

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF RICHARD DEAN CAPPS,

APPELLANT

APPELLATE CASE NO. 2013-001203

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF THE)
CARE AND TREATMENT OF)
RICHARD DEAN CAPPS,)

RESPONDENT,)
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_____)

2012-CP-23-04204

TRANSCRIPT OF RECORD

MAY 28 - 29, 2013
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE G. EDWARD WELMAKER

APPEARANCES:

ATTORNEY FOR APPLICANT:

NICOLE T. WETHERTON
ASSISTANT ATTORNEY GENERAL

ATTORNEY FOR RESPONDENT:

ELIZABETH P. WIYGUL, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 commitment that you've made to these parties to try this
2 case on the law and the evidence and that alone.

3 If you'd be back about twenty minutes til two. That'll
4 give you a little bit of time to find you some lunch and let
5 the bailiffs show you where the jury room will be and where
6 you're to come back. If you'll be back at twenty minutes
7 til two, we'll be hopefully ready to start the opening
8 statements at that time. Have a good lunch, ladies and
9 gentlemen. If you'll go now with Mr. Dougherty, he'll show
10 you where to report back.

11 (Whereupon the jury exited the courtroom at 12:29 pm)

12 **THE COURT:** All right. Were there some motions that we
13 might could hear at this time? Or we could do it right
14 before we come back. Are y'all ready now?

15 **MS. WETHERTON:** I just have a couple of things ---

16 **THE COURT:** All right.

17 **MS. WETHERTON:** --- I just wanted to clarify for the
18 record. I had shown Ms. Wiygul prior to -- my exhibits I
19 was going to admit. This is one collective exhibit. She
20 said that she would probably object.

21 This is a copy -- it's a certified copy from the
22 Greenville Clerk of Court. He was convicted of two counts
23 of lewd act. It's a sentencing sheet. It is the
24 indictments. And it's also the explanation of the charges.
25 And said that she would not object to the sentencing sheet,

1 but she would object to the indictment.

2 And I have some case law here I wanted to put on the
3 record. I wanted to go ahead and get it handled before we
4 started ---

5 **THE COURT:** Okay.

6 **MS. WETHERTON:** --- admitting things and then it would
7 slow everything down. If I could just cite you the case
8 that's stating my proposition. The case is in the matter
9 and care of treatment of John Phillip Corley. And that's
10 cited as 577 SE 2d 451.

11 They basically in that case just wanted to stipulate to
12 the convictions. And in that case -- and I also wanted to
13 cite to rule 702 of the rules of evidence.

14 Dr. Wadman, the expert in this case, will testify that
15 she looked at those indictments as part of rendering her
16 diagnosis. And pursuant to rule 702, anything that she
17 considered as to her expert opinion would be okay to be
18 testified to.

19 And in this case, in the Corley case it was stated that
20 the details of the appellant's prior offenses found in the
21 indictments were relevant to the issue of whether appellant
22 was likely to engage in acts of sexual violence again.

23 Mr. Capps has been diagnosed as a pedophile. And
24 according to the language in the indictment he touched a
25 child under the age of sixteen years. And the indictments

1 indicate that, which I would submit shows a pattern, which
2 would then go to her diagnosis, again, as to why she
3 diagnosed him with the mental abnormality of pedophilia. So
4 I'd ask that they be admissible.

5 **THE COURT:** Ms. Wiygul.

6 **MS. WIYGUL:** Your Honor, with that argument -- and I
7 thought we were in agreement. With that argument, I would
8 object to the introduction of any of the materials as
9 evidence. We would be very willing to stipulate to the
10 convictions.

11 There has been a lot of scrivener's errors and just
12 paperwork confusion apparently just throughout the course of
13 Mr. Capps' case. One of the indictment numbers referenced
14 on one of the warrant numbers is the incorrect indictment.
15 And so they don't match. There's also the tracking sheets
16 on both of the warrant numbers for the sentencing sheets the
17 State's referencing, the tracking sheets record them as
18 having been dismissed.

19 We don't plan arguing that at trial. We know that it's
20 a scrivener's error and that this kind of thing happens.
21 But due to the confusion it would cause, we would object to
22 the introduction.

23 In addition, Mr. Capps entered an Alford plea on these
24 charges. The doctor will be here. Dr. Wadman will testify
25 as to what she reviewed, what her recollection was.

1 But, quite frankly, the doctor reviews his entire case
2 file. And it would just be completely inappropriate to
3 retry the facts of his convictions during this trial. So we
4 would -- we would object on the basis of more prejudicial
5 than probative and it would lead to a lot of confusion for
6 the jury.

7 **MS. WETHERTON:** Your Honor, as far as that's concerned,
8 if it's going to be brought into testimony, there's nothing
9 indicating that he pled -- he had an Alford plea except for
10 his own testimony, if he does testify.

11 I think it's even more necessary -- necessary for this
12 certified copy of the indictment to be admitted into
13 evidence because he pled guilty as charged. He was charged
14 with lewd act, and he pled guilty to that.

15 So I think if he certainly is going to get on the stand
16 and testify that it was an Alford plea when there's nothing
17 else indicating that it was an Alford plea, I should be able
18 to admit the indictment into evidence.

19 In addition, in Corley the defense counsel had wanted
20 to stipulate the convictions into evidence. And the court
21 upheld that that was not proper, that we can, in fact, send
22 in the certified convictions.

23 **THE COURT:** All right. Any other matters?

24 **MS. WIYGUL:** Your Honor, just briefly. If the -- if
25 it's at issue, then we would go on and put on the record

1 that we would request a continuance in order to find out if
2 the transcript from the guilty plea is available to verify
3 whether it was, in fact, an -- entered as an Alford or not.
4 That's very important as it directly relates to at the time
5 of the plea did Mr. Capps admit to the facts alleged or did
6 he just enter a guilty plea.

7 **MS. WETHERTON:** And I would object to that, Your Honor.
8 This case has been set for trial for over a couple of
9 months. If that was going to be an issue, it should have
10 been looked into before this morning. So I would object on
11 that as well.

12 And on top of that, whether or not he actually pled,
13 was an Alford plea, it doesn't really matter for purposes of
14 the Sexually Violent Predator Act. A guilty plea, whether
15 it's just a regular guilty plea or an Alford plea, it's
16 still, you know, it still is considered and looked under the
17 Sexually Violent Predator Act. So at this point, I would
18 say that it would just be collateral.

19 **MS. WIYGUL:** And we would just go on the record to
20 state that we -- I'm going off my memory, but I don't
21 believe that Corley involved an Alford plea.

22 **THE COURT:** Any other issues from the State?

23 **MS. WETHERTON:** Any other additional issues?

24 **THE COURT:** Right.

25 **MS. WETHERTON:** I do have one ---

1 **THE COURT:** You said there were a couple of matters.

2 What was the other?

3 **MS. WETHERTON:** The other matter that I have is -- and
4 I wanted to make sure that this was clear and on the record.
5 This might not be a problem. I haven't talked to Ms. Wiygul
6 about it.

7 He was convicted of two sexually violent offenses,
8 however, there were five victims. The couple of cases he
9 was charged, but not convicted, and one case is involving
10 his granddaughter.

11 There was an order issued by the Department of Social
12 Services, a no contact order. Dr. Wadman had, again,
13 pursuant to rule 702 had reviewed all those cases that went
14 to her diagnosis. And I'm going to be getting into the
15 conduct even though he's not been convicted and that he was
16 charged.

17 And to support my proposition, that's in the matter of
18 care and treatment of James Ettel, E-t-t-e-l. And that's --
19 the citation is 660 SE 2d 285. And basically the court
20 upheld that sexual offenses that did not result in
21 convictions were appropriate, especially when the physician
22 considered that in her diagnosis.

23 **MS. WIYGUL:** And, Your Honor, as regards to the -- I'm
24 unclear on exactly what the State is wanting to have
25 entered. If they're referencing some kind of DSS records,

1 then we would object to any testimony as those records
2 aren't listed on the materials reviewed by Dr. Wadman in
3 preparation of her report.

4 **MS. WETHERTON:** It does state in her report that there
5 was an issue -- there was an order issued by DSS.

6 **MS. WIYGUL:** It does, Your Honor. However, it
7 specifically -- in her sources of information it does not
8 make any reference to her having reviewed those records.

9 **MS. WETHERTON:** And I wouldn't show her that order, but
10 since it is in her report I would say that she could testify
11 to it. That would be my argument.

12 **MS. WIYGUL:** And, Your Honor, I'm trying to clarify.
13 Is the State arguing that any documents referenced in any of
14 the materials that the doctor reviewed in preparation for
15 this report should be admissible?

16 **MS. WETHERTON:** No, that's not what I'm saying at all.
17 I'm basically saying that she's going to testify as to
18 unconvicted conduct.

19 **MS. WIYGUL:** Your Honor, I don't think there's any
20 question as to the legality of her testifying ---

21 **THE COURT:** Right.

22 **MS. WIYGUL:** --- as unconvicted conduct. We would ask
23 that the State limit itself to alleged conduct as he has not
24 been convicted of that.

25 **MS. WETHERTON:** I understand.

1 **THE COURT:** Right. Okay. All right. I'll review the
2 Corley case. We'll be ready to start back in an hour.

3 **MS. WIYGUL:** All right. Thank you, Your Honor.

4 **MS. WETHERTON:** Thank you, Your Honor. Oh, and, Your
5 Honor, one more thing. I apologize. I had shown this to
6 Ms. Wiygul. This is just the board that has the law, what I
7 have to prove.

8 **THE COURT:** Demonstrative?

9 **MS. WIYGUL:** We'd have no objection to that, Your
10 Honor.

11 **MS. WETHERTON:** It's just the law.

12 **THE COURT:** It's not going to be an exhibit, it's just
13 going to be ---

14 **MS. WETHERTON:** Right. I'll just show it to the jury.

15 **THE COURT:** All right.

16 (Whereupon court was in recess at 12:39 pm)

17 (Whereupon court resumed at 1:52 pm)

18 **THE COURT:** Thank you. Please take your seats. All
19 right. I understand there are two indictments, is that
20 right?

21 **MS. WETHERTON:** Yes, Your Honor.

22 **THE COURT:** And two sentencing sheets. Do you want
23 them both admitted?

24 **MS. WETHERTON:** Yes.

25 **THE COURT:** But you don't want or you want the

1 sentencing sheets, but not the indictments or ...

2 MS. WIYGUL: No, Your Honor, we'd object to all of the
3 -- we would agree to stipulate to the convictions, to the
4 guilty pleas being entered. However, we would object to it
5 on the basis of confusion and more prejudicial than
6 probative.

7 THE COURT: Okay. Well, I'm not, I mean, both the
8 indictments say the same thing.

9 MS. WIYGUL: They don't -- well, the problem is ---

10 THE COURT: Except for the ---

11 MS. WIYGUL: --- is that the indictments ---

12 THE COURT: --- victims.

13 MS. WIYGUL: --- don't match the warrants that are on
14 the sentencing sheets.

15 THE COURT: Yeah, but the content of the indictment is
16 the same, it's just different victims.

17 MS. WIYGUL: No, Your Honor. The content would involve
18 charges that were dismissed.

19 THE COURT: But they're both lewd acts, right?

20 MS. WETHERTON: Yes, Your Honor, they're both lewd
21 acts. I have them right here ---

22 THE COURT: Yeah, ---

23 MS. WETHERTON: --- if you'd like to look at them.

24 THE COURT: --- I've got them in the file, ---

25 MS. WETHERTON: Okay.

1 **THE COURT:** --- right?

2 **MS. WETHERTON:** And we're only admitting into evidence
3 what he was convicted of. We're not admitting other
4 indictments. We're going to -- we would talk about it
5 because it was relevant to her diagnosis, but I'm only
6 admitting the indictments and the sentencing sheets for his
7 convictions.

8 And I'm also doing that because I have to prove that
9 he's been convicted of a sexually violent offense. And so
10 that's ---

11 **THE COURT:** Right.

12 **MS. WETHERTON:** ---also part of the reason why I would
13 be admitting them into evidence.

14 **THE COURT:** Okay. Well, I've weighed the prejudicial
15 effect...I believe under Corley certainly they're, I mean,
16 there it was even a lesser included offense that --
17 convicted of, and they allowed it in. So I'll allow it in.

18 **MS. WETHERTON:** Thank you, Your Honor.

19 **MS. WIYGUL:** Thank you, Your Honor.

20 **THE COURT:** Over objection. Anything else we need to
21 take care of before our jury comes in? Ready to ---

22 **MS. WETHERTON:** No, Your Honor.

23 **THE COURT:** --- make your opening statements?

24 **MS. WETHERTON:** Yes, Your Honor. I just have to mark
25 my exhibit.

1 **THE COURT:** All right. You want to go ahead and mark
2 those now?

3 **MS. WETHERTON:** Yes.

4 **MS. WIYGUL:** Your Honor, if the -- it doesn't matter.
5 It's different.

6 **THE COURT:** Hang on just a minute before we ...

7 (Whereupon State's exhibit 1 was marked for
8 identification)

9 **MS. WIYGUL:** Your Honor, ---

10 **THE COURT:** Yes, ma'am.

11 **MS. WIYGUL:** --- we may have exhibits to enter in
12 relation to those at the ---

13 **THE COURT:** You can ---

14 **MS. WIYGUL:** --- appropriate time.

15 **THE COURT:** --- mark them as you -- mark them as you
16 come, that'll be fine. Or if you -- you want to mark them
17 for ID now or you want to ...

18 **MS. WIYGUL:** We can go on and premark them.

19 **THE COURT:** Okay.

20 **MS. WETHERTON:** Are those certified?

21 **MS. WIYGUL:** They're certified.

22 **MS. WETHERTON:** Okay.

23 **THE COURT:** Okay. Let's get them all marked. And
24 we'll ---

25 **MS. WIYGUL:** These are just certified copies of the

OPENING STATEMENTS - MS. WETHERTON

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1 this oath in states throughout the United States, even in
2 England of old.

3 So listen carefully as the oath is given. After the
4 oath is administered, then the attorneys will make their
5 opening statements to you. Madame Clerk.

6 **MADAME CLERK:** Ladies and gentlemen, please stand and
7 raise your right hand for the oath in this case. Your
8 response shall be I will.

9 You shall well and truly try case number 2012-CP-23-
10 4204, the State of South Carolina versus Richard Capps and a
11 true -- and a true verdict rendered according to the law and
12 the evidence so help you God.

13 **THE JURY:** I will.

14 **MADAME CLERK:** Thank you. You may be seated.

15 **THE COURT:** You may make your opening statement to the
16 jury.

17 **MS. WETHERTON:** Thank you, Your Honor. May it please
18 the Court, Judge Welmaker, Ms. Wiygul, Mr. Capps and ladies
19 and gentlemen of the jury. My name is Nicole Wetherton.
20 And I'm a new attorney with the Office of the Attorney
21 General. And this is my first jury trial here in
22 Greenville.

23 In this case today, it's about the protection of the
24 citizens of Greenville County and the residents of the State
25 of South Carolina. So why are we here? Well, it's our

OPENING STATEMENTS - MS. WETHERTON

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1 belief that that man sitting over there at that table, Mr.

2 Richard Capps, is a sexually violent predator.

3 So what is a sexually violent predator? About fourteen

4 years ago our representatives in Columbia passed a law with

5 two thoughts in mind. There are certain individuals in our

6 State that suffer from mental abnormalities and/or

7 personality disorder that make them likely to commit acts of

8 sexual violence.

9 And these individuals need treatment in a secure

10 facility to protect the public during that process because

11 they are extremely dangerous individuals. The State

12 contends that Mr. Capps is one of those individuals that our

13 representatives had in mind when they passed that law that

14 day, the Sexually Violent Predator Act.

15 So how do we know this? I'm going to show you a board

16 with what I have to prove. These are my requirements that I

17 have to prove to you beyond a reasonable doubt in this case.

18 First off, a person has to be convicted of a sexually

19 violent offense. And then the second thing that I have to

20 show you is that he suffers from a mental abnormality or a

21 personality disorder that will make him likely to engage in

22 acts of sexual violence if not confined in a secure facility

23 for long-term control, care and treatment.

24 So the first thing I have to prove to you is that Mr.

25 Capps was convicted of a sexually violent offense. In this

OPENING STATEMENTS - MS. WETHERTON

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1 case Mr. Capps was convicted of a sexually violent offense.
2 In fact, he's been convicted of two sexually violent
3 offenses.

4 And you're going to learn about these convicted
5 offenses and his victims. And you're going to learn about
6 how he sexually assaulted them.

7 Second off, this SVP Act also requires that I prove
8 that he suffers from a mental abnormality or a personality
9 disorder that makes him likely to commit future acts of
10 sexual violence if not confined for long-term control, care
11 and treatment.

12 And you're going to hear testimony today from the lady
13 sitting in the front row. She's a forensic psychiatrist
14 with the Department of Mental Health. Her name is Dr. Peggy
15 Wadman, who evaluated Mr. Capps and has rendered a
16 professional opinion that he suffers from a mental
17 abnormality. Dr. Wadman has diagnosed Mr. Capps as being a
18 pedophile.

19 And you're also going to hear testimony from which you
20 can decide whether Mr. Capps lacks control over his mental
21 abnormality and whether he is likely to commit acts of
22 future sexual violence. You will also hear how Mr. Capps
23 sexually abused a young girl and a boy that were sister and
24 brother that he was supposed to be babysitting and also a
25 few allegations where it's claimed that he even sexually

OPENING STATEMENTS - MS. WETHERTON

37.

1 abused his granddaughter.

2 You will also hear that Mr. Capps has some significant
3 health problems, yet had sexually offended these young
4 children despite being sick. You will also hear how Mr.
5 Capps has significant risk factors for re-offending. For
6 example, Mr. Capps completed sex offender treatment while
7 being housed at the Department of Corrections and he
8 completed it as late as August of 2012.

9 And Dr. Wadman will explain that Mr. Capps does not
10 take responsibility for his offenses despite pleading guilty
11 and he minimizes the impact he has on his victims. This is
12 an indication of treatment failure. It is also found that
13 Mr. Capps has a significant -- what is referred to as
14 cognitive distortions as to how he views these offenses
15 making it even more important that he be committed for
16 treatment.

17 Now these cases, despite the fact that they are civil
18 in nature, the State is still required to prove their case
19 beyond a reasonable doubt like that similar to that of a
20 criminal case. In this case I embrace that burden. And I
21 believe that I will be able to prove that Mr. Capps, beyond
22 a reasonable doubt, that he is, in fact, a sexually violent
23 predator.

24 Now these cases by their very nature tend to contain
25 some disturbing facts. In this case in that regard is no

OPENING STATEMENTS - MS. WIYGUL

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1 different. But I'm going to ask you to do one thing, I want
2 you to listen to all the evidence, and not just the State's
3 evidence, but all the evidence in this case.

4 And we believe that as you listen to this evidence the
5 verdict you must render will become clear, that Richard
6 Capps is a sexually violent predator who must be committed
7 to the Department of Mental Health to get that treatment he
8 so desperately needs and to get that treatment in a secure
9 facility to protect the citizens of Greenville County and
10 the State from him.

11 **THE COURT:** Ms. Wiygul, you may address the jury.

12 **MS. WIYGUL:** Thank you, Your Honor. This is the file
13 that belonged to Mr. Capps' criminal attorney. It was
14 closed on July 21st of 2008. It was closed because Mr.
15 Capps entered a guilty plea. He admitted what he did.

16 He was told that that was the way to do it. That that
17 was the quickest way to get this over with and get his life
18 back. Mr. Capps, a fifty year old man, with no criminal
19 history, with no prior involvement with law enforcement
20 believed it. Mr. Capps entered a guilty plea.

21 The State at the time of Mr. Capps' guilty plea did not
22 raise any concerns about his competence, about his -- any
23 mental illness because he had no history of mental illness.
24 They didn't feel it necessary to have him evaluated by
25 doctors. They didn't feel it necessary to have him

OPENING STATEMENTS - MS. WIYGUL

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1 evaluated by anybody at Mental Health.

