

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
J. Michael Baxley, Circuit Court Judge

Indictment Nos. 2011-GS-32-0242
2011-GS-32-0243
2011-GS-32-0244

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EX PARTE:

South Carolina Department of Disabilities
and Special Needs, ... Appellant.

IN RE:

State of South Carolina, ... Respondent,

v.

Rocky A. Linkhorn, ... Respondent.

RECORD ON APPEAL

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FILED
STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

STATE OF SOUTH CAROLINA)

v.)

ROCKY A. LINKHORN,)

DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

Indictment Nos 2011-GS-32-0242;
2011-GS-32-0243; 2011-GS-32-0244

ORDER GRANTING SOLICITOR'S RULE
TO SHOW CAUSE; REQUIRING DDSN TO
ACCEPT INVOLUNTARY COMMITMENT;
AND PROHIBITING FUTURE REFUSAL BY
DDSN IN SIMILAR CASES

I. INTRODUCTION

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This matter came before the Court pursuant to a petition for a Rule to Show Cause filed by Rhonda W. Patterson, Esq., Assistant Solicitor for the Eleventh Judicial Circuit. The motion asked that the South Carolina Department of Disabilities and Special Needs ("DDSN") be required to show cause as to why it has not provided services to Defendant Rocky A. Linkhorn. Both DDSN and the South Carolina Department of Mental Health ("DMH")¹ were served with the Rule to Show Cause and participated in the hearing in this matter.

The Rule to Show Cause hearing was conducted August 20, 2013 at the Lexington County Courthouse. Present and participating at the hearing were: Assistant Solicitor Rhonda W. Patterson, Esq. and Deputy Solicitor C Dayton Riddle, Esq of the Eleventh Circuit Solicitor's Office, the Defendant, Rocky A. Linkhorn, accompanied by his counsel Elizabeth C Fullwood, Esq; (3) Monique M. Lee, Esq., Office of General Counsel for DMH; and (4) Tana G. Vanderbilt, Esq., General Counsel for DDSN. Based on the testimony and arguments presented, the Court makes the findings of fact and conclusions of law contained herein, grants the Rule to Show Cause, and hereafter prohibits DDSN from engaging in similar conduct.

¹ DMH was dismissed from the Rule to Show Cause by the Court at the hearing on August 20, 2013 as Defendant is not mentally ill.

II. PROCEDURAL HISTORY

The Defendant was arrested on July 14, 2010, on warrants charging him with Criminal Sexual Conduct with a Minor in the First Degree, Lewd Act on a Minor, and Disseminating Obscene Material to a Minor. Specifically, Defendant Linkhorn is alleged to have committed a sexual battery by attempting intercourse on his four year old niece, which was witnessed by her ten year old brother. On February 8, 2011, the Honorable R. Knox McMahon ordered DMH to examine the Defendant for fitness to stand trial. The Defendant was ultimately examined in a joint evaluation by both DMH and DDSN. The examiners found him incompetent to stand trial but likely to attain competency in the foreseeable future.

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A *Blair*² hearing was held pursuant to S.C. Code Ann. § 44-23-430 on June 21, 2011, before the Honorable Edward B. Cottingham, Jr. At the hearing, Judge Cottingham ordered that the Defendant be committed for restoration to DMH for up to a 60 day period. See S.C. Code Ann. § 44-23-430(3). At the expiration of the 60 day period, DMH and DDSN produced a joint report that concluded the Defendant remained incompetent and would not attain competency to stand trial in the foreseeable future. A subsequent *Blair* hearing was then held before the Honorable William P. Keesley on November 2, 2011. Judge Keesley found the Defendant incompetent to stand trial and ordered the Solicitor's office to initiate involuntary commitment proceedings in the Probate Court pursuant to S.C. Code Ann. § 44-17-510, *et seq*.

On November 7, 2011, Assistant Solicitor Rhonda W. Patterson filed an involuntary commitment petition in the Lexington County Probate Court. On December 12, 2011, the Probate Court dismissed the proceedings upon receipt of the report of the designated DMH examiners because the report found that the Defendant was not mentally ill.

² *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981)

The Solicitor reinitiated Probate Court proceedings on January 5, 2012, seeking involuntary commitment of the Defendant as a person with intellectual disability or a related disability. DDSN expressed concern that Judge Keesley's Order of November 2, 2011 did not give it authority to proceed because the Order did not specifically reference S.C. Code Ann §44-20-450. As a result, Judge Keesley issued an Amended Order on February 27, 2012, ordering judicial commitment proceedings under S.C. Code Ann. §§ 44-17-510, *et seq.*, or § 44-20-450. DDSN then moved to dismiss the petition on August 6, 2012, on grounds that the Defendant does not have an intellectual disability or related disability as defined in S.C. Code Ann § 44-20-30(12) and (15). The Solicitor's petition was administratively dismissed by the Probate Court on January 3, 2013, without notice to DDSN, with the Probate Judge making a handwritten notation on the petition that the matter was being returned to the Circuit Court for review.

 The Eleventh Circuit Solicitor's Office then filed the present motion for a Rule to Show Cause on January 2, 2013. The Solicitor asked that DDSN be required to show cause for its failure to provide services to the Defendant. On March 12, 2013, the Honorable Jean Hoefer Toal issued an Order vesting exclusive jurisdiction in this matter to this Court. DDSN filed its return to the Solicitor's motion on July 29, 2013. The return alleged: (1) that this Court does not have jurisdiction to hear the matter, as the case is still pending in the probate court and there has been no Order appealed from that Court to the Circuit Court; (2) that the Defendant cannot be involuntarily committed to DDSN because he does not have an intellectual disability or related disability; and, (3) the Defendant is eligible for voluntary DDSN services in its Head and Spinal Cord Division and involuntary commitment is not permitted for persons in the Head and Spinal Cord Division as a matter of law.

III. FINDINGS OF FACT

This Court reviewed records in this case from the Lexington County Court of General Sessions and Probate Court. These included the reports of the designated examiners who evaluated the Defendant before his *Blair* hearings. Defense counsel also obtained some of the Defendant's medical records related to his disability. These records were distributed to the Court and to counsel for all interested parties. The defense retained Richard L. Frierson, M.D., as an expert in the field of forensic psychiatry. Dr. Frierson reviewed the Defendant's medical records, interviewed Defendant's sister, and examined the Defendant. He was qualified as an expert witness and testified at the hearing before the Court on August 20, 2013.

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The Defendant is a thirty-eight year old white male. Prior to 1998, he lived independently and did not have cognitive impairments. He suffered an anoxic brain injury in 1998 when he tried to hang himself while he was incarcerated in a county jail. This event substantially and permanently impaired his cognitive functioning. His thinking is concrete. He has significant memory impairment and difficulty retaining information. He can no longer live on his own, as he has problems with executive functioning. He cannot handle money, cook, or wash clothes. He must be reminded to tend to basic personal hygiene. Prior to his arrest, he lived in a camper trailer located adjacent to his sister's residence. At the time of the hearing, he was still incarcerated at Lexington County Detention Center from the date of his original arrest, a total of 1,133 days.

Dr. Frierson and the designated examiners diagnosed the Defendant with dementia due to general medical conditions and specifically as a result of the anoxic brain injury in 1998. The diagnosis of dementia encompasses those with memory impairment and other cognitive

disturbances that show a significant decline from previous level of functioning. There is also a substantial impairment in the ability to function socially and/or occupationally.

Dr. Frierson testified that in his professional opinion the Defendant's condition falls within the definition of "[p]erson with intellectual disability" set forth in S.C. Code Ann. § 44-23-10(21). The Defendant's treatment needs are placement in a facility with twenty-four hour supervision where he can obtain assistance with the activities of daily living. The placement should not permit him to have contact with children. Dr. Frierson also testified that the Defendant's clinical presentation is similar to that of an individual with an "intellectual disability" or "related disability" as defined in S.C. Code Ann. § 44-20-30(12) and (15). The Defendant's treatment needs would be the same regardless of whether his cognitive impairments were due to a development disorder or from physical brain injury.

The Court finds Dr. Frierson's testimony credible. His diagnostic impressions are consistent with those of the DMH and DDSN examiners who evaluated the Defendant for competence to stand trial. Based on the testimony of Dr. Frierson, the Court makes the following findings: (1) the Defendant suffers from dementia that resulted from a 1998 anoxic brain injury that occurred when the Defendant was twenty-four years old; (2) Dr. Frierson's conclusions about the Defendant's treatment needs are persuasive based on his experience in the care and treatment of incompetent persons in a forensic environment; (3) the Defendant should receive the type of treatment described by Dr. Frierson's testimony, and, (4) the Defendant requires the same treatment as an individual who suffers from an intellectual disability or related disability, and such treatment should be provided by DDSN.

