

RECEIVED

Jun 08 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Edgar W. Dickson, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JOHN SHELBY WELLS,

APPELLANT.

APPELLATE CASE NO. 2021-000679

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-3797

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT DATED JUNE 1, 20211

 DEFENSE COUNSEL OBJECTION ON COMPETENCY3

 COURT’S RULING ON COMPETENCY9

TESTIMONY

 ROZANNA TROSS

 Direct Examination by Ms. Shaw13

 Cross-Examination by Ms. Zmroczek37

 Redirect Examination by Ms. Shaw.....42

STATE RESTS43

 COURT’S RULING46

STATE’S EXHIBIT NO. 1 (SENTENCING 92-GS-16-120).....49

STATE’S EXHIBIT NO. 2 (SENTENCING 92-GS-16-121).....53

STATE’S EXHIBIT NO. 3 (2012-GS-32-01524 PLEA).....57

STATE’S EXHIBIT NO. 4 (2012-GS-32-01525 PLEA).....60

STATE’S EXHIBIT NO. 5 (FORENSIC EVALUATION).....63

COURT’S EXHIBIT NO. 1 (COMPETENCY EVALUATION).....80

ORDER OF COMMITMENT84

CERTIFICATE OF COUNSEL86

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

	<u>PAGE</u>
<u>ROZANNA TROSS:</u>	
Direct Examination by Ms. Shaw	13
Cross-Examination by Ms. Zmroczek	37
Redirect Examination by Ms. Shaw	42
Respondent Rests	43
Certificate of Reporter	48

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
(Respondent's Exhibits)			
1	Sentencing, 92-GS-16-120	*	
2	Sentencing, 92-GS-16-121	*	
3	2012-GS-32-01524 Plea	*	
4	2012-GS-32-01525 Plea	*	
5	Forensic Evaluation	*	12
(Court's Exhibit)			
1	Competency to Stand Trial	*	

*Transcriber's Note: There is no indication in the notes as to when these exhibits were marked.

1 my representation of Mr. Wells is my inability to
2 communicate with him. And I was falling back to the same
3 position where he is where he is asking for the lethal
4 injection. Your Honor, obviously, these things have
5 raised concerns, so when I tried to do an independent
6 evaluation, we couldn't even get through the independent
7 evaluation. I made -- I did get a competency evaluation
8 by the same doctor that I was going to use, psychologist
9 that I was going to use to do my SVP evaluation. I have
10 made that a court's exhibit. I believe the Court has seen
11 it ---

12 THE COURT: Yes, ma'am. I've seen it and read it.

13 MS. ZMROCZEK: --- and read it. And I'd just like to
14 make that Court's Exhibit 1.

15 Your Honor, Dr. Burke [phonetic] is not here, but I
16 think it clearly lays out his position, his testing, his
17 reasons for that.

18 And I noticed that the State handed up Oxner. I
19 actually was involved in that case, too. So this case is
20 a little bit different from that one, Your Honor. That's
21 why I just want to make sure I preserve all of Mr. Wells's
22 rights.

23 So in Oxner, Mr. Oxner was not convicted of his
24 crimes because he was found not competent and not likely
25 to be restored, so his crimes were actually nolle prossed.

1 So this is a little bit different, Your Honor. When
2 Mr. Wells has completed his sentence -- he has completed
3 his 15-year sentence, and it appears to me that the
4 incompetence, Your Honor, has maybe developed as a result
5 of some significant health problems and some age. And so
6 that's why we were objecting, and we are objecting. And I
7 understand that the statute is silent on this issue that
8 they don't have to be competent. But, you know, whatever
9 constitutional issues want to be raised as far as -- you
10 know, as far as the competency part, Your Honor, because
11 the whole point I thought of the SVP program was not
12 punitive, was not just to put away people and punish them,
13 but to help them get better. I don't know that this is a
14 situation that my client would even be able to get better.
15 So I certainly understand partially his mental thought
16 process, Your Honor, but just not being able to discuss it
17 with him has -- has created a barrier. So that's --
18 that's the objection that we wanted to make sure that was
19 preserved and put on the record.

20 THE COURT: Yes, ma'am. I believe you not being able
21 to have a conversation with him, nor was Dr. Burke able to
22 have a relevant -- a conversation with him.

23 And, Ms. Shaw, I'll let you address just for the
24 record the issue about whether or not he needs to be
25 competent for this just before I rule on that.

1 MS. SHAW: Thank you, Your Honor.

2 Contrary to argument, SC Code annotated 44-48-100(B)
3 actually does address the competency issue. Specifically,
4 it addresses what the Court needs to do in the event that
5 an individual has been found incompetent to stand trial in
6 a criminal matter. This is a little factually different
7 than the Oxner case. But the net result is the same as
8 that, at the time of trying this particular matter,
9 Dr. Burke has opined that Mr. Wells is not competent to
10 stand trial, nor will he become so. So in that instance,
11 the Court needs to make specific factual findings which
12 are outlined that in specifically what the Court needs to
13 find that Mr. Wells indeed did commit the offenses of
14 which he has been convicted or is alleged to have engaged
15 in.

16 Your Honor, we have submitted State's 1 through 4,
17 which are certified copies of his criminal convictions for
18 both criminal sexual conduct in the first degree from 1992
19 as well as two counts of lewd act on a minor. I believe
20 it was 2015. We would submit that those are prima facie
21 evidence that Mr. Wells did, in fact, commit the offenses
22 which he is alleged to have convicted -- to have
23 committed. He was convicted, I believe, by a jury for the
24 1992 offenses, and he pled guilty because he was charged
25 with a significantly worst offense, I believe, in 2015.

1 In addition to that, we have marked State's
2 Exhibit 5, which is the report authored by Dr. Tross, who
3 is here to testify today, in which Mr. Wells specifically
4 makes admissions that he did molest these children. So we
5 are asking that the Court take judicial notice of the
6 orders as well as review, if the Court has not already
7 reviewed, Dr. Tross's report and take notice of the
8 admissions contained therein which would be admissible
9 under, I believe, Rule 803.

10 So as a preliminary matter, we do need to get over
11 that hurdle and that would be willing to proceed from
12 there.

13 The one thing I do need to request from the Courts is
14 this matter is subject to appeal as is Your Honor's
15 decision is that the documents, both Dr. Burke's report
16 and Dr. Tross's report, be sealed.

17 That's all I have.

18 THE COURT: You want Dr. Tross's report and what
19 else?

20 MS. SHAW: And Dr. Burke's report, the court exhibit,
21 that needs -- they both need to be sealed.

22 THE COURT: Both need to be ---

23 MS. SHAW: Sealed.

24 THE COURT: --- sealed? Oh, okay.

25 MS. ZMROCZEK: It's my understanding, Your Honor,

1 that the -- all of the SVP cases are sealed and protected,
2 and they're not online or anything like that.

3 MS. SHAW: I understand that, Your Honor. But just
4 for purposes of the record, we do need to request that.

5 THE COURT: I don't think Ms. Zmroczek will have any
6 problems with sealing those. The Court has absolutely no
7 problem. Those -- those evaluations will be sealed.

8 And anything else from the State?

9 MS. SHAW: Not until Your Honor makes a decision,
10 preliminary decision. Thank you.

11 THE COURT: All right. Ms. Zmroczek, you don't have
12 any objection to the State's Exhibits 1 through 4?

13 MS. ZMROCZEK: That's correct. That's correct, Your
14 Honor.

15 THE COURT: Nor Exhibit 5.

16 MS. ZMROCZEK: No.

17 And, again, we -- this is slightly different because
18 we are not contesting the conviction. What I'm contesting
19 is his ability to help me prepare. If I could have any
20 defense ---

21 THE COURT: Regarding the ---

22 MS. ZMROCZEK: --- regarding the -- the commitment
23 process.

24 THE COURT: Yeah. And hopefully, I think that's
25 clear for the record. Just -- just to make that hopefully

1 as clear as we can, those four convictions that are set
2 forth in State's 1 through 4 are acknowledged by the
3 Court. The Court takes judicial notice that he was found
4 guilty of those four charges.

5 So -- and, Ms. Zmroczek, I'm going to -- I have
6 preserved, or at least I hope by making a court exhibit of
7 Dr. Burke's report and your proffer of that report,
8 hopefully I'll preserve that evidence on the record. But
9 competency is not an issue in this.

10 MS. ZMROCZEK: I think all we need is a ruling.

11 Right. And I think that's all we need is that -- is
12 for you ---

13 THE COURT: Okay.

14 MS. ZMROCZEK: --- to find that ruling that you --
15 because we've had -- and I know that they were probably
16 not recorded, but we did have several status conferences,
17 so you have been aware of the issues that have been
18 ongoing leading up to today.

19 THE COURT: Oh, yeah.

20 MS. ZMROCZEK: And so I just wanted to make sure that
21 another court reading this understands that this is not
22 something that we just sprung on you, that this is
23 something that has been developing. And since it's,
24 obviously, kind of a first-impression thing, we're just
25 making sure that we get the ruling that competence isn't

1 -- we understand that -- that the State's position and the
2 Court's position at this time is that competence is not
3 really an issue ---

4 THE COURT: In this proceeding.

5 MS. ZMROCZEK: --- in this proceeding to go forward.
6 And so -- and that would just be where our objection was.
7 And as long as it's preserved, I think we can move
8 forward.

9 THE COURT: And your objection is preserved on the
10 record. Okay. Thank you.

11 All right. Ms. Shaw?

12 MS. SHAW: Thank you, Your Honor.

13 As I noted earlier, there are two prongs to a finding
14 that an individual should be committed under the SVPA.
15 They are, number one -- and they are -- and listed, they
16 are enumerated in the statute at 44-48-30. And they are,
17 number one, that the individual has been convicted of a
18 sexually violent offense; and number two, that the
19 individual suffers from a mental abnormality which impairs
20 their ability to control their behavior and which makes
21 them likely to reoffend sexually.

22 In this matter, we have Mr. Wells, who has been --
23 obviously, as the Court just took judicial notice of, been
24 convicted of four sexually violent offenses. So the
25 question before the Court is really one of whether he

1 suffers from a mental abnormality which makes him likely
2 to sexually reoffend. The State intends to produce
3 Dr. Rozanna Tross who authored a report regarding
4 Mr. Wells's mental status, which has been exhibited --
5 admitted as State's 5 and which is dated April 24th of
6 2020.

7 As Ms. Zmroczek noted, the COVID pandemic has really
8 made trying these cases very difficult, so technically, we
9 are out of compliance with the statute which requires that
10 the trial be completed within 90 days. But given the
11 extreme and extenuating circumstances, we are requesting
12 that we be permitted to move forward today so that
13 Mr. Wells can get his due process and this matter can be
14 tried appropriately.

15 MS. ZMROCZEK: And just on that issue, Your Honor,
16 certainly, typically we do try to hold the State to that
17 -- that timeline prescribed within the statute. But
18 certainly, with this global pandemic, and I think that
19 Justice Beatty's orders have really kind of made that
20 moot, we're not raising a due-process violation for that
21 issue.

22 Thank you.

23 THE COURT: Okay. All right. Thank you.

24 MS. SHAW: All right. Thank you, Your Honor. And
25 Dr. Tross, who is here and prepared to testify, will be

1 discussing her interview with Mr. Wells as well as her
2 diagnosis. My understanding is that her diagnosis is
3 pedophilic disorder, nonexclusive type, attracted to
4 female children. But she will be testifying about that at
5 length, and following her testimony, we are requesting
6 that Your Honor make a ruling committing Mr. Wells for
7 long-term control, care and treatment at the Broad River
8 facility operated by Wellpath.

9 THE COURT: Thank you, ma'am.

10 MS. ZMROCZEK: And we don't object, Your Honor, to
11 her -- given the circumstances unique to this case, we
12 don't object to her report coming in as part of the
13 record.

14 THE COURT: All right. State's Exhibit No. 5 is
15 going to come into evidence, and I'll be glad to --
16 without objection.

17 (WHEREUPON, State's Exhibit Number 5 was admitted into
18 evidence.)

19 THE COURT: And I'll be glad to hear from Dr. Tross.

20 MS. SHAW: Thank you, Your Honor. The State calls
21 Doctor Rozanna Tross.

22 MS. ZMROCZEK: And, Your Honor, while she's being
23 called up there, we -- I understand that they may want to
24 put a little bit of her background into the record. We do
25 not object to her expertise as one able to testify

1 pursuant to the Sexually Violent Predator Act.

2 THE COURT: All right. Thank you, Ms. Zmroczek.

3 We're trying to see how well you're going to pay
4 attention.

5 WHEREUPON,

6 ROZANNA TROSS

7 After having been duly sworn, testified as follows:

8 THE CLERK: Have a seat, and state your full name for
9 the record, please.

10 THE WITNESS: Rozanna Tross, T-R-O-S-S.

11 MS. SHAW: And may I proceed, Your Honor?

12 THE COURT: You may. Yes, ma'am. Go ahead. I'm
13 sorry, Ms. Shaw.

14 DIRECT EXAMINATION

15 BY MS. SHAW:

16 Q Good afternoon, Dr. Tross. Can you hear me behind
17 those panes?

18 A I can.

19 Q Okay. If you can't hear me at any time, just tell me
20 and I will speak up and repeat the question.

21 Okay. So by whom are you employed and in what
22 capacity?

23 A Currently, I'm in private practice. But I was -- at
24 the time of this evaluation, I was employed with the
25 Department of Mental Health as a chief psychologist there.

1 Q And how long were you employed by DMH?

2 A Seven years.

3 Q Okay. And prior to that, did you have any prior
4 employers?

5 A Yes.

6 Q And who were they?

7 A Prior to moving to South Carolina, I worked with the
8 Civil Commitment Unit for Sexual Offenders in Cherokee,
9 Iowa. And prior to that, I worked for East Central
10 Regional Hospital in Augusta, Georgia, in their Competency
11 and Criminal Responsibility Unit.

12 Q And you have to have beyond a regular college
13 education to practice psychology, correct?

14 A I do.

15 Q Okay. And what degrees do you possess?

16 A I have a bachelor's degree in psychology, and a
17 master's in psychology -- or a master's of arts in
18 forensic psychology, and then I have a doctor of
19 psychology in clinical forensic psychology.

20 Q Okay. And you're licensed in the State of South
21 Carolina, correct?

22 A Yes.

23 Q And how long have you held your South Carolina
24 license?

25 A Since 2013.

1 Q And since you were licensed in 2013, have you been
2 working exclusively in the field of forensic evaluations
3 and sex offender evaluations?