2 A judge sat and took his plea in this very courthouse.

3 I'm not sure which courtroom, but it was the same

4 courthouse. The judge had no question as to his competency

5 or his mental health at the time. If he had, he would not

6 have accepted that guilty plea.

7 The judge accepted his guilty plea and he sentenced him

8 to a nine year sentence, no probation, no nothing, you go,

9 you do your nine years, however the jails figure that up.

10 Mr. Capps went and he did his nine years.

11 Sometime last year Mr. Capps got the little notice from

12 the State, just kind of a letter that said, by the way, you

13 ain't getting out. Now, we think you might have a mental

14 illness. Now, we think you might need treatment. Now,

15 after you've done your time, we're worried about protecting

16 our citizens.

17 Well, where was the State on July 21st of 2008 with all

18 this information and all these concerns? They weren't in

19 this courthouse.

20 You're going to have the opportunity to hear from Mr.

21 Capps. I would urge you all to keep something in mind.

22 We're not here to determine whether Mr. Capps is guilty of

23 the crimes alleged. That's done. We're not here to

24 determine whether Mr. Capps should go to jail. He's done

25 that.

OPENING STATEMENTS - MS. WIYGUL

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1 What we're here for is for you to determine, for you to
2 decide whether Mr. Capps is so mentally ill that he falls
3 into this special category, not just of sex offenders, not
4 just of people that plead guilty to sex offenses, but a
5 really scary subset of that group that is not safe, that
6 cannot control their actions, that will act out in a
7 sexually violent manner and can't help it.

8 I submit to you that that's not Mr. Capps. He's done
9 his time. He even received sex offender treatment while he
10 was in the Department of Corrections. That was voluntary.
11 He didn't have to do it. He completed it and he completed
12 it successfully.

13 Please keep in mind why we're here. The State does
14 have a high burden in this case. They do need to prove
15 their allegations beyond a reasonable doubt. The reason
16 they have to do that is because it involves Mr. Capps'
17 liberty. He goes back behind bars if he is determined to be
18 a sexually violent predator.

19 We're confident at the end of this case you're going to
20 tell Mr. Capps he's finished his sentence and he can go
21 home. Thank you.

22 **THE COURT:** You may call your first witness.

23 **MS. WETHERTON:** Thank you, Your Honor. The State would
24 call Dr. Patricia Wadman to the stand. Excuse me, Peggy
25 Wadman to the stand.

PEGGY WADMAN, M.D. - DIRECT EXAMINATION BY MS. WETHERTON

41

1 Peggy Wadman, M.D., being

2 duly sworn testified as follows:

3 MADAME CLERK: Thank you. You may be seated. Please
4 state your full name for the record.

5 DR. WADMAN: It's Peggy Wadman, W-a-d-m-a-n.

6 Direct Examination by Ms. Wetherton:

7 Q. Dr. Wadman, where are you currently employed?

8 A. I'm a forensic psychiatrist with the South Carolina
9 Department of Mental Health.

10 Q. And how long have you been employed with the Department
11 of Mental Health?

12 A. Since January of 2006.

13 Q. Okay. And just for the record, do we work for the same
14 place?

15 A. No, we don't.

16 Q. Prior to your current position were you responsible for
17 evaluating sexually violent predator cases ---

18 A. Yes, ---

19 Q. --- at the Department of Mental Health?

20 A. --- I was.

21 Q. Now what professional degrees do you possess?

22 A. I have a doctor of medicine degree and a master's in
23 public health.

24 Q. And have you had any specialized training other than
25 what was previously discussed?

PEGGY WADMAN, M.D. - DIRECT EXAMINATION BY MS. WETHERTON

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1 A. Yes. After I finished medical school and got my
2 degree, I did a four year residency in psychiatry. And then
3 I went on and did a year long fellowship in forensic
4 psychiatry. And I'm board certified in both of those.

5 Q. How do you become board certified in forensic
6 psychiatry?

7 A. You take a lot of -- you study a lot, take a lot of
8 tests and travel and do an oral exam. And then you also do
9 a written exam. And I had to do that for both of them. No,
10 not for forensic psychiatry. Not the oral, I had to do the
11 written exam.

12 Q. Okay. And not all psychiatrists are forensic -- are
13 board certified, correct?

14 A. That's correct.

15 Q. And what is the study of psychiatry?

16 A. It's just the study of the mind and behavior, people's
17 behavior and how the mind behaves. In terms of psychiatry,
18 the way it's different from psychology, a psychologist
19 doesn't go to medical school. They study more of the
20 behavior.

21 And a psychiatrist is actually a medical doctor. They
22 look at things down to the neurons and down to systems in
23 the brain and try to understand how to treat those. They
24 prescribe medication. Psychologists don't prescribe
25 medications. So that's the difference.

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1 Q. And can you explain to the jury what the study then is
2 of forensic psychiatry?

3 A. Well, forensic psychiatry is the interface between
4 psychiatry and the law. And what you'll see a lot of times
5 with forensic psychiatrists is they'll study and try to
6 determine if somebody is guilty or not guilty by reason of
7 insanity. You know, were they insane at the time they
8 committed a crime?

9 More recently, you know, forensic psychiatrists have
10 gotten involved in the sexual predator statutes in different
11 states. They will actually treat people in forensic
12 hospitals who have been found not guilty by reason of
13 insanity or too sick to actually stand trial. So they'll
14 treat them and try to restore them to competency.

15 Q. And have you previously been recognized and testified
16 as an expert witness in forensic psychiatry in courts of the
17 law in the State of South Carolina?

18 A. Yes, more than sixty times.

19 **MS. WETHERTON:** At this time, Your Honor, I'd move for
20 Dr. Wadman to be recognized as an expert in both psychiatry
21 and forensic psychiatry.

22 **THE COURT:** Any voir dire or any objection?

23 **MS. WIYGUL:** No, no objection, Your Honor.

24 **THE COURT:** All right. Without objection, she'll be
25 qualified as an expert in the field of forensic psychology

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1 -- psychiatry.

2 MS. WETHERTON: Thank you, Your Honor.

3 Q. Dr. Wadman, approximately how many individuals have you
4 evaluated under the South Carolina Sexually Violent Predator
5 Act?

6 A. At least sixty.

7 Q. And how many pre-commitment evaluations have you
8 conducted in these matters?

9 A. That would be -- each one of those -- each one of those
10 that I evaluated, I would have done some type of pre-
11 commitment report.

12 Q. Out of all of those evaluations about how many have you
13 recommended that certain individuals -- individuals not be
14 committed into the program?

15 A. Probably about seventy-five percent I do not recommend
16 to be committed. And about twenty-five percent I opine that
17 they meet the criteria to be committed.

18 Q. So you've actually testified for the defense in these
19 type proceedings?

20 A. Yes.

21 Q. And about how many times have you testified for the
22 defense?

23 A. Well, you know, seventy-five percent of the time I say
24 no, but not every one of those requires a hearing before a
25 judge. But it's probably about half and half.

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1 Q. And, doctor, how did you become involved in this case?

2 A. I was issued an order by Judge, I think it was, Verdin
3 back in September of 2012. I was appointed, a court
4 appointed examiner.

5 Q. And as a court appointed evaluator were you paid to
6 conduct your evaluation in this case?

7 A. No, I do these as part of my regular state salary.

8 Q. Okay. So as a result of your opinion do you receive
9 any additional compensation?

10 A. No.

11 Q. And, doctor, as part of that evaluation did you meet
12 with and interview Richard Capps?

13 A. Yes, I did.

14 Q. Is the man that you met with here in the courtroom
15 today?

16 A. Yes. He's sitting at the table there.

17 (Whereupon Dr. Wadman pointed to Mr. Capps)

18 **MS. WETHERTON:** Your Honor, may the record reflect that
19 Dr. Wadman pointed to the Respondent, Mr. Capps?

20 **THE COURT:** All right. It'll so reflect.

21 Q. Doctor, when you are appointed by the court to conduct
22 an evaluation what are you ordered to do?

23 A. Well, I'm ordered to look at all the evidence that's
24 available and then to render an opinion as to whether the
25 person is, you know, meets the criteria to be a sexual

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1 violent predator. And that's -- that is, does he have a
2 mental abnormality or a personality disorder? And if so,
3 does that make him likely to sexually re-offend?

4 And so I have to, you know, look at all of the victim
5 statements, incident reports, indictments, look at his time
6 in the prison and see what he's been doing in prison, look
7 at any mental health records, any medical records that may
8 be available and then actually sometimes do some testing and
9 do the interview.

10 Q. And, doctor, after you've conducted your evaluation and
11 consulted all the information you obtained how do you reach
12 your professional opinion in these matters?

13 A. Well, just by taking the sum total of the information
14 and seeing essentially does he have a mental abnormality or
15 personality disorder. And in Mr. Capps' case he does have a
16 mental abnormality, which is pedophilia.

17 And because of that pedophilia does the evidence show
18 that he's likely to sexually re-offend if he's released out
19 onto the streets? And in this case based on all of the
20 information available I believe that he would be likely to
21 sexually re-offend.

22 Q. And about how long does it take from beginning to end
23 to reach that professional opinion?

24 A. Well, it depends on how much information that I have
25 already, whether I have to order records. And it depends

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1 on, you know, on the actual individual, you know, how candid
2 they are maybe in the interview. Sometimes I have to bring
3 them back to clarify new information that I received. So it
4 can take -- sometimes it can take days, sometimes it takes
5 weeks.

6 Q. You have mentioned to the jury that you received a lot
7 of this information to review and reach your opinion in
8 these matters. What type of information did you receive to
9 aid you in conducting your evaluation in this case?

10 A. I received the victims' statements, the NC -- what's
11 called the rap sheet for the person, all the prison records,
12 indictments, incident reports, arrest warrants. I did
13 what's called a Static-99, which is an actuarial assessment
14 on him. And I did the interview with him.

15 Q. Okay. And how did you obtain that information?

16 A. It's sent to -- it's sent from the Attorney General's
17 Office to my paralegal. And the paralegal gets it to me.
18 And then the paralegal also orders whatever records I think
19 I need.

20 Q. And is this the type of information that is typically
21 relied upon by experts in your field?

22 A. Yes.

23 Q. At the time you conducted your interview and evaluation
24 with Mr. Capps was there any information that you requested
25 but could not obtain?

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1 A. No, no specific information. I did want to talk to his
2 wife and for whatever reason, you know, I had made multiple
3 phone calls to her, but never got an answer on the phone.

4 Q. Now is it common for experts in your field to rely upon
5 an individual's criminal history to reach an opinion in a
6 sexual violent predator case?

7 A. Yes, it is.

8 Q. Now why do you rely on information regarding his
9 criminal history, Mr. Capps' criminal history in reaching
10 your opinion?

11 A. Well, I look for a couple of things. One, if he has a
12 long criminal record that provides some evidence that maybe
13 he has an anti-social personality disorder of like a
14 sociopathic personality. And that's one of the criteria for
15 commitment to the program is do they have a personality
16 disorder.

17 The other thing I look at is does he have past sexual
18 offenses. Was he convicted of previous sexual offenses?
19 And that, you know, basically the best predictor of the
20 future is the past. Past behavior is the best predictor of
21 future behavior. And so that's one thing I'd want to look
22 at, too.

23 Q. Based on your interview and review of the file in this
24 case, at the time you interviewed him had he been already
25 convicted of a sexually violent offense?

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1 A. No, he had been arrested for one.

2 Q. At the time of your interview?

3 A. At the time of my interview?

4 Q. The time you evaluated him.

5 A. Oh, I'm sorry. Yes, he had been convicted of two and

6 he had been arrested for another one with another victim.

7 **MS. WETHERTON:** Permission to approach the witness,

8 Your Honor.

9 **THE COURT:** You may.

10 Q. I'm going to show you what's been marked as State's

11 exhibit 1. Have you seen these documents before?

12 A. Yes. They were in the -- these were -- just make sure.

13 Yes. These were in the file that I received, part of the

14 information I received.

15 Q. Is there anything on these documents that shows their

16 authenticity?

17 A. Yes. They have the seal -- the court seal on them.

18 They're certified copies.

19 Q. Now did you review these documents as part of your

20 evaluation?

21 A. Yes, I did.

22 Q. Okay. And what are these documents?

23 A. Well, they include two indictments for lewd act upon a

24 child involving different children. And then the

25 indictments -- the description of the offense basically that

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1 between the 1st day of August, 2006 and the 6th day of
2 October, 2007, being over the age of fourteen years, he did
3 wilfully and lewdly commit or attempt a lewd and lavacious
4 act upon or with the body or its parts of this child under
5 the age of sixteen years old ---

6 **MS. WIYGUL:** Your Honor, I'm going to object. I don't
7 believe this has yet been entered into evidence.

8 **THE COURT:** All right.

9 **MS. WETHERTON:** Your Honor, she did look at it as a
10 basis for her opinion.

11 **THE COURT:** Okay. Well, just ask your next question.

12 **MS. WETHERTON:** Okay.

13 Q. Are these the type of documents that are commonly
14 relied upon by experts in your field?

15 A. Yes.

16 Q. Okay. And why is it necessary to review the details of
17 in the underlying facts of the offense?

18 A. Well, reviewing the details helps to establish a
19 diagnosis, whether one exists or not, the age of the child.
20 If a person's victims are prepubescent, then it lends more
21 evidence that they may be a pedophile. If there's a lot of
22 violence involved in the acts, you know, then we would look
23 at other types of diagnoses.

24 So it's important to look at the details. It's also
25 important to look at the number of victims and the time over

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1 which it occurred.

2 Q. And would you please describe for the jury the details
3 underlying the specific facts in these two cases?

4 A. Okay.

5 **MS. WIYGUL:** Your Honor, again, I would object. I'd
6 ask that the documentation -- I don't believe it's been
7 entered into evidence yet.

8 **THE COURT:** Okay. Are these going to be entered into
9 evidence?

10 **MS. WETHERTON:** Yes, ---

11 **THE COURT:** Okay.

12 **MS. WETHERTON:** --- they are.

13 **THE COURT:** All right. Subject to the objection, then
14 these can be entered as exhibit number?

15 **MS. WETHERTON:** Number 1.

16 **THE COURT:** All right.

17 (Whereupon State's exhibit 1 was admitted into
18 evidence)

19 **THE COURT:** All right. You may ask your next question.

20 Q. Would you please explain to the jury the facts of this
21 case, these two cases.

22 A. Okay. This was -- these two cases involve two separate
23 victims, a little boy who was probably about eight or nine
24 years old when it occurred, and a girl who was about ten
25 years old.

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1 And Mr. Capps was out of jail on bond for a previous
2 sex offense against a child that he had been arrested for.
3 And while he was out of jail on bond he -- basically the
4 victim told police that Mr. Capps used to babysit him and
5 his two sisters, which were victims three and four. He was
6 not charged with four.

7 And he told the police that the -- that Mr. Capps would
8 take baths with him twice a day and fondle him in the
9 bathtub. He also said that Mr. Capps put his mouth on -- on
10 his, what he called his private. And he told the police
11 that he had also seen Mr. Capps touch his sisters
12 inappropriately.

13 The sister, who was about ten years old, said that Mr.
14 Capps had digitally penetrated her vagina twelve or more
15 times. And she had also seen him touch her younger sister
16 in the same way. She also said that Mr. Capps told her that
17 he would "whip her" if she told anyone. And the little
18 sister wouldn't talk to the police.

19 So for those crimes against these children he was
20 charged with one count of lewd act on a minor and two counts
21 of criminal sexual conduct with a minor, first degree. He
22 ended up pleading guilty the following year to two counts of
23 lewd act on a minor for the boy and the girl, but not the
24 youngest child.

25 Q. Okay. And what sentence did he receive following his

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1 conviction?

2 A. Two nine year sentences to run concurrently.

3 Q. Okay.

4 MS. WETHERTON: And, Your Honor, just for clarification
5 we're admitting exhibit 1 into evidence.

6 THE COURT: All right. It's admitted into evidence
7 subject to ---

8 MS. WIYGUL: Your Honor, I'd ---

9 THE COURT: --- objection.

10 MS. WIYGUL: --- just renew my earlier ---

11 THE COURT: Subject to ---

12 MS. WIYGUL: --- objections.

13 THE COURT: Subject to the objection made.

14 MS. WETHERTON: Thank you, Your Honor.

15 Q. In reviewing the legal documents in this case did you
16 see that Mr. Capps may have been arrested and charged with a
17 sexually violent offense?

18 A. Yes. In 2005, January 3rd, 2005 he was charged with
19 one count of lewd act on a minor. And that's -- that
20 involved a boy who was seven or eight years old when the
21 abuse allegedly occurred.

22 He didn't report the abuse until he was thirteen. He
23 reported it to his father. And he basically said that,
24 again, Mr. Capps would have him take a bath with him. And
25 then Mr. Capps would rub his genitals.

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1 And then on -- at least on one occasion Mr. Capps
2 watched a pornographic movie with him and rubbed the
3 victim's penis while watching the movie. And so he was
4 arrested in January of 2005 and charged with one count of
5 lewd act on a minor.

6 Q. Now why is that offense still considered -- is that
7 offense considered relevant?

8 A. Well, it's relevant -- what's especially relevant about
9 this is that what we look for is a sex offender being
10 detected because a lot of times if they're just detected,
11 you know, arrested for something, that could be enough to
12 stop the behavior. You know, if they're charged, arrested.

13 But what happened in this case is he was detected, he
14 was arrested and he was put out of jail on bond. And so
15 while he was on bond he sexually offended against, you know,
16 two to three more children.

17 And so that is relevant because it shows that he can't
18 control his behavior. Because, you know, he faces going to
19 prison over the first one, and while he's out on bond he
20 offends against two more. So that's very relevant.

21 Q. Did you also uncover any allegations of sexual abuse
22 where Mr. Capps was not charged?

23 A. Yes. During the investigation by the police they
24 learned that he had been accused of sexually fondling his
25 five year old granddaughter in 2001 on at least three

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1 different occasions, one while giving her a bath, also when
2 she was driving in the car with him and one time when he was
3 putting her to bed.

4 And the abuse was -- the alleged abuse was reported to
5 the Department of Social Services in Lexington County. He
6 was never charged with the offense, but a permanent
7 restraining order was issued by the Family Court barring him
8 from having any contact with the victim. And he never had
9 any contact with her again.

10 Q. Now did you consider that as relevant to your opinion?

11 A. Yes, because it shows a longevity. It shows that, you
12 know, this wasn't just -- the sexual offenses that he was
13 convicted of, they weren't just happenstance occurrences.
14 You know, they weren't just, well, he was having a bad day,
15 or a bad year, or a bad week, or under pressure or doing
16 something like that and this just happened. This shows a
17 pattern.

18 And so one of the things that we look for before we
19 diagnose someone with pedophilia is there has to be at least
20 a six month period of fantasies or behaviors involving
21 sexual fantasies or sexual behaviors with little children.
22 But we look at the longevity of that.

23 And it appears that he had been doing this, you know,
24 well, since 2001. Actually she reported it in 2001, I
25 think. So it was over years that this behavior was

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1 occurring.

2 Q. Was that information part of the basis of your opinion
3 in this case?

4 A. Yes, it was.

5 Q. So should Mr. Capps not be found to be a sexually
6 violent predator would he be released to the community?

7 A. Yes. He has no probation requirement to his sentence.
8 He's not going to be on probation. So he would be released
9 to the community, not on probation.

10 Q. All right. Are you offering your opinion solely on Mr.
11 Capps' criminal history?

12 A. No, not solely on that. Not solely on the crimes he
13 committed, but just the, you know, the whole of the
14 information that I looked at.