At the hearing, the Court called Beattie I. Butler, Esq. of the Ninth Circuit Public Defender's Office as the Court's expert witness. Mr. Butler is a public defender who has spent

the entirety of his sixteen years as an attorney in the area of criminal defense. Mr. Butler has represented many individuals whose competence to stand trial was in question due to mental illness or intellectual disability. Some of these individuals were in the same or similar situation as the Defendant – they had cognitive impairments but were denied involuntary treatment by DDSN because they did not fall within the narrow parameters of S.C. Code Ann. §44-20-30(12) and (15). In addition to his experience as a criminal defense trial attorney, Mr. Butler has provided extensive leadership to South Carolina Court Administration's efforts improve, monitor, and streamline the forensic mental evaluation process in this state.

The Court qualified Mr Butler as an expert in the areas of statutory construction and the procedural and substantive law of the forensic mental process in the criminal courts of South Carolina. Mr Butler provided the Court with a detailed explanation of how the relevant provisions of Chapters 20 and 23 of Title 44 can and must be reconciled and rendered harmonious in their application

One of the legal defenses raised in the Return of DDSN is the argument that the director of the DDSN has exclusive authority over who can be admitted to the services of DDSN [see 44-20-390(C)]. At the hearing, Mr. Butler opined it would be illogical for DDSN to evaluate defendants for fitness to stand trial who fall within the definition of "intellectual disability" under S.C. Code Ann. § 44-23-10(21) when these same defendants cannot be involuntarily committed through probate proceedings if found incompetent to stand trial and unlikely to be restored to competency. Similarly, S.C. Code Ann. § 44-23-460 requires these defendants to return to Court before release from hospitalization when they no longer need supervision and treatment. However, a defendant can only be released if first committed. The process codified in Chapter 23, Article 5 begins by evaluating defendants using the broad definition of "intellectual

disability" in S.C. Code Ann. § 44-23-10(21). In Mr. Butler's opinion, it makes no sense to exclude some of these individuals from the involuntary commitment process, including only those who fall within the narrower definitions of "intellectual disability" and "related disability" contained in S.C. Code Ann. § 44-20-30(12) and (15).

Instead, S.C. Code Ann §§ 44-23-430 and 44-20-450 cross reference each other and incorporate by reference the broader definition contained in Chapter 23. Specifically, S.C. Code Ann. § 44-20-450 lists eight classes of people who may initiate involuntary probate proceedings against a person. These range from a spouse, to a parent, to the director of the county DSS. Only the eighth category, the Solicitor in charge of criminal prosecution, references another statute, and the referenced statute is S.C. Code Ann. § 44-23-430. Thus, the narrower definition favored by DDSN may well apply to the categories outlined in S.C. Code Ann § 44-20-450(A)(1) through (7), where involuntary commitment does not arise in the context of a criminal case. But where a criminal defendant has been referred to Probate Court by the Circuit Court, the broader definition in S.C. Code Ann. § 44-23-10(21) applies. Incompetent criminal defendants must fall under the responsibility of some agency. Unless a defendant is mentally ill, an incompetent defendant falls within the responsibility of DDSN.

Mr. Butler responded to DDSN's position that such a classification created an equal protection problem by pointing out that unlike individuals probated under S.C. Code Ann. § 44-20-450(1) through (7), those in subsection (8) had been accused of crimes where at least a magistrate has found probable cause and a grand jury has indicted that defendant for a criminal offense. Similarly, he responded to DDSN's position that under S.C. Code Ann. § 44-20-430 the agency has the power to make the final decision in all cases of whether to provide services by opining that this statute supported his position that involuntary commitments arising out of the

forensic evaluation process had to be treated differently than others. While perhaps DDSN can decline services in other contexts, it cannot do so in defiance of a Circuit Court order.

Mr. Butler also testified that in his experience it has been a common practice for many years for DDSN to deny treatment and services to criminal defendants when their cognitive impairments do not arise during the developmental period.

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The Court finds that Mr. Butler's expertise and experience in this area of law is unquestionable and entitled to great weight. The Court further finds that DDSN has engaged in a long-standing pattern and practice of denying services to head, spinal cord, and/or brain-injured criminal defendants found incompetent to stand trial, even when those persons have identical clinical presentations and treatment needs as other defendants whom DDSN accepts as involuntary clients. DDSN has instituted the practice of only offering involuntary services to criminal defendants who are determined to be suffering from an "intellectual disability" or "related disability" as defined under S.C. Code Ann. § 44-20-30(12) or (15). These code sections require that the intellectual disability must manifest "during the developmental period" – before an individual reaches eighteen years of age – or if a "related disability," it must arise before the age of twenty-two. DDSN currently denies involuntary commitment care and treatment to those defendants whose cognitive impairments begin after the age of twenty-two, regardless of their treatment needs.

It appears to this Court that DDSN has used this legal argument to convince the various Probate Courts of this state that the Probate Judges do not have jurisdiction over individuals whose intellectual disability does not occur in the developmental period or in any case before the age of twenty-two, and thus the involuntary commitment petitions must be dismissed. The end result of this practice is that head, spinal cord, and/or brain-injured individuals find themselves

without care and treatment through involuntary commitment, potentially dangerous individuals are released to the general public, and potentially vulnerable individuals in need of care are warehoused in county jails in direct violation of S. C. Code Ann § 44-23-220. In the present case, the solicitor refused to release Mr. Linkhorn to the general public, who languished in the Lexington County jail for 1,133 days and would likely be there yet but for the Rule to Show Cause petition.

IV. CONCLUSIONS OF LAW

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9 DDSN argues that the Court is without jurisdiction to issue an Order in this matter because an involuntary commitment proceeding is still pending against the Defendant in Probate Court. This argument is incorrect. Associate Probate Judge Julie H. Thompson testified at the hearing that the Solicitor's second involuntary commitment proceeding was dismissed on January 3, 2013. Even if this were not the case, this Court would have jurisdiction to rule in this matter by virtue of Chief Justice Toal's Order of March 12, 2013, vesting exclusive jurisdiction of this case with this Court

In addition to the argument noted above, DDSN made additional arguments before the Court on August 20, 2013. Because the Defendant has a brain injury, DDSN acknowledges that the Defendant is eligible for services in DDSN's Head and Spinal Cord Division. However, an individual cannot be involuntarily committed to receive those services. Rather, the Defendant must consent to care and treatment before DDSN has a statutory obligation to offer services.

DDSN further argues, as previously discussed, that the Director of DDSN has final authority, under S.C. Code Ann. § 44-20-430, as to any person's eligibility for services and what services are to be provided by DDSN. The Court disagrees. The issues in this case require the Court to engage in statutory construction in an effort to harmonize the pertinent provisions of

law The following excerpts from *State v. Sweat*, 386 S.C. 339, 688 S.E.2d 569 (2010) contain an excellent exposition of the rules of statutory construction available to a court

All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.

The Court should give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.

The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Even so, an administrative construction affords no basis for the perpetuation of a patently erroneous application of the statute.

Id., at 350-351, 688 S.E.2d at 575-576 (citations and internal quotation marks omitted).

When the provisions of a general statute and a specific statute which deal with the same subject conflict, the specific statute is considered an exception to the general statute. See *Florence County Democratic Party, et al vs. Florence County Republican Party, et al.*, 398 S.C. 124, 128, 727 S.E.2d 418, 420-421 (2012). Where a conflict arises, the specific statute prevails. *Fernanders v. State*, 359 S.C. 130, 133, 597 S.E.2d 787, 789 (2004).

This case requires the Court to interpret the provisions of Chapter 20, Articles 1 and 3, and Chapter 23, Articles 1 and 5, of Title 44. Title 44 is the portion of the South Carolina Code

that contains laws relating to matters of health. Relevant to this Court's inquiry are the provisions of S.C. Code Ann. §§ 44-20-30(12) and (15), 44-20-430, 44-20-450, 44-23-10, and 44-23-430. Chapter 20 establishes and governs the operation of DDSN. The legislative intent is specifically expressed in the Code:

The State of South Carolina recognizes that a person with an intellectual disability, a related disability, head injury, or spinal cord injury is a person who experiences the benefits of family, education, employment, and community as do all citizens. It is the purpose of this chapter to assist persons with intellectual disability, related disabilities, head injuries, or spinal cord injuries by providing services to enable them to participate as valued members of their communities to the maximum extent practical and to live with their families or in family settings in the community in the least restrictive environment available.

 S.C. Code Ann. § 44-20-20. The articles of Chapter 20 establish DDSN; mandate its duties, responsibilities, and powers; provide for licensure and regulation of its facilities; and, provide for capital improvement to conduct mandated programs. The Court notes that one of the points raised by DDSN during these proceedings is that the agency does not operate a secure facility for housing individuals who may be criminally dangerous, an argument that this Court finds unpersuasive.