4 A Yes.

5 Q And have you ever been qualified as an expert in
6 either field in the State of South Carolina?

7 A Yes.

8 Q Okay. How many times?

9 A Approximately 65.

10 Q And approximately how many pre-commitment evaluations
11 have you completed in your career with DMH?

12 A In the past seven years, I have done 20
13 pre-commitment evaluations.

14 Q Okay. And you also did annual review reports with
15 DMH as well, correct?

16 A Yes.

17 Q How many of those did you do?

18 A Approximately 278.

19 Q Okay. And did you perform sex offender evaluations
20 for your previous employers?

21 A Yes.

22 Q And how many did you perform?

23 A Several hundred.

24 MS. SHAW: Your Honor, based on that foundation, I
25 would like to offer Dr. Tross as an expert in both

1 forensic clinical psychology as well as sex offender
2 evaluations.

3 THE COURT: And I believe there's no objections.

4 MS. ZMROCZEK: Without objection, Your Honor.

5 THE COURT: She is so qualified as an expert as set
6 forth. Okay.

7 MS. SHAW: Thank you, Your Honor.

8 THE COURT: Thank you.

9 BY MS. SHAW:

10 Q Now, Dr. Tross, are you familiar with John Shelby
11 Wells?

12 A I am.

13 Q And how are you familiar with him?

14 A In March of 2020, I was asked to conduct a
15 pre-commitment evaluation to determine whether or not he
16 met criteria to be civilly committed as under the Sexually
17 Violent Predator Act.

18 Q And that was in the context of your employment with
19 the Department of Mental Health, correct?

20 A Yes.

21 Q Now, when you do a pre-commitment evaluation, what
22 does it look for? What does it assess?

23 A Well, ultimately, we're looking to see if there is an
24 abnormality of some sort and/or a personality disorder.
25 If either of those things or the combination thereof would

1 predispose them to engage in sexually violent behavior or
2 sexually abusive behaviors, and then to determine whether
3 or not there's a likelihood that they would continue
4 engaging in those type of behaviors if they were released
5 into the community.

6 Q Okay. And you also look to see whether the
7 individual has actually been convicted of an offense,
8 correct?

9 A Correct.

10 Q And in this matter, you were provided with
11 documentation concerning Mr. Wells, right?

12 A Yes.

13 Q And what documentation were you provided with?

14 A A great deal, actually. We usually receive a large
15 file that consists of anything going on with him legally
16 prior to his referral for this type of an evaluation. So
17 in his case, it's going to -- it contained his legal
18 record, different convictions. He had everything from the
19 police department incident reports, forensic reports of
20 the victims, the court processing indictments, arrest
21 warrants, sentencing sheets as well as possible prior
22 psychological evaluations while he was either in the
23 Department of Corrections' custody or detention center
24 custody. And then we get records from his various places
25 of incarceration, so in his case, the Department of

1 Corrections and then also Lexington County Detention
2 Center where he was being held. We also look at his
3 criminal record.

4 Q Okay. Did you also received records from Gilliam
5 Psychiatric Institute?

6 A Yes. Assumed under his Department of Corrections
7 records, yes.

8 Q Okay. Great. And you were able to review this
9 information prior to meeting with him, right?

10 A Yes.

11 Q Okay. And you met with him actually on two separate
12 occasions; is that correct?

13 A That's correct.

14 Q When were those occasions?

15 A March 18th of 2020, and again on March 23rd of 2020.

16 Q Okay. And as part of your pre-commitment evaluation
17 process, do you usually do collateral interviews with
18 outside sources of information such as parole, pardon and
19 probation or relatives?

20 A Often, yes.

21 Q And in this case, did you feel that that was
22 necessary?

23 A Yes. I consulted with the Department of Probation
24 and Parole Services as well as SCDC directly.

25 Q And on the dates that you met with him, can you

1 please describe his demeanor and -- and relative level of
2 cooperation with your interview.

3 A Yes. Mr. Wells was difficult. He was not interested
4 in participating. He was resistant to even hearing the
5 notification of why he was being referred. He was -- on
6 the first occasion, he was pretty hostile, interrupted
7 often, spoke over, was dismissive of information that was
8 relayed to him about the nature and purpose of the
9 evaluation. It was partly that reason alone is why I
10 scheduled a second interview to see if, you know, he could
11 present in a different way the second time. And while he
12 was definitely calmer that second time, he was still
13 pretty upset about the nature and purpose of the
14 proceedings, resistant to the idea of having an
15 evaluation. And that stayed pretty consistent throughout
16 the evaluations.

17 Q Okay. Did he, in fact, make any specific statements
18 to you regarding his feelings about being committed?

19 A He did. On numerous occasions, he stated that if he
20 was not going to be released from jail and ultimately
21 committed to the SVP, he would prefer the lethal
22 injection.

23 Q That's not a possibility in these cases, correct?

24 A Correct.

25 Q So were you ultimately able to explain the purpose of

1 the interview for him to the extent you felt he was able
2 to understand what was going on?

3 A Yes.

4 Q Okay. And did he ultimately agree to proceed?

5 A He did.

6 Q Okay. Now, can you give us a brief history of
7 Mr. Wells's relevant personal history?

8 A Yes. So I will say that the veracity of the
9 information is limited. He gave differing accounts
10 between the two interviews. He often exaggerated or just
11 gave conflicting information that didn't add up with what
12 the available record would suggest, so it's accuracy is
13 somewhat limited. But what he did describe is, you know,
14 a pretty tumultuous upbringing, a father who was abusive,
15 a father who was alcoholic. He described having numerous
16 siblings at different times, but then suggested that he
17 was in various placements growing up but he never stayed
18 with them. He ran away. He also suggested that he was
19 incarcerated with DJJ between the ages of 10 and 17 and
20 was kind of at a work camp.

21 Aside from that, he described that he had worked for
22 short periods of time. He described a heavy substance
23 abuse from an early age, alcohol, and records from Gilliam
24 suggest that he also used opioid pills in conjunction with
25 that.

1 Academically, he described leaving school after the
2 second grade or during the second grade and never pursued
3 additional education. At different times he said he
4 couldn't read or write. That was, of course, difficult to
5 ascertain in the interview because he wouldn't participate
6 in those aspects of the interview to demonstrate his
7 ability to read or write.

8 Q Okay. Does he present with any medical conditions
9 which would be particularly relevant to the question of
10 whether he has the capacity to control his behavior? Not
11 psychological or psychiatric, but particularly medical
12 conditions.

13 A Well, he's described early medical problems kind of
14 throughout his life, some mild strokes. He's described
15 having asthma. He's described having physical injuries
16 that have caused injury to his back, legs. He describes
17 frequently being in physical pain. But those medical
18 conditions wouldn't impact his volitional control.

19 Q Okay. So can you describe briefly Mr. Wells's sex
20 offending history?

21 A Yes. So in Darlington County in 1991 -- or in 1992
22 he was convicted of two counts of criminal sexual conduct
23 with a minor in the first degree. He was sentenced to
24 concurrent terms of 20 years of incarceration. Those
25 victims were his 6 and 9-year-old nieces.

1 Q And just before we get to the second set of
2 convictions, what is he alleged to have done with those
3 children?

4 A Right. He attempted sexual intercourse with the
5 victims and was making pornographic movies -- or
6 photographs of them between the months of August and
7 November of 1991.

8 Q And did he also fondle and/or digitally penetrate
9 them?

10 A He reports having touched one of them. He denies the
11 behaviors that he is alleged to have committed. But the
12 indictments and affidavits suggest that he attempted
13 intercourse and then took photographs of them.

14 Q Okay. Did he make any other admissions regarding
15 those particular offenses when you met with him?

16 A He did. When I met with him the first time asking
17 him to describe what happened, he said, Well, I was asleep
18 in my bed, my nieces came in and said, Uncle, will you
19 have sex with me? He imitated a child's voice when he was
20 describing that. And then he said later, Because I was
21 drunk, I done it, but then when asked why he engaged in
22 this behavior, he would say, I don't know. When asked if
23 there was anything he could do to prevent the -- prevent
24 the -- could have done to prevent the offense, he said, I
25 don't know. And he doesn't know that he could have done

1 anything different to prevent it. He said ---

2 Q Did he evidence any insight into his offending
3 behaviors as to these two victims?

4 A No. In fact, he said when you do something like
5 that, you don't think about it.

6 Q So let's move on to the Lexington County convictions.

7 A Right. So ---

8 Q What is he alleged to have done in those convictions,
9 in those offenses?

10 A Right. So two girls in particular alleged that he
11 had sexually abused them, and they described everything
12 from fondling, to digital penetration, to oral sex, to his
13 sleeping in bed with them, him going into the bathroom
14 with them and watching them while they were taking baths,
15 to putting his mouth on their private parts as well as
16 their breasts and vaginal intercourse.

17 Q And just so we can make the record clear, how old
18 were the Darlington children?

19 A 6 and 9.

20 Q And how old were the Lexington children?

21 A 4 and 8.

22 Q Okay. Were they all female?

23 A Yes.

24 Q Now, does Mr. Wells have any nonsexual offending
25 history?

1 A He does. Quite a bit.

2 Q Can you give us a very brief description of what that
3 is?

4 A He described being in trouble with the law ever since
5 the age of 10. But as an adult, he's had numerous fraud
6 charges for checks, numerous counts in the State of Texas,
7 Georgia and South Carolina.

8 Q And those charges include convictions, correct?

9 A Correct.

10 Q Thank you.

11 Now, as far as his behavior at SCDC, he only had
12 three disciplinaries that were nonassaultive, correct?

13 A Correct. During his first period of incarceration,
14 yes.

15 Q Okay. Did he indicate anything to you regarding his
16 offending while at SCDC?

17 A Well, when discussing his behavior there, he sort of
18 bragged about making "buck" and not getting caught. One
19 of his convictions that he was criminally prosecuted for,
20 he said that he was caught with 1 1/2 grams of cocaine and
21 another 1 1/2 grams of crack cocaine. And he said he was
22 holding drugs for other inmates as a way to make money.

23 Q Now, in terms of his prior sex offender treatment,
24 has he ever had any?

25 A He has.

1 Q When did he have sex offender treatment?

2 A It appears he had about three months of treatment in
3 1993 while in SCDC.

4 Q Okay. And after the year 2000, has he had any sex
5 offender treatment?

6 A No.

7 Q Was it offered to him, if you know?

8 A The SCDC said that they have no record of him
9 participating or being involved in treatment. It was
10 unclear whether that was something that was offered to him
11 and he -- but they don't have a record of him declining
12 treatment.

13 Q Okay. But regardless, you have, in the information
14 in front of you, indicates that he re-offended sexually
15 after having those three months of sex offender treatment,
16 right?

17 A That's correct.

18 Q Now, he was referred to the multidisciplinary
19 committee in 2001, but they voted "no." Do you recall
20 that?

21 A Yes.

22 Q So as a result of that "no" vote back in 2001, has he
23 ever had an evaluation such as the one you did before?

24 A No.

25 Q Okay. And so basically, this is the first time

1 anyone has ever been able to get a full and complete
2 picture of Mr. Wells's psychological presentation as it
3 relates to the SVPA.

4 A That's correct.

5 Q Now, based upon the available documentary information
6 and your clinical interviews with Mr. Wells, did you
7 diagnose him with any sort of mental abnormality or
8 personality disorder?

9 A Yes.

10 Q And what was that?

11 A It's my opinion that he meets diagnostic criteria for
12 pedophilic disorder, sexually attracted to females,
13 nonexclusive type.

14 Q Okay. And that's in the DSM-5, correct?

15 A Yes, it is.

16 Q Okay. And can you please give us a brief recitation
17 of the criteria to be diagnosed with this disorder.

18 A Yes. So pedophilic disorder is specifically talking
19 about somebody who has a sexual interest in prepubescent
20 children. And that sexual interest spans several months.
21 The guideline is usually we see that behavior for at least
22 six months, and that's to rule out the idea that it could
23 be a transitory or situational type issue. It also
24 encompasses somebody who has acted on those urges and
25 somebody who they have to be over a certain age before

1 they could meet criteria for that.

2 Q Now -- so but first he has to meet criteria for
3 paraphilia, and then secondarily is for pedophilia,
4 correct?

5 A Correct.

6 Q Okay. Can you just explain a little bit about that?

7 A Yes. So paraphilias themselves are distinguishing
8 sort of abnormal or bizarre sexual interest from
9 non-bizarre or normal sexual interest. So it's really
10 somebody who has specific intense or persistent sexual
11 interest in a particular age group or type of sexual
12 behavior that is nonconsensual or not related to adults.

13 Q And then pedophilia is a subset of the paraphilias,
14 correct?

15 A Correct. Specifically referencing that interest in
16 prepubescent children.

17 Q Okay. So -- and "prepubescent" means children who
18 have no secondary sex characteristics, right?

19 A Correct. They haven't yet entered puberty.

20 Q Okay. Now, as part of your evaluation, you also
21 conducted a risk assessment, correct?

22 A Yes.

23 Q All right. And what is entailed in a risk
24 assessment?

25 A So ultimately, we are looking at whether or not

1 somebody is likely to continue engaging in these types of
2 behaviors. So to do that, I'm looking at static risk
3 factors which are historical and do not change, I'm
4 looking at dynamic factors which do change and are
5 amenable to treatment efforts as well as the presence of
6 protective factors which are things that could help
7 mitigate risk. So collectively, I'm looking at those
8 three categories to determine whether or not his risk is
9 likely.

10 Q Okay. And you use the STATIC-2002 and the
11 STATIC-99R, correct?

12 A Correct.

13 Q And what were Mr. Wells's scores on those actuarial
14 assessments?

15 A On both of those, he scored a 2, which is in the
16 average range of risk.

17 Q Okay. And can you please describe for the Court what
18 "average range" means.

19 A Yes. So the STATICS have a scale of -3 up to 12, and
20 other sex offenders who have a similar score, it's
21 truncated up in a 2, which I think is a 0 to 3, falls in
22 the average range meaning that other people with those
23 scores, the typical sex offender falls into that category
24 in terms of their risk to recidivate.

25 Q Are there any real world like daily examples you

1 could give which would help clarify what that actually
2 means?

3 A Yeah. A good way to think of it is somebody who is
4 being judged in terms of risk for car insurance or life
5 insurance rates. They have a checklist, if you will, of
6 items that have been known to increase the likelihood that
7 somebody would be at higher risk to die with life
8 insurance or higher risk to engage in risky driving
9 behavior. For instance, with car insurance, it would be
10 males under 25 who are not married. These things just
11 escalate their risk typically. So the STATIC-99s kind of
12 do the same thing. They look at the areas that are known
13 to increase risk, and they put them in categories. So
14 somebody who's an average risk is, you know, somebody who
15 is not typical. They've got enough risk factors that
16 would suggest most sex offenders are going to recidivate
17 in that -- in that category.