15 Q. Would it be professionally acceptable to base your
16 opinion just on his criminal history?

17 A. No.

18 Q. Now did you interview Mr. Capps?

19 A. Yes, I did.

20 Q. For how long did you interview him?

21 A. I was with him for about two hours and twenty minutes.

22 Q. Now when you conduct these types of evaluations is the
23 amount of time you spent with Mr. Capps the common amount of
24 time you spend interviewing an individual?

25 A. Usually, yes, because by the time I talk to the person

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1 that I'm going to be interviewing, I've reviewed all of the
2 legal documents and have a lot of information already. So
3 what I'm doing basically is trying to get some background
4 information on them.

5 I'll ask them about their growing up, and their medical
6 history, and any psychiatric history they may have had. So,
7 you know, depending on whether they have a very long
8 criminal history or a very long medical or psychiatric
9 history, it could take more than one interview or longer,
10 but in his case it didn't.

11 Q. Okay. Can you describe the interview with Mr. Capps to
12 the jury? What took place?

13 A. Well, when they -- a person first comes in, you know, I
14 introduce myself, let them know that I'm a psychiatrist, but
15 also warn them that whatever we talk about is not
16 confidential like -- with a regular psychiatrist, you go in,
17 you know, they can't talk about what you tell them. So it's
18 confidential between the two of you.

19 But with him, since I'm ordered by the court to conduct
20 this evaluation I let him know that anything that he says
21 could be used in the report and that a copy will go to his
22 lawyer, a copy to the Attorney General's Office and a copy
23 to the judge so that it's not confidential.

24 And so then basically I start by asking about his
25 background, growing up, you know, getting information like

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1 that. I ask about any psychiatric history.

2 He denied any past psychiatric treatment. He did have,
3 though, a couple of years of treatment for depression when
4 he first got to SCDC. And also his -- some records
5 documented a report of a suicide attempt he had in 1987 when
6 his first marriage broke up.

7 But for the -- ever since like 2010 he hasn't been a
8 mental health patient. He hasn't been treated for
9 depression or asked for any type of help like that.

10 I also ask about substance use because sometimes
11 alcohol or drugs will be a factor in a person's sex
12 offending, you know. And sometimes people will say, well, I
13 was too drunk to remember or I was high on crack cocaine and
14 I can't remember, you know, what I did. But in his case, he
15 didn't abuse alcohol or drugs. He has no history of that.

16 And so that's even more significant to me that he did
17 it without being disinhibited by alcohol and drugs. You
18 know, he didn't need that to disinhibit him to molest the
19 children.

20 Then I ask about his medical history. And he does have
21 several medical conditions. He has a rare form of cerebral
22 palsy. He wears braces on his legs. He's had that since
23 childhood. He's had surgery on at least one of his legs.
24 He had an emergency appendectomy followed by an emergency
25 cholecystectomy.

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1 And then he had prostate cancer in 2004. And he had a
2 prostatectomy. And ever since then he's had urinary
3 incontinence. And, in fact, he wears adult diapers.

4 And that was significant to me because I thought, well,
5 you know, sometimes when something like that happens, it's
6 very traumatic to a man. They may lose their ability to
7 function sexually, may lose interest in sex.

8 But it's significant that he sexually abused these two
9 children after his prostatectomy and during the time when he
10 had urinary incontinence and he wears adult diapers. So
11 that didn't stop him from doing that. And that was
12 significant to me.

13 I asked him about his sexual history because what I'm
14 looking for is, you know, when did this start. And what we
15 know about pedophilia is it usually starts in adolescence,
16 you know. That's when it usually begins -- the interest
17 comes.

18 And he said that he did become aware of what he -- and
19 this is what he called his pedophilia. He calls it
20 curiosity. He doesn't really have good insight into his
21 pedophilia. He called it sexual curiosity towards children.

22 He said it started when he was fourteen or fifteen
23 years old after watching an x-rated movie that had young
24 boys and girls on it that were about ten, eleven or twelve
25 years old. And he kept insisting that it wasn't an

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1 attraction to children; a sexual attraction, it was just a
2 curiosity about them.

3 And then I, you know, go over sex offense history and
4 get his story and ask about any treatment that he may have
5 had when he was in prison. And he did have treatment.

6 I guess one of the things, though, on -- just on the
7 sex offenses when I was asking him about that, you know, at
8 first he minimized it or denied it. And then -- then he
9 would say, well, okay, I did fondle him, but it was only
10 once.

11 And, for instance, with his granddaughter he said, no,
12 he had not fondled her at all, but then he said, okay, I
13 fondled her, but it wasn't -- I think he said it wasn't
14 sexually exciting to him. So it was almost like, well, that
15 didn't count. So, yeah, he said, I did touch her, but it
16 wasn't a fondling type touch. There was no sexual arousal.

17 So he also tended to blame the victims, which is --
18 which is what untreated pedophiles do. They really come to
19 believe that little children are sexually coming on to them.
20 It's what we call a cognitive distortion. They believe that
21 the children are basically asking or inviting them to have
22 sex with them.

23 And one of the things he told me about one of the
24 victims was when, you know, he was on his computer and the
25 little boy came up and, I guess, Mr. Capps was on his

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1 computer looking at pornographic cartoon type things and the
2 little boy asked about them. And so then he said that's --
3 that started this particular incident.

4 And I said, well, you know, are you -- are you telling
5 me that you feel like if the little boy hadn't asked you
6 about it that this never would have happened? And he said,
7 well, -- I'm trying to think what he said. He said that was
8 what stirred it with him. It was him seeing me looking at
9 that on the computer. And I did tell him that I could get
10 in trouble if he told anyone.

11 So, again, what I'm seeing is the cognitive
12 distortions, the thought pattern like a pedophile, the
13 person who's out on bond and is still committing sex
14 offenses, the person who was sanctioned by the Department of
15 Social Services and could never see his granddaughter again
16 and yet continued on to offend against at least three more
17 children.

18 He gets to prison and he did take -- he did participate
19 in the sex offender treatment program there. And he -- and
20 he did tell me some things that he had learned. But what I
21 find with people who have sexual disorders, they can -- most
22 like anything, it's like -- it's like with an alcoholic.

23 An alcoholic can say, okay, -- I'll say, well, what did
24 you learn in substance treatment? Well, I learned I
25 shouldn't drink and I shouldn't go near liquor stores. And

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1 if I keep drinking, you know, I'm going to damage my liver.
2 And, you know, they can kind of go through one, two, three,
3 four, five and then go out the next day and have a drink.
4 And so, basically, you know, he could tell me things that he
5 had learned, but then he would go back to minimizing, he
6 would go back to rationalizing, you know, he would go back
7 to blaming the victim.

8 And actually the coordinator of the program who was the
9 group leader, she said, the inmate does not take any
10 responsibility for his crime. He feels that he should not
11 have come to prison due to his disability, was angry when
12 talking about his crime, is in denial of his crime,
13 minimizes the victim as well as the circumstances. So,
14 essentially, I consider that a treatment failure.

15 Now, the other thing, too, that's an added risk factor
16 because when someone fails treatment, when someone goes
17 through treatment and they fail it, then that puts them at
18 an increased risk. That's just an independent risk factor
19 that they found with sex offenders. So that's kind of what
20 I go through with them.

21 Q. Did you ever -- was Mr. Capps ever involved in a sexual
22 relationship with adult women?

23 A. Yes. He was married twice. And he -- so he had two --
24 he was not ever -- he had -- I think he married his first
25 wife when he was seventeen, right before his eighteenth

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1 birthday. They were married eleven years. And then he's
2 been married to his second wife, I believe, for about
3 twenty-five years, something like that.

4 Q. Now was he involved in a consensual, sexual
5 relationship with an adult woman when he committed these
6 sexually violent offenses?

7 A. Yes. He -- with his wife. He was living with his
8 wife.

9 Q. Do you consider that in relation to your opinion?

10 A. Well, you know, a lot of -- a lot of times you might
11 think that a pedophile's only attracted to children, but we
12 call the -- and we would call that exclusive, an exclusive
13 type pedophile. But there are also non-exclusive type
14 pedophiles, people, you know, who are sexually attracted to
15 the opposite sex or the same sex, but then they're also
16 sexually attracted to children.

17 So he has both. I mean, he's a heterosexual in the
18 sense that he's attracted to adult women. But he's also a
19 pedophile in that he's attracted to prepubescent children.

20 Q. Okay. And for the record, when did he complete his sex
21 offender treatment?

22 A. I believe -- let's see. That was in -- August 16th of
23 2012.

24 Q. And, doctor, you talked about risk factors. What are
25 risk factors?

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1 A. Well, risk factors are anything that predisposes
2 somebody to commit a certain act. And so, again, just to
3 use alcohol, okay? If somebody is an alcoholic, a risk
4 factor for an alcoholic would be going into a liquor store,
5 picking up a bottle of liquor and looking at it, hanging out
6 at a bar. So, you know, we would know that those would be
7 risk factors for them to start drinking again.

8 Well, what we have with sex offenders is they've come
9 up with what they call actuarial assessment instruments that
10 have risk factors that are known to be correlated with
11 sexual re-offense, okay? They've done all these studies
12 with male sex offenders. And it's like they look at, okay,
13 what risk factors do they all have in common that cause them
14 to sexually re-offend? And so we score them based on
15 those.

16 And so some of them would be male victims. Somebody
17 who has male victims is -- that's a huge risk factor for re-
18 offense, very -- unrelated victims, you know, because
19 pedophiles who only molest their family members, you know,
20 only molest their own children are at lower risk. But he
21 had unrelated victims, age, you know, different risk factors
22 like that.

23 Q. Okay. What information did it reveal about Mr. Capps?

24 A. Well, on the actuarial assessment instrument, the
25 Static-99R, we call it, he actually received a low/moderate

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1 risk factor. He was -- he was in the -- in the low/moderate
2 range.

3 And then the manual always instructs us to -- does the
4 examiner think that that's a fair assessment? Is it too --
5 is it too much risk? You know, is it assigning too much
6 risk? Or is it assigning too little risk? And in his case
7 I think that it assigns too little risk. I think he's at
8 more of a risk than a low/moderate.

9 One of the things that lowered his score was his age.
10 So on the Static, if they are in the forty to fifty-nine
11 year old range, they actually get a minus one. So a -- so a
12 very high score would be a six, okay? His score was a two.
13 But he got a minus one for his age, but yet he sexually
14 offended when he was in that age group. You see what I'm
15 saying?

16 So the whole idea is that as men get older their risk
17 of re-offense goes down. But in his case, he kept offending
18 even though he's about, I think, fifty-four, fifty-five,
19 something like that. His birth date is 1957.

20 So -- and then was there, you know, has he ever been
21 convicted of non-sexual violence? Because a lot of times
22 that would -- that would be more appropriate like for
23 rapists, say, who use a lot of violence.

24 But with kids what we usually find is that there's not
25 -- really they don't need to use violence because kids are

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1 very easy to manipulate. They're very easy to -- it's very
2 easy to get children to do what you want them to do, you
3 know.

4 And in some of the cases he bought gifts. And he took
5 the first little boy, I think, to church. And he drove the
6 church van. And so he -- basically what he does, he'd gain
7 the trust of the parents and then he molested their
8 children.

9 Q. Was there any other information upon which you relied
10 in rendering your opinion regarding Mr. Capps that we have
11 not already discussed?

12 A. I don't -- I don't think so.

13 Q. Dr. Wadman, based on your examination of Mr. Capps, the
14 review of his records and all of these factors we have been
15 discussing did you render an opinion to a reasonable degree
16 of medical certainty as to whether Mr. Capps has a mental
17 abnormality or personality disorder?

18 A. Yes. He has a mental abnormality. And that's
19 pedophilia.

20 Q. What does it mean specifically to be diagnosed with
21 pedophilia?

22 A. It basically means that for at least a six month
23 period, it has to be, you know, at least a six month period,
24 and his was over years, that they have fantasies, or sexual
25 urges or behavior with prepubescent children. And they're

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1 either, you know, caught doing that or it's just extremely
2 upsetting to them that they have that. It causes a lot of
3 turmoil and dysfunction to their life. And in his case he
4 was criminally sanctioned for it.

5 Q. Was he diagnosed with a certain type?

6 A. Well, what we do is is it primarily attracted to males,
7 primarily attracted to females or primarily attracted to
8 both? And in his case it was both. And then non-exclusive
9 type. Non-exclusive type meaning that he also has a
10 heterosexual relationship with his wife..

11 Q. Is pedophilia considered a relevant mental abnormality?

12 A. Yes, it is.

13 Q. Can this condition be managed?

14 A. It can be managed, but not cured. It can be treated.

15 Q. Doctor, based on all the information you have just
16 described for the jury, including the information you
17 learned during our interview with Mr. Capps, do you have an
18 opinion to a reasonable degree of medical certainty as to
19 whether Mr. Capps' pedophilia affects his emotional or
20 volitional capacity so that he's predisposed to commit
21 future sexually violent offenses?

22 A. Yes. I do believe based on the, you know, on his past
23 behavior and the pattern that he showed that he's at risk of
24 committing future acts of sexual violence with children.

25 Q. Can you also explain to the jury what emotional or

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1 volitional capacity is?

2 A. Well, it's probably the closest word I could think of
3 would be will-power or, you know, the ability to control the
4 behavior. And the fact that he was on bond -- well, first
5 of all, just the fact that he was already caught.

6 And with DSS he had to go through that whole thing
7 where he was, you know, a restraining order, permanent
8 restraining order. He could never see his granddaughter
9 again.

10 Then he gets arrested and he's out on bond for
11 molesting a little boy. And while he's out on bond he's
12 molesting, you know, two or three more children shows me
13 that he -- he has a difficult time controlling his behavior
14 especially in light of the fact that at least the last two
15 or three occurred after his prostatectomy, after that
16 resulted in urinary incontinence and having to wear adult
17 diapers and he's still molesting children.

18 Q. Do you have an opinion to a reasonable degree of
19 medical certainty as to whether Mr. Capps has the propensity
20 to be dangerous and to commit future sexually violent
21 offenses?

22 A. I believe that he does.

23 Q. Do you have an opinion to a reasonable degree of
24 medical certainty as to whether Mr. Capps' propensity to
25 commit future sexually violent offenses is of such a degree

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1 that it poses a menace to the health and safety of others?

2 A. Yes, I do. I believe that it poses a menace to
3 children that he may come into contact with.

4 Q. Can you explain to the jury why you believe that Mr.
5 Capps' propensity to commit future sexually violent offenses
6 is such a degree that it poses a menace to the health and
7 safety of others?

8 A. Yeah, I think that, you know, I addressed that, the
9 whole points about being on bond and having been sanctioned
10 and ...

11 Q. Do you have an opinion to a reasonable degree of
12 medical certainty as to whether Mr. Capps has serious
13 difficulty in controlling his behavior and his propensities
14 to be dangerous?

15 A. Yeah, I do believe that he has serious difficulty
16 controlling his behavior.

17 Q. Do you have an opinion to a reasonable degree of
18 medical certainty as to whether Mr. Capps' pedophilia makes
19 him more likely to engage in acts of sexual violence if he's
20 not confined in a secure facility for long-term control,
21 care and treatment?

22 A. Yes, I do. And I just -- I do want to say, too, that
23 sometimes the word violence, I think, trips us up. You
24 know, we think of sexual violence as, you know, probably
25 beating somebody up and harming them, you know, physically

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1 in some way besides the sexual assault, but the way that
2 they define sexual violence are, you know, sexual acts
3 against children, too.

4 And as I said, those usually don't involve physical
5 violence because they don't need to involve physical
6 violence. The adult is bigger, they're smarter, you know,
7 they're more manipulative. And so they don't have to, you
8 know, use that type of violence.

9 Q. If Mr. Capps is released and not committed is there
10 anything you know that can require him to take sex offender
11 treatment?

12 A. No.

13 Q. Do you know of any program that can guarantee Mr. Capps
14 will receive sex offender treatment other than through this
15 commitment process?

16 A. No.

17 Q. Based on your evaluation who would be at risk if Mr.
18 Capps was released?

19 A. Children that he comes into contact with and gains the
20 trust of their parents.

21 **MS. WETHERTON:** Offered for cross examination, Your
22 Honor.

23 **THE COURT:** You may cross examine the witness, Ms.
24 Wiygul.

25 **MS. WIYGUL:** Thank you, Your Honor.

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1 Cross Examination by Ms. Wiygul:

2 Q. Dr. Wadman, you testified that you've testified in many
3 of these type trials and in many trials in this State,
4 correct?

5 A. Yes.

6 Q. And as an expert in your field, are you aware of
7 something called the Sex Offender Registry?

8 A. Yes.

9 Q. And are you aware if that -- if individuals that are
10 placed on that registry are under certain limitations by the
11 State?

12 A. They're limited in where they can live. You know, they
13 can't live within a thousand feet of a church, a school or
14 playground. And he would have to register as a sex
15 offender, yes.

16 Q. So when he registers as a sex offender -- and as you
17 said, he'll be required to, correct?

18 A. Yes.

19 Q. When he registers as a sex offender, that information
20 is openly available to the public, correct?

21 A. Yeah, they would have to look it up on the computer.

22 Q. He'll never be permitted to step foot on a daycare,
23 correct? On daycare grounds?

24 A. Well, he can't live within a thousand feet of a daycare
25 center.

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1 Q. He can't step foot onto a school in South Carolina, can
2 he?

3 A. You know, I don't have the statute in front of me right
4 now, but ---

5 Q. Would it surprise you to know that one of the
6 limitations on sex offenders listed on the registry is that
7 they may not enter school grounds in South Carolina?

8 A. That wouldn't surprise me, no.

9 Q. Okay. And the Sex Offender Registry is designed to
10 warn parents about sex offenders, correct?

11 A. Yes.

12 Q. And it's designed to protect children, correct?

13 A. Yes, it is.

14 Q. Okay. And you stated that the only way Mr. Capps would
15 be at any form of risk is if he had further contact with
16 children, correct?

17 A. Yes.

18 Q. Okay. Mr. Capps was in the Department of Corrections
19 from July of 2008 until. He's still incarcerated, correct?

20 A. Yes.

21 Q. Although he already maxed out his sentence, correct,
22 with SCDC?

23 A. I believe that he did. I don't know the date of his
24 max-out though.

25 Q. But you would agree that the only ---

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1 A. Yeah.

2 Q. --- thing holding him in custody is this action?

3 A. That's right.

4 Q. Okay. And during the years, and years and years that
5 he spent in the Department of Corrections, how many sexual
6 offenses did this man with no control have?

7 A. Well, there are no children in the Department of
8 Corrections.

9 Q. How many sexual offenses did he have?

10 A. None.

11 Q. Not one.

12 A. No, not one.

13 Q. Okay. And you stated that you reviewed the sex
14 offender treatment that Mr. Capps received at the Department
15 of Corrections, correct?

16 A. I reviewed the notes from the coordinator, yes.

17 Q. Okay. You reviewed the note that was entered on August
18 16th, correct? Where it says the inmate does not take
19 responsibility for his crimes.

20 A. I don't know if that was the August 16th note. Was
21 that the -- you're talking about the final note?

22 Q. Um-hum (affirmative).

23 A. Yes. Uh-huh (affirmative).

24 Q. Okay. Would you agree that the forty-four other notes
25 talked about how good he did in treatment?

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1 A. Yeah, they -- I think they all said exactly the same
2 thing, which what I've noticed is that they have a generic
3 note of they did -- they did the assignment. And then at
4 the end what they do is they basically summarize or evaluate
5 what they think that they've learned.

6 Q. Are you stating that each note is identical, doctor?

7 A. Let me look here. I have them here somewhere. Affect
8 is normal, participated in group discussion, actively
9 listened to the group discussion, participated in the group
10 discussion, participated in the group discussion, he
11 participated in the group discussion, he actively
12 participated in the group discussion, ---

13 Q. And, doctor, I'm going to stop you because you're
14 reading one sentence out of each note. Would you agree ---

15 A. Uh-huh (affirmative).

16 Q. --- with me ---

17 A. Uh-huh (affirmative).

18 Q. --- that each of these notes were entered individually
19 on different dates, not all by the same people, and that the
20 August 16th note is the only one out of forty-four of them
21 that had anything negative to say about Mr. Capps'
22 participation in this group therapy?