Section 44-20-30 defines the terms used in Chapter 20. "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." S.C. Code Ann. § 44-20-30(12). "Related disability" is defined as "a severe, chronic condition found to be closely related to intellectual disability or to require treatment similar to that required for persons with intellectual disability and must meet the following conditions. . . ." S.C. Code Ann. § 44-20-30(15). The definition goes on to provide that a related disability must be due to a medical

condition other than mental illness that will likely continue indefinitely and cause functional limitations in three or more areas designated by statute before the age of twenty-two. *Id.*

Article 3 of Chapter 20 pertains to the organization and system for delivery of DDSN services. It contains provisions for involuntary commitment to DDSN in S.C. Code Ann. § 44-20-450. Proceedings may be initiated in the probate court by designated relatives, the head of public or private institutions where the individual resides, or the Department of Social Services. S.C. Code Ann. § 44-20-450(A). In addition, a solicitor responsible for a criminal prosecution may seek involuntary commitment "pursuant to Section 44-23-430(2)." See § 44-20-450(A)(8). If the examiners designated by the probate court find that the person sought to be admitted does not suffer an intellectual disability or related disability, the proceedings must be dismissed. § 44-20-450(D).

 The Director of DDSN is granted wide executive discretion. "The director or his designee has final authority over applicant eligibility, determination, or services and admission order, subject to policies adopted by the commission. S.C. Code Ann. § 44-20-430.

Chapter 23 of Title 44 contains laws that apply to the mentally ill and to persons with an intellectual disability. It governs the detention, confinement, and transfer of confined persons; fitness to stand trial; and the treatment, rights, privileges, and expenses of patients generally. Like Chapter 20, Chapter 23 also contains definitions of the terms, which apply "[w]hen used in this chapter . . . unless the context clearly indicates a different meaning[.]" S.C. Code Ann. § 44-23-10. Intellectual disability is defined as "a person, other than a person with a mental illness primarily in need of mental health services, whose inadequately developed or impaired intelligence and adaptive level of behavior require for the person's benefit, or that of the public, special training, education, supervision, treatment, care, or control in the person's home or

community or in a service facility or program under the control and management of the Department of Disabilities and Special Needs." § 44-23-10(21)

Article 5 of Chapter 23 addresses fitness to stand trial in the court of general sessions and family court. It establishes the procedures for obtaining a competency examination, conducting a competency examination, and reporting the results of these examinations. It provides for hearings in the circuit court on the issue of competency and sets forth procedures to follow dependent on the result of a *Blair* hearing. Where a court finds a person incompetent to stand trial and unlikely to become competent in the foreseeable future, the solicitor responsible for the criminal prosecution "shall initiate judicial admission proceedings pursuant to Sections 44-17-510 through 44-17-610 or Section 44-20-450[.]" S.C. Code Ann. § 44-23-430(2).

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13 The Court finds that Chapter 20 is general in nature. It establishes a comprehensive system to provide services and assistance to persons with cognitive disabilities. Its express purpose is to recognize that the cognitively disabled are valuable members of the community and are entitled to a certain minimum quality of life commensurate with their needs. Chapter 20 also provides for their social welfare.

In contrast, Article 5 of Chapter 23 specifically addresses the concerns that rise when mentally ill or intellectually disabled persons are charged with the commission of a criminal offense in circuit or family court. The legislative intent here is twofold. First, the article seeks to protect the rights of the individual, and safeguards are codified to achieve this end. *See, e.g.*, S.C. Code Ann. § 44-23-410(C) (person may request additional examiner of his own choice); §44-23-430 (persons against whom criminal charges are pending but who are not involuntarily committed shall be released); and §44-23-440 (finding of unfitness to stand trial shall not preclude defense on the merits).

Second, the statute evinces the intent to protect the public from the actions of persons who have been charged with crimes who cannot control their conduct. This intent can be discerned throughout Article 5. Persons with a mental illness or with an intellectual disability are defined, in part, as those whose behavior needs supervision for the benefit of the general public. S.C. Code Ann. § 44-23-10(20) and (21). A defendant may be committed by a court to a treatment facility for up to 15 days prior to a competency exam. S.C. Code Ann. § 44-23-410(A)(2). If the designated examiners believe a defendant is in need of hospitalization, the court may order him confined prior to a *Blair* hearing. S.C. Code Ann. § 44-23-430. Likewise, a defendant found unfit to stand trial may be detained before initiation of involuntary commitment proceedings in probate court. § 44-23-410(2). Persons involuntarily committed to facilities after being found unfit to stand trial cannot be released until a hearing takes place in circuit court. S.C. Code Ann. § 44-23-460. Examining Article 5 of Chapter 23 as a whole, and in conjunction with statutes that address related matters, the Court finds that Article 5 of Chapter 23 is specific in nature.

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The plain language of S.C. Code Ann. §§ 44-20-450 and 44-23-430 illustrates that the General Assembly intended that they be read in concert. Each statute cites the other. Section 44-23-430 requires the solicitor to file an involuntary commitment proceeding under either the mental health commitment statutes or Section 44-20-450. Section 44-20-450 permits the solicitor to initiate involuntary commitment proceedings "pursuant to Section 44-23-430(2) []"

While the statutory framework might be inelegant, the legislative intent is clear. After a circuit court order is issued pursuant § 44-23-430(2), and commitment proceedings are commenced under § 44-20-450, the probate court and its designated examiners must use the statutory definition of "intellectual disability" contained in § 44-23-10(21) to determine whether

an individual should be committed to the care of DDSN. This interpretation harmonizes the statutes so that they complement each other. If interpreted as DDSN argues, not all persons who fall within the definition of intellectual disability contained in § 44-23-10(21) would be eligible for involuntary services. Those with head, brain, or spinal cord injuries could only receive treatment on a voluntary basis and would not be supervised by the court. The General Assembly did not intend to exclude these defendants from involuntary commitment and judicial oversight and instead offer them a choice as to whether or not they will receive treatment. To find otherwise would render § 44-23-10(21) superfluous within the statutory framework established in Chapter 23.

*JWB
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After respectful and careful consideration, the Court concludes that adoption of DDSN's arguments lead to an absurd result. An entire subgroup of criminal defendants could not be involuntarily committed for DDSN services, even though their clinical presentation and treatment needs are identical to those who suffer a narrowly defined "intellectual disability" or "related disability." This group includes, but is not limited to, defendants with head, brain, and/or spinal cord injuries. The Court does not believe the General Assembly intended to exclude this group from receiving involuntary treatment after the circuit court finds them incompetent to stand trial. Equally important, accepting DDSN's analysis overlooks the legislature's intent in Chapter 23, Article 5, to provide for protection of the general public. Some persons in this subgroup, as in this case, are charged with serious crimes. The Court is confident that the legislature did not intend for these persons to escape the judicial oversight otherwise provided for by Chapter 23, Article 5. It also did not intend to leave treatment within the discretion of these defendants. This conclusion is illogical and cannot be the result intended when enacting this legislation.

The Court further finds that S.C. Code Ann. § 44-20-430 does not allow the Director of DDSN to refuse to provide treatment and services to criminal defendants involuntarily committed to its custody in a case that originated in the circuit court as a result of proceedings under § 44-23-430. The legislature clearly intended that all criminal defendants with an "intellectual disability," as defined in § 44-23-10 be eligible for involuntary admission to the jurisdiction of the DDSN pursuant to § 44-20-450(E). It also intended that such defendants remain subject to the jurisdiction of the circuit court. To allow the director to arbitrarily deny treatment usurps the power of the courts by the executive branch and violates the separation of powers doctrine. S.C. Const. art. I, §8; *see, e.g., State v. Archie*, 322 S.C. 135, 137, 470 S.E.2d 380, 381-382 (Ct. App. 1996) (finding probation department invaded the power of the courts when it imposed additional conditions of probation).

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For the reasons outlined herein, the Court also finds that DDSN's practice of defending probate commitments against criminal defendants on grounds that their cognitive impairments do not fall within the narrow definitions contained in S.C. Code Ann. § 44-20-30(12) and (15) is contrary to the language and intent of Chapter 23 of Title 44. The issues presented in this case are capable of repetition yet evading review, and it is imperative that this Court extend the holding in this case to similarly-situated future defendants. *Cf., Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 564, 463 S.E.2d 90, 91 (1995). Further, by Order of Chief Justice Toal of the South Carolina Supreme Court dated August 14, 2003, this Court was vested with broad enforcement jurisdiction over criminal defendants with mental health or related issues. The Court therefore concludes it is appropriate to issue an Order prohibiting DDSN taking a similar position in any case in the future.