18 Q Okay. Thank you.

19 And the STATIC-99 and the 2002R, in fact, only take
20 into effect detected and convicted offenses, correct?

21 A Correct. Charges and reconvictions.

22 Q Okay. So despite their common use in the field, is
23 it possible that the STATICS actually could underestimate
24 an individual's individual risk of recidivation?

25 A It is possible.

1 Q And these are used in -- they're considered generally
2 reliable and used in the ordinary course of business when
3 you do these types of evaluations, correct?

4 A Yes.

5 Q Okay. Now, in addition to the STATICS, did you do
6 any additional standardized testing?

7 A No. Not in this case.

8 Q Okay. And what was that?

9 A There wasn't a need, in my opinion, to do formal
10 testing. In addition to his lack of willingness to really
11 participate or engage in testing, it was deemed that it
12 wouldn't be fruitful.

13 Q Okay. So clinical presentation was fairly clear?

14 A Correct.

15 Q Okay. Now, can you describe briefly what dynamic
16 risk factors are and how many of them there are in total?

17 A Yes. So dynamic risk factors are things that are
18 amenable to treatment meaning they could be manipulated,
19 they can change. With interventions or learning of coping
20 skills or better ways to do things, they could no longer
21 have that as a risk factor.

22 So research has suggested that there are 12
23 significant dynamic risk factors directly related to
24 increased risk of sexual recidivism and four additional
25 promising risk factors. So really what we do is look for

1 the presence of any of those 16 and in what ways they
2 might be related to the mental abnormality and/or
3 contribute to their risk.

4 Q Okay. And does Mr. Wells have any?

5 A He does.

6 Q How many?

7 A So I assigned six of the risk factors to him in
8 particular.

9 Q Can you go through each one of those risk -- six risk
10 factors you assigned to Mr. Wells and kind of give a brief
11 description of what it means in terms of his likelihood to
12 recidivate?

13 A Yes. So the first one I assigned was a sexual
14 preference for prepubescent children, which is consistent
15 with his abnormality of pedophilic disorder, meaning that
16 he has a sexual interest in children of that age group.
17 And, of course, in his case, he has acted out on that on
18 multiple occasions, thus presenting it as a current risk
19 factor since there isn't anything to suggest that he has
20 learned to manage that.

21 The second one was offense supportive attitudes,
22 which speaks to how he thinks about sex with children, his
23 beliefs about whether or not children can consent, whether
24 or not they have the ability to make adult-like decisions.
25 And based on how he described his offending, brief though

1 it was, would suggest that he has parentified kids in that
2 they can solicit sex from adults, they are perfectly
3 knowledgeable about what they're engaging in despite the
4 fact that they're 4, 6, 8 and 9 years old. So he has
5 offense supportive attitudes in that he has distorted
6 thinking about children and their ability to consent to
7 sex.

8 Q And just to stop you for a moment. In fact, he
9 indicated that he felt there was nothing wrong with his
10 behavior.

11 A Well, he did rationalize his behavior quite a bit.
12 His -- when speaking about his second set of offenses, he
13 said, well, they were already having sex with their
14 brother, as if that made it okay for him to then engage in
15 that behavior with them. So in that sense, it does seem
16 that he doesn't appreciate the wrongfulness of his
17 behavior.

18 Q Okay. Please continue.

19 A I also suggested that he had a lack of emotionally
20 intimate relationships with adults, and this is really
21 speaking to his ability to connect with people on an
22 emotionally intimate level his own age. That risk factor
23 is assigned because, while he was married briefly, his
24 sexual encounters or relationships since that time have
25 lasted maybe a couple of months and have only been

1 surrounded by those that lived in the home with him. He
2 would sort of -- the way he described it is he would
3 willingly engage in sex with them simply because they were
4 there rather than something that he had cultivated a
5 relationship with. In addition, he doesn't seem to have
6 adult friends outside of a sexual relationship that he
7 engages with that are healthy or that he has formed a bond
8 with, so as a result, he has that risk factor.

9 Q Okay. And the last three?

10 A Right. So poor problem-solving is really identified
11 by somebody's inability to understand the nature of a
12 problem, develop solutions and hypotheses of how to work
13 through a problem, a pros and cons list, if you will, or
14 even appreciate that there might be more than one avenue
15 with which they could address a problem. His lifestyle in
16 general would suggest that that has been a general area of
17 difficulty for him given that he, by his own account, has
18 been engaging in criminal behavior since the age of 10 and
19 seems to have not learned from consequences of that and
20 repeats those actions despite detection and sanction. He
21 has acknowledged using substances as a way to just deal
22 with emotional upsets and problems rather than finding
23 alternatives. And this, of course, is despite being
24 exposed to treatments in the past.

25 Q And that's his dysfunctional coping?

1 A Partly. But it's also this idea he just can't really
2 conceptualized different ways to problem-solve.

3 Q What are his last two?

4 A A callous lack of concern for others or just
5 callousness in general. He seems indifferent to the
6 consequences that his behavior has on others, whether or
7 not it harms them or whether or not it causes them a
8 problem like, you know, check fraud would be one of those,
9 repeated acts of check fraud without realizing that that
10 defrauds somebody else of money, sexual abuse despite the
11 fact that it harms children and is, of course, against the
12 law.

13 The last one is dysfunctional coping. And there are
14 two types of that: Externalized and sexualized,
15 referencing his use of sex to manage emotional upsets or
16 periods of discord. He will turn to sex as a way to sort
17 of Band-Aid his emotions. Externalized coping means he
18 puts blame on others, lashes out verbally toward others
19 and/or uses substances as a way to deal with problems.

20 Q Okay. Thank you.

21 Now, can you tell the Court what protective factors
22 are?

23 A Yes. These are usually community supports, family
24 supports, resources, if you will, in the community as well
25 as positive methods of coping that could help manage risk

1 or mitigate risk in the community.

2 Q Does Mr. Wells have any protective factors?

3 A Not really. He has suggested that he would live with
4 the Salvation Army and that they would monitor him or help
5 keep him away from children. And while sometimes having a
6 support network like that could be helpful, in his case,
7 it's similar to the circumstances he was living in prior
8 to offending and at the time of offending, so he hasn't
9 expressed an idea of how he would manage that differently
10 or use that in a positive way to suggest that it truly is
11 a protective factor.

12 Q Okay. And does Mr. Wells, aside from going to live
13 with the Salvation Army, does he have any future plans
14 that he expressed to you?

15 A He does not.

16 Q Does he have any plan not to reoffend?

17 A He doesn't. He shrugs his shoulder and suggested he
18 should probably stay away from kids because he couldn't
19 trust himself if he were around children. So -- but in
20 the two interviews with him, it really seems that his
21 motivation was simply to avoid being re-incarcerated
22 rather than prevent re-offense.

23 Q Okay. Now, given all of that information that you
24 were able to get through document review and through your
25 interviews with Mr. Wells as well as the actuarial

1 assessments, did you come to any conclusions about whether
2 he presents a risk of re-offense?

3 A I did.

4 Q And what was your conclusion?

5 A Well, it's my opinion that he is likely to reoffend
6 if he is released into the community.

7 Q Okay. And do you believe he has serious difficulty
8 controlling his behaviors?

9 A I do.

10 Q And do you believe that that difficulty makes it
11 likely that he would reoffend?

12 A Correct. In conjunction with the pedophilic
13 disorder.

14 Q And do you believe that that predisposition and the
15 likelihood to reoffend poses a menace to the health and
16 safety of others if he is not committed for long-term
17 care, control and treatment?

18 A I do.

19 Q And your use of the record review, the interview and
20 the risk assessment, including the actuarial assessments
21 and dynamic risk factors, is that all standard practice
22 within your field?

23 A Yes.

24 Q Okay. And those methods are generally considered
25 reliable and acceptable?

1 A Yes.

2 Q Okay. And did you review the report from Dr. Burke
3 that was conducted last week, which is Court's Exhibit 1?

4 A I did see that, yes.

5 Q Okay. And, in any way, shape or form, does that
6 report change your ultimate opinion on this matter?

7 A It does not.

8 Q Okay. And lastly, did you draw all of your
9 conclusions concerning Mr. Wells to a reasonable degree of
10 psychological certainty?

11 A Yes.

12 MS. SHAW: Thank you.

13 I have nothing further, Your Honor.

14 THE COURT: All right. Ms. Zmroczek, any questions
15 of this witness?

16 MS. ZMROCZEK: Just very briefly, Your Honor.

17 And I just need to note for the record that my client
18 can't hear, and so he couldn't hear one thing that she
19 said. And so, again, Your Honor, just falling back on my
20 position about him not being able to assist, you know,
21 even in preparing for this. I wanted to make sure that I
22 put that on the record.

23 CROSS EXAMINATION

24 BY MS. ZMROCZEK:

25 Q And just very briefly, Dr. Tross, why is it that you

1 met with him twice?

2 A Partly because of his cantankerous demeanor during
3 the first interview. He is, indeed, hard of hearing, but
4 he was so resistant to being at the interview, refusing to
5 really listen and try to understand why he was referred.
6 He was giving me very vague answers about his personal
7 history, and when discussing his offenses, he was so
8 defensive that I really thought to try to give him the
9 benefit of the doubt and be as thorough as possible, a
10 second interview was warranted.

11 Q And so in those two, again, he presented similar --
12 with a similar resistant demeanor; would you agree?

13 A He did. He was notably calmer and seemed to calm
14 down faster during the second interview, but, yes, was
15 still quite resistant.

16 Q And so -- and even you said candidly that the
17 veracity, meaning the truthfulness of the stuff that you
18 put in your report, some of it is so old and it's
19 internally inconsistent, but that all came from him,
20 right?

21 A Correct.

22 MS. SHAW: And, Your Honor, that was not the
23 testimony that was -- I mean, what she said was that he
24 was not a reliable historian and the information he gave
25 her was inconsistent. So if counsel would just rephrase

1 the question to correctly underline the testimony.

2 THE COURT: Okay. Well, I've read the report, and in
3 the report, she indicated that she felt his personal
4 history was inconsistent and therefore unreliable. So
5 that's what you're getting at, Ms. Zmroczek?

6 MS. ZMROCZEK: Right, right. That's exactly what I
7 was getting at.

8 MS. SHAW: That's fine.

9 THE COURT: Okay.

10 BY MS. ZMROCZEK:

11 Q And so -- and even like basing the STATIC-99, that's
12 based on information that some of which you have to
13 receive from him, right?

14 A No. Not exactly. The STATIC-99s are based on facts,
15 historical information which is part of why they don't
16 change. And so those pieces of information come directly
17 from his criminal record and the indictments, sentencing
18 sheets that we have about his criminal history.

19 Q Okay. What about his, like, intimate relationships
20 with adults?

21 A Correct. The second question, which is the only one
22 that comes from him, asked whether or not he has been in a
23 long-term, live-in romantic relationship for at least two
24 years. By his own account, the answer was no.

25 Q Right. But there's no way to verify that. There was

1 no way. We didn't go -- you didn't go back and verify how
2 long he'd been married or how many kids he had or things
3 like that?

4 A That's correct.

5 Q Okay. That's all. And, in fact, there's like a
6 whole mitigation section, and he wasn't giving you
7 anything really to work with, right?

8 A Correct. I think it's fair to say he wasn't trying
9 to help himself.

10 Q Right, right. And you read Dr. Burke's report?

11 A Yes, ma'am.

12 Q Okay. And you didn't -- and I know that that doesn't
13 change your diagnoses, but you didn't run any of the tests
14 just for competency on Mr. Wells, did you?

15 MS. SHAW: Objection. Relevance. The question of
16 whether he's competent is not relevant.

17 THE COURT: No. I understand that. And I'll note
18 your objection on the record, but I'm going to let you ask
19 it for purposes ---

20 MS. SHAW: Thank you, Your Honor.

21 MS. ZMROCZEK: Thank you.

22 THE WITNESS: Well, when I met with him both times,
23 there really wasn't an issue or question about competency.
24 His refusal to participate isn't the same thing as lacking
25 capacity to be competent, so there wasn't a need to stop

1 the interview or to proceed with a formal competency
2 assessment. On both occasions, mental status would
3 suggest that he was aware of who he was, where he was, why
4 he was meeting with me despite his displeasure at doing
5 so. He had an appreciation for the circumstances which is
6 why he seemed to advocate that he would prefer a lethal
7 injection.

8 BY MS. ZMROCZEK:

9 Q And he indicated that numerous times, right?

10 A He did.

11 Q Okay. And so -- but -- but it's your -- strike that.
12 I will move on.

13 And I believe that those are all -- oh. So you would
14 agree, though, that he does have some medical background
15 stuff that includes accidents and other physical --
16 long-term physical ailments, right?

17 A Correct. He's had a motor vehicle accident sometime
18 in his either late teens or early adulthood which has
19 created injuries to back, legs, knees. He's described
20 having to be cut out of the vehicle. He wasn't sure how
21 long he was hospitalized. But he was able to work after
22 that if you -- doing a timeline of when these events
23 happened and then his own reported work history.

24 He has had several light strokes while in SCDC. It
25 does appear that he was placed in a wheelchair for his

1 risk for falls. So as a result of safety and an abundance
2 of caution, they did put him in a wheelchair.

3 And in both interviews, he complained of just chronic
4 pain in general and feeling that the Tylenol he was given
5 was not sufficient to help manage that. And that is
6 consistent with SCDC records and hospital records, that he
7 just seems to have a great deal of pain. And he has had
8 some heart issues.

9 MS. ZMROCZEK: Thank you.

10 Those are all the questions that I have, Your Honor.

11 THE COURT: Anything on redirect?

12 MS. SHAW: Just two, Your Honor. Very briefly.

13 REDIRECT EXAMINATION

14 BY MS. SHAW:

15 Q Dr. Tross, you heard on cross-examination that
16 Mr. Wells is hard of hearing. During your interviews with
17 him, did you take any measures to ensure that he was able
18 to understand what you were trying to communicate to him?

19 A Yes. So oftentimes we sit slightly apart in an
20 interview, but, obviously, he was hard of hearing, and
21 that was notable not only in what he reported but in his
22 mannerisms. So I sat right next to him, shouted
23 throughout the evaluation as well as he was able to hear
24 what I was saying during that and repeat back or answer
25 those questions when he was willing. So I knew that he

1 heard me because his responses when he gave them were at
2 least in relation to the question asked.

3 Q And do you have any doubt whether he understood you?

4 A No.

5 Q Okay. And my last question is, obviously, seeing
6 Mr. Wells here, he's in a wheelchair, he's relatively
7 limited in terms of his physical mobility, do you need to
8 be mobile to sexually recidivate?

