Gehle, we've talked a little bit about Mr. Griffin's  
13 schizophrenia, and Mr. Falk asked you a little bit about he's  
14 -- decompensation or his deterioration of his, of his  
15 symptoms. In your report you looked at his history of  
16 decompensation when noncompliant with medications, and you  
17 found that that was documented, that was documented in the  
18 records; is that correct?

19 A Yes. When he stops taking medications he will have an  
20 increase in symptoms or we call that decompensation. So he's  
21 not functioning at the level that he's capable of.

22 Q You also found in your report that even when he was  
23 taking the medication that he -- when he was taking the  
24 medication that, that his delusion -- delusional and  
25 disorganized thinking appeared to remain present while other

Marie Gehle - Redirect by State

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1 symptoms were remitted; is that correct?

2 A That's correct.

3 Q Or decreased.

4 A Yes.

5 Q So even when he was taking the medication he still had  
6 this delusional or this thinking and disorganized thinking; is  
7 that correct?

8 A Yes.

9 Q Okay. In addition to -- we talked about the Static-99,  
10 but we also talked about some dynamic risk factors that he had  
11 and other concerns that you looked at. You don't just look at  
12 the Static-99 when assessing if someone's likely to reoffend;  
13 do you?

14 A That's correct.

15 Q Okay. And you found -- you looked at whether or not he  
16 carried a weapon in his, in his crimes. Is that one of the  
17 things you looked at?

18 A Yes.

19 Q And you found that significant; correct?

20 A Yes.

21 Q And why did you find that significant?

22 A Well, it means that he didn't want a consenting victim.  
23 He wasn't going to use sort of the normal or more common, less  
24 harmful tactics to gain a sexual partner. I mean, it's not  
25 uncommon for strangers to have sex, but there's a variety of

1 like courtship behaviors that occur before somebody will agree  
2 to have sex with you or, you know, even if you are -- if  
3 you're gaining consent because you're paying somebody I  
4 wouldn't call that abnormal, but this is "I'm going to use a  
5 knife. I'm threatening you. I'm showing you this knife," and  
6 the only reason that you do that is to create fear and to make  
7 sure that the victim knows that you're going to hurt them if  
8 you -- if they try to, to fight and that's very problematic.

9 Q In addition to looking at like whether he used a weapon,  
10 you looked at other factors, and one of those was whether he  
11 offended against strangers like you just mentioned; is that  
12 correct?

13 A Correct.

14 Q And you also looked at how he offended and the  
15 circumstances. He offended against minors where interested  
16 adults were nearby; is that correct?

17 A Yes.

18 Q And he offended -- did you also look at whether he  
19 offended in situations where he could easily be caught?

20 A Yes.

21 Q And why is, why is that significant?

22 A Well, I mean, that speaks to impulse control problems. I  
23 mean, if you're -- if -- this is a 12 year old girl at a  
24 store. I mean, 12 year old girls can go to stores by  
25 themselves, but it's likely that there are adults attached.

Marie Gehle - Redirect by State

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1 So that's very dangerous. I mean, you're putting your safety  
2 at risk because that's what happened in that situation. The  
3 offense that happened at the convenience store he, he pushed  
4 that girl into the bathroom. She screamed. Her dad  
5 immediately came, and her dad was talking about going out to  
6 the car and getting a weapon according to Mr. Griffin, and so  
7 he fled because he thought, "I'm going to get shot here,"  
8 because that's what happens when you offend a stranger. You  
9 have no concept of, you know, who's watching them. You don't  
10 know who they're attached to. You don't know if that's their  
11 dad, is that huge guy over there or if the girl came to the  
12 store to themselves. You don't know how dangerous it is, but  
13 you can assume that it's very dangerous when you're offending  
14 a stranger and in a public place. It's -- and with his sister  
15 present, too, I mean, she's, she's likely going to wonder,  
16 "Well, where he's at," and look for him, and it's very likely  
17 that he's going to get caught in that situation.

18 Q And then Mr. Falk talked about the Static-99 and how it  
19 looks at a five-year risk assessment or versus but when you're  
20 doing an evaluation in this case you're not just looking at  
21 five years; is that correct? You're looking at whether he's  
22 likely to ever reoffend; is that correct?

23 A Yes. Yes.

24 Q And you all -- looking at his, his sex offense history  
25 you found that he offended 30 days after his release from

1 prison; is that correct?

2 A Yes.

3 Q And while out on bond, after being released from being  
4 arrested for a sexual offense, he offended not three months  
5 later in North Carolina.

6 A That's correct.

7 Q Okay.

8 A And those are the only times that he has been outside of  
9 prison in his whole adult life. He has been incarcerated for  
10 the most part since he's been 16 years old except for those  
11 very short periods, just several months, and in those months  
12 he offended sexually.

13 Q Thank you, Dr. Gehle. No further questions.

14 THE COURT: Any recross?

15 MR. FALK: No, Your Honor.

16 THE COURT: Doctor, you may step down. Thank you.

17 A Thank you.

18 THE COURT: All right. Ladies and gentlemen, what we're  
19 going to do at this time it's a few minutes after five. I'm  
20 going to -- we're going to stop for the day. I'm going to ask  
21 you to be back here tomorrow morning at 9:30. Be back here  
22 tomorrow morning at 9:30. Do not discuss this case at all.  
23 As I told you from the outset, you're to decide this case  
24 based solely upon the evidence and testimony as presented in  
25 this courtroom and nowhere else. You all have a nice evening.

Motions

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1 I'll see you back tomorrow morning at 9:30. All right. He'll  
2 show you where to go.

3 (Whereupon, the following takes place outside the  
4 presence of the jury.)

5 THE COURT: All right. Anything else from the State at  
6 this time?

7 MR. MORROW: No, Your Honor. The State would rest its  
8 case at this time.

9 THE COURT: All right. Anything from Defense counsel?

10 MR. FALK: Are we doing a motion?

11 THE COURT: Well, what I'm going to do, I mean, I should  
12 have let you do that in front of the jury. When I bring the  
13 jury back in in the morning I'll recognize you and you can  
14 rest. If you want to go ahead and argue your motion.

15 MR. FALK: Yes, Your Honor.

16 THE COURT: Go ahead.

17 MR. FALK: I mean, Your Honor, really our argument would  
18 be that the testimony has got to be that he suffers from a  
19 mental disease, that he suffers from a mental abnormality or a  
20 personality disorder that makes it likely that he's going to  
21 reoffend. The testimony from the State's witness that it's 11  
22 percent, that he fits in a category of people which are likely  
23 to reoffend 11 percent of the time over the next five years.  
24 She also testified that his risk to reoffend goes down the  
25 older he gets. I think as a -- at some point 11 percent

1 can't, can't fit the definition of likely.

2 THE COURT: Well, I mean, the statute doesn't define what  
3 percent. She's --

4 MR. FALK: But it does say likely.

5 THE COURT: Well, she's testified I think sufficient --

6 MR. FALK: Thank you.

7 THE COURT: -- to get the case to the jury but your  
8 motion is so noted for the record.

9 MR. FALK: Thank you.

10 THE COURT: And I don't disagree with what you're saying.  
11 I mean, it does say likely, mental abnormality, cause one  
12 likely to reoffend, and while that's what the statute says,  
13 the statute doesn't define likely.

14 MR. FALK: Yes, Your Honor.

15 THE COURT: So noted for the record. All right. You had  
16 indicated previously that you don't intend to put up any  
17 witness, witnesses?

18 MR. FALK: That's right, Your Honor. Obviously, if this  
19 was a criminal case, we would talk to my client to make sure  
20 he was waiving his right. I think as it stands under the  
21 South Carolina it does reflect that. So I don't think -- I  
22 don't think we have to -- it's necessary you do a colloquy  
23 about whether or not he's waiving that right. I am making  
24 that decision as his counsel based on my conversations with  
25 him that I do not think that that would work.

Motions

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1 THE COURT: All right. Well, and for the record you say  
2 conversations and he's attempted to try to talk to you today  
3 and you certainly told me here at side bar, I don't know if  
4 it's on the record or not, indicated that you didn't  
5 necessarily understand what he was saying. It was not in a  
6 coherent manner.

7 MR. FALK: None of it was, yes.

8 THE COURT: Okay. So anything else from the State at  
9 this time?

10 MR. MORROW: Nothing from the State at this time, Your  
11 Honor.

12 THE COURT: Well, tomorrow you can certainly rest when I  
13 bring the jury back out, Mr. Morrow. All right.

14 MR. MORROW: Yes, Your Honor.

15 THE COURT: I'll -- at that point you need to put on the  
16 record, "I renew my previous motions" --

17 MR. FALK: Right.

18 THE COURT: -- just to make sure and I'm going to  
19 recognize you after I, in essence --

20 MR. FALK: Okay. Thank you.

21 THE COURT: -- say my rulings remain the same, and then  
22 you'll rest, I'm assuming, and then renew your motions again.