23 A. I would agree that the last note was the only one that
24 had anything negative to say about him, yes.

25 Q. Would you agree that the person that entered the last

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1 note entered pretty good notes throughout his treatment
2 during the groups that particular person supervised?

3 A. No, I wouldn't agree with that. I mean, it would just
4 depend on your definition of pretty good notes. But I think
5 -- and, you know, ---

6 Q. We can go through them. That's no problem.

7 A. Yeah, um-hum (affirmative).

8 Q. Do you have the group note from week one?

9 A. I think week one says the group did the initial
10 introduction to SOTP. Inmate's affect is in normal range.
11 That was the note.

12 Q. And week one was May 29th. Would you agree that it
13 just notes that he participated in group discussion and that
14 the group did the introduction, the overview and the purpose
15 of the Sexual Offender Treatment Program?

16 A. Um-hum (affirmative). And inmate participated in the
17 group discussion.

18 Q. Um-hum (affirmative). And then on May 30th the group
19 reviewed homework, which was the I statement.

20 A. Um-hum (affirmative).

21 Q. You agree with that?

22 A. Yes.

23 Q. And would you agree that they noted the inmate, inmate
24 meaning Mr. Capps, his affect was quiet, and that he actively
25 listened to the group discussions?

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1 A. Yes, that was the note. Two sentences. Let's see,
2 one, two.

3 Q. Would you agree that forty-four meetings later, I'm
4 sorry, forty-three because one was rescheduled, forty-three
5 meetings later the very person that entered this negative
6 note also noted that Mr. Capps received a certificate for
7 completing the program successfully?

8 A. Yeah, he completed it. And, well, she didn't say
9 successfully. Hold on just a minute.

10 Q. They gave him a certificate of completion, ---

11 A. Yeah, ---

12 Q. --- correct?

13 A. --- he completed it, meaning he completed it, but did
14 he learn anything from it? And all through here she's
15 talking about his affect being bright and he participated in
16 the group discussion. His affect is bright. He
17 participated in the group discussion. But at the end she
18 basically summarizes what she -- her -- what her opinion was
19 of what he may have ---

20 Q. What ---

21 A. --- learned or not learned.

22 Q. --- her opinion ---

23 A. Yes.

24 Q. Okay. Thank you. We don't have that individual here,
25 do we?

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1 A. No.

2 Q. Is that a medical doctor?

3 A. No.

4 Q. Okay. Dr. Wadman, in reviewing the incident reports, I
5 believe, State's 1.

6 A. Uh-huh (affirmative).

7 Q. You have it right here. Could you look at this,
8 please, and tell me what you're looking at, this paperwork.

9 A. This is a General Sessions tracking sheet. It's an
10 indictment.

11 Q. Okay. And would you look at the warrant number
12 referenced?

13 A. It says 1474113.

14 Q. Okay. And would you agree that that's one of the
15 warrants associated with the -- that's already been entered
16 into State's evidence? The sentencing sheet?

17 A. Let me see.

18 Q. And if I may, doctor, I'll show you what we're looking
19 at here.

20 A. 147 -- yeah, 40113.

21 Q. Okay. And could you tell me what that tracking sheet
22 reflects as the disposition of that warrant?

23 A. Guilty plea. Or is that scratched out? Dismiss, nol
24 pros, pros ended.

25 Q. Okay.

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1 A. Is that what you're talking about?

2 Q. That's what I'm talking about.

3 A. Yeah. This was for criminal sexual conduct with a
4 minor. Um-hum (affirmative), yeah.

5 Q. But that's the warrant referenced, correct?

6 A. Um-hum (affirmative).

7 Q. Okay. Could you, I believe this is the right one, look
8 at this warrant number of the second sheet? And I'm sorry,
9 it's been stapled.

10 A. And that would be 1 -- 1474112. So this one matches --
11 this was for lewd act and this was for criminal sexual
12 conduct.

13 Q. And what does that reflect as to that warrant number?

14 A. It says dismissed, nol pros, pros ended.

15 Q. Okay.

16 **MS. WIYGUL:** Your Honor, at this time I would ask to
17 enter the two tracking sheets related to the warrants on the
18 sentencing sheet into evidence as Respondent's 1.

19 **THE COURT:** Any objection?

20 **MS. WETHERTON:** No, Your Honor.

21 **THE COURT:** Without objection, it'll be admitted as
22 Respondent's exhibit number 1.

23 (Whereupon Respondent's exhibit 1 was admitted into
24 evidence)

25 Q. Dr. Wadman, would you agree that you are limited in

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1 these evaluations to the information you're provided?

2 A. Yes.

3 Q. Okay. And you have to take it on faith that all that
4 information is true, correct? All the documented
5 information is true, correct?

6 A. The certified copies, yes. I believe that certified
7 copies are true, yes.

8 Q. Do you take it as, on faith, that all the allegations
9 made are true?

10 A. No, I don't.

11 Q. You don't?

12 A. No.

13 Q. Do you go out and interview victims?

14 A. No, I don't. I have in the past, but usually I don't.
15 The reason I don't is because I've found that it re-
16 victimizes them.

17 Q. Do you go on your gut?

18 A. No.

19 Q. When you're reviewing whatever you're reviewing do you
20 go on your gut whether you felt the victim or the alleged
21 victim was telling the truth or not?

22 A. No. See, you know, I guess you're talking about --
23 there's a difference between when someone pleads guilty to
24 something and an incident is alleged. So if they've been
25 convicted of it, then, yes, I would say that the allegations

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1 are true because they've been convicted of it.

2 Q. Okay.

3 A. And a jury -- a jury has either found that they were
4 guilty of it or they've said that they were guilty of it.

5 Q. As an expert in forensic psychiatry are you familiar
6 with the concept of what's called an Alford plea?

7 A. Yes.

8 Q. Can you explain to me what your understanding is of an
9 Alford plea?

10 A. My understanding is that in an Alford plea the person
11 accepts the guilty plea because they're saying that there's
12 enough evidence against them that a reasonable jury would
13 find them guilty, so that they go ahead and they plead
14 guilty.

15 Q. All right. Under an Alford plea is it your
16 understanding that someone does not admit whatever the State
17 is alleging? They don't admit the facts.

18 A. That's -- that's what my understanding is.

19 Q. Okay.

20 A. Yeah.

21 Q. All right. Doctor, you stated during your
22 qualifications that there were many uses of forensic
23 psychiatrists. For instance, not guilty by reason of
24 insanity, guilty, but mentally ill, those types of pleas,
25 correct?

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1 A. Yes.

2 Q. Did anyone from the Attorney General's Office approach
3 you in 2007 or 2008 to evaluate Mr. Capps to find out if he
4 suffered from a mental abnormality?

5 A. That would have not have been their role. There would
6 be no ---

7 Q. Did anyone ---

8 A. No.

9 Q. --- approach you ---

10 A. No.

11 Q. --- from the AG's Office in 2007?

12 A. No.

13 Q. Did anyone from the State approach you in 2008?

14 A. No.

15 Q. Did anyone approach the Department of Mental Health to
16 have Mr. Capps evaluated at that time?

17 A. Not to my knowledge.

18 Q. Is it your expert opinion that if Mr. Capps suffers
19 from this now, then he would have suffered from it then?

20 A. Yes.

21 Q. You made some comments about a DSS case and a
22 restraining order that was put in place against Mr. Capps.

23 A. That's correct.

24 Q. Did the AG's Office provide you with that information?

25 A. It came in the package that the AG's Office sent.

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1 Q. It did?

2 A. As far as I know it did. Let's see.

3 Q. I'm curious, I believe that you listed your sources at
4 the beginning of your report.

5 A. Let me see. Let me check one thing. I know Mr. Capps
6 verified that there was a restraining order against him.

7 Q. I'm aware of what Mr. Capps told you, doctor. I'm just
8 asking what information you were provided about this. Did
9 you get information from anybody except Mr. Capps?

10 A. Yes. Whatever was in the record I would have -- I
11 would have had it in here. I mean, I don't know exactly
12 where I got it. I know it's in the file in here somewhere.
13 And I know that he verified that it was true.

14 Q. Mr. Capps told you about the DSS case, didn't he?
15 Otherwise, you would have listed it with your sources of
16 information at the beginning of your report, isn't that
17 correct?

18 A. No. Let me see. No, it's in the attorney -- it's in
19 the petition pursuant to the Sexually Violent Predator Act.
20 It's in the petition in the Court of Common Pleas. That's
21 where I found it, right here.

22 Q. A notation, but you don't have documentation, correct?
23 Did you order the DSS file?

24 A. No, I did not.

25 Q. So all the information you have is a notation ---

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1 A. Um-hum (affirmative).

2 Q. --- and something sent from the AG's Office and what

3 Mr. Capps told you?

4 A. That's right.

5 Q. And Mr. Capps told you he just agreed to the

6 restraining order, right?

7 A. He told me that -- let me see what he said. Yeah, he

8 said that -- he said -- they said I was fondling her, but I

9 didn't. She went with me to the beach. She said I was

10 touching her on her vagina. And then later, he said, I did

11 touch her, but it wasn't a fondling type of thing. There

12 was no sexual arousal.

13 Q. And, doctor, I appreciate you skipping around there,

14 but just to get to ---

15 A. Yeah, ---

16 Q. --- get the whole paragraph ---

17 A. No, he said he was ---

18 Q. --- and not mislead the jury. Does it say, she said I

19 was touching on her vagina, I was never charged, it was

20 reported to DSS?

21 A. Yes.

22 Q. I just agreed to the restraining order.

23 A. Yes.

24 Q. Okay. Doctor, you stated that criminal history was

25 heavily relied on, that it was very important, correct?

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1 A. I don't think I said heavily relied on. I said that
2 criminal history is important. It's one important part of
3 the whole process, of the whole package ---

4 Q. And you rely on ---

5 A. --- of information.

6 Q. --- that ---

7 A. Oh, yes, I do.

8 Q. And Mr. Capps doesn't have one except for these two
9 offenses, correct?

10 A. Oh, he does. He has an arrest that was an arrest for
11 another sex offense before these two.

12 Q. Does Mr. Capps have any other convictions?

13 A. No. No other convictions, no.

14 Q. In his whole life?

15 A. As far as I know, no other convictions.

16 Q. Would it be important to you to know if any of the
17 alleged victims in this case were not truthful?

18 A. Would it be important for me to know that? I would
19 have no way of knowing that.

20 Q. Okay.

21 A. Yeah.

22 Q. Because it's just too far removed in time?

23 A. For a lot of different reasons. I would have no way --
24 we never know if anybody is being completely truthful.

25 Q. Okay.

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1 A. There's no ---

2 Q. You stated that ---

3 A. --- way to know that.

4 Q. --- you interviewed Mr. Capps for about two hours and
5 twenty minutes, is that right?

6 A. Yes.

7 Q. Do you record your interviews?

8 A. No.

9 Q. May I ask why not?

10 A. I just don't. I just take notes.

11 Q. You held the fact that Mr. Capps had no history of
12 alcohol or drug abuse against him, didn't you?

13 A. No, I didn't. I said it was significant that he did
14 these without being intoxicated because I think if
15 somebody's intoxicated when they're committing sex offenses,
16 that can be a disinhibitor.

17 Q. Okay.

18 A. And so -- but I didn't hold that against him that he's
19 not. I mean, that's, you know, in one sense it's in his
20 favor.

21 Q. And you also talked about stressors, didn't you?

22 A. I ---

23 Q. About how sometimes stressors could cause people to act
24 out of the norm?

25 A. Well, for people with pedophilia, they have to have the

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1 underlying disorder. There are a lot of pedophiles who
2 never act on their impulses. They just go through their
3 whole life being sexually attracted to children and they
4 never sexually abuse children.

5 So certainly if somebody's going through a particularly
6 stressful time in their life, like with anything, that could
7 maybe disinhibit them or maybe lower the threshold. But
8 somebody has to already have the underlying disorder in
9 order to sexually abuse children.

10 Q. Could you tell us what important stressors play in
11 someone acting out that suffers from pedophilia?

12 A. What they play?

13 Q. What role does stressors play? You ---

14 A. It would depend -- it would depend on the person. It
15 would just -- it would depend on the person. I mean, for
16 instance, you know, if somebody who is otherwise honest is
17 under severe, severe financial stress and their daughter's
18 in the hospital dying, they've been known to rob a bank or
19 hold somebody up. I mean, it's just -- it would be person
20 specific.

21 Q. Okay.

22 A. It would be something to look at for each individual
23 person.

24 Q. Okay. Doctor, are you aware of how long Mr. Capps was
25 out on bond prior to going to court?

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1 A. He was arrested in January of 2005. And I think that
2 he was sentenced in 2008.

3 Q. Correct. And are you aware of how many days he got
4 credit for for being in jail during that time? I believe
5 it's on the State's exhibit if you need to refresh your
6 memory.

7 A. Let's see. He got credit for thirty days.

8 Q. I believe it's thirty-two.

9 A. Thirty-two days.

10 Q. So during 2005 and 2008 he was out on bond
11 continuously, correct?

12 A. I don't know. I know -- I know from when he was
13 arrested in 2005 for molesting the little boy, then he was
14 out on bond until -- then he molested the other children.
15 And I don't know at that point how long he was out.

16 Q. Doctor, you stated that you sometimes do further
17 testing, but not this time. What other tests are available
18 for you to use in these types of evaluations?

19 A. I mean, people could use a PPG, what's called the
20 penile plethysmography. But, you know, that can be reliable
21 or unreliable. You know, somebody who's sexually attracted
22 to children may not necessarily register on that -- on that
23 exam. They may or they may not.

24 I just -- in his particular case, given the weight of
25 the evidence and the actions, I didn't feel like it was

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1 necessary to define the diagnosis because he had molested
2 enough children over a long enough period of time with
3 similar -- in similar situations, you know, his M.O.
4 appeared to be getting in the bathtub with them and, you
5 know, maybe showing them pornography or something. So there
6 was enough -- the weight of the evidence that he has
7 pedophilia that a PPG wouldn't have necessarily given me
8 anything more.

9 Q. Thank you, doctor. What other types of tests are
10 available for you to use in these evaluations?

11 A. Well, you know, if I wanted to know -- if I wanted to
12 confirm whether he was sort of a psychopath or sociopath, I
13 would do the psychopathy checklist. But I don't have any
14 reason to believe that he's a psychopath or a sociopath.

15 He doesn't have a long criminal history. And he had a
16 good work history. Those were in his favor. So I don't
17 believe that he has a personality disorder. I just think
18 that he has the mental abnormality of pedophilia.

19 Q. What other type tests -- what other testing is
20 available in these types of evaluations?

21 A. Personality testing. You know, if I suspected that he
22 might have a personality disorder of some kind, I would have
23 asked for that. But I didn't really suspect that he has a
24 personality disorder.

25 Q. Okay. And you stated the one other actuarial table

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1 that you use routinely with these kind of evaluations said
2 that Mr. Capps was at low to moderate risk to re-offend,
3 correct?

4 A. Yes.

5 Q. Okay.

6 A. He's in that category.

7 Q. Doctor, how long have -- do you work with the Sexually
8 Violent Predator Program?

9 A. No.

10 Q. Did you used to?

11 A. Yes.

12 Q. Are you aware of what type treatment they offer them
13 down there?

14 A. No.

15 Q. Okay. You have no idea what kind of treatment is
16 offered in the program that you are recommending Mr. Capps
17 for?

18 A. No, I don't anymore.

19 Q. Okay. When was the last time you worked for the
20 program?

21 A. Two years ago.

22 Q. Okay. At that time what kind of treatment was offered?

23 A. I only did ---

24 **MS. WETHERTON:** Objection. Your Honor, can we
25 approach, please?

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1 **THE COURT:** Yes, ma'am.

2 (Whereupon a bench conference was held off the record
3 in the presence of the jury, but out of their hearing)

4 Q. Dr. Wadman, could you please tell the jury what kind of
5 treatment is provided in our State in the Sexually Violent
6 Predator Program? Last you knew.

7 A. The last I knew -- I can't even remember the name of
8 the program.

9 Q. Let me -- let me see if I can make it easier for you,
10 doctor. Would you agree that the treatment consists of one
11 hour a week of group therapy?

12 A. No, I wouldn't agree with that.

13 Q. Would you agree it consists of two hours a week of
14 group therapy?

15 A. No, I wouldn't agree with that either.

16 Q. Then can you tell us what else it involves?

17 A. I know that it involves group therapy. I know that
18 there is some individual therapy. But I don't know, you
19 know, in terms of, you know, what I do know is that -- is
20 that the program off-sight for the ones who were moving
21 along in the program, they would come over at least two full
22 -- almost full days a week. So they would be there from
23 about ten in the morning to about three in the afternoon.

24 Q. Doing what? Working on homework, group assignments?

25 A. I don't know.

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1 Q. Okay.

2 A. I really don't know.

3 Q. Okay. Do you know if the group therapy that's offered
4 at the treatment program is headed by doctors? Is it
5 supervised by doctors?

6 A. It's supervised by doctorates of psychology -- doctors
7 of psychology, as far as I know.

8 Q. Doctor, is it your testimony that as of two years ago
9 the treatment, the group therapy was supervised by doctors
10 of psychology only at that program?

11 A. As far as the overall supervision, I believe that was
12 -- yeah.

13 Q. And maybe that's where the confusion's ---

14 A. Uh-huh (affirmative).

15 Q. --- coming in. I'm talking about the person that goes
16 into the room and sits down at the table with the people
17 that are in group. Is that person a doctor?

18 A. No.

19 Q. No. In fact, it's just a staff member, isn't it?

20 A. No, they were licensed social workers.

21 Q. Just to clarify, you are limited by the information
22 you're provided, correct?

23 A. Yes.

24 Q. All of your -- and maybe I should have asked that. Was
25 there any information that you had to get your paralegal to

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1 get in this case?

2 A. I don't think so.

3 Q. So all of your information came from the Attorney
4 General's Office, correct?

5 A. Or from Mr. Capps.

6 Q. Correct.

7 A. Um-hum (affirmative).

8 Q. All right.

9 **MS. WIYGUL:** I don't have any further questions. Thank
10 you.

11 **THE COURT:** Redirect.

12 **MS. WETHERTON:** Just a few questions.

13 **Redirect Examination by Ms. Wetherton:**

14 Q. Did Mr. Capps tell you where he would live if he got
15 out?

16 A. With his wife.

17 Q. Does anybody else live in that household?

18 A. His step-daughter and her two children.

19 Q. And just for clarification, those notes from the Sex
20 Offender Treatment Program, they were all done by the same
21 person?

22 A. Yes.

23 Q. And also on that sentencing sheet that I admitted into
24 evidence that I gave you, is there anything on there that
25 indicates that it was an Alford plea?

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1 A. No.

2 Q. Okay. And why wouldn't our office approach you in 2007
3 to review this case?

4 MS. WIYGUL: Objection, Your Honor. Calls for
5 knowledge the doctor doesn't have.

6 MS. WETHERTON: Judge, she ---

7 THE COURT: I overrule it based upon your questioning.
8 Overruled.

9 A. There would be no reason -- there would be no reason to
10 approach us. There would be no court order. There would be
11 no -- no involvement on your part in the case even.

12 Q. In the Sexually Violent Predator treatment commitment
13 process, does the case start with the Attorney General's
14 Office?

15 A. No.

16 Q. And how does the case start?

17 A. The case starts -- whenever somebody who's been
18 convicted of a sex offense is getting out of -- they're
19 maxing out their prison sentence, their case is reviewed by
20 something called the multi-disciplinary team. And that's
21 made up of ---

22 MS. WIYGUL: Your Honor, I'm going to object at this
23 point. She's going into matters regarding people and ---

24 THE COURT: All right.

25 MS. WIYGUL: --- information that would ---

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1 **THE COURT:** I sustain the objection. She can answer
2 the question asked as far as when she would have gotten
3 involved.