9 A No.

10 Q Does he need to be able to ambulate and move about
11 independently?

12 A No.

13 MS. SHAW: Thank you. I have nothing further.

14 THE COURT: Anything on recross?

15 MS. ZMROCZEK: Nothing.

16 THE COURT: All right. Thank you, ma'am. You may
17 step down. I appreciate it. Thank you.

18 Does the State have any other witnesses?

19 MS. SHAW: No, Your Honor. The State rests.

20 THE COURT: All right. Ms. Zmroczek, since you
21 mentioned the fact that Mr. Wells could not hear, do you
22 need for me to ask the court reporter to replay that
23 portion of the tape?

24 MS. ZMROCZEK: No. So, Your Honor, this is something
25 that I have run into frequently with Mr. Wells. That's

1 why I've tried to send emails, but he also has trouble
2 communicating verbally as well. And so, Your Honor, what
3 I found is that, you know, I read him the report, so he
4 has seen the report. I think that she testified straight
5 from the report.

6 THE COURT: She did.

7 MS. ZMROCZEK: So -- and, you know, I let him know
8 that, so I don't think that that is necessary. He has the
9 report, you know. Whether or not he understands it I
10 think is a question for someone else. But he has the
11 report. It's been -- it's been read to him, so ---

12 THE COURT: You feel it would be unnecessary ---

13 MS. ZMROCZEK: I do.

14 THE COURT: --- and duplicative to do that, correct?

15 MS. ZMROCZEK: I do. I do, Your Honor.

16 THE COURT: And just for the record, as I mentioned
17 earlier, I've read Dr. Tross's report also, and she did
18 testify essentially straight from the interview and her
19 very lengthy report.

20 MS. ZMROCZEK: Thank you.

21 THE COURT: All right. Ms. Zmroczek, any witnesses
22 called on behalf of Mr. Wells?

23 MS. ZMROCZEK: I do not. In light of not being able
24 to have him independently evaluated for this portion of
25 it, Your Honor, we do not have any witnesses.

1 THE COURT: Okay. All right. Do you y'all wish to
2 have arguments or y'all want to put any arguments on the
3 record or anything like that?

4 MS. SHAW: Your Honor, I think the record has been
5 made fairly clear and with the opening, I would wave if
6 counsel wishes to.

7 THE COURT: Okay.

8 MS. ZMROCZEK: Yeah. And, I mean, again, Your Honor,
9 I think our position is slightly different in this case,
10 and so I think that we've laid all that out. I understand
11 the Court's ruling right now, and I've advised my client
12 that likely there will be an order that I think has been
13 already submitted, signed, and that I would continue to
14 appeal the process for him.

15 THE COURT: Okay. And I appreciate that,
16 Ms. Zmroczek. I am going to make finding that Mr. Wells
17 has been convicted of two criminal sexual conduct with
18 minors in the first degree.

19 MS. ZMROCZEK: Your Honor, I'm so sorry to interrupt.
20 He has to use the restroom, and there's a -- there's a
21 small window of ---

22 THE COURT: Go ahead. I have no problems with that.

23 MS. SHAW: Your Honor, actually, while Mr. Wells is
24 excused, may I also be excused?

25 THE COURT: Oh, yeah. We'll take a ten minute break.

1 Okay.

2 (WHEREUPON, a recess is taken at 2:37 PM.)

3 THE COURT: Go back on the record.

4 The Court finds that Mr. Wells was convicted of two
5 -- he has two convictions of criminal sexual conduct with
6 a minor in the first degree. Additionally, he has two
7 convictions of lewd act upon children under the age of 16.
8 So I also find, based on the evidence that is before the
9 Court, that he has a mental abnormality that predisposes
10 him to engage in acts of sexual violence and presents as
11 likely to reoffend and engage in sexual violence if he
12 were around children, and I find that he is a sexually
13 violent predator as the term is defined under South
14 Carolina Code Section 44-48-30. And I order that he be
15 committed to the Department of Mental Health for long-term
16 care, control and treatment, and he also will be --
17 continue to be detained at the Lexington County Detention
18 Center and then transported to a secure facility for
19 treatment by the Department of Mental Health.

20 Additionally, Ms. Shaw, you were kind enough to
21 prepare an order, which what I would ask you to do, if you
22 don't mind, if you would just add to it the arguments and
23 decisions that I made prior to the hearing. I'd also ask
24 that you note that I'm preserving her objection on the
25 record. And -- and I think that should do it.

1 If you would -- Ms. Shaw, if you would prepare that
2 order, forward it to me along with -- to Ms. Zmroczek.

3 Ms. Zmroczek, if there is anything that you want to
4 add, I want you to add it to that order, okay, and make it
5 identifiable so I know you're adding it. And then,
6 Ms. Shaw, any objection you have to anything, you can note
7 that on the third -- the third -- the third copy of that
8 order, and then I'll decide any dispute y'all have over
9 the wording or anything like that, okay?

10 MS. SHAW: No problem, Your Honor.

11 MS. ZMROCZEK: Perfect.

12 MS. SHAW: I'll take care of that as soon as I get
13 back to the office.

14 THE COURT: Okay. All right. No hurry. All right.
15 Thank y'all both.

16 MS. ZMROCZEK: Thank you.

17 MS. SHAW: Thank you, Your Honor.

18 THE COURT: Okay. Appreciate it. Thank y'all.

19 (WHEREUPON, proceedings concluded at 2:47 PM.)
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the digitally recorded proceedings had from the DCRP, Digital Courtroom Recorder Project, and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 1st day of June, 2021.

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

August 10, 2021

Cheryl A. Smith

Cheryl A. Smith, CVR-M

Court Reporter

SENTENCE

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

CASE NO. 92-GS-16-120
cscwm 1

The defendant John S. Wells Jr. is committed to the State Department of Corrections (county) for a term of 20 months / years and / or to pay a fine of \$ _____; provided upon the service of _____ months / years and / or payment of \$ _____, plus pay / waive costs and assessments as applicable, the balance suspended with probation for _____ months / years.

RESTITUTION For physical injury \$ _____
Yes / No For property damage \$ _____
to be paid _____

to Clerk for _____

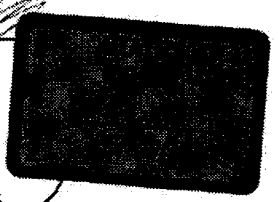
Other conditions Credit since Nov 13, 1991

DATE July 15, 1992

[Signature]
PRESIDING JUDGE

TOTAL DUE _____

[Signature]
CLERK OF COURT



TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMG
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA)
County of Darlington)

INDICTMENT #92GS16-0120

At a Court of General Sessions, convened on February 02, 1992,
the Grand Jurors of Darlington County present upon their oath

COUNT:
CRIMINAL SEXUAL CONDUCT WITH MINOR
FIRST DEGREE (16-3-655)

That John S. Wells did in Darlington County on or about August 18, 1991,
wilfully and unlawfully engage in criminal sexual conduct in the first degree
in that John S. Wells engaged in sexual battery, to wit: sexual intercourse and
made pornographic photographs of **MINOR 4**, and that the said **MINOR 4**
was less than eleven years of age at the time of the sexual battery

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided

SOLICITOR Chadon McBride

into contented
I appear in open court and plead guilty to _____
_____ the within indictment, consent for
my plea to be published and ask the mercy of the court.
Witness: Maurice [Signature] Signed: John S. Wells

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

WITNESSES

L. C. Braddock / *LS*
C Stephens

ARREST WARRANT #:

0237005

Arrested on November 13, 1991

ACTION OF GRAND JURY

True Bill

act
Foreman: *W. Miller* 2/3/92
Grand Jury

VERDICT

Foreman: _____
Petit Jury
Date: _____

DOCKET #: 92GS16-0120

THE STATE OF SOUTH CAROLINA
County of Darlington

COURT OF GENERAL SESSIONS

Term: February, 1992

THE STATE

vs

John S. Wells

J. Wells

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

FIRST DEGREE (16-8-655)

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

ARREST WARRANT

D- 237005

STATE OF SOUTH CAROLINA

County/ Municipality of Darlington

THE STATE against

John S. Wells, Jr.

Address: Rt # Airport Trl Pk Hartsville, S.C.

Phone: SSN

Sex: M Race: W Height: 55 Weight: 140

DL State: DL #:

DOB: Agency ORI #:

Prosecuting Agency: DCSD

Prosecuting Officer: Braddock

Offense: Criminal Sexual Conduct 1st Degree

Code/Ordinance Sec. 16-3-651

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:



STATE OF SOUTH CAROLINA

County/ Municipality of Darlington

AFFIDAVIT

Form Approved by S.C. Attorney General July 28, 1990 SCCA 518

Personally appeared before me the affiant L. C. Braddock who being duly sworn deposes and says that defendant John S. Wells, Jr. did within this county and state on August 18-91 thur 11-11-91 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Darlington) in the following particulars:

DESCRIPTION OF OFFENSE: Criminal Sexual Conduct 1st Degree

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 the defendant did commit sexual battery with MINOR 4, age 6, by attempting sexual intercourse and making pornographic photographs. This violation took place at the residence of Candy Hatchell at Rt # Airport Trl Park, lot Hartsville, S.C.

Sworn to and subscribed before me on 11-12-91

Signature of Affiant L.C. Braddock

Signature of Issuing Judge (L.S.)

Affiant's Address D.C. 50

Affiant's Telephone 398-4335

TRUE CERTIFIED COPY, JUST B. Suggs, CLERK OF COURT/MC, DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA

County/ Municipality of Darlington

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 8-18-91 thur 11-11-91 defendant John S. Wells, Jr. did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Darlington) as set forth below:

DESCRIPTION OF OFFENSE: Criminal Sexual Conduct 1st Degree

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 (L.S.)

Judge's Address POB 1765 Hartsville, S.C.

Judge Code: 301

Judge's Telephone 332-9661

Issuing Court: X Magistrate Municipal Circuit

ORIGINAL

SENTENCE

STATE OF SOUTH CAROLINA

CASE NO. 92-GS-16-121

COUNTY OF DARLINGTON

escwm 1

The defendant *John L. Wells Jr.* is committed to the State Department of Corrections (county) for a term of *20* months / years and / or to pay a fine of \$ _____; provided upon the service of _____ months / years and / or payment of \$ _____, plus pay / waive costs and assessments as applicable, the balance suspended with probation for _____ months / years.

RESTITUTION

For physical injury \$ _____

Yes / No

For property damage \$ _____

to be paid _____

to Clerk for _____

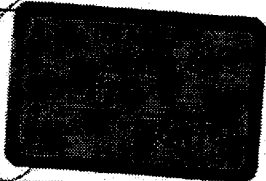
Other conditions *concurrent*

DATE *July 15, 1992*

[Signature]
PRESIDING JUDGE

TOTAL DUE _____

[Signature]
CLERK OF COURT



TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA)
) INDICTMENT #92GS16-0121
County of Darlington)

At a Court of General Sessions, convened on February 03, 1992,
the Grand Jurors of Darlington County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR
FIRST DEGREE (16-3-655)

That John S. Wells did in Darlington County on or about August 18, 1991,
wilfully and unlawfully engage in criminal sexual conduct in the first degree
in that John S. Wells engaged in sexual battery, to wit: sexual intercourse and
made pornographic photographs of **MINOR 3**, and that the said **MINOR 3**
MINOR 3 was less than eleven years of age at the time of the sexual battery

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided

SOLICITOR Chadon McBride

has cost over
also contended
appear in open court and plead ~~guilty~~ to _____ the within indictment, consent for
my plea to be published, and ask the mercy of the court.
Mauro Signed *John S. Wells*

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

WITNESSES

L. C. Braddock /s/ C. Stephens

ARREST WARRANT #:

0237006

Arrested on November 13, 1991

ACTION OF GRAND JURY

True Bill

Acting Foreman: Hera mwa 2/3/92
Grand Jury

VERDICT

Foreman:
Petit Jury
Date:

DOCKET #: 926816-0121

THE STATE OF SOUTH CAROLINA
County of Darlington

COURT OF GENERAL SESSIONS

Term: February, 1992

THE STATE

vs.

John S. Wells

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

FIRST DEGREE (16-3-655)

TRUE CERTIFIED COPY,

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

ARREST WARRANT

D- 237006

STATE OF SOUTH CAROLINA

County/ Municipality of
Darlington

THE STATE
against

John S. Wells, Jr.

Address: Rt # [redacted], Airport Trl Pk [redacted]
Hartsville, S.C.

Phone: [redacted] SSN: [redacted]

Sex: M Race: W Height: 5-5 Weight: 140

DL State: [redacted] DL #: [redacted]

DOB: [redacted] Agency ORI#: [redacted]

Prosecuting Agency: DCSD

Prosecuting Officer: Braddock

Offense: Criminal Sexual Conduct 1st

Degree Offense Code: [redacted]

Code/Ordinance Sec. 16-3-651

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant JOHN S. WELLS, JR.
on 11-13-91

[Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:



STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Darlington)

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 516

56

Personally appeared before me the affiant L. C. Braddock
being duly sworn deposes and says that defendant John S. Wells,
did within this county and state on 8-18-91 thur 11-11-91 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Darlington)
in the following particulars:

DESCRIPTION OF OFFENSE: Criminal Sexual Conduct 1st Degree

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 the defendant did commit sexual battery with MINOR 3, age 9, by
attempting sexual intercourse and making pornographic photographs. This
violation took place at the residence of Candy Hatchell at Rt # [redacted], Airport
Trl Park, Lot [redacted], Hartsville, S.C.

Sworn to and subscribed before me)
on 11-12-91)

L.C. Braddock
Signature of Affiant

J. Neil Winkum (L.S.))
Signature of Issuing Judge

Affiant's Address DC, SD

Affiant's Telephone 398-4335

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Darlington)

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 8-18-91 thur 11-11-91 defendant John S. Wells, Jr.
did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Darlington) as set forth below:

DESCRIPTION OF OFFENSE: Criminal Sexual Conduct 1st Degree

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.

J. Neil Winkum (L.S.))
Signature of Issuing Judge

Judge's Address POB 1765

Hartsville, S.C.