V. CONCLUSION

Based on the foregoing, the Court finds it appropriate to make the following rulings:

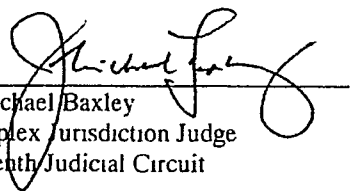
1. The Eleventh Circuit Solicitor's Petition for a Rule to Show Cause is GRANTED. It shall file involuntary commitment proceedings against the Defendant, pursuant to S.C Code Ann. § 44-20-450, in the Lexington County Probate Court DDSN shall, within five (5) days of August 20, 2013, take custody of the Defendant, remove him from the Lexington County Detention Center, and house him in a secure facility. If DDSN does not possess a secure facility, it shall bear the expense of obtaining the ordered placement.
2. DDSN is enjoined and prohibited from raising as a defense in the Defendant's involuntary commitment proceeding that a defendant determined incompetent to stand trial due to an intellectual disability pursuant to § 44-23-430 cannot be involuntarily admitted to its jurisdiction because he has a head, brain and/or spinal cord injury rather than an "intellectual disability" or a "related disability" as defined by S C Code Ann. § 44-20-30(12) and (15).
3. DDSN has engaged in a pervasive pattern and practice of denying involuntary services to otherwise eligible criminal defendants found incompetent to stand trial by a circuit court of competent jurisdiction. These defendants include, but are not limited to, defendants who have suffered head, brain, and/or spinal cord injuries. This practice violates state law and infringes upon the powers of the circuit courts. The issue is one that it is capable of repetition yet evading review. *Nelson v. Ozmint*, 390 S.C. 432, 434-435, 702 S.E.2d 369, 370 (2010). This Order shall have statewide application in probate court

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proceedings initiated by solicitors after a finding that a defendant is unfit to stand trial under S.C. Code Ann. § 44-23-430(2), and DDSN is henceforth enjoined and prohibited from opposing petitions for involuntary commitment on the basis that a defendant is eligible for voluntary services in its head and spinal cord injury division. It is also enjoined and prohibited from opposing petitions for involuntary commitment on the basis that a defendant does not have an "intellectual disability" or "related disability" as defined by S.C. Code Ann. § 44-20-30(12) and (15). The applicable threshold for involuntary commitment to DDSN services for criminal defendants who are unfit to stand trial is whether that defendant suffers from an "intellectual disability" as defined in S.C. Code Ann. § 44-23-10(21).

4. Either the Director of DDSN, or the South Carolina Commission on Disabilities and Special Needs pursuant to § 44-20-430, shall develop admission and intake procedures consistent with this Order for all criminal defendants found to be suffering from an "intellectual disability" as defined in S.C. Code Ann. § 44-23-10(21), and further shall provide for the development of secure facilities necessary thereto; or in the alternative, shall provide funds and necessary contractual arrangements to henceforth house such defendants in secure facilities operated by other entities

IT IS SO ORDERED.


J. Michael Baxley
Complex Jurisdiction Judge
Eleventh Judicial Circuit

September 17, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

The State of South Carolina,

-vs-

ROCKY AL LINKHORN. ,
_____)

FILED ORIGINAL
IN THE COURT OF GENERAL SESSIONS
JUL 14 2010
Warrant No.: M-301091, M-301093
M-301092

ORDER FOR CRIMINAL RESPONSIBILITY
AND CAPACITY TO CONFORM EVALUATION
(M'NAUGHTEN)

Select one of the following:

(Controls access to evaluation report as outlined below)

Ex parte evaluation requested by defendant
prior to assertion of insanity defense.

This matter is before me for an order requiring defendant Rocky Linkhorn, charged with Criminal Sexual Conduct with a Minor or Attempt- victim under 11 years of age, First Degree; Obscene /Disseminating Obscene Material to a Minor 12 years or younger, Sex/Lewd Act, Committing or attempting lewd act upon child under 16 to submit to an evaluation for criminal responsibility and capacity to conform conduct to the requirements of the law on or about July 14, 2010 pursuant to S.C. Code Ann. § 17-24-10 (1976). One of the following circumstances applies to the issuance of this order: (1) defendant has requested an evaluation to determine whether the insanity defense may apply; or (2) prosecution or defendant has requested this evaluation after defendant has affirmatively asserted the insanity defense and given appropriate notice pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure; or (3) both parties by consent request this evaluation regardless of whether defendant has asserted the insanity defense.

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and find defendant's mental state at the time of the alleged crime(s) will likely be at issue in this proceeding. This order is issued for the following reasons.

The Defendant has prior mental history.

THEREFORE, IT IS ORDERED: Because the Department of Mental Health has statutory responsibility for custody and control of individuals determined not guilty by reason of insanity, defendant shall be examined and observed at an appropriate facility of the Department of Mental Health by one or more examiners to determine whether defendant is criminally responsible pursuant to S.C. Code Ann. § 17-24-10(A) (1976) for conduct on or about July 29, 2009.

If defendant is believed to be criminally responsible by the designated examiners, defendant shall be further examined to determine whether, because of mental disease or defect, defendant lacked sufficient capacity to conform conduct to the requirements of the law on or about July 14, 2010 pursuant to S.C. Code Ann § 17-24-20(A) (1976).

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining



facility shall schedule the ordered examination as soon as possible and no later than sixty (60) days from the receipt of this order by the Department of Mental Health, this time being necessary to gather required records. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the Department of Mental Health to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

PROCEDURE IF LACK OF COMPETENCY IS INDICATED. If, during the course of the criminal responsibility and capacity to conform evaluation scheduled pursuant to this Order, the examiner finds indications that defendant may not be competent to stand trial pursuant to S.C. Code Ann. § 44-23-410 (1976) and *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981), the examiner shall terminate the criminal responsibility and capacity to conform evaluation, issue no report thereon, and by written communication recommend to the Court that a competency to stand trial evaluation should be ordered. Further, the examiner should state whether, in the examiner's opinion, such lack of competency is due to a mental illness or, in the alternative, mental retardation or a related disability. A copy of this written communication shall be sent to the prosecutor and defense counsel.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from the Department of Mental Health determine defendant requires an inpatient examination, upon written notice to this Court from the director of the Department of Mental Health or his designee, defendant shall be committed to an appropriate facility of the Department of Mental Health for no more than fifteen (15) days for examination and observation related to defendant's criminal responsibility and capacity to conform. If the examination and observation of defendant has not concluded at the end of the initial inpatient fifteen (15) days, defendant may be kept in the continued custody of the Department of Mental Health for an additional period not to exceed fifteen (15) days, provided the director of the examining facility or his designee notifies this Court in writing. The issuance of an additional Court order allowing for the inpatient commitment(s) discussed in this paragraph is not necessary.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of Department of Mental Health examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the Department of Mental Health in a suitable facility for so long as deemed clinically necessary or until a hearing on the matter may be conducted by this Court. An additional Court order shall be necessary for ongoing pre-trial inpatient detention



of defendant as discussed in this paragraph

ACCESS TO EXAMINER'S REPORT. The Department of Mental Health is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. It is the intention of the State of South Carolina to provide defendant an adequate opportunity for mental status investigation when the defendant's mental condition is seriously in question pursuant to Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985), either before or after defendant formally asserts the insanity defense. The purpose of the following provisions controlling access to the examiner's report is to strike a balance between defendant's right to explore the possibility of an insanity defense and prosecution's right to respond if such defense is raised. If defendant is requesting evaluation prior to asserting the defense of insanity, the evaluation shall be confidential until such time as defendant elects to assert the insanity defense. If defendant or prosecution is requesting evaluation after defendant's formal assertion of the insanity defense pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure, or both parties are requesting the evaluation by consent, the evaluation shall **not** be confidential and both defense counsel and the prosecutor shall be provided a copy of the examiner's report. In either case, ownership of the examining agency's files shall be vested with the examining agency.

(A) Ex parte evaluation requested by defendant prior to assertion of insanity defense. If defendant has requested an evaluation to determine whether the insanity defense may be viable, the examiner's report shall not be provided to the prosecution and shall not be admissible as evidence in any Court proceedings. The prosecution may not discover any portion of the evaluation files. Any written report resulting from the evaluation shall be considered confidential and provided only to defense counsel, and shall be provided within ten (10) days of all examinations or the conclusion of the inpatient examination period. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose unless and until defendant asserts the defense of insanity. However, as a condition of accepting the evaluation provided by the State of South Carolina, defendant expressly waives any and all confidentiality privileges associated therewith if defendant subsequently asserts the insanity defense. In such case, the evaluation shall no longer be confidential, and all parties' access to the evaluation report shall be controlled by paragraph (B) below.

(B) Evaluation requested by either party after assertion of insanity defense. Because the assertion of the insanity defense places defendant's mental status at issue, either party may discover any portion of the evaluation files upon presentation of a Court order authorizing such or a release authorization signed by defendant. Both the prosecutor and defense counsel shall be provided a copy of the examiner's report within ten (10) days of the conclusion of all examinations or the inpatient examination period. The evaluation report may be admissible as evidence in subsequent hearings concerning defendant's criminal responsibility and capacity to conform. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose other than on the issue of criminal responsibility and capacity to conform. Also, statements made during the examination may not be used to impeach defendant at



trial Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

(C) Evaluation Requested by Consent of Both Parties. By consent, the parties may request evaluation at any time, regardless of whether the insanity defense has been asserted by the defendant. The procedures and rules for this examination shall be the same as outlined in paragraph (B) above; however, in the event defendant does not assert the insanity defense, the examiner's report shall not be admissible for any reason, nor shall the contents of the evaluation files be used for any purpose.