4 Q. When would you be involved in the program or involved
5 in this process?

6 A. Not until a judge found probable cause that the person
7 is a sexual predator and would -- and requires an evaluation
8 to determine if he does meet this statutory requirement.

9 Q. So does the Office of the Attorney General come to you
10 and ask to evaluate someone?

11 A. No.

12 Q. As far as the treatment program, you have -- have you
13 been involved -- when was the last time you were involved in
14 the treatment program?

15 A. 2011, February or something like that.

16 Q. So do you currently know the state of the treatment
17 program, what happens there?

18 A. No.

19 Q. And were you qualified as an expert in treatment?

20 A. No.

21 **MS. WETHERTON:** Nothing further, Your Honor.

22 **THE COURT:** Okay. Thank you, doctor. You may step
23 down.

24 **MS. WIYGUL:** Judge, may I ask her one quick
25 clarification ---

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1 **THE COURT:** Yes, ma'am, you may.

2 **Recross Examination by Ms. Wiygul:**

3 Q. Doctor, in the probable cause order ordering you to
4 evaluate Mr. Capps, isn't it true that it found there was
5 probable cause to believe that Mr. Capps meets the criteria
6 to be a sexually violent predator, not that he is a sexually
7 violent predator?

8 A. Yeah, but that is for determining whether he's -- yes,
9 whether he's ---

10 Q. Thank you.

11 **THE COURT:** Thank you. You may step down.

12 **MS. WETHERTON:** And, Your Honor, Dr. Wadman is under
13 subpoena. We'd ask that she be released from her subpoena
14 ---

15 **MS. WIYGUL:** We'd have no objection.

16 **THE COURT:** Without objection, she may be excused.
17 Thank you for coming. You may call your next witness.

18 **MS. WETHERTON:** Your Honor, the State rests.

19 **THE COURT:** All right. Ladies and gentlemen, I'm going
20 to let you go back and take a short break in your jury room.
21 Let me remind you again not to discuss the case. While
22 you're back there you may have a need, someone may need to
23 check on a sick child, or make a phone call or get a cup of
24 coffee.

25 We need to appoint a foreperson, someone to be the

1 **THE COURT:** Let's take about a ten minute break. Well,
2 are there -- you intend to ---

3 **MS. WIYGUL:** Your Honor, we've got a bit of an issue.
4 Mr. Capps is over here shaking with pain. Apparently he was
5 not given his pain medicine this morning.

6 **MR. CAPPS:** I'm cold, Your Honor. When I get cold my
7 hips hurt.

8 **THE COURT:** All right. We'll see if we can't warm you
9 up. We'll take a little longer break if we need to. If
10 y'all will make sure that he gets whatever medication he
11 needs. If he needs ---

12 **MR. CAPPS:** They didn't send anything over with me.
13 I'm supposed to take pain medicine in the mornings, noon and
14 night. And they haven't sent anything over. And I've
15 already missed two doses today.

16 **MS. WIYGUL:** Why didn't you say anything this morning?

17 **MR. CAPPS:** I asked the officer that brought me over.
18 And they called medical, and medical said it was not
19 important. And they sent me on over.

20 **MS. WIYGUL:** What's the pain medication?

21 **MR. CAPPS:** Ultram for my hips. And then I didn't get
22 my blood pressure medicine. I didn't get my bladder control
23 medicine. I didn't get nothing this morning. The jail did
24 not give me anything before I left.

25 **THE COURT:** All right. Let's see if we can check on

1 that and see what medication he needs. And if we need to
2 give him some time to get it active, we'll play that by ear.
3 They're going to go pick it up for you, all right?

4 MR. CAPPS: Thank you, sir.

5 THE COURT: All right. Let's take a short break. Ms.
6 Wiygul, maybe you can let me know whether he needs more time
7 to -- even if we need to start back tomorrow. I want to
8 make sure that he's ---

9 MS. WIYGUL: Well, ---

10 THE COURT: --- capable. Is he going to testify, you
11 think?

12 MS. WIYGUL: (Affirmative nod).

13 THE COURT: Okay. So if you can monitor that and let
14 us know so that we can let the ---

15 MS. WIYGUL: Yeah.

16 THE COURT: --- jury coordinator downstairs know when
17 to bring the panel back. If we need to ---

18 MS. WIYGUL: I will run ---

19 THE COURT: --- let him testify ---

20 MS. WIYGUL: --- downstairs and check ---

21 THE COURT: ---, in the morning, we'll ---

22 MS. WIYGUL: --- with that officer right now.

23 THE COURT: Well, they're going to pick it up. They're
24 going ---

25 MS. WIYGUL: They're going to pick it -- my concern is

1 even if he takes it right now, is it going to kick in?

2 So ---

3 **THE COURT:** That's why you need to let us know. And if
4 we need to -- make sure that he's -- we'll start first thing
5 in the morning. We'll start at 7:00 in the morning to let
6 him get his testimony.

7 (Whereupon court was in recess at 3:25 pm)

8 (Whereupon court resumed at 4:13 pm)

9 **MS. WIYGUL:** We were talking. Do you want to make the
10 note from the jail a court exhibit?

11 **THE COURT:** If y'all want to. Have y'all seen that?
12 Okay. They got your medicine, right?

13 **MR. CAPPS:** Yes, sir.

14 **THE COURT:** All right.

15 **MR. CAPPS:** And I'm sorry for the trouble, but I ---

16 **THE COURT:** That's all right.

17 **MR. CAPPS:** --- I appreciate all your trouble.

18 **THE COURT:** We need to make sure you're ready to go on
19 that. Yeah, we can make that a court exhibit. That'll be
20 fine.

21 **MS. WIYGUL:** Thank you, Judge.

22 (Whereupon Court's exhibit 1 was marked)

23 **MR. CAPPS:** Moving around a little bit, getting out in
24 the warm helped considerably.

25 **THE COURT:** Well, good.

1 **MR. CAPPS:** Thank you, sir.

2 **THE COURT:** All right. So what we'll do is bring the
3 jury back and you can -- you have -- you only have one
4 witness, Ms. Wiygul, is that right?

5 **MS. WIYGUL:** Yes, Your Honor.

6 **THE COURT:** Okay. So we'll take that. And if -- we'll
7 see how -- if it goes past a quarter til, I probably won't
8 -- how long will y'all argue the case? Ten or fifteen
9 minutes each?

10 **MS. WETHERTON:** Closing argument, maybe ten minutes.

11 **MS. WIYGUL:** Yeah, I don't -- it shouldn't be longer
12 than about ten minutes.

13 **THE COURT:** All right. Well, we just need to let them
14 know downstairs before too long. Have our jury come in if
15 they're ready.

16 (Whereupon the jury entered the courtroom at 4:18 pm).

17 **THE COURT:** Mr. Foreman and ladies and gentlemen, I
18 apologize for keeping you waiting. We had some other
19 matters to come up. And we're trying to get scheduled your
20 fellow jurors coming in tomorrow to start the next case and
21 things of that nature. But we're now ready to proceed. The
22 State has rested. So, Ms. Wiygul, you may call your first
23 witness.

24 **MS. WIYGUL:** Respondent calls Richard Dean Capps.

25 **THE COURT:** All right. Come around and be sworn,

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1 please.

2 **Richard Capps**, being duly
3 sworn testified as follows:

4 **MADAME CLERK:** Thank you. You may -- please state your
5 full name for the record.

6 **MR. CAPPS:** Richard Dean Capps.

7 **MADAME CLERK:** Thank you.

8 **Direct Examination by Ms. Wiygul:**

9 Q. Mr. Capps, please introduce yourself to the jury.

10 A. My name is Richard Dean Capps. I'm going to be fifty-
11 six years old. I've lived in the Greenville area all
12 my life. I've done a lot of traveling in my last twenty,
13 twenty-five years as well with my work.

14 Q. And what kind of work did you do?

15 A. I was working in the video gaming industry.

16 Q. Okay. And at some point did you stop working?

17 A. Yes, I did.

18 Q. And was that because you were found to be disabled?

19 A. Yes, yes. It was -- finally, my health is what caused
20 me to quit.

21 Q. Okay. We heard a little bit about your health from Dr.
22 Wadman. And I'll ask you a little bit more about it later
23 on. Right now can you kind of walk us through the steps
24 that got you here today? When -- how old were you when you
25 first got a criminal charge?

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1 A. I guess it was for -- I believe it was around 2005.

2 Q. Okay.

3 A. And I'm fifty-six now.

4 Q. When that charge came up did you hire a private
5 attorney?

6 A. Yes, I did.

7 Q. Okay. And how much was that attorney going to charge
8 you?

9 A. Well, he started off being twenty thousand. And I paid
10 him ten of it. And then he came up and said it was going to
11 cost another thirty thousand.

12 Q. Okay. At that point were you able to pay the thirty
13 ---

14 A. No, I wasn't.

15 Q. --- thousand?

16 A. At that point, I wasn't.

17 Q. So what happened then? Did he continue representing
18 you?

19 A. No, he didn't.

20 Q. All right.

21 A. I ---

22 Q. What happened?

23 A. I ended up with a court appointed attorney, which was
24 John Mauldin.

25 Q. Okay. So you ended up with a public defender?

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1 A. Yes, I did.

2 Q. Okay. After you got the public defender, how many
3 times about did he meet with you about these charges before
4 court?

5 A. I remember two, specifically. It seems like it was
6 three.

7 Q. Okay. Now earlier we heard testimony about you got
8 credit for thirty-two days that you'd done in jail.

9 A. Yes, ma'am.

10 Q. On these charges.

11 A. I did.

12 Q. Did you do those thirty-two days just before you pled
13 or did you do them right when you were charged and then you
14 bonded out?

15 A. I did them -- as soon as I was charged I did the
16 thirty-two days. And that's when I hired the private
17 attorney. And he got me a bond hearing. I was being held
18 on no bond.

19 Q. Okay. And how much bond did you post? Do you recall?

20 A. Seven thousand, five hundred dollars is what it cost
21 me.

22 Q. Okay.

23 A. And it was -- I think the bond itself, if I remember
24 right, was seventy-five thousand dollars for the bond.

25 Q. So by then you're out seventeen thousand and five

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1 hundred dollars, ---

2 A. Yes.

3 Q. --- and you're out of money?

4 A. Yes.

5 Q. Okay. Was your bond ever revoked?

6 A. No, it was not.

7 Q. Okay. So from 2005 to July of 2008 you were out on
8 bond?

9 A. Yes. Yes, I was.

10 Q. And you weren't picked up again?

11 A. No, I was not.

12 Q. And you weren't violated?

13 A. No, I was not.

14 Q. Okay. So whenever you came to court on July 21st of
15 2008 you came in one of those doors?

16 A. Yes, I did.

17 Q. And you weren't wearing orange?

18 A. No, I wasn't.

19 Q. Okay. When you entered your guilty plea was there
20 anything out of the norm about it?

21 A. When I entered my guilty plea I had talked to the
22 attorney, John Mauldin, about entering under an Alford plea.

23 And he ---

24 Q. Okay.

25 A. --- said he would do that.

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1 **MS. WETHERTON:** Objection. Hearsay.

2 **THE COURT:** Overruled.

3 Q. Can you -- can you explain to the jury what your --
4 what was your understanding of what an Alford plea was?

5 A. My understanding of the Alford plea was is that I felt
6 like I-couldn't win the case that I had. And my
7 understanding was that I could take a lesser charge and
8 plead guilty to it or I could plead and take the lesser
9 charge without admitting my guilt.

10 Q. And did Mr. Mauldin tell you that that -- or was it
11 your understanding that charge would be non-violent?

12 A. Yes, it was. At the time I was told it would be non-
13 violent.

14 Q. Okay. Mr. Capps, I'm going to show you what's been
15 entered as the State's exhibit 1, specifically your
16 sentencing sheets. And can you tell me what that -- there's
17 a -- there's a section where you -- the judge or the court
18 can mark it non-violent, violent, serious, most serious.

19 A. Um-hum (affirmative). This one is marked non-violent.

20 Q. Okay. And what about the other one?

21 A. It is marked non-violent as well.

22 Q. Okay. And at the time of your guilty plea or at the
23 time of your plea did Mr. Mauldin or did anyone explain to
24 you that while the statute considered those offenses non-
25 violent that another statute, the Sexually Violent Predator

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1 Statute, did consider those offenses violent?

2 A. No. I had no prior knowledge to this statute that I'm
3 being held under now until about August of 2012, right after
4 I finished the program at SCDC.

5 Q. Okay. Who told you about the Sexually Violent Predator
6 Program and that they might try to put you in it?

7 A. The way I found about it was -- found out about it was
8 that they served papers on me saying I had to be held for
9 this court. That's how I found out about it. I had no
10 prior knowledge of it at all.

11 Q. Okay. When your private attorney represented you on
12 the criminal charges did he ever explain this statute to you
13 or that you could be subjected to it if you pled guilty?

14 A. No, he did not.

15 Q. Did the attorney that represented you at the time of
16 the plea tell you about the existence of this statute?

17 A. No, they did not.

18 Q. Did the judge tell you about this statute?

19 A. No, did not.

20 Q. Okay. Were you surprised?

21 A. Very surprised. I was thinking that I'm about done
22 with all this and going home.

23 Q. Did you have plans for when you -- when were you
24 supposed to be released? What was your max-out date?

25 A. My max-out date was March the 1st of this year.

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1 Q. Okay. And did you have plans in place prior to all of
2 this for being released?

3 A. I was planning on going home and getting back with the
4 wife. And I have her waiting on me. She's kind of
5 expecting me to be back.

6 Q. And we heard some mention earlier about step-children
7 in the home. Does she have any children in her home?

8 A. No. There's nobody there. Hadn't been for years.

9 Q. How old are her children?

10 A. Thirty-four, thirty-five, thirty-six years old.

11 Q. Okay.

12 A. Right there.

13 Q. Okay.

14 A. I might be off a year or so, but seems like they're
15 thirty-five and thirty-six, a boy and a girl.

16 Q. So right now your wife lives at home alone?

17 A. Alone, yes.

18 Q. Okay. If you can't live with your wife do you have
19 anywhere else you could stay?

20 A. Yes. I have my mother down the street just a little
21 piece. She's in bad health right now. And my wife is there
22 with my sister taking care of her. And she wants me to come
23 and stay with her for a while.

24 Q. Okay.

25 A. And I also ---

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1 Q. Now -- I'm sorry.

2 A. I also have an adoptive mother that -- a biological
3 mother that I know. She's wanting me to come and stay with
4 her, but that wouldn't be a good idea. And then I also have
5 a biological sister that I could go stay with, which I've
6 considered, too.

7 Q. And where does she live?

8 A. She lives in Johns Island in Charleston.

9 Q. Okay. Mr. Capps, are you aware of the fact that you'll
10 have to be on the Sex Offender Registry for the rest of your
11 life?

12 A. Yes, I am.

13 Q. Were you aware of that at the time of your plea?

14 A. Yes, I was.

15 Q. Okay. I'm going to draw your attention again to this
16 sentencing sheet. And I believe they both say the same
17 thing. Can you read the notes that the court has
18 handwritten on the sentencing sheet?

19 A. Must enter sexual registry.

20 Q. Okay. And is that the Sex Offender Registry?

21 A. Yes, it is.

22 Q. Were there any other notes that the court made?

23 A. Do not house at Perry Correctional Institute.

24 Q. Okay.

25 A. And it's the same on both.

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1 Q. Okay. Is there any mention that you saw on those
2 sentencing sheets -- and you signed those sentencing sheets,
3 right?

4 A. Yes, I did.

5 Q. You signed them on the day of your plea?

6 A. Yes, I did.

7 Q. Was there anything written on those sentencing sheets
8 or typed on them that notified you that you were subject to
9 commitment under this law?

10 A. Nothing at all.

11 Q. Mr. Capps, I understand that you entered an Alford
12 plea, correct?

13 A. I did.

14 Q. And was it your understanding that that meant you were
15 not admitting what they said you did, but that it went on
16 record as a guilty plea?

17 A. Yes, that was my understanding. The judge explained
18 that to me.

19 Q. Okay. Despite that fact, were you offered sex offender
20 treatment in the Department of Corrections?

21 A. Yes, I was.

22 Q. And did you take advantage of that?

23 A. I did. I did take that class. It's about a twelve
24 week program.

25 Q. Okay. How many days a week did that program meet, did

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1 the group meet?

2 A. We met every day for a hour, hour and a half. We had
3 roughly forty or so classes in the twelve weeks that I was
4 there.

5 Q. And they assign homework in that program?

6 A. Yes, they did.

7 Q. And you had to present those -- that homework to the
8 group?

9 A. Yes, we did.

10 Q. And you had to discuss it?

11 A. Had to discuss it, yes.

12 Q. Did you have to talk about some things that were fairly
13 uncomfortable to talk about?

14 A. Yes, I did.

15 Q. And did you do it? Did you open up to the best of your
16 ability?

17 A. Yes, I did.

18 Q. Okay. Prior to that, before you entered your guilty
19 plea, had anyone ever said anything to you about they
20 thought you might suffer from a mental illness or a mental
21 abnormality?

22 A. Nobody. Nobody said nothing.

23 Q. Was any question as to your competence raised at the
24 time of your plea?

25 A. Nothing, no.

RICHARD CAPPS - DIRECT EXAMINATION BY MS. WIYGUL

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1 Q. Mr. Capps, can you tell us a little bit, and you don't
2 have to go into great detail, but can you tell us a little
3 bit about what you learned at the Sex Offender Treatment
4 Program in the Department of Corrections?

5 A. Well, I know that some of the things I've done is not
6 right. And I -- when I done the things that I'm accused of
7 doing -- and I'm not saying I didn't do all of them, you
8 know. There's one or two of them I did do. I'm not denying
9 that at all.

10 But at the time I done them, I never thought once about
11 causing any long-term problems or hurting anybody. And ---

12 Q. At the time these offenses occurred did you have any
13 stressful situations going on in your life?

14 A. No.

15 Q. Had you been diagnosed with prostate cancer? Had you
16 been placed in an adult diaper?

17 A. I didn't have anything stressful going on, but I did
18 have the prostrate [sic] cancer and the adult diaper, yes.

19 Q. But you don't consider those stressful?

20 A. It's a part of life now.

21 Q. Okay. I see. Mr. Capps, what have you lost? What
22 have you lost because of these acts other than the last ---

23 A. Well, ---

24 Q. --- seven years of your life?

25 A. You heard them talking about the situation with my

RICHARD CAPPS - DIRECT EXAMINATION BY MS. WIYGUL

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1 granddaughter.

2 Q. Um-hum (affirmative).

3 A. And I never denied that, although I know the doctor
4 says that I did. But I never denied that with her. I don't
5 know where she come up with that. But because of that act,
6 I have lost all contact with my oldest ...

7 (Pause)

8 Q. Just take a moment, sir.

9 A. I'm sorry.

10 Q. That's okay.

11 A. I've lost all contact with my oldest daughter and her
12 family.

13 Q. And let me stop you there just for a minute. Did you
14 make them take you to court or did you voluntarily sign the
15 papers?

16 A. No, I voluntarily signed the papers.

17 Q. Okay.

18 A. I was -- I was working out of town at the time. And it
19 was -- I just went ahead and voluntarily signed the papers.

20 Q. And did you do that so that you wouldn't put the family
21 through more?

22 A. Yes, I did. I'd done enough.

23 Q. When you made the decision to enter a guilty plea and
24 not to take all of these charges to trial, what was your
25 reasoning?

RICHARD CAPPS - DIRECT EXAMINATION BY MS. WIYGUL

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1 A. The same thing. I didn't want to drag these kids into
2 a situation where they'd have to relive the things that I'd
3 done.