Judge's Telephone 332-9661

Judge Code: 301

Issuing Court: Magistrate Municipal Circuit

TRUE CERTIFIED COPY,
J. Neil Winkum
CLERK OF COURT/CMC,
DARLINGTON COUNTY, SC

ORIGINAL

(0-15) concurrent recommendation ⁵⁷ on

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

INDICTMENT/CASE#: 2012GS3201524

John Shelby Wells

A/W#: M302983

AKA:

Date of Offense: 1/1/2011 - 7/8/2011

Race: White Sex: M Age: 64

S.C. Code §: 16-15-0140

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 2468

Address: Bluff Ridge Rd Lot [REDACTED]

City, State, Zip: Lexington, SC 29073

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Committing or attempting lewd act upon child under 16

CONVICTED OF or PLEADS

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials) JSW
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
J.S. Wages 64191 Solicitor 64191 SC Bar# John J. Wells Defendant [Signature] Attorney for Defendant 66261 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2012-GS-32-1525
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: SEX OFFENDER REGISTRY

A TRUE COPY
Lex. Ct. C.C.P., G.S. & P.C.

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$
TOTAL		\$190.00

Appointed PD or appointed other court § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Beth A. [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2041
Sentence Date: 6/6/2012

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
COMMITTING OR ATTEMPTING A LEWD ACT
UPON A CHILD

§ 16-15-0140

At a Court of General Sessions, convened on JUNE 2012, the Grand Jurors of Lexington County present upon their oath:

That John Shelby Wells, a person over the age of fourteen (14) years, did in Lexington County, on or about January 1, 2011 through July 8, 2011, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: **MINOR 1** **MINOR 1** date of birth [REDACTED], with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140, South Carolina Code of Laws 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Suzanne Magers
ASSISTANT SOLICITOR

ARREST WARRANT

M-302983

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

THE STATE
against

John Shelby Wells

Address: Bluff Ridge Rd

Lexington, SC 29073-

Phone: SSN: Sex: M Race: W Height: 5 3 Weight: 140

DL State: SC DL #: DOB: Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: T. Govan - 1868

Offense: Sex / Lewd Act upon a child under 16

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant John Shelby Wells

on 7-25-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

ORIGINAL

Lexington Co. Sheriff's Dept.

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

Personally appeared before me the affiant T. Govan who

being duly sworn deposes and says that defendant John Shelby Wells

did within this county and state on or about 07/01/2011 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Lexington)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Lewd Act upon a child under 16

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 in July 2011, the defendant John Shelby Wells did commit a Lewd Act against the victim MINOR 1 whom is 7 years of age. Through a Forensic interview at the Dickerson Center for Children the victim disclosed that the defendant has inappropriately touched her on her vagina and buttocks, with his penis while at his residence. The defendant is a registered Sex Offender. This incident occurred at Bluff Ridge Rd, in the Lexington area of Lexington County, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

Affiant's Address P O Box 639
Lexington, SC 29071-

Affiant's Telephone

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 or about 7/1/2011 defendant John Shelby Wells

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Lexington) as set forth below.

DESCRIPTION OF OFFENSE: Sex / Lewd Act upon a child under 16

Having found probable cause and the above affiant having sworn before me, 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

Sworn to and subscribed before me

on 07/22/2011

(L.S.)

Signature of Issuing Judge

Scott D. Whittle

Judge Code: 5886

Judge's Address 650 Knox Abbott Drive
Cayce, SC 29033-

Judge's Telephone (803)796-7100

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

S.C. Attorney General
April 21, 2003
SCCA 618

ORIGINAL

[Handwritten Signature]

A TRUE COPY
LEXINGTON COUNTY SHERIFF'S DEPT.

(0-15)

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
John Shelby Wells)
 AKA:)
 Race: White Sex: M Age: 64)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: Bluff Ridge Rd)
 City, State, Zip: Lexington, SC 29073)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS3201525
 A/W#: M302984
 Date of Offense: 1/1/2011 - 7/11/2011
 S.C. Code § : 16-15-0140
 CDR Code #: 2468

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Committing or attempting lewd act upon child under 16

CONVICTED OF or PLEADS

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
[Signature] 64191 [Signature] [Signature]
 Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2012-GS-32-1524
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
 days/hours Public Service Employment

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: Sex Offender Registry

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 1302

Clerk of Court/ Deputy Clerk: Beth A. Carrizo/ok
 Court Reporter: Coconut Rantson
 SCCA/217 (03/2011)

Presiding Judge: [Signature]
 Judge Code: 2041
 Sentence Date: 6/6/2012

A TRUE COPY
 Lex. Ct. of C.C., G.S. & P.C.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
)

INDICTMENT FOR
 COMMITTING OR ATTEMPTING A LEWD ACT
 UPON A CHILD

§ 16-15-0140

At a Court of General Sessions, convened on JUNE 2012, the Grand Jurors of Lexington County present upon their oath:

That John Shelby Wells, a person over the age of fourteen (14) years, did in Lexington County, on or about January 1, 2011 through July 11, 2011, willfully and lewdly or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: **MINOR 2** date of birth **██████████** **██████████**, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140, South Carolina Code of Laws 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Suzanne Mayes
 ASSISTANT SOLICITOR

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICES

FORENSIC PSYCHOLOGICAL EVALUATION
Pursuant to the South Carolina Sexual Predator Act
§44-48-10

Name: Wells, John Shelby
aka: Wells Jr., John Shelby
Wells Jr., John S. Shelby
Wells, John Shelly
Date of Birth: [REDACTED] (age 72)
County: Lexington
Evaluator: Rozanna Tross, Psy.D.
Date of Report: 4/24/20

IDENTIFYING INFORMATION

Mr. John Shelby Wells is a 72-year-old male who has been convicted of at least one sexually violent offense as defined by §44-48-30 and is approaching release from total confinement. He is currently serving concurrent sentences of 15 years for two counts of Lewd Act upon a Child under 16. Mr. Wells reported he was released from McCormick Correctional Institution within the South Carolina Department of Corrections (SCDC) on or about 1/31/20 and transferred to the Lexington County Detention Center where he is currently residing, pending disposition of these SVP proceedings.

REASON FOR EVALUATION

On 12/2/19, a petition was filed by the State of South Carolina alleging Mr. Wells is a Sexually Violent Predator (SVP) as defined by the Sexually Violent Predator Act. This Act states in §44-48-20, "The General Assembly finds that a mentally abnormal and extremely dangerous group of sexually violent predators exists who require involuntary commitment in a secure facility for long-term, control, care and treatment."

On 2/18/20, the Lexington County Court of Common Pleas issued an order for an evaluation to help determine if Mr. Wells "suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment."

The South Carolina Statute §44-48-30 defines *mental abnormality* as a "mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses." *Likely to engage in acts of sexual violence* is defined as "the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others."



NOTIFICATION

Attempts to explain the nature and purpose of the evaluation to Mr. Wells at the beginning of the first interview were met with hostility and resistance. He interrupted this writer on multiple occasions, spoke over her, and dismissed the information he was given. He refused to try and read the written notification placed in front of him saying he could not read, and refused to listen to the information trying to be discussed with him. He stated this evaluation was "unfair" and if he was going to be sent back to the Department of Corrections "just give me a lethal injection." He stated, "They should have done this 10 years ago" referencing his previous incarceration for a sexual offense in 1992. When asked to calm down and at least listen to why the evaluation was taking place now verses during his previous period of incarceration, he was tangential and quickly began a tirade of complaints about how the Department of Corrections was not assisting him with his medical needs (e.g., pain medication beyond Tylenol). After about 10 minutes, Mr. Wells did appear to lessen his displeasure and was willing to hear the notification, though he frequently interrupted the process complaining of unfair treatment by the Department of Corrections and his desire to receive the "lethal injection" should the court commit him.

Despite the difficulty, Mr. Wells was advised a Judge had ordered him to be evaluated by the Department of Mental Health to see if he meets criteria for possible commitment under the Sexually Violent Predator Act. He was advised a report, containing an opinion on this matter, would be written and submitted to the Attorney General's office and subsequently to his attorney and the Court. He was also advised this report would become part of his treatment record should he become committed. He was advised a review of available records and discussions with relevant collateral informants would be had as needed and that any or all information gleaned from these sources could be used in the report. He was advised any statements he made in the context of this evaluation were not confidential and could also be made part of the report. He was advised any information pertaining to the interview or report could become part of courtroom testimony if so requested.

Mr. Wells stated, "I ain't signing nothing" when shown the notification form in writing and initially stated he had "nothing to say" when advised the interview was part of the evaluation process. Given his cantankerous demeanor, he was offered a chance to speak with his attorney, but simply shook his head no and folded his arms across his chest. When asked who his attorney was, he stated, "I ain't saying nothing." While this writer was looking up that information, Mr. Wells began discussing his offenses and his version of what took place. He was asked if he wanted to continue with an interview, to which he indicated yes. The interview proceeded at that point.

During the second interview, Mr. Wells was noticeably more willing to engage in a conversation and asked questions about the notification as it was given. He was again advised of the above nature and purpose of the evaluation to which he again asked why this was not done 10 years ago when he was released from his first sexual offense, to which he was informed the Multidisciplinary Team had met, but did not consider his case for further review. He stated again, that if he is going to be committed to the program, he is going to ask for the lethal injection.

SOURCES OF INFORMATION

Information for this report was gathered from the following sources as well as clinical interviews with Mr. Wells on 3/18/20 and 3/23/20.

- Consultation with Probation, Pardon, and Parole Services.
- Consultation with SCDC Sex Offender Treatment Manager.
- County of Lexington Order for Evaluation Pursuant to the Sexually Violent Predator Act dated 2/18/20.
- County of Lexington Probable Cause Order dated 1/3/20.
- Petition Pursuant to the Sexually Violent Predator Act dated 12/2/19.
- Prosecutor's Review Committee Probable Cause Determination form dated 11/18/19.
- Sexual Predator Referral Form (Multidisciplinary Team) dated 10/17/19.
- SCDC Sexual Predator Multi-Disciplinary Team Referral Data dated 10/16/19.
- Sexual Predator Synopsis Forms (no date).
- County of Lexington Arrest Warrants, Indictments, Affidavits, and Sentencing Sheets.
- Lexington Sheriff's Department Incident Reports, Reporting Officer Narratives, Case Supplemental Reports, Defendant Affidavits, Voluntary Statements, and Witness Statements.
- Dickerson Center for Children Forensic Interview Reports.
- South Carolina Children's Advocacy Medical Response System reports.
- County of Darlington Arrest Warrants, Indictments, Affidavits, and Sentencing Sheets.
- Records from Prisma Health – Richland and Prisma Health - Baptist
- Records from South Carolina Department of Corrections (SCDC).
 - Records from Gilliam Psychiatric Hospital.
 - Records from McCormick Institution.
- Records from Lexington County Jail.
- South Carolina Criminal History Record.
- Texas Criminal History Record.
- Georgia Criminal History Record.

BRIEF RELEVANT HISTORY

Mr. Wells was not a reliable historian in that he tended to exaggerate his history, provide different accounts between interviews, as well as provide vague responses to questions. Due to his age, many collateral sources were no longer available and other records were not provided, despite having sent multiple requests. Therefore, the following historical is limited in both its thoroughness and veracity.

Childhood History

Mr. Wells stated he was born and raised in Hartsville, South Carolina. He stated he is one of eight children born to his parents' marital union, having two sisters and five brothers. However, he stated during the second interview, his mother had three children (two girls and a boy) prior to marrying his father. He also reported he and his siblings "were all adopted out" as his "mom and dad didn't have the money to take care of us." He indicated this occurred when he was "eight or nine." Mr. Wells stated he "never stayed" at his placements and always "went

back home." He stated his family was spread "all over South Carolina and North Carolina." Available collateral records do not reference Mr. Wells' early childhood.

Mr. Wells described his father as an abusive man who frequently "slapped" him on his head and "threatened me." He stated his father threatened to shoot him on one occasion, though during the second interview stated his father "tried to shoot me four or five times." Mr. Wells also stated he is "completely deaf" in his right ear, which he attributed to his father slapping him "on the head." However, during the second interview, he stated he lost his hearing at the age of "five or six" after he "fell and hit my head on a coal heater." He stated he and his siblings were "playing around and I fell." Mr. Wells stated he was hospitalized "for a year" after this injury where he was treated for "burns on my neck" and sustained permanent hearing loss in his right ear.

During the first interview, Mr. Wells reported his father died in either 1964 or 1965. During the second interview, he stated his father died in 1974. He consistently reported his mother passed away in 2001. He reported he has not spoken to any of his siblings since 2001 adding, "I have no one." Mr. Wells reported he lived "on my own" throughout his adult life. Records from SCDC and various hospitals note he lived with the Salvation Army for many years. Prior to his arrest on the most recent sex offense, Mr. Wells stated he was living in a trailer park in Lexington County. He stated he moved there after his release from incarceration in 2005.

Academic History

Mr. Wells reported he attended school but left in the second grade. SCDC records note a grade level of "two" under education. Mr. Wells stated, "no one cared" that he left school. When asked why he left, he stated, "I had problems. I couldn't talk and hear people. I can't understand what people say." Mr. Wells reported attending an "industrial school" from the age of 10 to 17 through the Department of Juvenile Justice. He stated they did not attend school but "did work" such as "picked corn, planted veggies." Mr. Wells stated he "never learned to read or write because I can't hear." He stated it is "hard to understand what people say, I can't hear the vowels or correct pronunciation." Mr. Wells had significant difficulty hearing during both interviews and SCDC records note he is "hard of hearing."

Work History

Mr. Wells stated he typically helped his uncle "tear down houses and stuff" when he was able to work but indicated he has been unable to work most of his life. When not working, he stated he "cleaned my room" and "watched TV." However, he later stated he worked "six months" with the Department of Transportation then "had a light stroke." He stated this was "the only job I ever had" though later stated he worked in Texas for "one month" doing "offshore drilling." Mr. Wells stated he began receiving SSI in 2008 or 2009 for "health problems." During the second interview, he stated this was in 2005.

While in SCDC, records note Mr. Wells worked for two months in 1994 but was terminated due to "unsat job performance." He appears to have worked consistently from February 1995 to March 1999 then "placed in st/sp custody." He began work again in February 2000 and worked until June 2001 when he was again "placed in st/sp custody." He resumed work in October

2001 and continued until February 2002 when he was not eligible to work due to "medical." He worked again from August 2002 until October 2003 where he was again unable to work due to "medical." He was released from SCDC in 2005. He returned in June of 2012 and records reflect he was taken out of the institution on three occasions for "medical." Records note he worked from February 2013 to April 2013. According to the History of Movements, Mr. Wells was taken out of the institution for medical reasons on 25 separate occasions between 1/22/14 and 3/1/19.