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS.

Department of Mental Health examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the Department of Mental Health of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the Department of Mental Health, counsel for prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the Department of Mental Health may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the Department of Mental Health may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the Department of Mental Health's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the Department of Mental Health of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with nonappearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the



interview and examiners being unable to offer an opinion on criminal responsibility and capacity to conform. Failure to cooperate may further result in the case being called for trial without completion of the evaluation, and may result in defendant being prohibited from presenting expert testimony on the issue of insanity or waiver of the insanity defense.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the Department of Mental Health at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the Department of Mental Health to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Address for the Department of Mental Health

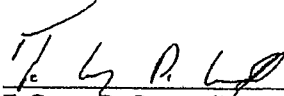
Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email. FES-PARALEGAL@SCDMH.ORG

AND IT IS SO ORDERED.



Presiding Circuit Judge

Lexington, South Carolina
Dated: 8 Feb 11



F. Casey D. Cornwell
Defense Counsel
407 ½ West Main St
Lexington, SC 29072
(803) 785-8873



Rhonda Patterson
Prosecutor
205 East Main Street
Lexington, SC 29072
(803) 785-8352

The following documents must be attached to this order upon submission to the Department of Mental Health:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
SCCA 222 (3/2005) 8
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Defendant's Rule 5(f) notice of insanity defense (if applicable)
10. Autopsy reports (if applicable)

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The State of South Carolina,

Plaintiff

v.

ROCKY LINKHORN

Defendant.

IN THE COURT OF GENERAL SESSIONS

Indictment No(s): 8

A/Warrant No.(s): M-301091, M-301093, M-

ORDER FOR COMPETENCY TO STAND
TRIAL EVALUATION PURSUANT TO
STATE V. BLAIR

EVALUATION BY:
(Select Only One)

☒ Department of Mental Health (Mental
Illness)

OR

☐ Department of Disabilities and Special Needs
(Mental Retardation or Related Disability)

This matter is before me for an order requiring defendant ROCKY LINKHORN, charged with Criminal Sexual Conduct with a Minor or Attempt- victim under 11 years of age first degree, Obscene/Disseminating Obscene Material to a minor 12 years or younger, Sex/Lewd Act, committing or attempting lewd act upon on a child under 16, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C 529, 273 S E 2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons.

THAT THE DEFENDANT HAS A HISTORY OF MENTAL HEALTH PROBLEMS.

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having mental retardation or a related disability, to render an opinion

whether defendant is competent to stand trial

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining agency's receipt of this order. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

TRANSFER TO ALTERNATE AGENCY. If the initial examination is performed by the Department of Mental Health, and examiners find indications of mental retardation or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not mental retardation or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have mental retardation or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created

in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

FINDING OF DUAL DIAGNOSIS. If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and mental retardation or a related disability, no opinion on defendant's mental competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

REQUEST FOR EXTENSION. Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order shall be necessary for

ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT. Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976), thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational testimony. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law.

OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES. The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special

Needs, or both.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v Hardy, 283 S C 590, 325 S E 2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without

completion of the evaluation.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency.

Evaluation Order Service Information

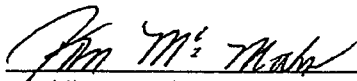
Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

Department of Disabilities and Special Needs

Office of Clinical Services
Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, S.C. 29240
(803) 898-9694 (Phone)
(803) 898-9660 (Fax)
Email: OBSForensics@ddsn.sc.gov

AND IT IS SO ORDERED.



Presiding Circuit Judge



Printed Name of Presiding Circuit Judge

LEXINGTON, South Carolina

Dated: 8 FEB 11

Rhonda Patterson
Prosecutor
205 EAST MAIN STREET
Address
LEXINGTON, SC 29072
City, State, Zip
803-785-8352
Telephone
Email

F Casey D Cornwell *TC D. Call*
Defense Counsel
407 1/2 WEST MAIN STREET
Address
LEXINGTON, SC 29072
City, State, Zip
803-785-8873
Telephone
Email

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[Handwritten signature]

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Autopsy reports (if applicable)

A handwritten signature, possibly reading "R.H.", is located at the bottom of a long, curved line that starts near the list of documents and extends down towards the signature.

ORIGINAL

*General Sessions Order following Blair Hearing on Defendant's Competency To Stand Trial
Finding Defendant Not Competent, but Likely to Become Competent
§44-23-430(3)*

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) Indictment No(s) M-301091, 093, 092
) A/Warrant No(s)
)
The State of South Carolina,) FINDING OF PRESENT LACK OF
) COMPETENCE TO STAND TRIAL
) BUT LIKELY TO BECOME COMPETENT
) WITH TREATMENT
vs)
)
)
ROCKY LINKHORN) ORDER OF COMMITMENT UP TO SIXTY DAYS
Defendant)
)

BEHAYA FRICCA
CLERK OF COURT
LEXINGTON, SC

2011 JUN 21 P 3:14

FILED

This matter is before me pursuant to S.C. Code Ann §44-23-430 (1976) for a hearing on the issue of Defendant's competence to stand trial

Defendant is charged with Criminal Sexual Conduct with a Minor under 11 years of age first degree, Obscene/Disseminating Obscene material to a minor 12 years or younger, Sex/Lewd Act committing or attempting lewd act upon a child under the age of 16 Pursuant to a previous Court order, Defendant's competence to stand trial has been evaluated. In a report dated March 2, 2011 and May 11, 2011, the examiners found that Defendant is not currently competent to stand trial, but is likely with treatment to become competent in the foreseeable future. The report was statutorily admitted into evidence pursuant to S C Code Ann § 44-23-420(C), and a copy of the report is attached hereto

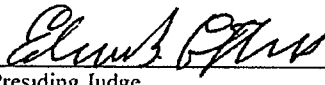
Based upon the examiner's report, I find that the Defendant is currently incompetent to stand trial for the reasons set forth in S C Code Ann §44-23-410, but likely to become competent in the foreseeable future

THEREFORE IT IS ORDERED that Defendant be hospitalized through the South Carolina Department of Mental Health (SCDMH) pursuant to S C Code Ann §44-23-430(3) for up to sixty (60)

days for observation and treatment in an effort to restore Defendant's competence to stand trial. The Defendant shall be immediately taken into custody by the Sheriff, and the Sheriff's office is hereby authorized and required to transport Defendant to the facility designated by SCDMH following confirmation that a treatment bed is available.

IT IS FURTHER ORDERED that examiners shall re-examine Defendant's capacity to stand trial following the period of hospitalization and treatment and subsequently render a report to the Court, solicitor, and defense counsel. Thereafter, upon motion by a party, this Court shall determine whether Defendant is at that time competent to stand trial, or whether final judicial commitment proceedings commenced by the Solicitor pursuant to S. C. Code Ann. § 44-17-510 et seq. are appropriate.

IT IS SO ORDERED.



Presiding Judge
Judicial Circuit

Date: June 21, 2011
Lexington County

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) NOV -2 PM 4:42
STATE OF SOUTH CAROLINA)
v)
ROCKY LINKHORN)
DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

FINDING OF LACK OF COMPETENCE
TO STAND TRIAL FOR THE FORESEEABLE
FUTURE AND ORDERING PROBATE
COMMITMENT PROCEEDINGS

INDICTMENT NO(s) 2011-GS-32-0242, 243,
2011-GS-32-0244
WARRANT NO(s). M301091, M301092,
M301093

This matter is before me pursuant to S. C Code Ann Section 44-23-430 (1976)
for a hearing on the issue of Defendant's competence to stand trial

Defendant is charged with CRIMINAL SEXUAL CONDUCT WITH A MINOR,
LEWD ACT UPON A MINOR, AND DISSEMINATING OBSCENE MATERIAL TO A
MINOR. Pursuant to a previous Court order, Defendant's competence to stand trial has
been evaluated In a report dated OCTOBER 21, 2011, the examiners found that
Defendant is not currently competent to stand trial and is unlikely to become competent
in the foreseeable future The report was statutorily admitted into evidence pursuant to
S. C Code Ann 44-23-420 (C), and a copy of the report is attached hereto

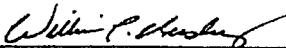
This report was rendered after Defendant was previously found by the Court to
lack the competence to stand trial but was likely to become competent with appropriate
treatment. Thereafter, Defendant was hospitalized through the facilities of the South
Carolina Department of Mental Health (SCDMH), pursuant to S C Code Ann Section
44-23-430(3), for observation and treatment in an effort to restore Defendant's
competence to stand trial This restoration effort was unsuccessful, and thus this Court
has determined that the Defendant is now unlikely to become competent in the
foreseeable future

Based upon the examiner's report, I find that the Defendant is currently incompetent to stand trial for the reasons set forth in S C Code Ann Section 44-23-410, and unlikely to become competent in the foreseeable future.