23 MR. FALK: Right. And again.

24 THE COURT: And then we'll go into closing arguments.

25 All right.

1 MR. MORROW: Thank you, Your Honor.

2 MR. FALK: Thank you.

3 OFF THE RECORD

4 (On the record, October 23, 2018. The following takes  
5 place outside the presence of the jury.)

6 THE COURT: All right. Anything before I bring the jury  
7 out, Mr. Morrow?

8 MR. MORROW: Nothing from the State, Your Honor.

9 THE COURT: Mr. Falk?

10 MR. FALK: Nothing from the Respondent.

11 THE COURT: What I put in here pursuant to your objection  
12 yesterday, Mr. Falk, I'm going to just read -- just listen to  
13 this. You had an objection to mental health facility, and I  
14 just put in here provided in a secure facility.

15 MR. FALK: Thank you.

16 THE COURT: That's what the statute says. Okay. Bring  
17 me the jury, please.

18 Well, hold on just a second. You're going to rest.  
19 You're going to renew your motions. I'm going to recognize  
20 you, Mr. Falk.

21 MR. FALK: Yes, sir.

22 THE COURT: You'll rest, renew your motions and we'll go  
23 straight into closing arguments. Let me ask you all this  
24 question, I kind of started doing this a little bit and that  
25 is giving the charge before you do your closing arguments.

Motions

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1 What do you all -- any objections to that?

2 MR. FALK: I love the idea.

3 THE COURT: Mr. Morrow.

4 MR. MORROW: It doesn't bother me, Your Honor.

5 THE COURT: Well, I mean, it gives them the law and kind  
6 of lets them at least be thinking about while you're making  
7 your arguments, and I just -- I think Judge Cottingham used to  
8 do that, and I just -- I tend to like that when they're  
9 hearing the last word from you all. Okay?

10 MR. FALK: Just curious, do you notice any more questions  
11 or less questions coming back on the law?

12 THE COURT: You know, when I first got on the bench I  
13 didn't send the charge back. Then I started sending it back,  
14 and then I've stopped again; and it just seems when you don't  
15 send it back there are more questions that come back, and I  
16 tried a case last -- was it week before last, week before last  
17 in Florence, it was an attempted, attempted murder case,  
18 wasn't it, ABHAN case. You know, that statute that they have  
19 now, I mean, everything, ABHAN, A and B First, A and B Second,  
20 A and B third, are all lesser included offenses, and the  
21 statute says that, which necessitated I think based upon the  
22 facts that came out during the course of the trial required  
23 that I charge all of that, and after the third time bringing  
24 the jury out and charging them on A and B first or A and --  
25 and/or A and B second and third I sent it back. The lawyers

1 initially objected to it. I said, "Whether you object to it  
2 or not, at this point I'm sending it back," but it just --  
3 it seems like there are less questions when you send it back,  
4 and I'm not saying I'm going to do that in this case.  
5 This is pretty straightforward, but when you have multiple  
6 charges, so to speak, and multiple lesser included offenses, I  
7 think the charge needs to be sent back with them. So all  
8 right. Well, I'm going to go ahead and charge them after we  
9 do all the resting and etcetera and go from there.  
10 All right. You can bring me the jury now, please, sir. Other  
11 than that objection, was there any other objection in this  
12 charge?

13 MR. FALK: No, Your Honor.

14 THE COURT: Okay.

15 (Whereupon, the following takes place in the presence of  
16 the jury.)

17 THE COURT: All right. Mr. Foreman, ladies and gentlemen  
18 of the jury, I hope you all had a nice evening last night and  
19 are ready to proceed this morning. I'm going to -- we're  
20 going -- what I'm going to do at this time is I'm going to  
21 recognize the State. Mr. Morrow.

22 MR. MORROW: Yes, Your Honor. At this time the State  
23 would rest its case.

24 THE COURT: All right. Mr. Falk.

25 MR. FALK: The Respondent will also rest.

Motions

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1 THE COURT: Well, you need -- renew your motions, prior  
2 motions.

3 MR. FALK: Renew the prior motions and then rest.

4 THE COURT: The Court's rulings on those motions remain  
5 the same. The Defense has rested at this point and again  
6 renewed its prior motions of which the Court's rulings remain  
7 the same. All right. Thank you. You may be seated.

8 Ladies and gentlemen, you have heard all the testimony  
9 that you are going to hear in this case. What we're going to  
10 do at this point is -- that which remains is a charge on the  
11 law and arguments of counsel. There's no set in stone order  
12 in which that takes place. When I initially got on the bench  
13 back in 2010 or ever since I've been practicing law most  
14 judges have always let the lawyers argue and then charge you  
15 on the law. Okay. There's a judge that's now retired, but  
16 held a lot of court down here, Judge Cottingham, from  
17 Bennettsville, always or liked to give the charge first and  
18 then let you hear from the lawyers, and I've started doing  
19 that, and I kind of like the way that goes, giving the lawyers  
20 the last word to you as opposed to me. I will remind you now  
21 and, and before I turn it over to the lawyers for closing  
22 arguments, their arguments are not evidence in this case. The  
23 evidence as I've told you from the outset is based upon the  
24 testimony that was in here and items of evidence that may have  
25 been introduced during the course of the trial. All right.

Charge

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1           Now, I'm going to read this charge to you. I ask that  
2 you pay very close attention to what I tell you the law is as  
3 it applies to this case. Okay.

4           The Petitioner in this case, ladies and gentlemen, the  
5 State of South Carolina has brought this case under the  
6 Sexually Violent Predator Act of South Carolina. The State  
7 seeks the civil commitment of the Respondent, Mr. Thomas  
8 Griffin, for long-term control, care and treatment in a secure  
9 facility. This is not a criminal proceeding seeking  
10 incarceration but rather a proceeding seeking civil  
11 commitment. The State of South Carolina alleges or claims  
12 that Respondent, Thomas Griffin, is a sexually violent  
13 predator under the law. Respondent denies that he is a  
14 sexually violent predator, and the burden of proof is  
15 therefore on the State of South Carolina to prove by evidence  
16 sufficient to satisfy each of you beyond a reasonable doubt  
17 that Respondent is a sexually violent predator. If the State  
18 is unable to meet that burden of proof as to one or more of  
19 the elements of this claim, Respondent is entitled to a  
20 finding that he is not a sexually violent predator.

21           In most civil cases the Petitioner only has the burden of  
22 proving that a fact is more likely true than not true, such as  
23 by the greater weight or preponderance of the evidence.  
24 However, I say that again, however, in this case the State's  
25 burden of proof must be more powerful. It is -- it must be

Charge

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1 beyond a reasonable doubt.

2 Now, under the constitution and laws of South Carolina  
3 you are the sole finders of the facts in this case. I may not  
4 intimate to you in any way what I may think about the claims  
5 in this case. You also are the judges of the credibility and  
6 believability of the witnesses who have testified. In passing  
7 upon her credibility, the witness's credibility you may take  
8 into consideration many things such as what was the manner and  
9 appearance of the witness who testified, was she  
10 straightforward or was she hesitant in answering, how did the  
11 witness come to know the facts that she testified to or what  
12 was her ability to know these facts, is there some reason a  
13 witness would want to give testimony which would help or hurt  
14 one side or the other, in other words, was the witness biased  
15 or prejudiced and was the testimony of a witness strengthened  
16 or weakened by other testimony or evidence. You, ladies and  
17 gentlemen of the jury, may believe as much or as little of  
18 each witness's testimony as you think proper. You may believe  
19 the testimony of a single witness against that of many  
20 witnesses or just the opposite. You may believe a part of a  
21 witness's testimony and disbelieve the rest, and you do not  
22 determine the truth merely by counting the number of witnesses  
23 presented by each side. The fact that testimony is not  
24 controverted does not mean you must accept it as true and  
25 undisputed. You must gauge the credibility of the witness to

1 determine the believability or truth of the facts offered  
2 through the testimony. Keep in mind throughout this process  
3 you have but one objective, to seek the truth, regardless of  
4 the source from where it comes.

5       There are two types of evidence, ladies and gentlemen,  
6 which are presented during a trial, direct evidence and  
7 circumstantial evidence. Direct evidence is the testimony of  
8 a person who claims to have actual knowledge of a fact, such  
9 as an eyewitness. It is evidence which immediately  
10 establishes the main fact to be proved. Circumstantial  
11 evidence is proof of a chain of facts and circumstances  
12 indicating the existence of a fact. It is evidence which  
13 immediately establishes collateral facts from which the main  
14 fact may be inferred. Circumstantial evidence is based on  
15 inference and not on personal knowledge or observation. The  
16 law, ladies and gentlemen, makes absolutely no distinction  
17 between the weight or value to be given to either direct or  
18 circumstantial evidence, nor is a greater degree of certainty  
19 required of circumstantial evidence than of direct evidence.