Substance Abuse History

During the first interview, Mr. Wells reported he used marijuana "just before" he committed his first offense but indicated this was the "only time" he used it. He stated "I had a seizure from taking it" and "it put me in the hospital." Later in the interview, he stated, "I took pills all the time" but would not provide details. During the second interview, he stated he drank from an early age and drank "as much as I could get." He stated he drank "all the time" and smiled when discussing his use. Mr. Wells added, "My daddy was a bootlegger." An Intake Assessment from Gilliam Psychiatric Hospital reflects Mr. Wells reported "an extensive history of substance abuse including Valium, Darvocet, and alcohol." SCDC records also note a conviction for "Use, Poss, Narc, Marij, Unauth Drug, Inhalant" in July 2002, to which Mr. Wells acknowledged being in possession of 3 grams of cocaine and crack that he says he was "holding" for other inmates. He denied using any type of substance other than alcohol. Lexington County Detention Center records note Mr. Wells reported a history of attending substance abuse treatment for alcohol "six - eight times" while in the community.

Relationship and Sexual History

Mr. Wells reported he married around the age of 22 or 23 and had two children with his wife, the first of whom died at the age of 14 months due to Spinal Meningitis. He stated he has only seen his second son (born nine months after his first son died) "twice in 20 years." Mr. Wells stated he is unsure how long he and his wife were together but stated he "caught her running around on me" which ended the relationship. During the second interview, he stated he and his wife were together "three years" before separating but indicated they are still married as neither one sought a legal divorce. He stated he has not seen his wife or son since 2001. SCDC and Lexington County Detention Center records note Mr. Wells is divorced and has "no dependents."

Mr. Wells denied a subsequent long-term relationship but stated he had several different women live with him at different times, the longest of which was "a couple months." Mr. Wells reported having eight different sexual partners in his life, adding, "they all lived with me at some point." He stated, "A Mexican girl would come and go with me some time and we had sex." Mr. Wells denied ever viewing pornography, visiting strip clubs, or calling phone sex lines. He denied frequent masturbation, feeling he was sexually preoccupied, and denied feeling there was anything problematic or abnormal about his sexual interests or behaviors.

Mental Health History

During the first interview, Mr. Wells vacillated between saying he has had mental health treatment in the past to saying he has never been seen by mental health prior to his

incarceration in 1992. He then stated he was seen on "Bull Street (South Carolina State Hospital) after he "shot myself" and "cut myself" but was unable to provide any details related to these hospitalizations. He later stated he shot himself in the abdomen around the age of 16 or 17 (e.g., 1964/65) and was taken to "Valley Hospital" in Hartsville, SC where he was kept for two weeks. When asked why he shot himself he stated, "I was tired of living... tired of hurting." He then reported a suicide attempt via overdose of Valium and Darvocet's but could not recall when this took place or his course of treatment. He later referenced an overdose when his son died (approximately 1973) then stated "I did all this cutting and stuff... they sent me to Gilliam three times (though this occurred while he was incarcerated between 1992 and 2001)." During the second interview, Mr. Wells stated he "saw a psychiatrist two or three times for shooting myself" and after an "overdose on Valiums." He stated he was around the age of 24 or 25 when he shot himself and stated, this was "over a girl." He stated, "I found out she was dating a black guy." He stated he shot himself in the abdomen and went to the hospital where they "prescribed me Valium." Mr. Wells stated he "overdosed" on this Valium after his son died (which would have been around this same time period). Mr. Wells added, "I tried to sign myself into Bull street" but "they threw me out, said nothing was wrong with me." He was unable to provide any details as to when this occurred or why he went to the hospital.

Mr. Wells reported that while in SCDC, he was admitted to their psychiatric hospital (Gilliam) on three separate occasions. He stated his first hospitalization to Gilliam was precipitated by his mother coming to visit him, but being denied entrance." He stated she was "made to wait five hours out there in the heat." Mr. Wells stated, "I went off" which he explained meant, "I got mad, angry, throwing stuff... I threw a TV, put my fist through an officer's desk." He stated he was hospitalized for "two months" and given "pain meds." Mr. Wells stated his second hospitalization lasted "a month" but he could not recall why he was hospitalized. He stated his third hospitalization took place while he was housed at Kirkland Correctional Institution but he stated he could not recall why he was hospitalized or how long he was there. SCDC records reflect Mr. Wells was seen at Gilliam in July 1994, June 1999, and June 2001. Mr. Wells reported he has been "so sad" in the past that he "didn't want to live no more" and indicated he "just hurt all the time" which he explained meant his physical pain. He reported he "used to take an antidepressant medication" but has not done so since 2005.

Department of Mental Health (DMH) records note an admission for Mr. Wells to William S. Hall Psychiatric Institute on 3/12/01 to 12/17/02 with a code of 780.9 which references "general symptoms." SCDC records note a transfer for "medical" on 3/12/01 though he was returned to the institution the same day. He returned to Richland County for "medical" again on 9/19/01 but returned the same day to the institution. No other records for inpatient or outpatient treatment with the Department of Mental Health were found.

Records were requested from Gilliam Psychiatric Hospital, but only an Intake Assessment and Discharge Summary from his 1994 admission were provided. Those records indicate this was his first admission to the hospital and he was referred due to "feeling depressed from what he perceives as [a] lack of adequate medical attention." His intake assessment indicated he "has a history of prior psychiatric treatment at South Carolina State Hospital" and "a history of [a] suicide attempt" though it is unclear if this is his self-report or substantiated by hospital records

from those admissions. Mr. Wells reported he "shot himself in the abdomen when he was 18-years-old." While at the hospital, he consistently denied psychiatric symptoms and reported "numerous somatic complaints" related to "pain in both legs, stomach ulcers, frequent hemorrhoids, and lower back pain." Neurological testing was completed during his hospitalization, which reflected "no indications of neurological deficits." Psychological testing "indicated that Mr. Wells may be described as somewhat tense and anxious individual who often feels worried, depressed and fatigued" mostly in relation to his "medical conditions and chronic pain." He was discharged back to the institution with a diagnosis of Adjustment Disorder with Depressed Mood.

Subsequent notes from SCDC reflect Mr. Wells was referred to Gilliam in June of 1999 to "help him develop appropriate coping techniques" after he had "resorted to cutting as a means of not returning to the yard and as a method of venting his feelings." Notes stated he had been in protective custody over 60 days due to feeling "threatened" by other inmates due to his sex offender status and being "worried about his safety." Mr. Wells frequently requested to be transferred to another institution or sent to Gilliam Psychiatric Hospital out of fear of returning to the general population. He reportedly engaged in manipulative behavior to achieve this goal, such as reporting suicidal ideation, making superficial cuts on his wrists, and reporting psychotic symptoms. Records reflect he was spoken to on several occasions about these tactics to which he stated, "[he] understands it is inappropriate." Notes reflect Mr. Wells returned to the institution with diagnoses of Schizoaffective Disorder, Depressive Type; Cannabis Abuse; and Antisocial Personality Disorder though specific symptoms and behaviors were not described.

Records from Lexington County Detention Center reflect Mr. Wells reported one prior suicide attempt due to feeling he had "lost everything" after having a stroke. He also reported having cut his wrists on prior occasions.

Medical History

Mr. Wells gave a fairly convoluted medical history, focusing mostly on how "you can't get nothing" while incarcerated with SCDC and how he has been inadequately provided for in terms of pain management. He reported varying amounts of hospitalizations (e.g., "15 times" in his life to "18 or 19 times last year") and often switched to talking about his various suicide attempts (though at other times stated there were only two) when asked for clarification about his medical problems. During the second interview, he was more willing to engage in a discussion about his medical history. He discussed his hearing loss and stated he is now "100%" deaf in his right ear and "90% deaf in my left." SCDC records note Mr. Wells is "hard of hearing" and references his needing hearing aids and/or batteries for his aids on several occasions.

Mr. Wells reported he was involved in a motor vehicle accident "sometime in my 40's" where he "had to be cut out of the truck." He stated he received "multiple" injuries on his legs and back and guessed he spent "a month" in the hospital. He stated subsequent to the accident, he had "a seizure" and has chronic headaches. He stated he was put in a wheelchair "six or seven years ago" because "I kept falling and hitting my head" which he stated "messed my back up."

He also reported having "three light strokes," one in 2000, 2009, and 2010 but could not recall any details. He stated, "In the last seven years, I've been to the hospital 18 times." Mr. Wells stated he has muscle spasms, gets headaches, falls, and has hit his head frequently. He stated, "Since I've been at Lexington Detention Center, I've fallen and hit my head five times." He stated he fell and hit his head "seven times" while in SCDC.

Records from Prisma Health – Richland/Baptist reflect 12 different admissions for Mr. Wells between June 2005 to September 2017, the majority of which reflect complaints of chest pains, pain in his legs, back, or head, and abdominal cramping. Early notes reflect no significant findings though he was noted to have possible bladder cancer or prostatitis in 2005 and a nodularity of the prostate in 2006. Hospital notes reflected Mr. Wells had a history of Asthma, Bronchitis, peripheral vascular disease, two myocardial infarctions and moderate coronary disease. Notes from 2005 reported he has a history of a "gunshot wound to abdomen with multiple surgeries" which was "25 years ago (e.g., 32 years old)." When seen in 2014 and 2015, he was referred to the Cardiac Unit though testing did not yield any significant findings on either occasion (e.g., 2/10/14, 3/2/15 & 5/13/15). In April 2016 he was diagnosed with a left plural effusion and hypoxia due to aspiration. In August 2016 SCDC staff told the hospital Mr. Wells has "slurred speech" and a "change in vision." Records reflect he had Bell's Palsy and a history of Thoracic Dissection. A note from September 2016 reflected Mr. Wells "fell" from his wheelchair though no injury was noted. Records from September 2017 reflect an "Unchanged ascending thoracic aneurysm; Colonic diverticulosis w/o acute diverticulitis; Enlarged prostate; and Hepatic steatosis (fatty liver)."

Early records from SCDC reflect Mr. Wells was seen by medical for numerous complaints of back, hand, neck and headache pain. He was prescribed an Inhaler for "wheezing," Naproxen for pain, as well as Prilosec and Zantac. In November 2018 he was taken to the ER due to "shortness of breath and chest pains." He was seen for a follow up at Piedmont Cardiology on 12/12/18 and scheduled for a "Valvuloplasty" at Self Regional Hospital on 1/17/19 and 2/14/19. Mr. Wells was seen again at the hospital on 1/14/19 for an "abnormal EKG" and "chest pains" and received several follow up appointments over the next several months. Notes stated he was seen at USC for surgery on 5/20/19 and has had subsequent follow up appointments at Advanced Cardiothoracic in Greenwood, SC and Self Regional Hospital. He was taken to the hospital on 11/7/19 with complaints of chest pains and has continued with regular follow up appointments with Self Regional and Advanced Cardiology.

Records from Lexington County Jail reflect Mr. Wells had a "cardiac valve replacement in November 2019" and has since complained of chest pains when he coughs and at times has difficulty breathing. Notes reflect he was treated with each complaint with various medication adjustments, stabilized, and returned to his unit. On an intake form, Mr. Wells reported he had a "light stroke" in 2001 and 2008, has Cardiovascular Disease, and Hypertension. Mr. Wells was noted to be "at risk" for falls though he is "able to transfer self to wheelchair and able to maneuver via walking his feet." On 2/27/20, while being seen by the nurses, Mr. Wells "gently slide to the floor from his wheelchair as it stumbled on carpet threshold." He was "assisted" back into his wheelchair" with "no injury" noted. He told staff he "fell yesterday in the

bathroom but did not report it" though he "hurt his right knee." Staff examined his knee and saw a "small reddened area" the "size of an eraser."

Legal History

Mr. Wells reported he first became involved with the criminal justice system at the age of 10. He stated, he along with a same aged peer, were with a group of adult males (he estimated they were 26 or 27 years old) who were "trying to rob" another man. Mr. Wells stated, "Me and my brother went to his door and asked to use his car jack. That's when the other guy hit him in the head." As a result, he stated he was placed in an "industrial school" within the Department of Juvenile Justice where he stayed until the age of 17. As an adult, Mr. Wells stated he has been incarcerated "four times," the first of which occurred when he was 20. He indicated that aside from his two sexual offense convictions, all his legal history surrounded "forgery."

Official records reflect Mr. Wells was convicted of two counts Fraud – Insufficient Funds Check and Flight to Avoid (Fugitive from South Carolina) in Port Lavaca, Texas in February 1977. The NCIC also lists LARC (larceny) by Check on this date with a disposition of "bail/released on own recognizance" and a charge of five counts Forgery on 3/1/77 (disposition not listed). When asked about this, Mr. Wells stated he was "in Texas for one month" while working. He denied he was evading arrest or detection for illegal activity in another state.

Records also reflect charges of Fraud and Flight/Escape in Georgia on 2/27/81. The disposition notes, "time expired" as of 7/1/13. Mr. Wells stated he was driving his mother back from Florida to South Carolina and was stopped due to car trouble while in GA. When the police came to assist him, they discovered he had a warrant for fraud in South Carolina.

South Carolina records reflect Mr. Wells was charged with four counts Forgery on 10/20/76. On 11/2/76 he was charged with an additional count of Forgery. On or about 3/8/77, he was convicted of three counts Forgery and sentenced to five years confinement suspended to 18 months confinement and three years probation. On 2/27/81, Mr. Wells was charged with Fraud and Forgery. He was convicted of Common Law Forgery on 5/1/81 and sentenced to four years confinement. On 6/17/81, he was charged with Forgery and convicted on 8/13/81 and given six months confinement. On 11/3/81, Mr. Wells was convicted of two counts Forgery and given seven years confinement and four years confinement respectively, to run concurrent. On 1/17/92, he was charged with Fraudulent Check. On 2/5/92, he was charged with two counts Fraudulent Check. On 5/3/02, Mr. Wells was charged with Sex Offender Registry Violation First Offense, though he denies he has ever received a charge of this nature. He stated, "I always registered." Mr. Wells acknowledged his multiple fraudulent check charges, laughing as he recalled there were "many." When asked why he had such charges, he shrugged his shoulders and smiled.

SEXUAL OFFENSES

First Offense

On or about 7/15/92 (age 44), Mr. Wells pleaded guilty to two counts Criminal Sexual Conduct with a Minor First Degree and was sentenced to concurrent terms of 20 years of incarceration.

The victims were his six and nine-year-old nieces. The affidavits note Mr. Wells "attempted sexual intercourse" with the victims and was "making pornographic photographs" of them. The offenses were reported to have occurred between August and November 1991. Official records related to these offenses are unavailable "due to the age" of the cases.

SCDC records note Mr. Wells reported he was "accused of taking pictures" of his seven and nine-year-old nieces and "laying between them with his penis out but does not remember touching them." He also reported he was "intoxicated" at the time of the offense.