THEREFORE IT IS ORDERED that Defendant be hospitalized through the South Carolina Department of Mental Health (SCDMH), pursuant to S C Code Ann Section 44-23-430(2) The Defendant shall be immediately taken into custody by the Sheriff, and the Sheriff's office is hereby authorized and required to transport Defendant to the facility designated by SCDMH following confirmation that a bed is available

#2
IT IS FURTHER ORDERED, pursuant to S C Code Ann Section 44-23-430(2), the Solicitor responsible for the prosecution of Defendant shall initiate judicial admission proceedings in the County Probate Court pursuant to S C Code Ann Section 44-17-510 through Section 44-17-610, within fourteen (14) business days from the date of this Order.

IT IS ORDERED.


Presiding Judge
Eleventh Judicial Circuit

DATE: November 2, 2011

*General Sessions Order following Blair Hearing on Defendant's Competence To Stand Trial
Finding Defendant Not Competent, and Not Likely to Become Competent §44-23-430(2)
Optional language for use if §44-23-430(3) hospitalization to restore competence is unsuccessful*

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS

Indictment No(s): 2011-GS-32-0242;
243;244

FILED

) A/Warrant No(s) M301091;092,093

FEB 28 2012

The State of South Carolina,

) AMENDED ORDER

) FINDING OF LACK OF

) COMPETENCE TO STAND TRIAL

) FOR THE FORESEEABLE FUTURE

) AND ORDERING

) PROBATE COMMITMENT PROCEEDINGS

PROBATE JUDGE
LEXINGTON COUNTY,

vs.

RECEIVED

ROCKY LINKHORN,
Defendant

MAR -6 2012

LEGAL SERVICES

This matter was before me pursuant to S. C. Code Ann. §44-23-430 (1976) for a hearing on the issue of Defendant's competence to stand trial.

*Wpc
#1*

The Defendant is charged with Criminal Sexual Conduct with a Minor, Lewd Act Upon a Minor, and Disseminating Obscene Material to a Minor Pursuant to a previous Court order, dated November 2, 2011, I found based upon the evidence presented at that hearing and documented in the previous Order that that Defendant was not competent to stand trial pursuant to South Carolina Code Ann. 44-23-410, and further, that he was not likely to become competent in the foreseeable future. It was Ordered that Solicitor responsible for the prosecution of Defendant initiate judicial proceedings pursuant to South Carolina Code Ann. 44-17-510 through 44-17-610.

On November 7, 2011, the Solicitor initiated proceedings in Probate Court as directed. On December 12, 2011, the Probate Court dismissed the proceedings upon reading the report of the Designated Examiners finding that the Defendant was not

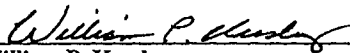
mentally ill. There were indications that the Defendant may suffer from mental retardation and accordingly the Solicitor reinitiated proceedings in Probate Court to for the involuntary admission of a person with mental retardation or a related disability.

The Department of Disabilities and Special Needs has expressed concern that the original Order does not give them the authority to proceed as it did not mention Section 44-20-450.

ACCORDINGLY IT IS ORDERED, pursuant to S.C. Code Ann. §44-23-430(2), the Solicitor responsible for the prosecution of Defendant shall initiate judicial admission proceedings in the Lexington County Probate Court pursuant to S.C. Code Ann. §44-17-510 through §44-17-610 and/or §44-20-450 within fourteen (14) business days from the date of this Order

IT IS SO ORDERED.

2


William P. Keesley
Presiding Judge
11th Judicial Circuit

Date: 2/27/12

ORIGINAL

*General Sessions Order following Blair Hearing on Defendant's Competency To Stand Trial
Finding Defendant Not Competent, and Not Likely to Become Competent
§44-23-430(2)*

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)
) 2011-GS-32-242; 243; and 244
) 1030/09/1, 1092 & 1093
The State of South Carolina,) FINDING OF LACK OF COMPETENCE TO
) STAND TRIAL FOR THE FORSEEABLE
) FUTURE AND ORDERING PROBATE
) COMMITMENT PROCEEDINGS
)
vs.)
)
Rocky Al Linkhorn,)
)
Defendant.)

2011-09-22 P.M. 2
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

This matter is before the Court pursuant to S. C. Code Ann. §44-23-430 (1976) for a hearing on the issue of the Defendant's competency to stand trial.

Defendant is charged with Criminal Sexual Conduct with a Minor in the First Degree, Lewd Act, and Disseminating Obscene Material to a Minor. Pursuant to a previous Court Order, Defendant's competence to stand trial has been evaluated. In a report dated October 21, 2011, the examiners found that the Defendant is not currently competent to stand trial, and is unlikely to become competent in the foreseeable future. The report was statutorily admitted into evidence pursuant to S.C. Code Ann. § 44-23-420(C), and a copy of the report is attached hereto.

This report was rendered after Defendant was previously found by the Court to lack the competence to stand trial but was likely to become competent with appropriate treatment. Thereafter, Defendant was hospitalized pursuant to S.C. Code Ann. §44-23-430(3), for observation and treatment in an effort to restore Defendant's competence to stand trial. This restoration effort was unsuccessful.

Based upon the examiners' report, the Court finds that the Defendant is currently incompetent to stand trial for the reasons set forth in S.C. Code Ann. §44-23-410, and is unlikely to become competent in the foreseeable future. Based on testimony from Dr. Richard Frierson, MD, the Court further finds that the Defendant has an intellectual

disability as defined by S.C. Code Ann. §44-23-010 and must receive care, treatment, or rehabilitation from the Department of Disabilities and Special Needs.

THEREFORE IT IS ORDERED that pursuant to S.C. Code Ann. §44-23-430(2) the Solicitor responsible for the prosecution of the Defendant shall initiate judicial admission proceedings in the County Probate Court within fourteen (14) business days from the date of this Order pursuant to S.C. Code Ann. §44-20-450 (Intellectual Disability or Related Disability—Department of Disabilities and Special Needs).

IT IS FURTHER ORDERED that pending the commencement of the judicial admission proceedings, and until such time as the Probate Court shall gain jurisdiction over the Defendant by finding that the Defendant meets the criteria for civil commitment, the Defendant shall be admitted to an intellectual disability facility or otherwise remanded to services through the Department of Disabilities and Special Needs (SCDDSN) if incompetent due to an intellectual disability or a related disability.

 The Defendant shall be removed from the custody of the Lexington County Detention Center and taken into the custody of SCDDSN within five days of this order and placed in a secured facility. If there is no bed space available at a designated secured facility, then SCDDSN must secure bed space at Geo Care or a similar secured facility at SCDDSN's expense until placement is available at a secured facility.

IT IS FURTHER ORDERED that, if after examination and a hearing, the Probate Court determines the Defendant does not meet the criteria for further Probate proceedings and dismisses the proceedings pursuant to S.C. Code Ann. §44-17-580(2) (mental illness) or S.C. Code Ann. §44-20-450(D) (intellectual or related disability), then the solicitor responsible for prosecution of the Defendant shall return this matter to the General Sessions Court so that this Court may enter such Order as is appropriate with respect to ongoing provisions for bond, notification of the victim(s) as to the status of the case, and such other requirements necessary to the ends of justice. In the interim prior to the General Sessions hearing, the provisions of Defendant's current bond and any additional requirements stated above shall remain in place.

FILING, SERVICE, AND TRANSMITTAL OF THIS ORDER. It is the responsibility of the solicitor to file and serve this order as outlined herein. After being signed by the Court, the original order must be immediately filed with the Clerk of Court

and a certified copy served upon the opposing party. Further, **within five (5) business days**, a certified copy of this order must be served upon the examining agency at the address listed below. To expedite the agency's ability to implement this order and prepare for legal proceedings, the solicitor is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

Information for Service of Order on Agency

Department of Mental Health

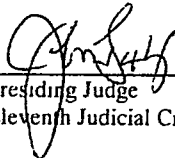
Forensic Evaluation Service Paralegal
S.C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, SC 29203-3220
(803)935-5540 (Phone)
(803)935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

Department of Disabilities and Special Needs

Office of Clinical Services
Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, SC 29240
(803)898-9694 (Phone)
(803)898-9660 (Fax)
Email: OBSForensics@ddsn.sc.gov

IT IS SO ORDERED.

Date: August 22, 2013



Presiding Judge 2121
Eleventh Judicial Circuit

Solicitor's name. Rhonda W. Patterson
Telephone: (803)785-8234
Email: rpatterson@lex-co.com

Defense Counsel. Elizabeth Fullwood
Telephone (803)785-8873
Email: efullwood@lex-co.com

The Supreme Court of South Carolina

The State of South Carolina,

Prosecutor,

v.