20       Now, ladies and gentlemen, you heard the testimony of a  
21 witness who has special knowledge, skill, experience, training  
22 or education in a particular field and who has given her  
23 opinion as an expert as to matters in which she is skilled.  
24 In determining the weight to be given to such an opinion you  
25 should consider the qualifications and credibility of the

Charge

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1 expert and her reasons given for her opinion. You are not  
2 bound by such opinions. Give them the weight, if any, to  
3 which you deem them to be entitled. The value and effect of  
4 expert testimony is a matter to be solely estimated by you,  
5 the jury. No opinion of an expert can be accepted in and of  
6 itself as truthful or reliable but must be weighed by you and  
7 convince your judgment beyond a reasonable doubt and with the  
8 same force and effect as any other fact proved in this case  
9 before you can rely upon it. You must consider expert  
10 testimony in the same manner as you do any other testimony and  
11 give to it such weight as you believe it to be entitled when  
12 considered with all the other evidence in the case. Such  
13 testimony is given for the purpose of helping you and not for  
14 the purpose of controlling your judgment.

15 Now, the same constitution and law that makes you the  
16 finders of the facts, ladies and gentlemen, makes me the judge  
17 of the law. You must accept as correct the law which I charge  
18 and apply to you in this case and reach a verdict as a result  
19 of me charging you on this law.

20 If I should make an error in the law as I instruct it to  
21 you there is another time and another place and another court  
22 in which that error can be considered and if necessary  
23 corrected, but for the purpose of this case today you must  
24 accept the law as I charge it to you, and in that regard I  
25 tell you that neither you nor I for that matter should be

Charge

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1 concerned about what we think the law ought to be but only  
2 concern yourselves with what I charge you the law, in fact, to  
3 be.

4 Now, what is a reasonable doubt in the law? A reasonable  
5 doubt, ladies and gentlemen, is the kind of doubt that would  
6 cause a reasonable person to hesitate to act. Proof beyond a  
7 reasonable doubt is proof that leaves you firmly convinced.

8 Now, there are very few things in this world that we know  
9 with absolute certainty, and the law does not require proof  
10 that overcomes every possible doubt. What is required is if  
11 based on your consideration of the evidence you are firmly  
12 convinced that the Respondent is a sexually violent predator  
13 then you must return a verdict for the State. If on the other  
14 hand you think there is a real possibility that he is not a  
15 sexually violent predator you must give him the benefit of the  
16 doubt and find a verdict for the Respondent. Reasonable doubt  
17 may arise from evidence that is in the case or from the lack  
18 of evidence in the case. It is up to you, ladies and  
19 gentlemen, to determine whether or not a reasonable doubt  
20 exists in this case. Excuse me.

21 The elements, ladies and gentlemen, which the State must  
22 prove beyond a reasonable doubt are, one, that the Respondent  
23 has been convicted of a sexually violent offense. I charge  
24 you that assault with intent to commit assault, that assault  
25 with intent to commit criminal sexual conduct with a minor in

Charge

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1 the second degree is a sexually violent offense. Two, that  
2 Respondent suffers from a mental abnormality or personality  
3 disorder that makes him likely to engage in acts of sexual  
4 violence if not confined in a secure facility for long-term  
5 control, care and treatment. Inherent in these two elements  
6 is that the State must prove the requirement that Respondent's  
7 mental abnormality or personality disorder causes him serious  
8 difficulty in controlling his behavior. In other words, the  
9 State must prove beyond a reasonable doubt that the individual  
10 it seeks to commit suffers from a mental illness which he  
11 cannot sufficiently control without the structure and care  
12 provided in a secure facility rendering him otherwise likely  
13 to commit a dangerous act. In order for you to better  
14 understand the elements of the State's cause of action I am  
15 going to define for you some of the terms that I have just  
16 used.

17 A mental abnormality means a mental condition affecting a  
18 person's emotional or volitional capacity that predisposes the  
19 person to commit sexually violent offenses. This mental  
20 abnormality or personality disorder must cause Respondent  
21 serious difficulty in controlling his behavior.

22 Likely to engage in acts of sexual violence means the  
23 person's propensity to commit acts of sexual violence is of  
24 such a degree as to pose a menace to the health and safety of  
25 others so that he is dangerous to others. Again, I remind you

1 that the burden of proof is on the State to prove to your  
2 satisfaction beyond a reasonable doubt that the Respondent has  
3 been convicted of a sexually violent offense as I have  
4 instructed you and also suffers from a mental abnormality or  
5 personality disorder that makes Respondent likely to engage in  
6 acts of sexual violence if not confined in a secure facility  
7 for long-term control, care and treatment. If the State  
8 carries its burden of proof and convinces you beyond a  
9 reasonable doubt as to each of the two elements of its cause  
10 of action it is entitled to a finding that Respondent is a  
11 sexually violent predator. If the State does not meet that  
12 burden of proof as to one or both of these elements Respondent  
13 is entitled to a finding that he is not a sexually violent  
14 predator.

15 All right. Ladies and gentlemen, I have charged you on  
16 the law applicable to this case. What I'm going to do -- what  
17 we're going to do now is I'm going to turn it over to the  
18 lawyers for closing arguments, and once they are finished I'm  
19 going to give you just a couple of more instructions here  
20 before I turn it over to you all for your deliberations. At  
21 this time the State's recognized for closing arguments.

22 MR. MORROW: Thank you, Your Honor. May it please the  
23 Court.

24 Thomas Griffin is a sexually violent predator. Mr.  
25 Griffin needs treatment in a secure facility. He has a long

## Closing Argument by State

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1 documented history of schizophrenia, a mental illness that  
2 impairs his perception of reality. In addition, you heard  
3 from Dr. Gehle who found that he suffers from other specified  
4 paraphilic disorder, biastophilia, a sexual arousal to non-  
5 consenting sex or rape.

6 Mr. Griffin has demonstrated this behavior repeatedly  
7 throughout his life. He was convicted in 1972 of assault with  
8 intent to commit rape. He then went to prison in 1973 for  
9 about between 20 and 40 years. He was released from prison in  
10 North Carolina on November 14<sup>th</sup>, 1996. Then on December 19<sup>th</sup>,  
11 1996, he approached a 12 year old female who was in the  
12 restroom at the Dixie Dollar Amusements in Loris, South  
13 Carolina. He presented a knife and told the victim that he  
14 had not had sex in three years. That victim yelled for help  
15 and was able to escape Mr. Griffin. Mr. Griffin was  
16 apprehended on December 31<sup>st</sup>, 1996, and extradited to South  
17 Carolina on February 12<sup>th</sup>, 1997. He was released on bond on  
18 February 15<sup>th</sup>, 1997, and on May 28<sup>th</sup>, 1997, Mr. Griffin, while  
19 still out on bond for his offense in South Carolina, was  
20 arrested in North Carolina for first degree rape and first  
21 degree kidnapping in Columbus County, North Carolina. It is  
22 alleged that he entered Williams Town -- or a school and  
23 sexually assaulted a 12 year old female stranger who was using  
24 the bathroom. It is alleged that Mr. Griffin presented a  
25 knife and forced the victim to strip, penetrated the victim

1 digitally and attempted to penetrate her with his penis. The  
2 victim escaped and ran, and ran towards the classroom. Mr.  
3 Griffin allegedly tried to take her from the restroom.

4 On May 29<sup>th</sup>, 1997, he gave a statement to law enforcement  
5 that Dr. Gehle told you about confirming much of the victim's  
6 account of that situation in North Carolina. Mr. Griffin was  
7 then extradited to South Carolina for the offense in Horry  
8 County where he was sentenced to 20 years of incarceration on  
9 June 16<sup>th</sup> of 1999.

10 Thomas Griffin cannot control himself. Despite the fact  
11 that he's been in prison for much of his adult life, he has  
12 still managed to be arrested for three separate sexual  
13 offenses. Not 30 days after being released from prison in  
14 1996 he offended in Horry County. After making bond for that  
15 offense in 1997, he was again charged in May for, for almost  
16 an identical offense except this time he went into a  
17 school.

18 He offended in very public places. He offended against  
19 stranger victims. He offended in places where he was very  
20 likely to get caught, and he offended where there were  
21 interested adults around. He also used a weapon. Mr. Griffin  
22 cannot control his sexual urges. He needs treatment, and that  
23 treatment should happen in a secure facility under the  
24 supervision of the South Carolina Department of Mental Health.

25 Now, why are we here today? We're here to seek civil

## Closing Argument by State

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1 commitment. It's not about punishment. It's about treatment  
2 in a secure facility to protect the public during the  
3 treatment process. The secure facility is under the  
4 jurisdiction of the South Carolina Department of Mental  
5 Health. I mean, excuse me, Thomas Griffin needs help and the  
6 public needs protection from him while he gets this treatment.

7       And what does the State have to prove? The State has to  
8 prove that he's been convicted of a sexually violent offense  
9 and that he suffers from a mental abnormality or personality  
10 disorder that makes him likely to reoffend if not confined for  
11 treatment. The burden of proof in this case is on the State.  
12 Proof beyond a reasonable doubt, as you just heard, is not  
13 proof beyond all doubt or any doubt or every doubt. There are  
14 few things in this world we know with absolute certainty, but  
15 proof beyond a reasonable doubt is proof that leaves you  
16 firmly convinced.