During the interview for this current assessment, when asked to explain what happened during this offense, Mr. Wells stated he was "asleep in my bed" and his nieces "came in and said 'Uncle will you have sex with me?' and imitated a little girl asking for sex (e.g., put his hands on his hips, batted his eyes, and spoke in a high-pitched voice). He added, "because I was drunk I done it" then shrugged his shoulders. He stated he did not know what he was thinking "back then" and stated, "I don't know why I done it." When asked if there was anything he could have done different to prevent the offense, he stated, "I don't know if I could have done something different to prevent it from happening. When you do something you don't think about it right then." During the second interview, Mr. Wells stated, "I had a real bad drinking problem then" but maintained he did not know why he offended. He added, "I only touched one of them, they said I touched the other but I didn't." When asked why the girls were at his house, he stated, "I always babysitted [sic] for my family."

On or about 11/15/01, Mr. Wells' case was reviewed by the Multidisciplinary Team to determine if he met criteria to be considered a sexually violent predator. His case was not referred for continued review at that time and he was released from SCDC (though SCDC records note he was not released until 4/29/05).

Second Offense

On or about 7/8/11 (age 63), the mother of two girls (four and eight) reported to law enforcement Mr. Wells sexually abused her children and "several other children" while they were in his care. The initial disclosure came from a four-year-old female [MB] who disclosed to her father Mr. Wells "took out his dick and put it in [her eight-year-old sister's] ^{MINOR 2} mouth." She also reported Mr. Wells "touched her between her legs" and that he "sleeps in the bed with them every night and goes in the bathroom with them when they are in [the] bathtub." MB referenced sexual behavior toward her eight-year old sister ^{MINOR 2} and their seven-year-old cousin

^{MINOR 1} The parents picked up their children from Mr. Wells and asked ^{MINOR 2} what had been happening. She disclosed Mr. Wells "was licking her between her legs and sucking on her breast" and had placed his "finger" in her private. The parents then told the mother of the seven-year-old female ^{MINOR 1} what their children had disclosed. ^{MINOR 1} reported Mr. Wells touched her "breasts and private area." During subsequent Forensic Interviews, ^{MINOR 2} disclosed Mr. Wells "took pictures" of her private area with his "cell phone" and "showed her magazines of 'naked' men and women dancing." She reported Mr. Wells put baby oil on her when he touched her and also reported witnessing Mr. Wells touch MB on her "private," breasts, and buttocks. MB denied any sexual abuse during the Forensic Interview but reported she witnessed Mr. Wells have vaginal intercourse with her sister ^{MINOR 2}. ^{MINOR 1} disclosed Mr. Wells touched her on her butt

with his penis and on her vagina. She stated the abuse occurred on at least three occasions. Mr. Wells was charged with two counts of Lewd Act upon a Child under 16. On or about 6/6/12 he pleaded guilty to both counts and received concurrent sentences of 15 years of incarceration. He entered SCDC on 6/8/12. Investigative notes reflect the parents were aware of Mr. Wells prior sexual conviction and that he was on the Sex Offender Registry. However, they noted they were advised (presumably by Mr. Wells) that he was "not a predator," likely because his case was not referred fro committed as an SVP.

When asked to explain what happened during these offenses, Mr. Wells stated, "I'm not the only one doing stuff with them. Their older brother was going with them before I ever did." When asked to explain what occurred, he stated, "If I be smoking something or drinking I don't know half of what I do." He stated, "they should be locked up too if they are going to put me in prison... I only pled guilty because they said I would get eight or nine years. They gave me 15." When asked to explain what he says took place, he stated (in a high pitched sing-song voice), "she told me, 'my brother does it so you can do it too.'" When asked what the victims' allege he did to them, Mr. Wells stated, "What would you do? What if you were a man and a girl comes up to you naked and says 'do you want to get with this?' What would you do?" He then added, "I may have a problem with that but I'm not a sex-o-path."

During the second interview, when asked what took place during this offense, Mr. Wells stated he frequently babysat children from the trailer park where he lived and that these three particular girls "came over on weekends." When asked why he offended he stated, "Cause the way she was. I caught her with her brother on top of her one time." When asked if this made him want to have sex with the victim he stated, "they were all having sex with their brother." When asked if this made him think it was okay to have sex with them, he stated, "I didn't say it was okay, but they were already having sex. What else can I say? I already acknowledged I shouldn't have done it." When asked if he was attracted to little girls, referencing seven or eight year olds, Mr. Wells responded, "She wasn't little." When asked what he meant by that he stated, "four or five is little." When asked what he may have been thinking when he committed the offense, he stated, "I don't know why I did it. I don't know what I was thinking." When asked why he was babysitting children given he had previously committed a sexual offense and was on the sex offender registry, Mr. Wells stated, "They all knew I was on the registry."

PRIOR SEX OFFENDER TREATMENT

Records from the South Carolina Department of Corrections reflect Mr. Wells participated in sex offender treatment from 1/11/93 to 4/5/93 and was noted to have "good" participation. A note dated 2/29/00 stated he was "evaluated for intensive treatment for sex offenders" but in consultation with the SCDC Sex Offender Treatment Manager, there are no records Mr. Wells participated in any type of sex offender treatment from 2000 to present. When asked what he learned from participating in treatment, Mr. Wells stated, "I learned I can be a victim just as much as they were a victim." He declined to elaborate further.

INCARCERATION HISTORY

The South Carolina Department of Corrections (SCDC) records reflect Mr. Wells was incarcerated between July 1992 and April 2005 and again from June 2008 to present. His early records suggest he had a difficult time while incarcerated due to concerns he was being "threatened" by other inmates as described above. Mr. Wells also received three infractions; Mutilation in 1999; Use, Poss, Narc, Marij, Unauth Drug, Inhalant in 2002; and Possession of Contraband in 2003. He was criminally prosecuted for the 2002 infraction in McCormick County Court and received a sentence of four years incarceration to run concurrent with his 15-year sentences for Lewd Act. When asked about this charge during the current interview, Mr. Wells initially stated he did not know why he received any of his infractions. During the second interview, he stated the 2002 conviction was related to his "holding drugs for other inmates" so he "could make money to buy canteen." He stated he was "caught with 1.5 grams of cocaine and 1.5 grams of crack cocaine." He smiled and added, "I made buck" frequently but "never got caught." He stated he never used anything but the alcohol he made.

Mr. Wells does not appear to have had difficulties during his second period of incarceration and did not receive any infractions.

POST-INCARCERATION REQUIREMENTS

In consultation with Probation, Pardon, and Parole Services, Mr. Wells is required to participate in the Supervised Reentry Program. Under this provision, offenders who have served two or more continuous years of incarceration are released six months prior to their max out date. Between their early release and max out date, the Supervised Reentry Program supervises them. Mr. Wells' max out date, per SCDC records, is 8/5/20. As such, if he is released from the Lexington County Detention Center after this date, he will not be under supervision.

When Mr. Wells is released, he will have GPS monitoring for as long as he is on the Sex Offender Registry (Jessie's Law). This is not supervision and PPPS will have no authority to enforce sex offender conditions such as counseling or Internet restrictions etc.

FUTURE PLANS

Mr. Wells reported that upon release he plans to reside with the Salvation Army, and this is consistent with SCDC's After Release plans for him. Mr. Wells stated he felt staying with the Salvation Army will allow him to "be in the middle of town (close to resources)" and "not have any children around me." He stated he plans to support himself with SSI and Social Security as well as "food stamps and Medicaid and Medicare." Mr. Wells stated he will have "people to talk to" at the Salvation Army and "stuff like that." When asked how he thought he could avoid reoffense, he stated, "I can't say that. No one can say what they are going to do or not." When asked if there was anything he could do to try and prevent a reoffense he shrugged his shoulders and stated, "Not be around any of them. I won't babysit because I don't trust myself to not do something like that again."

CLINICAL PRESENTATION

This writer met with Mr. Wells on 3/18/20 and 3/23/20 for a combined total of four hours and 35 minutes. He was quite cantankerous during his first interview, interrupting this writer on

multiple occasions, speaking over her, and becoming tangential about his various medical problems and his frustration over the Sexually Violent Predator Act. When calm, he was attentive to information being discussed and answered questions. He was noticeably calmer during the second interview, though still exhibited much of the same behaviors, just on a smaller scale.

On both occasions Mr. Wells knew what month and year it was, who he was, and why he was meeting with this writer. He was wheelchair bound but could ambulate on his own by shuffling his feet. He had significant hearing difficulties and this writer had to sit very close to him and speak very loudly for him to hear during both interviews. During the second interview, he advised he no longer had batteries in his hearing aid making his hearing more impaired. Mr. Wells frequently cupped his right ear and leaned forward to assist him in hearing. Questions often had to be repeated multiple times for him to hear them. Mr. Wells' speech was difficult as he spoke out of the side of his mouth and his tongue (which was off to the side) was noticeably interfering with pronunciation. His memory was difficult to assess as he provided contradictory answers between interviews and often appeared to simply not want to discuss a given topic in further detail. He was also very defensive, which seemed to interfere with the clarity of his memory. Mr. Wells did not demonstrate any tics, compulsions, or unusual behaviors, and he did not appear to be responding to internal stimuli during the interview. He denied any current suicidal or homicidal ideation, though stated on multiple occasions he would ask for the "lethal injection" if committed to the SVPTP or "sent back to SCDC" as it was a kin to letting him die. He denied any specific plans to harm himself and was dismissive of the idea when asked. Mr. Wells denied problems with sleep, appetite, or mood though expressed anxiety about the potential outcome of these proceedings. He expressed on numerous occasions the proceedings were "unfair" as he had "already served my time." Mr. Wells expressed a great deal of physical discomfort in his legs, chest, and head related to various medical ailments and expressed concern over his current medical status. He frequently complained about the inadequate medical care he receives while incarcerated and exaggerated the severity and frequency of his medical needs (e.g., reported greater numbers of problems compared to available records, reported constant pain but did not appear in discomfort throughout the interview).

DIAGNOSTIC FORMULATION

Mr. Wells was referred for an evaluation to "determine if he suffers from a mental abnormality or personality disorder." Based on his offense patterns and behaviors, he meets diagnostic criteria for Pedophilic Disorder, Sexually Attracted to Females, Nonexclusive Type.

A paraphilia, per the *Diagnostic and Statistical Manual of Mental Disorders 5*, denotes "any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners" (pg. 685). A paraphilia may be defined as any sexual interest greater than or equal to normophilic sexual interests. A Paraphilic Disorder "is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others" (pg. 686). Pedophilic Disorder is a paraphilic disorder wherein the individual has "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors

involving sexual activity with a prepubescent child or children (pg. 697)." Mr. Wells has engaged in sexual behavior with multiple prepubescent children on several different occasions. His offenses spanned many months and appeared to continue despite detection, sanction, and treatment exposure. Therefore, he meets criteria for Pedophilic Disorder. The specifier Nonexclusive Type reflects Mr. Wells also has sexual interest in adult females.

Personality Disorders are enduring patterns of inner experience and behavior that deviate markedly from the expectations of the individual's culture and manifest themselves in at least two of the following areas: cognition; affectivity; interpersonal functioning; and impulse control. These enduring patterns are "inflexible and pervasive" across a broad range of personal and social situations. The patterns are stable and "of long duration" the onset of which "can be traced back to at least adolescence or early adulthood." Mr. Wells' known history does not lend itself to definitive conclusions related to a personality disorder, especially given his tendency to exaggerate his circumstances and the lack of available collateral records (e.g., school records, family accounts, early mental health records, etc.). Aside from his reported abuse of alcohol and admitted check fraud, there does not appear to be a "pervasive pattern" of "disregard for, and violation of, the rights of others" which characterizes Antisocial Personality Disorder nor is there a pervasive pattern of "odd or eccentric" behaviors, "dramatic, emotional, or erratic" behaviors, or "anxious and fearful" behaviors inherent in the other key personality disorders. Mr. Wells does present with manipulative behaviors (e.g., reporting suicidal ideation, engaging in superficial suicidal gestures) in response to increased anxiety, but this does not appear pervasive nor does it manifest itself across a broad range of personal and social situations. In fact it appears isolated to situations of perceived stress (e.g., being threatened by others, fearing civil commitment, etc.). Mr. Wells also presents with significant distorted thinking and an indifference to the harm his actions cause others, but these traits in and of themselves, do not suggest a personality disorder as they can be explained by a desire for self-preservation, a poor ability to accept responsibility for ones actions, and a general lack of insight. As such, no personality disorder diagnosis is given.

While Mr. Wells has experienced intense periods of anxiety, these appear situation specific and are not long-lasting (i.e., as soon as his circumstances or environment change, his anxiety abates). Despite his poor methods of coping (e.g., manipulative behaviors, emotional outbursts, etc.) his reported anxiety does not rise to the level of clinical disorder. As such, no anxiety related disorder is given.

RISK ASSESSMENT

The key factors empirically supported through the research as contributing to sexual offense recidivism are typically divided into static and dynamic factors. Static factors (e.g., offense and victim characteristics) are relatively fixed aspects of an offender's history and therefore do not change with treatment interventions, environmental changes, or in terms of relationship to risk. Dynamic or sometimes referred to as psychologically meaningful factors (e.g., relationship status, deviant sexual interests, and compliance with supervision), are changeable and amenable to treatment and/or environmental manipulations and can help mitigate risk if adequately managed or intervened upon. Assessment of both static and dynamic factors is involved in determining risk for sexual reoffense.

Additionally, an offender's treatment compliance, future plans, sources of community support, and individual protective factors are risk relevant considerations. Treatment compliance is displayed when an individual regularly attends and actively participates in treatment (e.g., contributes meaningfully to group, completes assignments, and practices learned skills) and is motivated for prosocial change. Protective factors are characteristics (e.g., skills, strengths, and coping strategies), resources, or aspects of one's environment that mitigate recidivism risk or help individuals better manage stressful situations. These include factors such as prosocial identity and connections, stability and self-control, and professionally provided support. As such, an assessment of static and dynamic risk factors, treatment compliance, and protective factors, are all involved in assessing risk for sexual recidivism.

STATIC RISK FACTORS

The following items have been empirically supported in the literature as contributing to sexual recidivism: having prior sexual offenses, having deviant sexual interests, psychopathy, being young at the time of offending, having stranger and/or unrelated victims, having male victims, never having been married or in a committed relationship, and violating the conditions of release and/or treatment (Witt & Conroy, 2009). Of these factors, Mr. Wells has prior sexual offenses, deviant sexual interests, and has unrelated victims. While he did reoffend after participating in sex offender treatment, he was not under any type of supervision or specific conditions at the time of his reoffense.