Rocky Linkhorn

Defendant.

Lexington County
2011-GS-32-00242; 00243; 00244

ORDER

IT IS ORDERED that the Honorable J. Michael Baxley be vested with exclusive jurisdiction to hear and dispose of the above case. Judge Baxley shall decide all matters pertaining to this case, including motions to appoint or relieve counsel, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.



Jean Hofer Toal
Chief Justice

March 12, 2013
Columbia, South Carolina

The Supreme Court of South Carolina

ORDER

By Order dated October 28, 2002, the Honorable Henry F. Floyd was assigned to oversee all outstanding and future orders of the Courts of General Sessions committing criminal defendants to the facilities of the Department of Mental Health. Find that these duties should be reassigned.

NOW, THEREFORE, pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that the Honorable J. Michael Baxley is vested with statewide jurisdiction over enforcement of all outstanding and future orders issued by Courts of General Sessions committing defendants to the Department of Mental Health pursuant to S.C. Code Ann. Sections 44-23-430 or 17-24-40. This includes jurisdiction over any currently pending enforcement actions, any actions that may be initiated during the period this Order remains effective, as well as any actions by the Department of Mental Health to stay enforcement of such commitment orders. Any pleadings related to the commitment orders shall be filed in the county where the commitment order was issued with a copy also mailed to Judge Baxley and General Counsel of the Department of Mental Health.

IT IS FURTHER ORDERED that the Honorable J. Michael Baxley shall have jurisdiction to review and approve a statewide plan for the orderly and timely disposition of commitment orders and to monitor the status of all inmates currently in custody and awaiting admission pursuant to commitment orders.

This Order shall take effect September 1, 2003 and remain in effect until further order of this Court.

s/Jean Hofer Toal
Jean Hofer Toal,
Chief Justice

August 14, 2003
Columbia, South Carolina

The Supreme Court of South Carolina

ORDER

By Order dated August 14, 2003, the Honorable J. Michael Baxley was assigned to oversee all outstanding and future orders of the Courts of General Sessions committing criminal defendants to the facilities of the Department of Mental Health. I find that these duties should be reassigned.

Now, therefore, pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that the Honorable Frank R. Addy, Jr. is vested with statewide jurisdiction over enforcement of all outstanding and future orders issued by Courts of General Sessions committing defendants to the Department of Mental Health pursuant to S.C. Code Ann. §§44-23-230 or 17-24-40. This includes jurisdiction over any currently pending enforcement actions, any actions that may be initiated during the period this Order remains effective, as well as any actions by the Department of Mental Health to stay enforcement of such commitment orders. Any pleadings related to the commitment orders shall be filed in the county where the commitment order was issued with a copy also mailed to Judge Addy and General Counsel of the Department of Mental Health.

IT IS FURTHER ORDERED that the Honorable Frank R. Addy, Jr. is vested with statewide jurisdiction over enforcement of all outstanding and future orders issued by Courts of General Sessions committing defendants to the Department of Disabilities and Special Needs pursuant to S.C. Code Ann. §§44-20-450(8). This includes jurisdiction over any currently pending enforcement actions, any actions that may be initiated during the period this Order remains effective, as well as any actions by the Department of Disabilities and Special Needs to stay enforcement of such commitment orders. Any pleadings related to the commitment orders shall be filed in the county where the commitment order was issued with a copy also mailed to Judge Addy and General Counsel of the Department of Disabilities and Special Needs.

IT IS FURTHER ORDERED that the Honorable Frank R. Addy, Jr. is vested with statewide jurisdiction pursuant to §44-23-410(B) to consider motions by the Department of Mental Health or Department of Disabilities and Special Needs for an extension of time up to fifteen (15) days to complete a court-ordered examination, or an examination and observation.

This order shall take effect immediately and remain in effect until further order of this Court.

s/Jean Hoefer Toal
Jean Hoefer Toal
Chief Justice

May 7, 2014
Columbia, South Carolina

RECEIVED

AUG 29 2013

IN THE PROBATE COURT
CASE NO : 2012MH3260062
LEGAL SERVICES

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Rhonda W. Patterson)
PETITIONER)

PETITION FOR JUDICIAL ADMISSION

IN THE MATTER OF:)
Rocky A Linkhorn)
An alleged intellectually disabled person)
DOB: 11-03-74)

FILED

JAN 5 2012

PROBATE JUDGE
LEXINGTON COUNTY, SC

The undersigned respectfully shows to the Court:

1. That this Petition is filed pursuant to S.C Code Ann. §44-20-450 (Supp. 2010) and this Court has jurisdiction of this matter
- 2 That Rocky A Linkhorn is according to the information and belief of the undersigned, intellectually disabled and in need of the South Carolina Department of Disabilities and Special Needs services; and because of this condition, should be admitted to the jurisdiction of the South Carolina Department of Disabilities and Special Needs. The reasons for this belief are as follows: Mr. Linkhorn has been evaluated by both the South Carolina Department of Mental Health and South Carolina Department of Disabilities and Special Needs and it was determined that he is incompetent to stand trial and unlikely to become competent in the near future due to a lack of mental capacity (dementia). It was also determined that he has intellectual/cognitive deficits.
- 3 That the Petitioner has the following relationship with the allegedly intellectually disabled person. I am the Assistant Solicitor assigned to prosecute Mr. Linkhorn on a Criminal Sexual Conduct with a Minor-First Degree, Lewd Act, and Disseminating Obscene Material to a Minor.

*Dismissed in Probate Court based upon Circuit Court jurisdiction of this matter as confirmed with Solicitor's office.

4 That a diagnostic evaluation must be performed on the person alleged to have an intellectual disability by the South Carolina Department Disabilities and Special Needs to determine if the allegedly intellectually disabled person is intellectually disabled and is in need of placement in a facility or service program by the South Carolina Department of Disabilities and Special Needs.

5. That below are set out the names and address of those most interested in or closely related to the allegedly intellectually disabled person besides the Petitioner:

Name: Elizabeth Fullwood Relationship: Defense Attorney

Address: 407 1/2 West Main Street, Lexington, SC 29072

Phone (803) 785-8873

Name Rhonda Patterson Relationship: Assistant Solicitor

Address: 205 East Main Street Lexington, SC 29072

Phone: (803) 785-8234

WHEREFORE, the undersigned Petitioner prays that the Court inquire into the condition of said person and declare him/her to be intellectually disabled and in need of services from the South Carolina Department of Disabilities and Special Needs and order admission of him/her to the jurisdiction of the South Carolina Department of Disabilities and Special Needs as soon as necessary services are available

Dated: January 5, 2012

Lexington, South Carolina



Petitioner's Signature

205 East Main Street Lexington, SC 29072

Address

(803) 785-8234

Telephone Number

15969

South Carolina Bar Number

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The State of South Carolina,

vs.

ROCKY LINKHORN,
Defendant

) IN THE COURT OF GENERAL SESSIONS

) Indictment No(s) 2011-GS-32-0242, 243,244
) A/Warrant No(s) M301091,092,093

)
)
)
) MOTION FOR A RULE TO SHOW CAUSE
)
)
)

FILED

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2013 JAN -2 AM 10:43

This matter was before the Court pursuant to S. C. Code Ann. §44-23-430 (1976) for a hearing on the issue of Defendant's competence to stand trial

The Defendant is charged with Criminal Sexual Conduct with a Minor, Lewd Act Upon a Minor, and Disseminating Obscene Material to a Minor. Pursuant to a previous Court order, dated November 2, 2011, the Court found based upon the evidence presented at that hearing and documented in the previous Order that that Defendant was not competent to stand trial pursuant to South Carolina Code Ann 44-23-410, and further, that he was not likely to become competent in the foreseeable future. It was Ordered that the Solicitor responsible for the prosecution of Defendant initiate judicial proceedings pursuant to South Carolina Code Ann. 44-17-510 through 44-17-610

On November 7, 2011, the Solicitor initiated proceedings in Probate Court as directed. On December 12, 2011, the Probate Court dismissed the proceedings upon reading the report of the Designated Examiners finding that the Defendant was not mentally ill. There were indications that the Defendant may suffer from mental retardation and accordingly the Solicitor reinitiated proceedings in Probate Court to for the involuntary admission of a person with mental retardation or a related disability

On August 6, 2012, the Department of Disabilities and Special Needs filed a Motion to dismiss the petition for judicial admission stating the defendant does not have an intellectual disability and is not in need of services from the South Carolina Department of Disabilities and Special Needs.

The State moves that the South Carolina Department of Mental Health and the South Carolina Department of Disabilities and Special Needs be ruled into this Court to show just cause for services being denied to this defendant as previously ordered by this Court.

I SO MOVE.