17       What, what evidence has been provided? The State has  
18 provided evidence that he has been convicted of a sexually  
19 violent offense. We put the certified copy of that conviction  
20 into the, into the record and you'll have that conviction to  
21 look at. The State has met -- has proved that element of this  
22 -- of its case. He's been convicted of assault with intent to  
23 commit criminal sexual conduct with a minor in the second  
24 degree.

25       The second element the State has to prove is that he

1 suffers from a mental abnormality or personality disorder that  
2 makes him likely to reoffend if not confined for treatment.  
3 To that, to that the State has provided you with the testimony  
4 of Dr. Marie Gehle. Dr. Gehle's a chief psychologist with the  
5 South Carolina Department of Mental Health who's been  
6 practicing for 18 years. She's done over 200 forensic  
7 evaluations of sex offenders. She talked about her  
8 methodology, her evaluation. She talked about how she  
9 reviewed records, including criminal history, mental health  
10 history, disciplinary history, community supervision records,  
11 prior treatment, medical history and educational history. She  
12 talked about how she conducted an in-person interview with Mr.  
13 Griffin, conducted an actuarial assessment assessing his risk  
14 to reoffend looking at static risk factors for re-offense.  
15 She also talked about looking at empirically supported dynamic  
16 risk factors for re-offense.

17 Well, she found that he had multiple of those. She  
18 diagnosed him with other specified paraphilic disorder,  
19 biastophilia. Biastophilia is a type of paraphilia in which  
20 an individual is sexually aroused by engaging in coercive  
21 sexual acts with non-consenting people. Otherwise, basically,  
22 he's aroused by rape. Mr. Griffin has convicted or been  
23 convicted of two sexual assaults and has been charged with a  
24 third. Not less than 30 days after his release from a 23-year  
25 prison sentence, Mr. Griffin attempted to sexually assault a

## Closing Argument by State

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1 12 year old female stranger in a public restroom using a  
2 knife. While on bond he committed another offense in North  
3 Carolina. Use of a weapon during these sexual assaults  
4 suggests that he was interested in coercive sex with a non-  
5 consenting victim.

6 His diagnosis of schizophrenia, long documented history  
7 of schizophrenia, he's exhibited delusions and disorganized  
8 speech that Dr. Gehle told you about, his history of auditory  
9 and visual hallucinations when not taking his antipsychotic  
10 medication, all these -- although these hallucinations stop  
11 with medication, delusional and disorganized thinking still  
12 appear to remain present even with the medication.

13 Why -- the State also has to prove that he's likely to  
14 offend if not confined for treatment. Now, part of that Dr.  
15 Gehle looked at static risk factors. She looked at his  
16 Static-99R score, and that -- what that is essentially is that  
17 he -- she compared his score on this instrument to other sex  
18 offenders and what their score was on the instrument, and when  
19 they -- when she did that she was able to get a, a risk score,  
20 and what she found was that his risk to reoffend was about  
21 twice that of a normal or average sex offender.

22 She also looked at his dynamic risk factors. She would  
23 say had a preference for pubescent children. He had offense  
24 supportive attitudes, a preference for sexualized violence, no  
25 long term previous romantic relationships, poor problem

1 solving abilities, lifestyle impulsiveness and resistance to  
2 rules and supervision. He has two -- he has been charged in  
3 SCDC with at least two criminal offenses. He's had 20 or  
4 while he was in prison he had 29 disciplinary infractions, and  
5 one of those was for sexual misconduct with another inmate.

6 The State asks that you find Thomas Griffin is a sexually  
7 violent predator. Through his actions and throughout his life  
8 he has demonstrated inability to control his sexual urges. He  
9 is a sexually violent predator. Despite spending much of his  
10 adult life in prison he has managed -- been charged with three  
11 separate sexual offenses. He has offended against 12 year old  
12 girls in public places, in close proximity to interested  
13 adults. He used a weapon in those offenses. He committed  
14 sexual misconduct while incarcerated and he's been convicted  
15 of a sexually violent offense. He suffers from two mental  
16 abnormalities, other specified paraphilic disorder,  
17 biastophilia and schizophrenia. He has demonstrated an  
18 inability to control those urges and despite a high likelihood  
19 that he would get caught. He is a sexually violent predator  
20 and we ask that you find him to be a sexually violent predator  
21 and commit him to the Department of Mental Health Sexually  
22 Violent Predator Treatment Program in a secure facility where  
23 he can receive the treatment that he needs and so the public  
24 can be protected during the treatment process. Thank you.

25 THE COURT: Mr. Morrow, Mr. Falk, can you all come here,

## Closing Argument by Respondent

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1 come here a minute?

2 (Whereupon, a bench conference is held in the presence,  
3 but out of the hearing of the jury.)

4 MR. FALK: May it please the Court?

5 THE COURT: Mr. Falk, yes, sir.

6 MR. FALK: I do disagree with Mr. Morrow. Thomas Griffin  
7 is not a sexually violent predator. Thomas Griffin has  
8 schizophrenia. My client can get better. It has happened in  
9 the past. When he goes to a forensic hospital on the property  
10 where the Department of Mental Health, as Dr. Gehle said that  
11 he could go to a facility to get rehabilitated at a hospital  
12 to be brought back to sanity. She said that's where you would  
13 go to treat somebody like that. That's where you would go to  
14 be restored to sanity. That was her testimony. She said that  
15 the sexually violent predator treatment program was not that  
16 same type of facility. My client needs a mental health  
17 facility. He doesn't need to go to a facility that's storing  
18 a bunch of pedophiles.

19 The State's got to prove that he has a mental abnormality  
20 or personality defect that makes it likely that he's going to  
21 commit a crime. This is sort of what I was talking about at  
22 the beginning, that just the fact that you commit the crime  
23 does not necessarily mean that you've got a mental abnormality  
24 that makes you want to commit the crime. What I was alluding  
25 to in my opening argument when I was talking about some people

1 go in and steal stuff because they want what they stole, a guy  
2 goes and steals a chocolate bar because he really likes  
3 chocolate. That's not a mental illness. It's the person who  
4 steals the chocolate bar because they like stealing and they  
5 don't care what it is. They just like to steal. They get,  
6 they get pleasure from the act of stealing. That's the  
7 difference. The State needs to prove to you that Mr. Griffin  
8 suffers from a mental illness that he enjoys the act, not that  
9 he enjoys the chocolate bar, the end of the act.

10 She also said that schizophrenia is not the  
11 diagnosis that puts him where he is today. He is here because  
12 she diagnosed him as having an unspecified paraphilic  
13 disorder, other paraphilic disorder with a qualifier called  
14 biastophilia and what she said was that that is a diagnosis  
15 where people get aroused by the act of forcibly having sex  
16 with other people, that they get aroused by the rape.

17 This is the document. This is the book. This is the  
18 bible that she uses in her field. She says that he suffers  
19 from biastophilia. You would think that if that is, in fact,  
20 a recognized mental disorder that that would be something that  
21 would be covered in this 847 page book, but it's not because  
22 it doesn't make sense because what they're really saying is  
23 it's -- he's, he's committed a crime. You can't just classify  
24 everybody who commits a crime as saying that they have a  
25 mental disease. I mean, I'm here today to tell you that my

## Closing Argument by Respondent

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1 client is no angel. He has committed rapes in the past, 26  
2 years ago, whenever it was. He's committed rapes in the past,  
3 and the criminal justice system has done what they do to  
4 people who commit rapes. They put him away. Your job today  
5 is not to put him away for the conduct he did in the past. It  
6 was 1997. This is 2018. Dr. Gehle admitted that this is a  
7 controversial diagnosis. I submit that it's a controversial  
8 diagnosis because we're trying to diagnose saying that -- by  
9 saying that biastophilia or this coercive paraphilic disorder  
10 really allows these kind of proceedings to go forward against  
11 somebody in order to sort of warehouse people who have been --  
12 who've committed rapes in the past in order to sort of get  
13 them off the street. That may be a goal that you all think is  
14 a good goal, but that's not your job today because somebody  
15 who's committed a rape does not necessarily mean they've got a  
16 mental disease. It would be different I would think if you  
17 were saying that he suffered from pedophilia where it's sort  
18 of this unnatural desire to be attracted to, you know,  
19 prepubescent children, but that's not what he has. He hasn't  
20 -- he has, you know, he found 12 year old girls attractive but  
21 these were 12 year old girl who had sexual characteristics.  
22 She said that that is not a sign of a -- that the attraction  
23 to the 12 year old Dr. Gehle said is not the sign of a  
24 paraphilia [sic]. It's not like being attracted to a  
25 pedophile. I mean, I know this is a tough argument for you

1 all to get around because, you know, he's not a great guy.  
2 He's committed a crime, but he needs to go to a mental  
3 hospital where he can get the treatment, be brought back to  
4 sanity like he was in 1999 and he was at other times in the  
5 past.

6 I'm put in a situation today that I can hardly  
7 communicate with him because he talks and gesticulates, and I  
8 have no idea what he's saying. It's sort of, you know, he may  
9 be saying inside a body that's trapped that he can't talk but  
10 anyways he doesn't need to go to a program to be tried and  
11 taught how not to be a sexually violent predator. I mean, he  
12 needs to go to someplace where he can be restored to  
13 competency.