The Static-99R and Static-2002R are actuarial risk assessments designed to assess risk of sexual recidivism for adult males who have already been charged with or convicted of at least one sex offense against a child or non-consenting adult. They are intended to position offenders in terms of their relative degree of risk for sexual recidivism based on commonly available demographic and criminal history information that has been found to correlate with sexual recidivism in adult male sex offenders. The scores characterize the individual's relative risk for sexual recidivism in terms of how unusual it is and in terms of how it compares to risk presented by the typical offender. The recidivism estimates were derived from new charges and reconvictions of groups of individuals; as such, these estimates do not directly correspond to the recidivism risk of an individual offender. The Static-2002R differs from the Static-99R in that it addresses persistence of sexual offending, deviant sexual interests and general criminality. When used together, these two instruments add incremental validity to risk prediction. Authors of the Static-99R and Static-2002R now suggest using both instruments when assessing risk prediction in high stakes evaluations, to include Sexually Violent Predator evaluations.

Mr. Wells' score of 2 on the Static-99R places him in the Level III or Average Risk category of being charged with or convicted of another sexual offense relative to other adult male sex offenders. This level is described as "typical offenders in the middle of the risk distribution." In routine samples with the same score as Mr. Wells, the five-year sexual recidivism rate was 5.6% with confidence intervals of 4.8% and 6.5%. His score of 2 on the Static-2002R also places him in the Average Risk category and places the five-year sexual recidivism rate at 4.6% (with confidence intervals of 3.6% and 6%). Collectively, Mr. Wells' static risk falls in the average risk range compared to other sex offenders with similar scores on these measures.

DYNAMIC RISK FACTORS

The following items have been empirically supported as contributing to sexual recidivism: having a sexual preoccupation, a sexual preference for prepubescent or pubescent children, sexualized violence, multiple paraphilias, offense-supportive attitudes, emotional congruence with children, a lack of emotionally intimate relationships with adults, lifestyle impulsiveness, exhibiting poor problem solving, demonstrating resistance to rules and supervision, grievance/hostility, and having negative social influences (Mann, Hanson, & Thornton, 2010). Additionally, there are several factors found to have significant predictive value for sexual recidivism but which have less empirical support to date. These are: hostility toward women, Machiavellianism, possessing a callousness/lack of concern for others, and displaying dysfunctional coping.

Mr. Wells presents with a *sexual preference for prepubescent children, offense supportive-attitudes, a lack of emotionally intimate relationships with adults, poor problem-solving, a callousness/lack of concern for others, and dysfunctional coping (externalized and sexualized)*. Mr. Wells' current presentation does not offer insight into the role these factors played in his choice to commit sexual offenses. He does not offer insight into how he can ameliorate his dynamic risk nor an interest in doing so aside from avoiding future detainment.

PROTECTIVE FACTORS

Mr. Wells reported he plans to reside with the Salvation Army upon discharge, similar to where he has lived in the past. He stated he feels this situation will provide him an outlet for community resources as well as "someone to talk to" if needed. He indicated he feels living at the Salvation Army will prevent him from being around children in the community.

OPINION

Sexually violent predators, as defined by statute are an "extremely dangerous group" of individuals who require involuntary commitment to a secure facility, as they possess a mental abnormality or personality disorder that makes them "likely to engage in acts of sexual violence if not confined." This mental abnormality, as defined by statute, is a "mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses." Mr. Wells appears to fall into this category. First, he has a mental abnormality that predisposes him to commit acts of sexual violence (e.g., Pedophilic Disorder) and he has acted on this abnormality on multiple occasions offering little insight into why he may have offended or how he could have prevented offending. His offense patterns suggest mere access to children is the antecedent to his offending and he has done little in the past to prevent this from reoccurring. Second, Mr. Wells' risk to recidivate sexually falls in the average category per actuarial assessments and he presents with several dynamic risk factors, none of which he has made efforts to curtail or otherwise mitigate.

Overall, Mr. Wells demonstrates little interest or responsibility in preventing reoffense other than to avoid subsequent incarceration. He does not demonstrate insight into his offending. He externalizes blame for his actions and rationalizes his behavior. Mr. Wells does not present with any form of appropriate coping or problem solving and offers no avenue of preventing future offense aside from "avoiding" children, which he cannot articulate how to do other than

residing at the Salvation Army. As such, it is my opinion Mr. Wells meets criteria to be considered a sexually violent predator as he has a mental abnormality that predisposes him to engage in acts of sexual violence and presents as "likely" to engage of acts of sexual violence if around children.

R. Tross, Psy.D.
Rozanna Tross, Psy.D.
Chief Psychologist

4/24/20
Date



South Eastern Assessments, Inc.

133 East 1st North Street, Summerville, SC 29483

Office: (843) 821-2480

Fax: (843) 875-3149

Competency to Stand Trial & Psychosexual Evaluation Report PRIVATE

Client: John Wells

Evaluator: William Burke, Ph.D.

Date of Assessment: May 20, 2021

Date of Birth: [REDACTED]

Waiver of Confidentiality

Prior to the beginning of this assessment Mr. Wells was fully informed that anything he discussed during this consultation could be reported in the following summary to his attorney Ms. Aimee Zmroczek and the SC Attorneys General Office. He understood this as demonstrated by his ability to repeat back the conditions of this consultation as described above. However, he refused to sign any type of Consent to be Evaluated document or Release of Information. After a concerted attempt to explain the signed a release of records, I phoned Ms. Zmroczek and placed him on speaker phone. She attempted to persuade him to proceed with the evaluation and he continued to refuse. He was quite loud and animated while repeatedly stating "Just give me what I want, a lethal injection, I don't want to live no more if I can't be out of jail."

Warning Regarding the Release of Information

This competency evaluation should not be released to the evaluatee other than under the supervision of a mental health practitioner, because the information in this summary may be detrimental to the evaluatee's emotional health.

Warning Regarding the Limitations of this Summary

This evaluation relied upon direct information from the patient, and collateral information provided by other sources. The validity of the information provided has not been established; therefore, the accuracy of this report is limited to the accuracy of the information provided. If additional information is provided, subsequent to this report, we may reach different conclusions. Under these circumstances, we reserve the right to change our opinions. Given this and other limitations of the evaluation process, we are unable to determine an individual's past behavior or to predict an individual's future behavior with absolute certainty.



Assessment Instruments & Objective Measures:

Mini Mental State Evaluation (MMSE)

Montreal Cognitive Assessment (MoCA)

Rogers Criminal Responsibility Assessment Scales (R-CRAS)

Clinical Observations: As noted above, Mr. Wells did not cooperate with the interview process of this evaluation. He did state repeatedly that he would rather die than go into the SVP program. He was emotionally labile, at times crying and at other times angrily shouting. He had difficulty speaking clearly and when asked about it he reported that he has suffered at least 3 strokes. He had great difficulty hearing but when one raises their voice, he appeared to be able to hear and comprehend what was being said to him.

Background Information: Mr. Wells is a 72 year-old male referred by his attorney for a second opinion regarding whether or not he meets the criteria of a Sexually Violent Predator per SC statute. The limited information Mr. Wells provided is listed below.

Medical History: Mr. Wells reported that he suffered a gunshot wound at the age of 16 from a stranger in a bar who shot 6 other people and then himself. He also shot himself in the abdomen in a suicide attempt at age 18 after his girlfriend broke up with him. He had a heart valve replacement in at some point, he could not recall. He reported having three different strokes. His speech is greatly impaired presumably from stroke. He has difficulty talking, swallowing, and walking.

Criminal History: A review of Mr. Wells criminal history finds two separate sexual assaults. One incest charge followed by a second assault of a non-related child that occurred after the initial arrest. This qualifies at two separate offenses for Static-99R protocol in scoring. This was derived from Dr. Tross' evaluation.

Mental Status: Mr. Wells presented with a flat and angry affect that did not brightened on approach or with encouragement. He refused to sign a consent to treatment document.

Montreal Cognitive Assessment (MoCA): The MoCA was designed as a rapid screening instrument for mild cognitive dysfunction. It assesses different cognitive domains: attention and concentration, executive functions, memory, language, visuoconstructional skills, conceptual thinking, calculations, and orientation. Time to administer the MoCA is approximately 10 minutes. The total possible score is 30 points; a score of 27 or above is considered normal. Mr. Wells achieved a score of 16, indicating severe issues with cognitive function.

Mr. Wells was unable to correctly complete the Alternating Trail Making Test portion of the MoCA. This is an indication of impaired executive function due to a lack of cognitive flexibility and concrete thought process. Language difficulties may also interfere with task comprehension.

Executive function(s) are those cognitive processes that are necessary for the cognitive control of behavior. This involves selecting and successfully monitoring behaviors that facilitate the attainment of chosen goals. His behavior and testing results both indicate an inability to assist with his own defense due to brain damage that directly effects executive function.

My licensure and training allow me to administer, score, and interpret the MoCA. I am certified by MoCa and successfully completed their training and passed the exit exam. I do not know what precise diagnosis regarding the structural damage to his brain outside of the interview and MoCA results. A neurologist or neuropsychologist is needed to determine those specific diagnoses.

Mini Mental State Evaluation (MMSE): The MMSE is a brief screening test that quantitatively assesses the severity of cognitive impairment and can be used to document cognitive changes over time if necessary. The MMSE assesses Orientation (10 items), Registration (3 items), Attention & Calculation (1 item), Recall (3 items), and Language (9 items). Raw scores are corrected for age. A score of 23 or lower is indicative of cognitive impairment. Mr. Wells refused to cooperate while attempting this structured interview. Some of the items overlap with the MoCA, which he did complete. He was not oriented to all four spheres. He did not know the date, time, or place regarding the evaluation. He refused to answer questions about his sleep and appetite. He repeatedly endorsed suicidal ideation. He endorsed symptoms of depression. He denied delusional thought. He denied auditory and/or visual hallucinations.

Rogers Criminal Responsibility Assessment Scales (R-CRAS): Is a comprehensive structured interview decided to assess competency to stand trial issues. Mr. Wells was asked about the roles and functions of key courtroom personnel. He described the defense attorney's job as to "to help me." When asked what outcome the attorney should desire for their client's case, he said "my side". When asked about the solicitor's job, he refused to answer. He refused to answer that he understood the solicitor's job was to attempt to prove a defendant "guilty" when it was explained to him. He also refused to answer the role of the judge in this particular trial. He refused to answer about the role of a jury in his case. Mr. Wells correctly identified himself as the defendant in his case. He refused to answer any other questions regarding the understanding of the trial process and the role each category of person plays in the proceedings.

In regard to his ability to rationally understand the proceedings against him, Mr. Wells did not provide a logical explanation related to his desired outcome. Again, he repeated sometimes calmly and sometimes screaming "Give me what I want, a lethal injection. I don't want to live if I can't get out of jail." He stated this at least 25 times during the 5.5 hours he was in my office.

CLINICAL IMPRESSIONS REGARDING COMPETENCY TO STAND TRIAL:

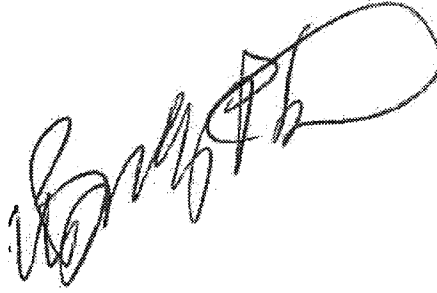
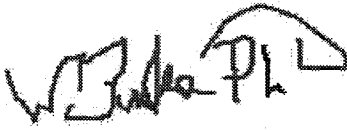
During the current evaluation, it was clear that Mr. Wells was unable to assist in his own defense. His emotional liability, his speech difficulties, and his difficulty with verbal expression all suggest some type of organic brain damage. The only test that Mr. Wells agreed verbally to undergo was the Montreal Cognitive Assessment (MoCA). This occurred after four hours of conversation that was—for the most part—adversarial due to his stance on the assessment.

OPINION/COMPETENCY TO STAND TRIAL: No and Not Likely. Per South Carolina Code Ann. 44-23-410 (1976), an individual "...is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity..." It is my opinion that due to current symptoms, including objective evidence of brain damage, Mr. Wells does not have a rational understanding of the proceedings against him or the capacity to rationally assist counsel in his own defense. Therefore, on the date

of the evaluation, it is my opinion that Mr. Wells is incompetent to stand trial. It is also my opinion that competency cannot be restored with psychiatric and competency restoration treatment. Mr. Wells' competency to stand trial is not likely to be restored in the foreseeable future.

Recommendations: I recommend a neuropsychological evaluation to determine more specific data regarding his brain damage.

Respectfully Submitted;



William Burke, Ph.D. LPC
President & Clinical Director of SEA
Assistant Clinical Professor of Forensic Psychiatry
Medical University of South Carolina

FILED

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 IN THE MATTER OF THE)
 CARE AND TREATMENT OF)
 JOHN SHELBY WELLS,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 CASE #: 2019-CP-32-04802

ORDER OF COMMITMENT

2021 JUN -9 PM 12:58

RECEIVED

Jun 23 2021

SC Court of Appeals

The trial of this case was held in the Lexington County Court of Common Pleas on June 1, 2021. The State withdrew its request for a jury trial, and the matter was heard by the Court. Suzanne Shaw of the Attorney General's Office represented the State and Aimee J. Zmroczek, Esquire, represented the Respondent.

As a preliminary matter, the State offered Exhibits 1 through 5 into evidence, without objection, as to the matter of competency raised in the report authored by Dr. William Burke on May 20, 2021. Ms. Zmroczek offered Dr. Burke's report in evidence as Court's Exhibit 1, without objection. Court's Exhibit 1 and State's Exhibit 5, the report authored by Dr. Rozanna Tross, dated April 24, 2021, are sealed.

For purposes of preserving the record for appeal, certain objections and representations were made concerning Respondent's willingness and/or ability to communicate with his attorney, and same are preserved as stated on the record.


The Court has made findings of fact pursuant to S.C. Code Ann. 44-48-100(b) concerning Respondent's criminal convictions for Criminal Sexual Conduct with Minors, First Degree and Lewd Act against Minors under 16. Without passing judgment on the sufficiency or appropriateness of Dr. Burke's competency report, the court has taken judicial notice of, and has found that, based on the certified copies of Respondent's criminal convictions, and the report authored by Dr. Tross, that Respondent did, in fact, commit the sexually violent offenses of which he was charged and convicted.

The Court having heard the presentation of testimonial evidence from Dr. Tross 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, John Shelby Wells is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED THAT:

- (a) Respondent, John Shelby Wells is committed to the Department of Mental Health for his long-term control, care and treatment;
- (b) Respondent, John Shelby Wells, is to continue to be detained at the Lexington County

1/2 


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.



EDGAR W. DICKSON
Eleventh Judicial Circuit
Court of Common Pleas

June 2, 2021
Lexington, South Carolina

2/2 

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,

s/David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Jun 08 2022

SC Court of Appeals

This 8th day of June, 2022.