4 Now, granted, there's two of them I'm charged with that
5 I did not do. And that's why I took the Alford plea. But
6 at the same time, I didn't want to drag the kids into that
7 situation. And I didn't want to drag my family or their
8 family into that situation.

9 Q. Okay. Did you understand that you had the right to a
10 trial? That you could have made the State call witnesses,
11 ---

12 A. Yes.

13 Q. --- had a jury seated?

14 A. Yes, I did.

15 Q. If you had known then that you'd be subject to
16 commitment under this Act, would you have entered a plea?

17 A. No, I would not. I would have drug it out for
18 everything it was worth.

19 Q. Okay. Would you have made the State prove every victim
20 they were alleging?

21 A. I would.

22 Q. Okay. What's your understanding of what this program
23 involves? Do you know where it's housed?

24 A. My understanding is it's housed right in the middle of
25 the SCDC at Broad River in Columbia.

RICHARD CAPPS - DIRECT EXAMINATION BY MS. WIYGUL

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1 Q. Okay.

2 A. Which is where I took the program. And I know what

3 kind of a place that is. There's a lot of life sentenced

4 men all around that area. It's not just -- it won't be just

5 criminal offenses there. There's lifers on that yard.

6 Q. Okay. Have you heard of some pretty scary stuff going

7 on down there?

8 A. I've seen some pretty scary stuff going on down there

9 just in the twelve weeks that I was there.

10 Q. Okay. You heard Dr. Wadman testify that the final note

11 in the Department of Corrections treatment program was that

12 they didn't feel like you took responsibility and that you

13 didn't feel like you should be in jail. Could you -- do you

14 -- were you even aware of that note prior to today?

15 A. No, I wasn't. I was not aware of that note.

16 Q. Did you receive any kind of positive feedback after

17 participating in that program?

18 A. No, I did not.

19 Q. Did you receive any negative feedback?

20 A. I didn't receive any feedback, period.

21 Q. Did they give you a certificate saying you ---

22 A. Oh, you're talking ---

23 Q. --- successfully completed it?

24 A. Oh, you're talking about the program at Broad River.

25 Oh, I'm sorry.

RICHARD CAPPS - DIRECT EXAMINATION BY MS. WIYGUL

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1 Q. Yes.

2 A. I misunderstood what you was asking. I'm sorry.

3 Q. Okay. Let me re-ask those questions then. Did you
4 receive any negative feedback while you were in the sexual
5 treatment program?

6 A. No, I did not.

7 Q. Did you receive any positive feedback?

8 A. Every feedback I got on every paper I turned in said
9 good -- had good, or great or excellent written on it.

10 Q. Okay. Did anyone ever tell you that they felt like you
11 had not completed the program successfully?

12 A. No, they did not. As a matter of fact, the certificate
13 I have has a gold seal on it, which the lady that was doing
14 the program put on the certificates it was successfully
15 completed. There was two people in the group that received
16 certificates without that gold seal.

17 Q. Okay. So you felt like that gold seal meant that you'd
18 done what you were supposed to?

19 A. Exactly.

20 Q. Okay. You stated that you were actually transported
21 down to Broad River to participate in this program, is that
22 correct?

23 A. Yes, I was.

24 Q. While you were there were you able to speak with anyone
25 involved with the sexually violent treatment program?

RICHARD CAPPS - DIRECT EXAMINATION BY MS. WIYGUL

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1 A. No, I was not.

2 Q. Did you become aware of what type of treatment they
3 receive there?

4 A. No, I didn't.

5 Q. Okay.

6 A. I knew the program was there, but I never -- I wasn't
7 aware of anything about it.

8 Q. Okay. Mr. Capps, could you go through -- Dr. Wadman
9 touched on some of your medical conditions. Could you go
10 through and just kind of give us a list of what's going on
11 with you medically?

12 A. My mother that had me was seven months pregnant when I
13 was born. I was born with cerebral palsy, which I'm still
14 dealing with today with the braces. 2003, my appendix
15 ruptured in July. In August my gallbladder ruptured. 2004,
16 I had the prostate [sic] cancer. I had my right leg
17 operated on in 1999. And since then I've acquired a heart
18 condition now. I have a a-fibular heartbeat. And I'm on
19 medicine for that. And I've had surgery for that also.

20 Q. Okay. How do you view all these illnesses? Do you
21 view them as being unfair or just something you have to deal
22 with?

23 A. No, they -- I just deal with them. It's a part of
24 life. It's what God gave me to deal with, and I deal with
25 it.

RICHARD CAPPS - DIRECT EXAMINATION BY MS. WIYGUL

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1 Q. Okay.

2 A. That's the way I look at it.

3 Q. Even dealing with these illnesses you were actually
4 able to keep a job at almost all of the institutions you
5 were at during your incarceration, isn't that correct?

6 A. Yes, I was.

7 Q. What kind of work did they have you doing?

8 A. They had me cleaning -- cleaning in the dorm. I was
9 actually working in the commissary helping with the -- doing
10 the chemicals, filling all the chemical bottles up for each
11 dorm each day and had me cleaning up. I would help with
12 folding -- washing and folding the clothes.

13 Q. Okay. Did you receive payment for that?

14 A. Actually, for the days that I worked I got -- earned
15 work credit, but there's still a question of a hundred days
16 that they have not given me that ---

17 Q. But that's -- that's ---

18 A. Right.

19 Q. --- the argument for later down the road, right?

20 A. Right, that's -- I know.

21 Q. Okay.

22 A. But, yeah, I got payment for the days I worked there
23 that they allowed me to work.

24 Q. Okay. And dealing with all these physical
25 disabilities, with all of your mental issues, with

RICHARD CAPPS - DIRECT EXAMINATION BY MS. WIYGUL

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1 everything going on with that, with all of the pain you're
2 in, you didn't have any altercations in all the years you
3 were in prison, did you?

4 A. None at all. I've gotten along good with everybody.

5 Q. Okay. Did you ever have an infraction write-up for not
6 being able to control yourself?

7 A. No, uh-uh (negative).

8 Q. Okay. Prior to these guilty pleas had you ever been
9 convicted of a crime?

10 A. No.

11 Q. You ever had a speeding ticket?

12 A. Had a speeding ticket. Actually, that was all, was
13 speeding tickets.

14 Q. Okay. All right. Mr. Capps, is there anything else
15 that you feel like this jury needs to know about you before
16 making a decision in this case?

17 A. I would like for the jury and the Judge to know that if
18 I am allowed to go home, I fully intend to get into some
19 kind of a private treatment program. And I will stay there
20 until I'm satisfied that the doctor or til the doctor is
21 satisfied.

22 Q. And what you're talking about is an out-patient sex
23 offender treatment ---

24 A. An out-patient ---

25 Q. --- program?

RICHARD CAPPS - CROSS EXAMINATION BY MS. WETHERTON

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1 A. Yes. Yes.

2 Q. Okay. Okay.

3 A. I want to do that. And I'm -- and I'm going to be sure
4 that I -- I'm going to do everything within my power to make
5 sure I distance myself from any children.

6 Q. And you're under a court order to be on the Sex
7 Offender Registry?

8 A. Yes. And I -- yes, I am.

9 Q. Okay. I have no further questions. Thank you, sir.
10 Please answer any questions Ms. Wetherton may have.

11 **THE COURT:** You may cross examine.

12 **MS. WETHERTON:** Thank you, Your Honor.

13 **Cross Examination by Ms. Wetherton:**

14 Q. So basically your last statement -- do you think then
15 you need additional sex offender treatment?

16 A. No, I don't feel like I do, but I would -- I would
17 still just like -- like to have it. I mean, I ---

18 Q. So you would just go?

19 A. I would go. Yes, I would go.

20 Q. But you don't think you need it?

21 A. I'm not sure I'd say I need it. I mean, I -- I can't
22 really say. But I know from the past things that I've done
23 -- I do want to go for the treatment in a private program.
24 I don't want to take any chances at all that I'm going to
25 let this reoccur again. That's why I want to go.

RICHARD CAPPS - CROSS EXAMINATION BY MS. WETHERTON

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1 Q. So you're concerned that it's going to reoccur again?

2 A. No, I'm not concerned. I'm -- I'm concerned that it
3 could reoccur again, but ---

4 Q. So you're concerned that it could reoccur ---

5 A. That I'm -- I -- I'm confused at exactly what you're
6 wanting, to be honest about it.

7 Q. Are you concerned that you could sexually re-offend,
8 that you could hurt another child ---

9 MS. WIYGUL: Your Honor, I'd object. He's answered
10 that he is concerned that it could happen again.

11 THE COURT: Overruled.

12 Q. Are you concerned that you could sexually re-offend
13 another child again?

14 A. In my present mind -- mindset, no, I would not, but I
15 want to have the treatment as a safeguard. I've been locked
16 up for five years. And I've paid a terrible price just with
17 my family alone for what I've done. I had no contact with
18 my oldest daughter. My youngest daughter died this past
19 November at thirty-two years old. So I've -- I've paid a
20 terrible price, not to mention the price that these children
21 have paid because of my actions.

22 Q. Well, ---

23 A. They're paying a price, too. And I know that.

24 Q. Well, that's interesting because you had stated on --
25 make sure I understand because on direct examination you

RICHARD CAPPS - CROSS EXAMINATION BY MS. WETHERTON

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1 would have put them through it again if you knew you didn't
2 have to go through this program.

3 A. I would have.

4 Q. You would have put them through the whole entire
5 criminal process, correct?

6 A. I would have put them through -- if I had known this --
7 this right now, yes, I would have done that.

8 Q. So if you have additional -- the State requires you to
9 have additional sex offender treatment, the fact that you
10 could re-victimize additional children and put them through
11 a criminal process, that's more important to you? You're --
12 what you're going to do ---

13 MS. WIYGUL: Your Honor, I'm going to object to -- I'm
14 just going to ask that she clarify the question.

15 THE COURT: All right. Rephrase your question.

16 MS. WETHERTON: Sure.

17 Q. So what's more important to you, re-victimizing
18 children or not having to go through sex offender treatment?

19 MS. WIYGUL: Your Honor, I'm going to object.

20 THE COURT: I overrule the objection.

21 A. You know, you're -- you're really trying to twist
22 things around here. When I came in here five years ago, I
23 did not want to put these children through this. But if I
24 had known this particular thing that was going to -- taking
25 place right now, if I had known five years ago this was

RICHARD CAPPS - CROSS EXAMINATION BY MS. WETHERTON

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1 going to be taking place, then I would have done what I had
2 to do in order to prove my innocence on two -- on two of
3 these charges that I'm charged with. And as far as re-
4 victimizing, no, I am not going to re-victimize any
5 children.

6 Q. Okay. So when you pled guilty that day and you took an
7 oath to tell the truth?

8 A. I took an oath just like I did today.

9 Q. Okay. And you're stating even -- is there anything in
10 the sentencing sheets or anything that indicates that there
11 was an Alford plea in this case?

12 A. No, there's not.

13 Q. And your understanding of an Alford plea is you didn't
14 have to admit to anything?

15 A. My understanding of the Alford plea was that I didn't
16 have to admit to guilt, but I could take a lesser charge.

17 Q. But you admitted to sexually offending these two
18 children? You've since admitted it?

19 A. Yes, I did.

20 Q. Okay.

21 A. I know I did.

22 Q. So for in exchange you accepted nine years
23 incarceration, correct?

24 A. Yes.

25 Q. And you -- and you also knew that you had to register

RICHARD CAPPS - CROSS EXAMINATION BY MS. WETHERTON

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1 as a sex offender?

2 A. I knew that.

3 Q. Okay. And as far as your -- you were born with
4 cerebral palsy, correct?

5 A. Yes.

6 Q. In 2003 you had your appendix removed?

7 A. Yes.

8 Q. In 2003 you had your gallbladder issues?

9 A. Yes.

10 Q. 2004 you had prostate cancer?

11 A. Yes.

12 Q. And in 1999 you had issues with your right leg?

13 A. Yes.

14 Q. And you committed these sexual offenses in 2005?

15 A. Yes.

16 Q. And how many children do you come in -- did you hang
17 out with while you were in prison?

18 **MS. WIYGUL:** Objection, Your Honor.

19 **THE COURT:** Overruled.

20 A. How many children?

21 Q. Um-hum (affirmative).

22 A. There's no children in prison.

23 **MS. WETHERTON:** Nothing further.

24 **THE COURT:** Any redirect?

25 **MS. WIYGUL:** Just briefly, Your Honor.

RICHARD CAPPS - REDIRECT EXAMINATION BY MS. WIYGUL

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1 **Redirect Examination by Ms. Wiygul:**

2 Q. Mr. Capps, just to clarify, had you known that you'd be
3 subject to commitment for the rest of your life would you
4 have pled guilty or would you have demanded a trial on the
5 children that you deny victimizing?

6 A. I would have demanded a trial.

7 Q. Would you have still entered a guilty plea for the
8 children you admit victimizing?

9 A. Yes, I would.

10 Q. Would you still have agreed to no contact with your own
11 family?

12 A. Yes, I would.

13 Q. Would you still have agreed to be on the Sex Offender
14 Registry the rest of your life?

15 A. Yes, I would.

16 Q. Mr. Capps, if you had known that the State would be
17 trying to put you away for life or the possibility of life
18 would you have come up with the money to hire a private
19 attorney no matter what you had to sell?

20 A. I would have, yes.

21 Q. I have no further questions. Thank you.

22 **MS. WETHERTON:** Your Honor, can I ---

23 **THE COURT:** Yes, ---

24 **MS. WETHERTON:** --- follow up ---

25 **THE COURT:** --- briefly.

RICHARD CAPPS - RECROSS EXAMINATION BY MS. WETHERTON

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1 **Recross Examination by Ms. Wetherton:**

2 Q. Ms. Wiygul, is she court appointed?

3 A. Yes, she is.

4 Q. Are you happy with her?

5 A. Very happy.

6 Q. So just because someone's a court appointed attorney
7 doesn't mean they're a bad attorney?

8 A. In this case, no.

9 Q. Okay.

10 **MS. WETHERTON:** Nothing further.

11 **THE COURT:** All right. Thank you, sir. You may step
12 down. You may call your next witness.

13 **MS. WIYGUL:** Your Honor, at this time, Respondent would
14 rest and just renew all previous objections.

15 **THE COURT:** Anything in reply from the State?

16 **MS. WETHERTON:** No, Your Honor.

17 **THE COURT:** All right. Mr. Foreman, ladies and
18 gentlemen, you've heard all the testimony in this case. The
19 stage at which we are now would be for a chance for the
20 attorneys to make their summary and closing to you. Then I
21 would instruct you on the law.

22 Because of the delay that I incurred we might not be
23 able to successfully complete that today. I apologize for
24 that. But I think rather than putting us on a time
25 restraint this afternoon, we'll just wait til in the morning

CLOSING ARGUMENTS - MS. WETHERTON

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1 Wednesday, May 29, 2013:

2 **THE COURT:** Thank you. Please be seated. All right.

3 Everybody ready to proceed?

4 **MS. WETHERTON:** Yes, Your Honor.

5 **MS. WIYGUL:** Yes, Your Honor.

6 **THE COURT:** All right. If our jury's ready, you can
7 have them come in.

8 (Whereupon the jury entered the courtroom at 9:06 am)

9 **THE COURT:** Good morning, ladies and gentlemen. We are
10 now ready to proceed with the closing statements of the
11 attorneys. The attorneys will give you their view of the
12 evidence.

13 I told you before, this is not evidence itself, what
14 they have to say to you. Still, I urge you to listen
15 carefully as each attorney addresses you. After they've
16 done so I'll instruct you on what the law of the case is.
17 And then it'll be yours to decide. All right, Ms.
18 Wetherton.

19 **MS. WETHERTON:** Thank you, Your Honor. May it please
20 the Court, ladies and gentlemen of the jury. On behalf of
21 the Office of the Attorney General and Alan Wilson, on
22 behalf of the Attorney General, I'd like to thank you for
23 sitting on the jury in this case.

24 I can only imagine when you got your civil summons to
25 sit on a jury trial you were probably thinking that you're

CLOSING ARGUMENTS - MS. WETHERTON

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1 going to be involved in like a car accident type thing or a
2 slip and fall in a grocery store and here you are trying to
3 figure out whether or not someone's a sexually violent
4 predator. So it's probably not exactly what you had in
5 mind.

6 But this is a very important case. I realize that it
7 is a very short case, but it's still very, very important.
8 You know, it's obviously very important to Mr. Capps. It's
9 very important to our office. And it's going to be very
10 important to your community.

11 So what did I have to prove? I talked to you about
12 that. I'm going to show you the board that I showed you in
13 my opening. This is my burden of proof in this case. I
14 have to prove two things.

15 First, that he had been convicted of a sexually violent
16 offense. And, second, that he suffered from a mental
17 abnormality or personality disorder that makes the person
18 likely to engage in acts of sexual violence if not confined
19 in a secure facility for long-term control, care and
20 treatment. This is my burden of proof. Again, this is what
21 I have to show you.

22 So what did I show you during this trial? First, I
23 admitted into evidence, which will go back with you in the
24 jury room, two copies of certified convictions right here
25 for a lewd act on a minor. Under the SVP Act, lewd act on a

CLOSING ARGUMENTS - MS. WETHERTON

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1 minor is a sexually violent offense. And the Judge will
2 instruct you during your jury instructions that, again, lewd
3 act on a minor is, in fact, a sexually violent offense.

4 I wanted to talk about, there's some issue going on
5 here with this Alford plea business that I wanted to talk
6 about with you really quick. All I can tell you is it's not
7 indicated. And you're going to see on the sentencing sheets
8 that are certified by the Clerk of Court, there's nothing
9 indicating that it was an Alford plea.

10 But for the purposes of what we're trying to prove
11 today, it really doesn't matter because under the SVP Act an
12 Alford plea is still considered a guilty plea. And even if
13 he pled under Alford, it still counts as a sexually violent
14 conviction under the SVP Act.

15 So as far as I'm concerned, it really doesn't matter
16 whether or not you guys believe it was an Alford plea or
17 not. The Judge is also going to instruct you on that. An
18 Alford plea is basically you did not have to admit guilt,
19 but it's still considered a guilty plea.

20 So as you heard yesterday, he admitted to molesting
21 those two children. So it really, again, has nothing as
22 much to do with the ultimate issue in this case.

23 Also, I had to prove there had -- he had to have a
24 mental abnormality, a personality disorder. Now you heard
25 testimony from the court appointed expert, Dr. Wadman, who's

CLOSING ARGUMENTS - MS. WETHERTON

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1 a forensic psychiatrist at the Department of Mental Health,
2 that he has a relevant mental abnormality. He was diagnosed
3 with being a pedophile.

4 And how do we know that? Dr. Wadman testified that he
5 sexually abused several children under the age of twelve.

6 Dr. Wadman further testified that based on her review and
7 experience in her expert opinion that Mr. Capps has a lack
8 of control over his pedophilia. So he would commit acts of
9 sexual violence.

10 So how do we know that? According to his previous sex
11 offender treatment that was completed as recently as August
12 of 2012 he doesn't have an understanding of his behavior or
13 the effect on his victims. Based on that information it is
14 even more important that he was required to attend sex
15 offender treatment so he could finally gain an understanding
16 of his mental abnormality and he doesn't victimize another
17 child.

18 He also has significant risk factors such as the
19 treatment failure, the length of time over which he molested
20 his child victims and the fact he has serious medical
21 problems, and yet he continued to sexually abuse children.

22 Now, Dr. Wadman also stated the best predictor of
23 future behavior is past behavior. And as you heard
24 yesterday, he has a repetitive pattern of sexually violent
25 behavior against children.

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1 Now as I told you in my opening, I asked you to listen
2 to all the evidence. And you got the benefit of hearing Mr.
3 Capps testify yesterday.

4 So what did he say? Well, what I found interesting is
5 first off he said that if he knew he would be subjected to
6 mandatory sex offender treatment he would make the children
7 he sexually abused go to trial.