14 Here's where I think reasonable doubt exists in the  
15 State's case because the State has to prove a likelihood to  
16 commit a crime of sexual violence. It's not, it's not as Mr.  
17 Morrow said likely to commit a crime going forward or  
18 committing violence moving forward. It's committing a crime  
19 of sexual violence going forward. That's what they have to  
20 prove.

21 Dr. Gehle testified that just somebody who has a high  
22 risk of committing another crime again does not make them a  
23 sexually violent predator, and Dr. Gehle testified that just  
24 because somebody has schizophrenia would not make them a  
25 sexually violent predator. You've got to connect those two

## Closing Argument by Respondent

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1 dots, that the disease causes the conduct. It almost seems  
2 like the disease they've created is this he likes to rape  
3 people, therefore he is a sexually violent predator. That's  
4 almost sort of a circuitous argument. He's committed these  
5 crimes, therefore he's crazy because he's committed these  
6 crimes, but there's no, no unnatural drive, that it's not like  
7 he's attracted to little girls, baby girls.

8 He's already done significant criminal sentences in the  
9 past. Your job is not to be sentencing him today, but here's  
10 the thing, at the end of the day she said that he's -- he  
11 thinks it's likely that he's going to reoffend because she  
12 said that he fits in a category of people it is likely that in  
13 11 percent of the times they're going to reoffend over a five-  
14 year period. Eleven percent of the time, you have to get your  
15 arms around whether or not you think that is likely to  
16 reoffend.

17 Now, what the State says when, kind of where Dr. Gehle is  
18 arguing is she said, "Yeah, but he is twice as likely to  
19 reoffend as another person committed sexually violent crimes,"  
20 but unless you know what that first odd is, it's hard to  
21 twice, oh, it sounds a lot worse, and the reason why I was  
22 fumbling for these when I came up here is I think maybe this  
23 is an argument you all can appreciate. This is a ticket to  
24 Friday's, no, to -- yeah, the Friday's Mega Millions jackpot.  
25 I had one in 300 million chance of winning on that ticket. So

1 I wanted to double my odds. I got two tickets. I didn't win  
2 the jackpot. Twice of something that's not likely is not  
3 necessarily -- I mean, twice sounds good, but it's 11 percent  
4 of the time, he fits in a category of people that's going to  
5 commit another crime 11 percent of the time in five years.  
6 He's 63 years old right now, 62 years old right now. Five  
7 years at 67 I submit to you this is an old guy that needs some  
8 treatment. He needs to be restored to sanity. He doesn't  
9 need to go to the sexually violent predator treatment program.  
10 I think it's very easy to just think that's the best thing to  
11 do with him, but that's not the right thing to do with him.  
12 He needs to -- he need -- he does not need to go to the  
13 sexually violent predator program because he's not a sexually  
14 violent predator. He clearly has a mental disease. He has a  
15 personality defect, but what's so sad is that it's something  
16 that he can be restored. He's been restored in the past. He  
17 can be restored again, just a matter of medicine, getting his  
18 medicine right.

19 I think at the end of the day if you will just keep  
20 considering that the State, everything else put aside, the  
21 State's got to say that it's likely to commit crimes of sexual  
22 violence, and their experts say that he fits in a group of  
23 people that makes it 11 percent chance that that's going to  
24 happen.

25 I -- the State has the burden of proof beyond a

Charge

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1 reasonable doubt. So in effect they're telling you that 11  
2 percent chance of something happening is proof to you beyond a  
3 reasonable doubt that that thing will happen. I submit to you  
4 that that is not enough. My client is sick. My client has  
5 committed bad crimes in the past. My client does not need to  
6 be in the sexually violent predator treatment program. He  
7 needs to be in a mental -- he needs to be in a forensic mental  
8 hospital that Dr. Gehle talked about so he can be treated.  
9 Thank you.

10 THE COURT: Mr. Morrow, any reply?

11 MR. MORROW: Nothing from the State, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, give you a  
13 few, few more instructions. I've given you the law in this  
14 case, and you've heard the closing arguments by counsel. I  
15 want each of you to clearly understand that you are not,  
16 ladies and gentlemen, partisans or advocates for the State of  
17 South Carolina or for this Respondent, for the Respondent.  
18 You do not serve as jurors to reward your friends or punish  
19 your enemies. In this regard you have been selected -- you  
20 were selected by both the State and the Respondent to be fair  
21 and impartial jurors. It is your duty by your joint  
22 deliberations to determine the truth in this case, giving to  
23 the Respondent the benefit of every reasonable doubt on each  
24 and every issue, then to the facts which you determine to be  
25 true you should take and apply the law which has been given to

Charge

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1 you by this Court and thus arrive at a verdict which speaks  
2 the truth in this case. In fact, the word verdict, which has  
3 as its Latin derivative, means a true saying. Thus, when you  
4 have accomplished these responsibilities, you will have  
5 satisfied your oath as jurors, and you will have discharged  
6 your duty to this Court.

7 Now, there are two possible verdicts in this case, ladies  
8 and gentlemen: one, Respondent is a sexually violent predator  
9 or Respondent is not a sexually violent predator. There is no  
10 significance whatsoever in the order in which I state these  
11 possible verdicts. It is simply that one must be stated  
12 first. All 12 of you, ladies and gentlemen, must agree on the  
13 Verdict. Your verdict must be unanimous. Your verdict cannot  
14 be based on sympathy, passion, prejudice, emotion or any other  
15 consideration not in evidence in this case.

16 Now, Mr. Foreman, when the jury agrees on the verdict you  
17 will sign your name as foreperson on the line underneath the  
18 jury verdict. If you will then knock on the door and let the  
19 bailiff know, my deputy know that you all have reached a  
20 verdict we'll get you back into the courtroom as quickly as  
21 possible.

22 During your deliberations should you have any questions,  
23 Mr. Foreman, you all as a jury, it will be your responsibility  
24 to reduce that question to writing, knock on the door, let my  
25 bailiff know, my deputy know that you have a question. He'll

Charge

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1 get it to me, and after consulting with the attorneys I'll  
2 make a decision on how to appropriately answer that question.

3 Now, at this time let me ask this question before you all  
4 step to the jury room. Anyone on the jury not feeling well?  
5 Everyone feeling okay? Okay. I'm going to ask that all of  
6 you, all of you at this point step to the jury room, but do  
7 not, do not begin your deliberations until you're instructed  
8 to do so. The law requires that I consult with these  
9 attorneys to make sure that I have not left anything out of  
10 the instructions that I have given to you. So at this time  
11 I'm going to ask you step to the jury room. Do not begin your  
12 deliberations until you're instructed to do so.

13 (Whereupon, the following takes place outside the  
14 presence of the jury.)

15 THE COURT: All right. Any, any exception or objection  
16 to the charge from the State?

17 MR. MORROW: Nothing from the State, Your Honor.

18 THE COURT: Mr. Falk.

19 MR. FALK: Your Honor, I do have a concern in that this  
20 is a reasonable doubt case, and you used the verdict that  
21 speaks the truth language, which is the language that was used  
22 in a criminal case in Beaty where they said was inappropriate  
23 in a criminal case and that's really speaking to my burden of  
24 proof here, and I'm making my objection to the language. I'd  
25 ask that you recharge or a curative instruction.

Charge

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1 THE COURT: Mr. Morrow.

2 MR. MORROW: Your Honor, I believe -- the State has no  
3 objection to your charge, believes it was appropriate and this  
4 is a civil case. I mean, it's beyond a reasonable doubt  
5 standard, but I think it was an appropriate charge.

6 THE COURT: Well, I'm not going to bring them out and  
7 give another charge. I'll note your objection for the record.  
8 I mean, you were, you were provided with this charge at least  
9 24 if not more hours before we -- at least before we started  
10 this case, and I've asked you multiple times whether or not  
11 there were any objections to the charge before I gave it, and  
12 to now, after I've charged them, to raise this objection I  
13 think it was waived.

14 MR. FALK: Thank you, Your Honor.

15 THE COURT: All right. But it's noted for the record.

16 All right. You all come up here and look at the -- any  
17 items of evidence. The verdict form that I have I'd punched  
18 holes in it and put in a notebook. Is that okay with you all?

19 MR. FALK: Yeah.

20 MR. MORROW: Yes, Your Honor.

21 (Exhibits reviewed and approved by counsel for State and  
22 Respondent.)

23 THE COURT: All right. Do you all mind if I pull the  
24 alternates out in the hall and excuse them?

25 MR. FALK: No, Your Honor.

Verdict

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1 MR. MORROW: No, Your Honor.

2 (Alternates excused.)

3 REPORTER: All right. Do the attorneys agree on the  
4 exhibits?

5 MR. MORROW: Yes, ma'am.

6 MR. FALK: Yes.

7 REPORTER: Plaintiff's One only?

8 MR. FALK: Thank you.

9 (Deliberations begin at 10:20 a.m.)

10 OFF THE RECORD

11 (Whereupon, the following takes place outside the  
12 presence of the jury. Verdict reached at 10:45 a.m.)

13 THE COURT: All right. Anything before I bring the jury  
14 out from the State?

15 MR. MORROW: Nothing from the State, Your Honor.

16 THE COURT: All right. Respondent's counsel?

17 MR. FALK: No, Your Honor.

18 THE COURT: All right. Bring me the jury, please.

19 (Clerk and Court confer.)

20 (Whereupon, the following takes place in the presence of  
21 the jury.)

22 THE COURT: Mr. Foreman, I need you to date the verdict  
23 form, please. It's the 23<sup>rd</sup>.

24 FOREPERSON: Thank you.

25 THE CLERK: All right. Madam Clerk, you may publish the

Verdict

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1 verdict.

2 THE CLERK: Okay. Mr. Foreperson, have you reached a  
3 verdict?

4 FOREPERSON: Yes, ma'am.

5 THE CLERK: Okay. State of South Carolina, County of  
6 Horry, in the Court of Common Pleas, 15<sup>th</sup> Judicial Circuit, in  
7 case number 2016-CP-26-6412, in the Matter of the Care of  
8 Treatment Thomas Griffin, has the Petitioner, the State of  
9 South Carolina, proven beyond a reasonable doubt that the  
10 Respondent Thomas Griffin is a sexually violent predator under  
11 the South Carolina Sexual Violent Predator Act? We, the jury,  
12 unanimously answer the questions as follows: yes, Thomas  
13 Griffin is a sexually violent predator, signed by Foreperson  
14 Gary Crowder.

15 Mr. Foreman and ladies and gentlemen of the jury, if this  
16 is your verdict please raise your right hand to signify.

17 (All jurors raise right hand.)

18 THE COURT: All right. All right. Anything from the  
19 State or Respondent before I release the jury?

20 MR. MORROW: Nothing from the State, Your Honor.

21 MR. FALK: No, Your Honor.

22 (Jury released by Court.)

23 THE COURT: All right. Anything from the State at this  
24 time?

25 MR. MORROW: Your Honor, I have an order prepared for

Verdict

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1 committal.

2 THE COURT: All right. Mr. Falk, have you seen that?

3 All right. Anything at this time, Mr. Falk?

4 MR. FALK: Not at this time, Your Honor.

5 THE COURT: All right. I've signed the order. Give it  
6 to my clerk, and you need that back or --

7 MR. MORROW: I, I just need to get a copy to the  
8 Department of Mental Health, Your Honor.

9 THE COURT: Okay. All right. Thank you all.

10 MR. FALK: Thank you.

11 THE COURT: Thank you, Mr. Falk. Thank you, Mr. Morrow.

12 MR. MORROW: Thank you.

13 (Adjourned.)

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## 1 C E R T I F I C A T E

2

3 I, the undersigned, Grace L. Hurley, Official Court  
4 Reporter for the State of South Carolina, do hereby certify  
5 that the foregoing is a true, accurate and complete Transcript  
6 of Record of the Hearing as reported by Dixie Eubank, held in  
7 the case of In the Matter of the Care and Treatment of Thomas  
8 Griffin, held in the Court of Common Pleas for Horry County,  
9 Horry County Courthouse, Conway, South Carolina, on October 22  
10 through 23, 2018.

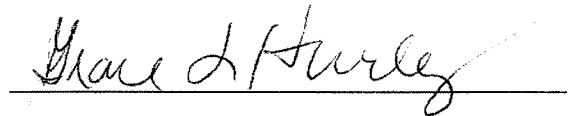
11 I do hereby certify that I am neither of kin, counsel,  
12 nor interest to any party hereto.

13

14

15

16



17

Grace L. Hurley, CVR-CM-M

18

Official Reporter

19

20

21

22

23

24

25 January 11, 2019.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 In Re Care and Treatment of )  
 )  
 )  
 )  
 THOMAS GRIFFIN )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

IN THE COMMON PLEAS COURT  
 FOR THE 15th JUDICIAL CIRCUIT  
 CASE NO.: 2016-CP-26-06412  
 RESPONDENT'S 2<sup>nd</sup> MOTION FOR  
 COMPETENCY TO STAND TRIAL  
 EVALUATION

HORRY COUNTY  
 2018 OCT 22 PM 2:24  
 RECEIVED  
 CLERK OF COURT  
 HORRY COUNTY

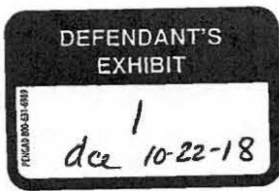
Respondent by counsel renews his motion that this Court enter an order for evaluation of Respondent to determine whether Respondent is competent to stand trial. Attached hereto as Exhibit A is counsel's initial motion for evaluation that was filed February 28, 2018.

**PROCEDURAL HISTORY**

Respondent's case was on the Horry County trial roster for the week of March 19, 2018. On February 28, 2018 Respondent filed his initial motion for competency evaluation, and the Honorable Judge George M McFaddin Jr., took the matter under advisement.

Respondent's counsel and counsel for the State of South Carolina were before the Honorable Judge William H Seals, Jr. on another Sexually Violent Predator matter during the week of August 7, 2018. As of that date Judge McFaddin had not yet ruled on Respondent's motion to reconsider, and both parties agreed to submit the matter to Judge Seals, who was then Chief Administrative Judge for Horry County Common Pleas. Judge Seals denied the motion for competency evaluation and relied upon SC Code Ann § 44-48-100(B) which sets forth the procedure for conducting a SVP civil commitment case for respondents that are charged with a sexually violent offense and found incompetent to stand trial for that offense.

On October 17, 2018 both parties received the attached email (EXHIBIT B) from Judge McFaddin in which he grants the motion for a competency evaluation.



**SIGNIFICANT CHANGE IN CIRCUMSTANCES**

There has been a significant change in Respondent's condition that justifies this court to reconsider the denial of Counsel's request for competency evaluation. On October 17, 2018 counsel met with Respondent at the Horry County Detention Center. Counsel is informed and believes that Respondent's mental condition had decompensated even further than when he met with him in February 2018.

Counsel is informed and believes that Respondent's current mental state is because he is not receiving his antipsychotic medications while he is in the Horry County Detention Center. Counsel has reviewed Respondent's medical records from the detention center and is unable to confirm whether Respondent is currently receiving these medications. In Dr Gehle's report she notes that in 1999 Respondent was evaluated for competency to stand trial and criminal responsibility in South Carolina. In 1999 he was diagnosed with Psychotic Disorder, Not Otherwise Specified. In her report Dr Gehle states: *[Respondent] has been psychiatrically hospitalized for related competency restoration treatment. It was noted that [respondent] readily decompensates into psychosis when he does not take prescribed psychotic medications. With consistent treatment, he was deemed competent to stand trial.*

**LEGAL ARGUMENT IN SUPPORT OF RESPONDENT'S MOTION**

Conducting a civil commitment trial under SC Code Ann § 44-48-10 et seq, when respondent lacks the ability to assist in his own defense violates respondent's due process protections under the V and XIV Amendments to the United States Constitution as well as Article 1, § 3 of the South Carolina Constitution.

"[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Addington v. Texas, 441 U.S. 418, 425 (1979). "The

loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement." Vitek v. Jones, 445 U.S. 480, 492 (1980). "It is indisputable that commitment to a mental hospital can engender adverse social consequences to the individual and that whether we label this phenomena 'stigma' or choose to call it something else . . . we recognize that it can occur and that it can have a very significant impact on the individual." Id. (Internal quotations omitted).

Due Process is not a technical concept with fixed parameters unrelated to time, place, and circumstances; rather, it is a flexible concept that calls for such procedural protections as the situation demands." State v. Legg, 416 S.C. 9, 13-14, 785 S.E.2d 369, 371 (2016). "Procedural Due Process contemplates a fair hearing before a legally constituted impartial tribunal." Id.; see also Daniels v. Williams, 474 U.S. 327, 337 (1986) ("[A] guarantee of fair procedure, sometimes referred to as 'procedural due process': the State may not execute, imprison, or fine a defendant without giving him a fair trial.").

"To establish a procedural due process claim, a person must show deprivation of his liberty or property interests due to the government's failure to provide notice, an opportunity to be heard in a meaningful way, or judicial review." Clemmons v. Lowe's Home Centers, Inc.--Harbison, 412 S.C. 366, 378, 772 S.E.2d 517, 524 (Ct. App. 2015)). To determine whether a particular procedural protection is warranted in a given context, courts apply the test articulated in Mathews v. Edwards, 424 U.S. 319, 334 (1976). The Mathews test has three elements: (1) the liberty interest at stake; (2) the risk of erroneous deprivation of that liberty interest with the existing procedures and probable value, if any, of additional safeguards; and (3) the government interest, including costs and administrative burdens of additional procedures. Id. at 370.