8 Now he had no problem with accepting nine years of
9 incarceration or registering as a sex offender for the rest
10 of his life, but he doesn't want sex offender treatment.
11 But yet he says that if he's not committed into the program
12 he'll voluntarily go himself. And he'll pay for that cost
13 and he'll go himself despite nobody can make him do that,
14 despite the fact that he says that he doesn't have a
15 problem.

16 And then when I asked if he had concerns about whether
17 or not he would sexually offend or not, I found it was
18 interesting that he hesitated. He hesitated and it took
19 four times for me to ask that question.

20 Now I ask you, why did he hesitate so much? If
21 somebody asks somebody -- one of you even, would you have a
22 problem sexually offending children, the answer probably
23 would come to you very quickly. But it took me four times
24 to ask that question before he answered.

25 And to me, he's either doing one of two things. He's

CLOSING ARGUMENTS - MS. WETHERTON

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1 lying about the fact that he would be willing to attend sex
2 offender treatment on his own and he's just basically trying
3 to tell you all something so you would feel better letting
4 him out or that he really deep down has a concern that he
5 may have a problem.

6 And then what else I found interesting is he also
7 talked about what he lost as a result of the crimes he
8 committed on these children. His lost relationship with his
9 daughter as a result of him sexually offending his
10 granddaughter or the five years he lost while incarcerated.
11 I believe almost in a sense he was trying to victimize
12 himself.

13 And this is an example, I submit to you, as a cognitive
14 distortion. This is what Dr. Wadman talked about yesterday.
15 This is what she's concerned about because he doesn't truly
16 understand what he did. He's not totally taking
17 responsibility for his actions.

18 And also don't be swayed by the fact that he has his
19 medical conditions. He had all of these when he offended
20 and he molested those children.

21 And, finally, I wanted to talk about one more thing.
22 There's going to be an argument that we're trying to lock
23 him up for the rest of his life. That's not the truth. Now
24 when you go into this program it is for an indefinite term,
25 but that's because it's a result of it being treatment. He

CLOSING ARGUMENTS - MS. WIYGUL

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1 has to progress in treatment.

2 And I can't do something like a guilty plea and say,
3 well, if he does six months to a year we'll let him out
4 because he might not advance in treatment within six months
5 to a year. He may, but he may not. So it is for an
6 indefinite term, and I concede that.

7 But I understand, he's served his nine years. I'm not
8 trying to lock him up again and the State's not trying to
9 lock him up again. We're trying to put him in a secure
10 facility for treatment. And when he gets out, that'll be up
11 to him.

12 I had a release trial last week where someone was let
13 out. It does happen. People are released from the program.
14 But he has to advance in treatment. And I can't give him a
15 term because I don't know how long that'll take him to
16 actually progress. But the whole purpose of this is not to
17 lock him up. Again, the whole reason is, again, to give him
18 treatment.

19 So based on that evidence that I presented to you I do
20 believe that I have met my burden of proof of what I had to
21 show to you. And I do ask that you find Mr. Capps to be a
22 sexually violent predator. Thank you.

23 **THE COURT:** Ms. Wiygul, you may address the jury.

24 **MS. WIYGUL:** Thank you, Your Honor. Let's first
25 address the law. The State's right, this is its burden.

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1 This is what it needs to prove to you beyond a reasonable
2 doubt. And it has to prove every single word on this board.
3 It has to prove it beyond a reasonable doubt.

4 And I submit to you that the doctor's testimony took
5 the words likely out of the equation. And that's all it
6 needs for reasonable doubt.

7 Dr. Wadman told you that details were very important in
8 these kind of cases. Well, unfortunately the details were
9 lost in 2005. They were available then. They were
10 available in 2007. They were available in 2008.

11 But Dr. Wadman told you that the details she relied on
12 were all provided by the AG's Office. She didn't send her
13 paralegal out to get more information. She didn't request a
14 copy of that DSS file that she went on and on about. She
15 just took what the AG's Office told her.

16 And then she interviewed Mr. Capps for two hours. And
17 I was kind of surprised because Dr. Wadman seemed almost
18 hurt that Mr. Capps didn't trust her, a woman he's never met
19 before, who's not recording their conversation, who has told
20 him that whatever he tells her will be used against him in a
21 court of law. And she's surprised he doesn't trust her.
22 That's not a surprising thing.

23 This case isn't about treatment. If it were about
24 treatment, then Dr. Wadman would have been able to tell you
25 what kind of treatment he could expect. She told you she

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1 didn't even know.

2 You heard what kind of treatment he's gotten from the
3 Department of Corrections. He was in a twelve week program
4 that met daily, five times a week for twelve weeks. He got
5 nothing but positive reports for forty-four group meetings.

6 The State is harping on the summary note that was
7 included at the close of this treatment that was never
8 shared with Mr. Capps. What was shared with Mr. Capps about
9 that treatment? A certificate and a gold star. He thought
10 he'd done good.

11 Let's talk a little bit about what he did get out of
12 that treatment. He got an understanding of his illness. He
13 got an understanding of pedophilia. He learned just like
14 Dr. Wadman told you that this is not something that's
15 curable, it's manageable.

16 There are a lot of people walking around on the streets
17 that suffer from pedophilia that do not molest children.
18 There are a lot of people walking around on the streets that
19 suffer from pedophilia that have molested children in the
20 past that no longer molest children because they've learned
21 how to manage their illness.

22 The State wants you to hold that against Mr. Capps.
23 She wants you to hold it against him that he recognizes that
24 this is like alcoholism. It's not something that goes away.
25 It's something he's going to need treatment for the rest of

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1 his life.

2 The court knew that when they gave him a nine year
3 sentence and no probation. This isn't about treatment.
4 This is about locking him up. It's about locking him up at
5 Broad River.

6 Just like he told you, he saw that program. It scared
7 him to death. It's not housed in a nice, quiet facility
8 where he can wear his own clothes and go about his day and
9 receive treatment. It's housed in the old death row. The
10 meals are prepared by prison inmates that know they're
11 preparing food for the sexually violent predators. This is
12 not a treatment issue.

13 In fact, at the beginning of the State's case she told
14 you that the case is about the protection of the citizens of
15 Greenville County. She didn't tell you the case is about
16 getting Mr. Capps the treatment he needs.

17 This case is about Mr. Capps not being able to wear his
18 own clothes. It's about him not even being permitted an
19 orange jumpsuit, him being issued a pink one so everyone
20 will know what program he's in while he's out on that yard.

21 Dr. Wadman told you that the issue is -- well, and the
22 State told you the issue is whether he suffers from a lack
23 of control. Well, no, he hasn't been exposed to children in
24 the Department of Corrections, but he's been exposed to a
25 lot of different types of people.

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1 And yet somehow he managed to exercise the control to
2 not get in any altercations while he was down there, not
3 with a guard, not with a fellow inmate, nothing. He
4 behaved. He did what he was supposed to do.

5 Dr. Wadman also talked about stressors. Now, I don't
6 know about y'all, but I was really impressed by how Mr.
7 Capps copes with the medical issues he has.

8 But you want to talk about stressors? Let's talk about
9 being a fifty year old man who has got prostate cancer, who
10 is told he'll be incontinent for the rest of his life and
11 have to wear an adult diaper.

12 Let's talk about stressors. Let's talk about constant
13 pain. Let's talk about going through all of that and
14 suffering from this mental abnormality that you know nothing
15 about. I submit to you, that's some serious stressors. I'd
16 ask that the jury not hold the fact that Mr. Capps has a
17 diagnosis of pedophilia against him because that is not
18 enough to commit him under this Act.

19 Dr. Wadman told you she was ordered by the court to
20 look at all the evidence available. She did. She looked at
21 the evidence the Attorney General's Office sent her. The
22 only testing that she did showed that he was at low to
23 moderate risk to re-offend. Not likely, low to moderate.
24 Despite the other tests she had in her arsenal she chose not
25 to give him any of that testing. And in her opinion the one

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1 test she put him through is wrong.

2 Mr. Capps got a bit confused while the -- while the
3 State was cross examining him. But I submit to you, it's
4 kind of hard to answer a question like are you more
5 interested in re-offending or in punishing your victims or
6 in not being in sex offender treatment. That's not a
7 question, that's an insult.

8 I'm going to ask that when y'all go back you take a
9 real close look at the indictments and at these tracking
10 sheets. They're confusing. There's paperwork errors.
11 There's some numbers that have been mixed up.

12 Mr. Capps testified that the reason he entered an
13 Alford plea is because although he completely admits to
14 having two child victims, one of those isn't one of the
15 victims he admits to. So he chose, with his attorney's
16 assistance, to enter an Alford plea because he said, I know
17 I did wrong, but I didn't do wrong to that child. But I
18 understand that I did wrong, and I need to admit it, and I
19 need to do my time.

20 He's not interested in re-victimizing the children. He
21 just wanted the record straight for what he did and what he
22 didn't do. At no point did he state that he would have the
23 victims that he actually victimized go through a trial.

24 What he said was that had he known that all of these
25 alleged victims would be brought up later, he'd made real

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1 sure in the beginning to clarify for the record who he
2 victimized and who he did not victimize. A man that enters
3 a sentence knowing that he can get a lot more than nine
4 years doesn't do that because he's trying to avoid
5 responsibility. He does it because he's accepting
6 responsibility for what he did wrong.

7 The fact that the Alford plea is not written on the
8 sentencing sheet, it's a non-issue. For legal purposes he
9 entered a guilty plea. And he understands that. And he
10 understood it at the time of his plea.

11 The only purpose for the Alford plea was because he
12 didn't want it on record that he said he did something to
13 someone that he didn't do. That's not a matter of not
14 taking responsibility.

15 'Cause if he wasn't taking responsibility he wouldn't
16 have been so open with Dr. Wadman. He wouldn't have said,
17 yes, I victimized children. But he did, despite the fact
18 that she'd already told him whatever he told her was going
19 to be used against him in this procedure.

20 The State is trying to lock him up again. The State's
21 holding it against him that when asked if he would re-offend
22 he hesitated. Dr. Wadman told you if anyone flat out said
23 they wouldn't re-offend they'd be lying because it's not a
24 curable illness.

25 I'd be much more concerned if he didn't hesitate

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1 because that'd mean he'd be -- he was telling y'all what he
2 thought you wanted to hear. Instead, he put serious thought
3 into it.

4 He doesn't think he'll re-offend, but he knows that
5 it's always a possibility just like an alcoholic knows
6 there's always the possibility that they'll pick up another
7 beer or another drink. And that's why he intends to seek
8 treatment even though when he entered his guilty plea in
9 2008 the court obviously didn't think it was an issue 'cause
10 otherwise they'd ordered him to be on probation for five
11 years, but they didn't. So now the State wants to lock him
12 up, longer.

13 In 2002 a movie came out called Minority Report. It
14 was science fiction. It was about predicting future crimes.
15 And they locked people up for their future crimes that they
16 might commit even though they hadn't done anything yet.

17 In 2002 it was science fiction. Now it applies to sex
18 offenders. What happens when the government starts feeling
19 like it can predict who's going to use drugs? When it can
20 predict who's going to rob a bank? When it can predict
21 who's going to lose their temper and hit someone?

22 This law is meant to apply to a very small subset of
23 sex offenders, the scariest ones, the ones that have no
24 control, the ones that can't function anywhere, that can't
25 get along with people. Mr. Capps has spent the last five

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1 years of his life under 24/7 observation showing the State
2 how much control he has.

3 He took the only treatment that was offered to him and
4 he excelled at it. He got a gold star. And now the State
5 wants to lock him up again. Low to moderate risk. And he's
6 done his time.

7 We're asking that the jury find that Mr. Capps is not a
8 sexually violent predator and that you send him home. His
9 birthday is . He'll be fifty-six. He'd like to spend
10 it with his wife and mother. Thank you.

11 **THE COURT:** Briefly in reply.

12 **MS. WETHERTON:** Just a few things, Your Honor.

13 First off, let's talk about the AG's file. I'm an
14 assistant attorney general. I'm responsible for putting
15 that documentation together in the petition. When I get
16 these people, it's my job to put this information together.

17 I don't hide evidence. I would be disbarred if I hid
18 evidence. I don't -- this is the first time I've ever seen
19 Richard Capps. I have no personal animosity against him. I
20 don't get an extra pay increase for getting someone
21 committed into the program.

22 Everything that is submitted in that petition is from
23 the Solicitor's Office. It's, you know, everything is legal
24 documents, victim statements. Those are things that we get
25 from other law enforcement agencies.

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1 I don't find something and hide it. I turn it over --
2 I turn over every single thing in those petitions that I
3 receive. And I actually -- I take offense to the fact that
4 it's the AG's Office that turned it over. We compile the
5 information, but there was nothing hidden in this case to
6 prove our case.

7 We do summary judgment motions. We do releases. When
8 we feel that this person is not a sexually violent predator,
9 we will move that case forward and try to do the right
10 thing. So don't fall to this kind of insinuation that
11 somehow I hid evidence or something like that happened
12 because that did not happen in this case.

13 Also, the Static-99, she did say that he was a low to
14 moderate risk to re-offend, but also she said when you look
15 at the case and you look at that person specifically, that
16 underestimated his risk. That is what a good doctor should
17 do.

18 Think about it when you go to the doctor and you're
19 having certain symptoms. Do they run one test and you're
20 done? No. They look at your family history. And they look
21 at your personal history. They evaluate you. They run
22 other tests. They do things like that.

23 She talked about why she didn't run those additional
24 tests because she didn't think that that would help him in
25 those situations considering the diagnosis that she had.

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1 But she didn't just hang her hat on the Static. No doctor
2 would just hang their hat on one single test.

3 Also, this case is about treatment. Let's talk about
4 treatment for a minute. There's about two hundred people
5 that have been admitted into the Sexually Violent Predator
6 Program. And over time, about eighty have been released.

7 Do you know how many people have actually re-offended?
8 Four. So they're actually doing something right. Something
9 happened there and there is something about treatment when
10 eighty people are released and only four people re-offend.
11 They're getting treatment.

12 And as far as him not causing any problems in the
13 Department of Corrections, he's not exposed to any children
14 there. He's a pedophile. We're not saying that he fights
15 and he causes problems that way. That's not what his mental
16 abnormality was. He's not exposed to those type of people
17 that he would offend.

18 And also with sex crimes, this isn't like Minority
19 Report. We're not now moving into the drug trade and that
20 type of thing. Sex crimes have a high rate of recidivism.
21 And what we're trying to do is try to offer these people
22 some type of help before they get back out into the
23 community.

24 He did go through twelve weeks. Basically what we can
25 tell, he didn't do very well. Now he did go to the -- he

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1 did go to the group classes. He did sit in treatment. You
2 know, he did participate. But at the end, he -- they then
3 said that he didn't have an understanding of what he did.
4 And so we're just trying to get him some additional help
5 before he goes back out into the community so he doesn't re-
6 offend again.

7 And also this issue with that he got a gold star,
8 where's the gold star? This is the day of his commitment
9 trial. He knows this day is coming. And he's coming into
10 court relying on this gold star on his own participation
11 certificate, but have you seen it? So I ask you to think
12 about that as well.

13 And as far as me proving my case, Dr. Wadman talked
14 about his risk factors, talked about his criminal offense
15 history, talked about his mental abnormality. And if you
16 hear all of that and you're satisfied that he's okay, by all
17 means, ladies and gentlemen, send him home. Send him home
18 to his wife.

19 And according to what Dr. Wadman said, there's children
20 living in that house right now. Now he says there's not.
21 And you can choose to believe him. But by all means, if you
22 don't feel he's met my -- my burden of proof, by all means,
23 please, send him home. Thank you.

24 **THE COURT:** Mr. Foreman, ladies and gentlemen, it's now
25 my responsibility to instruct you on the law of the case.

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1 This is a case brought by the State of South Carolina under
2 the Sexual Violent Predator Act of South Carolina, a law
3 that's been enacted by our Legislature.

4 What the State is seeking is a civil commitment of the
5 Respondent, Mr. Capps, for long-term control, and care and
6 treatment in a secure facility. It's not a criminal
7 proceeding that we're having today. Rather, a proceeding
8 seeking civil commitment.

9 Now the State of South Carolina alleges, makes a claim
10 that the Respondent, Mr. Capps, is a sexually violent
11 predator under the law of South Carolina. Mr. Capps has
12 denied that.

13 That places the burden on the State of South Carolina
14 to prove by evidence sufficient to satisfy each of you
15 beyond a reasonable doubt that the Respondent is, in fact, a
16 sexually violent predator. If the State is unable to carry
17 that burden of proof in one or more of the elements of the
18 claim, then the Respondent is entitled to a finding that
19 he's not a sexually violent predator.

20 Most civil cases, some of you may have served on juries
21 before in a civil case. The petitioner or the plaintiff
22 would only have a burden of proof that is more likely true
23 than not true by what was called the preponderance of the
24 evidence or the greater weight of the evidence. This is a
25 case that's different from that, however.

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1 Here, the State's burden of proof is more powerful than,
2 that. It must be proof beyond a reasonable doubt. And I'll
3 explain to you what a reasonable doubt is in a few moments.

4 Now under our Constitution of South Carolina, you, the
5 jury, are the sole fact-finders of the facts in this case.
6 I can't intimate, or state or comment on in any way about
7 the facts in the case. Our constitution, the law of South
8 Carolina prohibits a trial judge from that.

9 So if there's any comments I've made, or rulings I've
10 made or anything I say to you now in the course of this
11 instruction to you that leads you to believe I have an
12 opinion about the facts, you must disregard that. I don't
13 have an opinion about the facts. Our law, our constitution
14 prohibits me from having an opinion about the facts. My job
15 is to instruct you on the law.

16 You have the job to determine what the facts are. You
17 do that by judging the credibility and the believability of
18 the witnesses who testify. You can take into consideration
19 the manner and the appearance of the witness on the witness
20 stand.

21 Was the witness straight-forward or hesitant in
22 answering? How did the witness come to know the facts to
23 which he or she testified to? What was the ability of that
24 witness to know the facts? Was there bias or prejudice of a
25 witness that would want to give testimony that would help or

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1 hurt one side or the other?

2 You can believe all of the testimony of a witness. You
3 can believe part of the testimony of a witness. In your
4 judgment, you can reject the entire testimony of a
5 particular witness. It's up to you to decide the
6 believability of each individual witness. And you can
7 reject it in its entirety. You can accept it in its
8 entirety or any portion thereof.

9 The fact that any part of testimony is not controverted
10 doesn't mean that you must accept it as true and undisputed.
11 You must gauge the credibility of the witness to determine
12 the believability or truth of the facts offered through
13 testimony.

14 Now in most cases there's two types of evidence that
15 are presented. There's what's called direct evidence and
16 circumstantial evidence. Direct evidence is the testimony
17 of a person who claims to have actual knowledge of a fact
18 such as an eyewitness. It's evidence which immediately
19 establishes the main fact to be proved.

20 Circumstantial evidence is proof of a chain of facts
21 and circumstances that indicate the existence of a fact.
22 It's evidence which immediately establishes a collateral
23 fact from which the main fact may be inferred.
24 Circumstantial evidence is based on inference, not on
25 personal knowledge or observation.

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1 The law makes absolutely no distinction between the
2 weight or the value to be given to either direct evidence or
3 circumstantial evidence. A greater degree of certainty is
4 not required of circumstantial evidence than of direct
5 evidence. You should weigh all the evidence in the case,
6 ladies and gentlemen, and use that evidence to make your
7 decision.

8 In this case you've also heard the testimony of a
9 witness who has been qualified as an expert witness. That's
10 a witness who has special knowledge, or skill, or
11 experience, or training or education in a particular field.
12 Such a witness is entitled to give an opinion as an expert
13 in that field in which he or she is skilled.