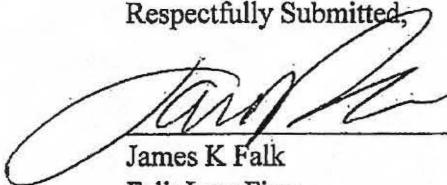
The first factor undoubtedly weighs heavily in Respondent's favor. "Civil commitment deprives [the offender] of significant liberty interests." In re Detention of Morgan, 253 P.3d 394 (Wash. Ct. App. 2011); see also In re Treatment & Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) ("A person's interest in freedom from bodily restraint is 'at the core of the liberty protected by the Due Process Clause from arbitrary governmental actions.'" (quoting Foucha v. Louisiana, 504 U.S. 71, 80 (1992))).

The second element also weighs in Respondent's favor. There is a considerable risk of erroneous deprivation of liberty under the existing procedures. In his current state Respondent is unable to take the stand to rebut Dr Gehle's diagnosis. Dr Gehle diagnosed Respondent as having Other Specified Paraphilic Disorder, Biastophilia in addition to Schizophrenia. Counsel is informed and believes that Biastophilia is defined as is a paraphilia in which sexual arousal is dependent on, or is responsive to, the act of assaulting an unconsenting person, especially a stranger. In order to effectively represent Respondent at trial counsel must be able to call Respondent to the stand to testify that his sexual arousal pattern is "normal" and that he does not become aroused by the act of physically coercing his partners into sex.

Respondent can also meet the third element under Mathews because the Respondent the requested relief will not create a prolonged delay in these proceedings; and will not create an undue burden for the state. Counsel is informed and believes that until he is returned to competency Respondent would be unable to participate in or comprehend the sex offender treatment he would receive if he were convicted. Respondent can be expected to return to

competency once he has received sufficient treatment with anti-psychotic medications. Therefore the delay to these proceedings resulting from the requested evaluation and recompensation period would not pose an undue hardship upon the State.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'James K. Falk', written over a horizontal line.

James K Falk  
Falk Law Firm  
PO Box 38  
Charleston, SC 29402  
(843) 606-6007  
(843) 972, 9005 Fax  
jfalklaw@gmail.com

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 In Re Care and Treatment of )  
 )  
 )  
 )  
 Thomas Griffin )  
 )  
 Respondent, )

---

IN THE COMMON PLEAS COURT  
 FOR THE 14th JUDICIAL CIRCUIT  
 CASE NO.: 2016-CP-26-06412  
 MOTION FOR EVALUATION  
 COMPETENCY TO STAND TRIAL

HORRY COUNTY  
 2018 FEB 28 PM 12:49  
 CLERK OF COURT  
 HORRY COUNTY, SC

Respondent, by counsel, moves pursuant to § SC Code 44-48-100, that this Court enter an order for the evaluation of Respondent to determine whether he is competent to stand trial. In support of this motion Counsel cites the following passage from the June 26, 2017 report prepared by the court- appointed expert, Dr. Maries Gehle. The purpose of Dr Gehle' report was not to determine whether Respondent was competent to stand trial, but rather to determine if Respondent met the criteria for classification as a Sexually Violent Predator.

*Mental Health History: According to mental health and SCDC records, Mr. Griffin has a long history of mental health problems and treatment. He has been diagnosed with Schizophrenia and psychotic disorders (the umbrella under which Schizophrenia is classified) consistently in the records. In the current interview, Mr. Griffin said he has been diagnosed with Schizophrenia in North Carolina. He said he was prescribed "Benadryl and Artane," both medication often used to help with side effects from antipsychotic medications. He said he took medication for 17 of the 23 years he served in prison in North Carolina. He said he has been in Dorothea Dix in 1971. North Carolina state psychiatric records were requested; however, no records were found.*

*Mr. Griffin has been evaluated for competency to stand trial and criminal responsibility in South Carolina in 1999. He was diagnosed with Psychotic Disorder, Not Otherwise Specified. He has been psychiatrically hospitalized for related competency restoration treatment. It was noted that he readily*

*decompensates into psychosis when he does not take prescribed psychotropic medication. With consistent treatment, he was deemed competent to stand trial.*

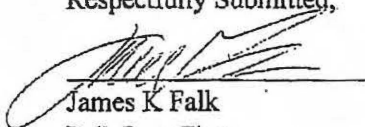
*Mr. Griffin was hospitalized at Gilliam Psychiatric Hospital multiple times while incarcerated at SCDC. The admissions are provided in a chart at the end of this report. The dates of hospitalization were noted in SCDC records retrieved from the system on August 15, 2016. In addition, it is known that he was hospitalized at least one time after August 15, 2016 (the 2017 hospitalization dates were noted in a discharge summary). Mr. Griffin was noncompliant with psychotropic medications at times in SCDC. In the current evaluation, he said his medications were changed from injections to oral medication "about four months ago." It was noted in recent records from the detention center that Mr. Griffin was diagnosed with Schizophrenia and was treated with Risperdal (an antipsychotic medication) and Cogentin (a medication to help with side effects from antipsychotic medication). He was generally compliant with medication. The respondent's sister said that in that June 2017, Mr. Griffin told her that his food (at the jail) was being poisoned (a likely paranoid delusion).*

Additionally Counsel retained Dr William Mulbry to perform an independent evaluation of Respondent for the purpose of these commitment proceedings. Like Dr Gehle, Dr Mulbry did not evaluate Respondent to determine his competency to stand trial. However, Dr Mulbry concurs in Dr Gehle's assessment of Respondent's current mental health status.

On February 23, Counsel met with Respondent at the Horry County Detention Center for the purpose of preparing for his March 19<sup>th</sup> commitment trial. During this meeting Counsel was unable to effectively communicate with Respondent because his answers to Counsel's questions were often times illogical or no way responsive to the questions asked. Counsel is informed and believes that he has not received any psychiatric medications while housed in the Horry County Detention Center. Counsel is informed and believes that at this time Respondent is unable participate in his defense to the pending commitment proceedings.

Counsel therefore asks moves for an evaluation to determine whether Respondent can be restored to a level of competence that would enable him to participate in the defense of these commitment proceedings.

Respectfully Submitted,



James K Falk  
Falk Law Firm  
PO Box 38  
Charleston, SC 29402  
(843) 606-6007  
(843) 972, 9005 Fax  
jfalklaw@gmail.com

HORRY COUNTY  
2018 FEB 28 PM 12:41  
KENDALL B. LAYTON  
CLERK OF COURT  
HORRY COUNTY, SC

CERTIFICATE OF SERVICE

A copy of the above was mailed this 23 day of February 2018, to James Bogle, Jr. Esq. at the Office of South Carolina Attorney General PO box 11549, Columbia, and SC 29211-1549.

  
James Falk

# EXHIBIT B

10/19/2018

Gmail - In Re: Thomas Griffin 2016-CP-26-06412



James Falk &lt;jfalklaw@gmail.com&gt;

---

**In Re: Thomas Griffin 2016-CP-26-06412**

2 messages

**McFaddin, George M. Law Clerk (Lillian Meadows)** <gmcfaddinlc@sccourts.org> Tue, Oct 16, 2018 at 10:36 AM  
 To: "James Falk (jfalklaw@gmail.com)" <jfalklaw@gmail.com>, Cam Morrow <CMorrow@scag.gov>  
 Cc: "McFaddin, George M. Secretary (Andrea Morris)" <GMcfaddinSC@sccourts.org>, "McFaddin, George M." <gmcfaddinj@sccourts.org>

Good Morning,

Regarding the State's motion for evaluation of competency to stand trial in the above-referenced matter, Judge McFaddin respectfully grants the motion. Mr. Morrow, please prepare a proposed order and upload it to e-file.

I apologize for the delay in this ruling. If either of you have any questions, please do not hesitate to contact me.

Best,

**Lillian L. Meadows**

Law Clerk to The Honorable George M. McFaddin, Jr.

215 N. Harvin St.

Sumter, SC 29150

W: (803) 436-2373

M: (850) 865-5602

--- CONFIDENTIALITY NOTICE --- This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

---

**James Falk** <jfalklaw@gmail.com>  
 To: Cam Morrow <cmorrow@scag.gov>

Wed, Oct 17, 2018 at 9:45 AM

How does this affect next week. I am driving to Horry County to talk with Griffin. Call me in my car if we need to discuss.  
 843 557 8786

Jim  
 James Falk  
 Falk Law Office

10/19/2018

Gmail - In Re: Thomas Griffin 2016-CP-26-06412

38 Broad Street, 3rd Floor  
PO Box 1058  
Charleston, SC 29402  
(843) 606 6007  
(843) 972 9005 Fax  
WWW.FALKLAWFIRM.COM  
[Quoted text hidden]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 177

COUNTY OF Horry  
STATE \_\_\_\_\_

VS. Thomas Griffin

AKA: \_\_\_\_\_  
Race: Black Sex: male  
DOB: [redacted] Age: [redacted]  
SSN: [redacted]  
DL#: \_\_\_\_\_  
SID#: \_\_\_\_\_

INDICTMENT/CASE#:

97-GS-26-1708

A/W#: F-2776ld6

Date of Offense: 12-19-1996

S.C. Code § : C.S. 17-25-30

CDR Code #: 010113

SENTENCE (Guilty left and mentally ill)

PLEA

TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Assault w/ intent to commit C.S.C. w/ A minor  
in violation of § 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0131916

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

[Signature]  
Solicitor

Thomas C Griffin  
Defendant

Babara Pitt  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

SPECIAL CONDITIONS:

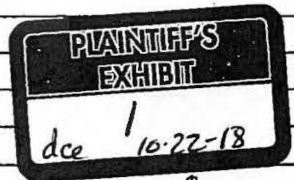
RESTITUTION  Heard,  Waived,  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

set by SCDPPS

Recipient: \_\_\_\_\_



\*Fine: .....\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$ 3.00

TOTAL.....\$ 103.00

Clerk of Court/Deputy Clerk Jeanne J Roberts

Court Reporter: Brenda Babb

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (1/99)



CERTIFIED COPY

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service/Employment

Obtain GED \_\_\_\_\_

Attend Voc Rehab. or Job Corps \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund.

Other: \_\_\_\_\_

PRESIDING JUDGE Alice Renee Lee

Judge Code: 1/1/1

Sentence Date: 6-14-99

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NOV 05 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
IN THE MATTER OF THE CARE )  
AND TREATMENT OF )  
THOMAS GRIFFIN, )  
RESPONDENT. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-26-6412

ORDER OF COMMITMENT


The trial of this case was held in the County of Horry in the Court of Common Pleas the week of Oct. 22, 2018. A jury of citizens from Horry County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Christopher A. Morrow represented the State and James F. Falk, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:

The State has proven beyond a reasonable doubt that Respondent Thomas Griffin is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

- (a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent is to continue to be detained at the Horry County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health. The Detention Center is to transport Respondent on such scheduled date as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Presiding Judge  
Fifteenth Judicial Circuit Court of Common Pleas

Oct. 23, 2018  
Horry, South Carolina

CLERK OF COURT  
HORRY COUNTY, SC  
2018 OCT 23 AM 10:49

STATE OF SOUTH CAROLINA

COUNTY OF Horry  
STATE \_\_\_\_\_

VS.

Thomas Griffin

AKA: \_\_\_\_\_  
Race: Black Sex: male  
DOB: \_\_\_\_\_  
SSN: \_\_\_\_\_  
DL#: \_\_\_\_\_  
SID#: \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS 179

INDICTMENT/CASE#:

97 -GS- 26 - 1708

A/W#: F-277666

Date of Offense: 12-19-1996

S.C. Code § : C.S. 17-25-30

CDR Code #: 0101113

SENTENCE (Guilty but not mentally ill)

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Assault w/ intent to commit C.S.C. w/ A minor  
in violation of § 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0131916

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

[Signature]  
Solicitor

Thomas C Griffin  
Defendant

Babara Pratt  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: ..... \$ \_\_\_\_\_

§ 14-1-206 - Assessments 100%..... \$ \_\_\_\_\_

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$ \_\_\_\_\_

County (3%)..... \$ 3.00

TOTAL..... \$ 103.00

Clerk of Court/Deputy Clerk Jeanne J Roberts

Court Reporter: Brenda Babb

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc Rehab. or Job Corps \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund.

Other: \_\_\_\_\_

PRESIDING JUDGE Alice Renee Lee

Judge Code: 1 1 1

Sentence Date: 6-14-99

RENEE M. ELVING  
CLERK OF COURT  
HORRY COUNTY, SC

CERTIFIED COPY

97-2-229  
ARREST WARRANT  
F. 277666 E 277666

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
HORRY

THE STATE  
against  
THOMAS C GRIFFIN  
AEBY LANE  
Address: CHADBOURN NC

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: B Height: 5 7 Weight: 165  
State: \_\_\_\_\_ DL #/NCID: 23820299  
DOB: \_\_\_\_\_ Agency ORI #: \_\_\_\_\_  
Prosecuting Agency: \_\_\_\_\_  
Prosecuting Officer: \_\_\_\_\_  
Offense: ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE (ABHAN) Offense Code: \_\_\_\_\_  
Code/Ordinance Sec. C/L, 17-25-0030

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of  
HORRY

The accused  
is to be arrested and brought before me to be  
dealt with according to law. TRANSFERRED TO SOLICITOR APR 24 1997

Signature of Judge  
S. C. Caper

A copy of this arrest warrant was delivered to  
defendant Thomas C. Griffin  
on 2-13-97

Signature of Constable/Law Enforcement Officer  
Sandy S. Caper

RETURN WARRANT TO: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
HORRY )

AFFIDAVIT

Personally appeared before me the affiant DEL. MATT TWIG, CERTIFIED COPY  
being duly sworn deposes and says that defendant THOMAS C. GRIFFIN  
did within this county and state on 12/19/96 violate the criminal laws of the  
State of South Carolina (or ordinance of  County/  Municipality of \_\_\_\_\_ )  
in the following particulars:

DESCRIPTION OF OFFENSE:  
C/L, 17-25-0030 REENE N. ELVIS  
ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED HORRY COUNTY, SC  
CLERK OF COURT

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

THAT ON 12/19/96, ONE THOMAS GRIFFIN DID APPROACH THE VICTIM ONE 12 YEAR  
OLD FEMALE, WHILE SHE WAS ATTEMPTING TO EXIT A RESTROOM LOCATED IN THE  
DIXIE DOLLAR AMUSEMENTS, IN THE LORIS SECTION OF HORRY COUNTY, GRIFFIN  
PUSHED THE VICTIM BACK INTO THE RESTROOM AND PRESENTED A KNIFE. ONCE  
INSIDE THE RESTROOM, GRIFFIN BEGAN TELLING THE VICTIM THAT HE HAS NOT HAD  
SEX IN THREE YEARS AND FOR HER NOT TO SCREAM AND SHE WOULD NOT BE HURT.  
THE VICTIM THEN YELLED FOR HELP AND WAS ABLE TO ESCAPE FROM GRIFFIN.  
GRIFFIN THEN FLED THE BUSINESS ON FOOT PRIOR TO THE ARRIVAL OF LAW ENFORCE  
MENT LEAVING HIS SISTER IN THE BUSINESS.

Sworn to and subscribed before me )  
on 12/20/96 ) Signature of Affiant  
R. S. Swales )  
Affiant's Address: HORRY COUNTY POLICE DEPT  
CONWAY SC 29526  
Affiant's Telephone: 0002481250

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
HORRY )

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:  
It appearing from the above affidavit that there are reasonable grounds to believe that  
on 12/19/96 defendant THOMAS C. GRIFFIN  
did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of \_\_\_\_\_ ) as set forth below:

DESCRIPTION OF OFFENSE:  
C/L, 17-25-0030  
ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE (ABHAN)  
Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge R. S. Swales (L.S.) )  
Judge's Address 209 REALY STREET  
CONWAY, S.C.  
Judge's Telephone 8032481372  
Issuing Court:  Magistrate  Municipal  Circuit  
Judge Code: 791

CERTIFIED COPY

RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

DOCKET NO. 97-GS-26-1708  
THE STATE OF SOUTH CAROLINA  
COUNTY OF HORRY  
52576 41 CPN  
COURT OF GENERAL SESSIONS  
JULY TERM 1997

THE STATE

VS.

THOMAS C GRIFFIN B/M  
ABBY LANE  
CHADBOURN NC  
284310000

DOB: [REDACTED]  
SSN: [REDACTED]

ATTORNEY:

MS. BARBARA PRATT

INDICTMENT FOR:

ASSAULT WITH INTENT TO  
COMMIT CRIMINAL SEXUAL CONDUCT

ORIGINAL

Ralph J. Wilson, Solicitor

WITNESSES

TJGG/HCPD

ARREST WARRANT NO. F-277666  
CDR 0254 16-03-0656,0563 (2)

CDR

CDR

CDR

ACTION OF GRAND JURY

JUL 31 1997

TRUE BILL

FOREMAN OF GRAND JURY

*Paul H. Nuckel*

VERDICT

FOREMAN OF PETIT JURY DATE

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR:
	)	ASSAULT WITH INTENT TO COMMIT
COUNTY OF HORRY	)	CRIMINAL SEXUAL CONDUCT

At a Court of General Sessions, convened on July 31, 1997 the Grand Jurors of Horry County present upon their oath:

ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT  
(CDR: 0254 16-03-0656,0563(2) )

That Thomas C. Griffin did in Horry County on or about December 19, 1996 commit the offense of Assault with Intent to Commit Criminal Sexual Conduct in that he assaulted the victim, **MINOR** [REDACTED] a 12 year old female, by presenting a knife while uttering threats and pushing the victim back into a restroom she was leaving, all with the intent to accomplish a sexual battery.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

INDICTMENT

*Ralph J. Wilson*  
SOLICITOR

RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

CERTIFIED COPY

## 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,

**RECEIVED**

**Jun 22 2020**

**SC Court of Appeals**

s/Joanna K. Delany

Joanna K. Delany

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of June, 2020.