14 Now you should consider the qualifications and the
15 credibility of any expert, the reasons given for that
16 opinion. You're not bound by that opinion even though the
17 testimony of an expert may be uncontradicted. You give it
18 the weight, if any, that you determine that expert testimony
19 is entitled to.

20 It's a matter to be solely determined by you. The fact
21 that the expert gave an opinion must not or does not have to
22 be accepted by you if you find it unreliable or the basis of
23 that opinion unreliable. But it must be weighed by you and
24 convinced in your judgment beyond a reasonable doubt with
25 the same force and effect as any other fact that's been

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1 proven in this case before you can rely upon it.

2 You, therefore, consider the expert testimony in the
3 same manner as you would any other testimony. Give it the
4 weight that you believe it's entitled to after you consider
5 all the evidence in the case.

6 In this particular trial there's also been evidence
7 presented of a possibility of what's called an Alford plea
8 being made. And in an Alford plea the defendant voluntarily
9 and knowingly consents to the imposition of a sentence even
10 though he's unwilling or unable to admit that he
11 participated in the acts constituting the crime.

12 And Alford plea is essentially the same as a guilty
13 plea for the purpose of sentencing. The Alford plea allows
14 the defendant to enter the plea without any admission of
15 guilt if he believes the State has sufficient evidence to
16 meet its burden of proof of finding him guilty.

17 Now, I've indicated to you the Constitution of our
18 State says that a jury is the finders of the fact. And that
19 same constitution and the law of South Carolina makes me the
20 judge of the law in the case.

21 I'm going to -- I have and I will continue to instruct
22 you the law of the case. And your duty under your oath is
23 to accept that law and apply the law as I state it to you
24 now.

25 Some of you may have an idea of what the law is in a

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1 case such as this or even an idea of what the law ought to
2 be in a case such as this. If you have such a notion and
3 it's in conflict with what I now tell you the law is, then
4 you must abandon such an idea because under your oath you've
5 sworn to accept the law and apply that law just as I state
6 it to you now.

7 I mentioned the State has the burden of proof beyond a
8 reasonable doubt. You may ask yourself what is a reasonable
9 doubt in the law? A reasonable doubt is the kind of doubt
10 that would cause a reasonable person to hesitate to act.
11 Proof beyond a reasonable doubt is proof that leaves you
12 firmly convinced.

13 There are very few things in this world that we know
14 with absolute certainty. And the law doesn't require proof
15 that overcomes every possible doubt.

16 What is required is if based upon your consideration of
17 the evidence you're firmly convinced that the Respondent is
18 a sexually violent predator, then you must return a verdict
19 for the State. If, on the other hand, you think there's a
20 real possibility that he's not a sexually violent predator,
21 you must give him the benefit of that doubt and find a
22 verdict for the Respondent.

23 Reasonable doubt may arise from the evidence that is in
24 the case or from the lack or absence of evidence in the
25 case. It's up to you, ladies and gentlemen, to determine

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1 whether or not reasonable doubt exists in this case.

2 Now, the elements which the State must prove beyond a
3 reasonable doubt is that the Respondent has been convicted
4 of a sexually violent offense. I charge you, ladies and
5 gentlemen, that lewd act upon a minor is categorized by our
6 law as a sexually violent offense.

7 The State must also prove beyond a reasonable doubt
8 that the Respondent suffers from a mental abnormality or a
9 personality disorder that makes him likely to engage in acts
10 of sexual violence if not confined in a secure facility for
11 long-term control, care and treatment.

12 Inherent in these two elements is that the State must
13 prove the requirement that Respondent's mental abnormality
14 or his personality disorder causes him serious difficulty in
15 controlling his behavior. In other words, the State must
16 prove beyond a reasonable doubt that the individual it seeks
17 to commit suffers from a mental illness which he cannot
18 sufficiently control without the structure and the care
19 provided by a mental health facility rendering him otherwise
20 likely to commit a dangerous act.

21 Now in order for you to better understand the elements
22 of the State's cause of action I'm going to define for you
23 some of the terms that I've just used. Mental abnormality,
24 that means a mental condition affecting a person's emotional
25 or volitional capacity that predisposes that person to

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1 commit sexually violent offenses. This mental abnormality
2 or personality disorder must cause Respondent serious
3 difficulty in controlling his behavior.

4 The phrase likely to engage in acts of sexual violence
5 means that the person has a propensity to commit the acts of
6 sexual violence to such a degree as to pose a menace to the
7 health and safety of others so that he is dangerous to
8 others.

9 Now I remind you that the burden of proof is on the
10 State to prove to your satisfaction beyond a reasonable
11 doubt that the Respondent has been convicted of a sexually
12 violent offense, as I've instructed you, and also suffers
13 from a mental abnormality or a personality disorder that
14 makes the Respondent likely to engage in acts of sexual
15 violence if not confined in a secure facility for long-term
16 control, care and treatment.

17 Now if the State carries its burden of proof and
18 convinces you beyond a reasonable doubt as to each of the
19 elements of its cause of action, it's entitled to a finding
20 that the Respondent is a sexually violent predator. On the
21 other hand, if the State does not meet its burden of proof
22 as to one or both of these elements, the Respondent is
23 entitled to a finding that he is not a sexually violent
24 predator.

25 You've been selected by these parties to be fair and

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1 impartial jurors. It's your duty by your joint deliberation
2 to determine the truth of the case giving to the Respondent
3 the benefit of every reasonable doubt on each and every
4 issue. To the facts which you determine to be true, you
5 should take and apply the law that I've given to you and
6 thus arrive at a verdict which speaks the truth.

7 Obviously, there's two possible verdicts. I've
8 prepared a verdict form, Mr. Foreman. I believe it'll be
9 self-explanatory. Either that you find the Respondent is a
10 sexually violent predator because the State has met its
11 burden of proof beyond a reasonable doubt or you find the
12 State has not met its burden of proof beyond a reasonable
13 doubt, then you would find that he's not a sexually violent
14 predator.

15 There's obviously no significance in the order in which
16 they're listed on the sheet. One has to be listed before
17 the other.

18 Your verdict must be a unanimous one. All twelve of
19 you must agree upon the verdict. Your verdict can't be
20 based upon sympathy, or passion, or prejudice, or emotion or
21 any other consideration not in evidence in the case.

22 When you have reached a unanimous verdict, Mr. Foreman,
23 I'd just ask if you would sign the verdict form, date it,
24 let the bailiffs know that you have reached a unanimous
25 verdict. And we'll receive the verdict back here in the

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1 courtroom.

2 I'm going to ask at this time, if you would, go back to
3 your jury room. Don't start your deliberations just yet.
4 There's a final matter of law I need to take care of with
5 the attorneys before you actually start your deliberation.

6 We'll notify you as to when you can start your
7 deliberations. And we'll send the exhibits back along with
8 the verdict form. But for right now, don't start your
9 deliberations just yet. I will ask you if you would retire
10 to your jury room.

11 (Whereupon the jury exited the courtroom at 9:49 am)

12 **THE COURT:** Any exceptions to the charge from the
13 State?

14 **MS. WETHERTON:** No, Your Honor.

15 **THE COURT:** From the Defense?

16 **MS. WIYGUL:** None from Respondent.

17 **THE COURT:** All right. If y'all will make sure all of
18 your exhibits are in order. If you want to look over the
19 verdict form again, I have it here. And we'll send those
20 back. You can just put it with the exhibits and we'll let
21 them start their deliberations.

22 (Whereupon the alternate was released and the jury
23 began deliberating at 9:50 am)

24 **THE COURT:** All right. We'll be at ease til we hear
25 from our jury.

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1 (Whereupon court was in recess at 9:52 am)

2 (Whereupon court resumed at 11:05 am)

3 **THE COURT:** All right. I understand we've got a
4 verdict from the jury. Is there any matters we need to take
5 care of before we hear from our jury?

6 **MS. WETHERTON:** Nothing from the State, Your Honor.

7 **MS. WIYGUL:** Nothing from Respondent, Your Honor.

8 **THE COURT:** All right. If they're ready, please have
9 the jury come in.

10 (Pause)

11 **THE COURT:** Bring them in.

12 (Whereupon the jury entered the courtroom at 11:07 am)

13 **THE COURT:** Mr. Foreman, I understand the jury has
14 reached a verdict, is that correct?

15 **MR. FOREMAN:** Yes, Your Honor.

16 **THE COURT:** Is it a unanimous verdict?

17 **MR. FOREMAN:** Yes, Your Honor.

18 **THE COURT:** If you would, please, hand the verdict form
19 to the bailiff. All right, Madame Clerk, you may publish
20 the verdict.

21 **MADAME CLERK:** Your Honor, this is case 2012-CP-23-
22 4204, South Carolina, State versus Richard Capps. We, the
23 jury, -- the Petitioner -- the State of South Carolina
24 proven beyond a reasonable doubt that Richard Capps is a
25 sexual violent predator under the South Carolina Sexually

VERDICT OF THE JURY

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1 Violent Predator Act. We, the jury, unanimously answer the
2 question as follows; yes, Richard Capps is a sexually
3 violent predator, Norman F. Chandler, May 29th, 2013. This
4 is your verdict, so say you all, please signify by raising
5 your right hand.

6 (Whereupon all jurors raised their right hand)

7 **MADAME CLERK:** Thank you.

8 **THE COURT:** All right. Any matters we need to take
9 care of with this jury before they're discharged in the
10 case, from the State?

11 **MS. WETHERTON:** None from the State, Your Honor.

12 **THE COURT:** From the Defense?

13 **MS. WIYGUL:** None from Respondent, Your Honor.

14 **THE COURT:** Thank you very much, ladies and gentlemen,
15 for serving on this case. We have another jury waiting to
16 come in to start another trial. You're welcome to stay with
17 us and observe if you'd like. However, your services for
18 today are concluded.

19 I don't know that we've got any other trials this week.
20 I know Judge Verdin has a jury already empaneled. I don't
21 know what her status is for the rest of the week and how
22 long this case we're starting we'll try since we're working
23 on a short week.

24 Just to be safe, I'm going to ask you to call back
25 tonight after 6:00. There'll be an instruction on the

1 answering machine as to whether or not you need to call back
2 in tomorrow or either report back.

3 Thank you very much for your service in this case.
4 You've been a good, conscientious group. I've enjoyed
5 working with you. It's been my honor to be a judge of the
6 law while you've judged the facts. Thank you very much.
7 You're excused at this time. Everyone else please remain
8 seated.

9 (Whereupon the jury exited the courtroom at 11:10 am)

10 **MS. WETHERTON:** Your Honor, I have an order of
11 commitment.

12 **THE COURT:** All right. I'll be glad to review it. And
13 let Ms. Wiygul review it as well.

14 (Pause)

15 **MS. WETHERTON:** Your Honor, may I approach?

16 **THE COURT:** Yes, ma'am.

17 **MS. WETHERTON:** The only thing that we changed -- I
18 talked to Ms. Wiygul. I had that he was at the Alvin S.
19 Glenn Detention Center. He's actually at the Greenville
20 County Detention Center.

21 **THE COURT:** Okay.

22 **MS. WETHERTON:** If that's okay.

23 **THE COURT:** All right.

24 (Pause)

25 **THE COURT:** Okay.

1 MS. WETHERTON: Thank you.

2 THE COURT: Thank you.

3 MS. WETHERTON: It was nice being before you. Thank
4 you.

5 THE COURT: I hope to see you again.

6 MS. WETHERTON: Oh, thank you.

7 THE COURT: Thank you, Ms. Wiygul. Wish you the best,

8 ---

9 MS. WIYGUL: Thank you, Judge.

10 THE COURT: --- Mr. Capps.

11 (Hearing Ended at 11:13 am)

12 (End of Requested Transcript of Record)

WITNESSES

Cheryl Cromartie

Greenville County Sheriffs Office

10/26/2007

ARREST WARRANT NUMBER

ref: 1474113

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-23-00 5390

KBF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2008

THE STATE

vs.

RICHARD DEAN CAPPS

PLEAD GUILTY

Indictment for

✓ 2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

A Certified Copy
Paul B. Widenor
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 2-12-13

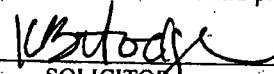
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That RICHARD DEAN CAPPS did in Greenville County, between the 1st day of August 2006 and the 6th day of October 2007, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of S.K.A., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the 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.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Richard Capps

AKA: _____

Race: W Sex: M Age: 50

DOB: _____ SS#: _____

Address: _____

Slater, SC 29683

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-23-005390A/W#: 1474113 RefDate of Offense: 9/17/2007S.C. Code § : 16-03-0655(A)(1)CDR Code #: 0385SENTENCE SHEET D-15 YsIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: LEWD ACT ON A MINORin violation of § 16-15-140 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. RC (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: _____

Kris B. Hodge
Hodge, Kris B

Defendant

John L. Hadden
Attorney for Defendant3696
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 9 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: _____☐ 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. 32 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

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

\$

§ 35.13 (Public Def/Prob) \$500

\$

§ 73.3, 1B TP (Law Enforce. Funding) \$25

\$

§ 33.7, 1B TP (Drug Court Surcharge) \$100

\$

§ 50-21-114(BUI Breath Test Fee) \$50

\$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

\$

3% to County (if paid in installments) _____

\$

§ 90.11 TP (SCCJA Surcharge) \$5

\$

TOTAL _____

\$

Paul B. Wickens

Clerk of Court/ Deputy Clerk

Court Reporter: Koffley

PRESIDING JUDGE _____

Judge Code: 2101818Sentence Date: 7/21/08

SCCA/217 (07/2008)

WITNESSES

Cheryl Cromartie

Greenville County Sheriffs Office

10/26/2007

ARREST WARRANT NUMBER

ref: 1474112

ACTION OF GRAND JURY.

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-23-005389

KBF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2008

THE STATE

VS.

RICHARD DEAN CAPPS

PLEAD GUILTY

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

A Certified Copy
 Paul B. Wiseman
 Clerk of Court C.P. & G.S.
 Greenville County, SC
 Dated 2-12-13

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That RICHARD DEAN CAPPS did in Greenville County, between the 1st day of August 2006 and the 6th day of
October 2007, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious
act upon or with the body, or its parts, of A.A., a child under the age of sixteen years, with the intent of arousing,
appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of
§16-15-140 of the 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.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Richard Capps

AKA:

Race: W Sex: M Age: 50

DOB: SS#:

Address: Slater, SC 29683

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-65-23-005389

A/W#: I474112 Ref.

Date of Offense: 8/1/2006

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

0-15 yrs

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: LEWD ACT ON A MINOR

in violation of § 16-15-140 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. RC (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Hodge, Kris B

Defendant

Attorney for Defendant

SC Bar# 3696

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 9 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:

☒ 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. 30 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

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	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5
TOTAL	\$	\$

Paul B. Wiseman
Clerk of Court Deputy Clerk

Court Reporter: Soffrey

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: The defendant is not to be placed on the Central Registry.

Do not house at Perry Court Institution

☐ Appointed PD or appointed other counsel §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21

Sentence Date: 7/21/08

SCCA/217 (07/2008)

General Sessions Tracking Sheet
Indictment # 0000GS23

Name: Capps, Richard Dean

AKA:

Addr: Slater, SC 29683

SSN#

Sex: M Race: W

DOB:

DL# SC/

Warrant/Ticket # 1474113

Date of Arrest: 10/26/2007

Date of Offense: 09/17/2007

Date Rcv by Clerk 11/09/2007

Magistrate: Hudson, James E.

Counts: Code: 0385/Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

Indictment # 2008 0000GS23 1052

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

- Disposition
- ☒ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 9. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

JUL 22 2008

Pled other charge

Judge:

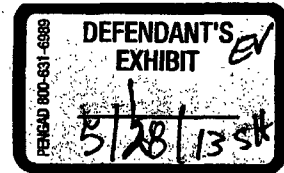
Defense Atty: Mauldin

Counts: Code: 2468

Sentence:

Court Reporter:

Solicitor: R. F. Fudge



144

A Certified Copy
Paul B. Wiersma
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 5-28-13

General Sessions Tracking Sheet
Indictment # 0000GS23

Name: Capps, Richard Dean

AKA:

Addr: Slater, SC 29683

SSN#

Sex: M Race: W

DOB:

DL# SC/

Warrant/Ticket # I474112

Date of Arrest: 10/26/2007

Date of Offense: 08/01/2006

Date Rcv by Clerk 11/09/2007

Magistrate: Hudson, James E.

Counts: Code: 0385/Sex / Criminal sexual conduct
with minor - victim under 11 yrs of age - First
degree

Indictment # ²⁰⁰⁸ 0000GS23 1054

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

JUL 22 2008

- Disposition
- ☒ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain: Pled to other charge
Explain: _____
Explain: _____
Explain: _____
Explain: _____
Explain: _____

Judge: _____

Defense Atty: Mauldin

Counts: _____ Code: 2468

Sentence: _____

Court Reporter: _____

Solictor: Kestodge

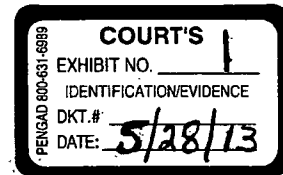
A Certified Copy
Paul B. Willenain
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 5-28-13

5/28/13

Mr. Capps, Richard 107535

Has received his 5/28/13 Amuds

and is fine to return to court

Uphold on GCDC Medical
467-2397

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 RICHARD CAPPS,)
 RESPONDENT.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-23-4204

ORDER OF COMMITMENT

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2013 MAY 29 A 11:37

The trial of this case was held in the County of Greenville in the Court of Common Pleas the week of May 28, 2013. A jury of citizens from Greenville County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Nicole T. Wetherton represented the State. Elizabeth Wiygul, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Sections 44-48-90 and 44-48-100:

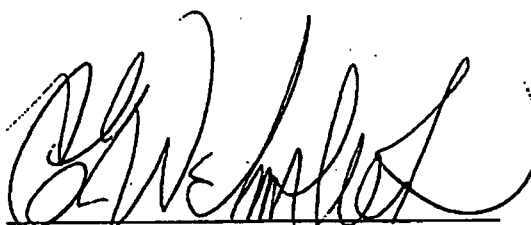
The State has proven beyond a reasonable doubt that Respondent, Richard Capps, is a sexually violent predator as that term is defined in South Carolina Code Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

(a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent is to continue to be detained at the *Greenville* ~~Arvin S. Glenn~~ County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health, at 4460 Broad River Road, Columbia, SC 29210. The Detention Center is to transport Respondent on such scheduled date as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.



Presiding Judge
 for the Thirteenth Judicial Circuit
 Court of Common Pleas

5/29, 2013
 Greenville, South Carolina

RECEIVED

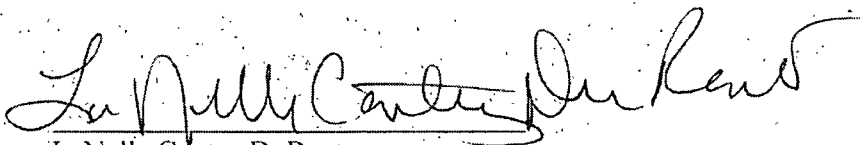
JUN 03 2013

SC Court of Appeals

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 18th, 2014



LaNelle Cantey DuRant
Appellate Defender

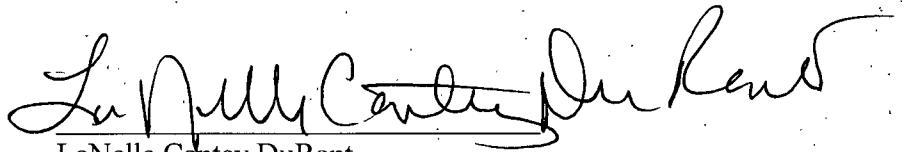
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 18th, 2014

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant".

LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF RICHARD DEAN CAPPS,

APPELLANT

APPELLATE CASE NO. 2013-001203

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of February, 2014.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 18th day of February, 2014.

hank jones (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

ORIGINAL

RECEIVED

FEB 18 2014

SC Court of Appeals