Rhonda W. Patterson
Assistant Solicitor
Eleventh Judicial Circuit Solicitor's Office

January 2, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
The State South Carolina,)
vs.)
Rocky A. Linkhorn)
Defendant,)
_____)

IN THE COURT OF GENERAL SESSIONS
Indictment No(s): 2011-GS-32-0242; 243, 244
A/Warrant No(s): M301091; 092, 093

RETURN TO RULE ON BEHALF OF
SOUTH CAROLINA DEPARTMENT
OF MENTAL HEALTH

This case is before the Court on a Rule to Show Cause filed by the Solicitor's Office stating that the South Carolina Department of Mental Health be required to show cause why court ordered services are being denied to the defendant.

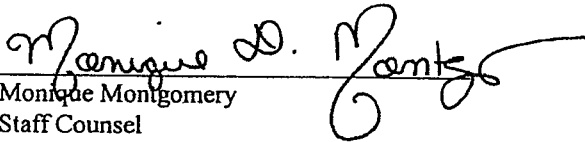
South Carolina Department of Mental Health replies to Rule in the Following:

1. South Carolina Department of Mental Health was ordered on June 21, 2011 to admit the Defendant for a 60 day inpatient admission for restoration of competency. That Order has been satisfied.
2. In review of the Department of Mental Health opinions / evaluations Rocky Linkhorn does not suffer from a mental illness for which the Department of Mental Health can provide services or treatment that would be beneficial to Mr. Linkhorn.
3. On December 12, 2011, the Probate Court dismissed the Judicial Proceedings initiated pursuant to South Carolina Code Ann. 44-17-510 through 44-17-610 after a finding that the Defendant was not mentally ill.
4. The Department of Disabilities and Special Needs has determined that Rocky A Linkhorn is eligible for case management services from the South Carolina Department of Disabilities and Special Needs Head and Spinal Cord Division South Carolina Code Ann. § 44-38-370.

WHEREFORE, based on the above and previous submitted evaluations and Orders the South Carolina Department of Mental Health respectfully requests that the Court determine that it is not the appropriate agency to provide services to this defendant.

Respectfully submitted,

August 19, 2013
Columbia, South Carolina


Monique Montgomery
Staff Counsel
South Carolina Department of Mental Health
P.O. Box 485
Columbia, S.C, 29202

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

The State of South Carolina.

vs

Rocky A. Linkhorn

Defendant,

(An alleged intellectually disabled person)

DOB: 11/03/74

IN THE COURT OF GENERAL SESSIONS
Indictment No(s): 2011-GS-32-0242; 243, 244
Warrant No(s): M301091; 092, 093

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC
TO RULE ON BEHALF OF
SOUTH CAROLINA DEPARTMENT OF
DISABILITIES AND SPECIAL NEEDS

This case is before the Court on a Rule to Show Cause filed by the Solicitor's Office stating that the South Carolina Department of Disabilities and Special Needs be required to show cause why court ordered services are being denied to the defendant.

South Carolina Department of Disabilities and Special Needs replies to Rule in the following

1. South Carolina Department of Disabilities and Special Needs was never ordered to provide services to the defendant by any court order
2. The Petition for Judicial Admission filed January 5, 2012 by the Solicitor's Office pursuant to the Amended Order of the General Sessions Court Order dated February 27, 2012 is still pending before the Probate Court of Lexington County (see attached)
General Sessions Court has no jurisdiction in this matter. The Motion to Dismiss filed August 8, 2012 by the South Carolina Department of Disabilities and Special Needs is also still pending before the Probate Court of Lexington County (see attached)
3. The Petition in the Probate Court seeks judicial admission pursuant to S.C. Code Ann. § 44-20-450(A) that permits the involuntary admission for a person with an intellectual disability or a related disability (see attached).

- 4 S C. Code Ann. § 44-20-450(D) states that if the diagnostic evaluation performed by the South Carolina Department of Disabilities and Special Needs does not find an intellectual disability or a related disability the Petition for Judicial Admission will be dismissed. A diagnostic evaluation was done pursuant to an order by the Probate Court dated January 18, 2012 (see attached).
5. Rocky A. Linkhorn has been determined eligible for case management services from the South Carolina Department of Disabilities and Special Needs Head and Spinal Cord Division pursuant to S.C Code Ann. § 44-38-370
6. Involuntary Admission is not permitted for persons under the Head and Spinal Court Division. S C Code Ann § 44-38-38 discusses functions of the delivery of services of this division

WHEREFORE, based on the above, the South Carolina Department of Disabilities and Special Needs respectfully requests this Rule to Show be dismissed.

Respectfully submitted,

July 29, 2013

Columbia, South Carolina


Tana Vanderbilt, General Counsel

South Carolina Department of Disabilities
and Special Needs
P.O. Box 4706
Columbia, SC 29240
Phone: (803) 898-9683
Fax: (803) 898-9656

FILED
2013 JUL 30 PM 2:19
BETH A. CARRIGG
CLERK OF COURT
FLEXINGTON SC

RECEIVED

JAN 20 2012

LEGAL SERVICES

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Rhonda W. Patterson)
PETITIONER)

IN THE PROBATE COURT
CASE NO.: 2012MH3200002

PETITION FOR JUDICIAL ADMISSION

IN THE MATTER OF:)
Rocky A. Linkhorn)
An alleged intellectually disabled person)
DOB: 11-03-74)

FILED

JAN 5 2012

PROBATE JUDGE
LEXINGTON COUNTY, SC

The undersigned respectfully shows to the Court:

1. That this Petition is filed pursuant to S.C. Code Ann. §44-20-450 (Supp. 2010) and this Court has jurisdiction of this matter.
2. That Rocky A. Linkhorn is according to the information and belief of the undersigned, intellectually disabled and in need of the South Carolina Department of Disabilities and Special Needs services; and because of this condition, should be admitted to the jurisdiction of the South Carolina Department of Disabilities and Special Needs. The reasons for this belief are as follows: Mr. Linkhorn has been evaluated by both the South Carolina Department of Mental Health and South Carolina Department of Disabilities and Special Needs and it was determined that he is incompetent to stand trial and unlikely to become competent in the near future due to a lack of mental capacity (dementia). It was also determined that he has intellectual/cognitive deficits.
3. That the Petitioner has the following relationship with the allegedly intellectually disabled person. I am the Assistant Solicitor assigned to prosecute Mr. Linkhorn on a Criminal Sexual Conduct with a Minor-First Degree, Lewd Act, and Disseminating Obscene Material to a Minor

4. That a diagnostic evaluation must be performed on the person alleged to have an intellectual disability by the South Carolina Department Disabilities and Special Needs to determine if the allegedly intellectually disabled person is intellectually disabled and is in need of placement in a facility or service program by the South Carolina Department of Disabilities and Special Needs.

5. That below are set out the names and address of those most interested in or closely related to the allegedly intellectually disabled person besides the Petitioner:

Name: Elizabeth Fullwood Relationship: Defense Attorney

Address: 407 ½ West Main Street, Lexington, SC 29072

Phone: (803) 785-8873

Name: Rhonda Patterson Relationship: Assistant Solicitor

Address: 205 East Main Street Lexington, SC 29072

Phone: (803) 785-8234

WHEREFORE, the undersigned Petitioner prays that the Court inquire into the condition of said person and declare him/her to be intellectually disabled and in need of services from the South Carolina Department of Disabilities and Special Needs and order admission of him/her to the jurisdiction of the South Carolina Department of Disabilities and Special Needs as soon as necessary services are available.

Dated: January 5, 2012

Lexington, South Carolina



Petitioner's Signature

205 East Main Street Lexington, SC 29072

Address

(803)785-8234

Telephone Number

15969

South Carolina Bar Number

*General Sessions Order following Blair Hearing on Defendant's Competence To Stand Trial
Finding Defendant Not Competent, and Not Likely to Become Competent §44-23-430(2)
Optional language for use if §44-23-430(3) hospitalization to restore competence is unsuccessful*

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF GENERAL SESSIONS

) Indictment No(s): 2011-GS-32-0242;
243;244

) A/Warrant No(s): M301091;092;093

FILED

FEB 28 2012

The State of South Carolina,

) AMENDED ORDER

) FINDING OF LACK OF

) COMPETENCE TO STAND TRIAL

) FOR THE FORESEEABLE FUTURE

) AND ORDERING

) PROBATE COMMITMENT PROCEEDINGS

PROBATE JUDGE
LEXINGTON COUNTY, S

vs.

ROCKY LINKHORN,
Defendant.

RECEIVED

MAR -6 2012

LEGAL SERVICES

This matter was before me pursuant to S. C. Code Ann. §44-23-430 (1976) for a hearing on the issue of Defendant's competence to stand trial.

Wpc
#1

The Defendant is charged with Criminal Sexual Conduct with a Minor, Lewd Act Upon a Minor, and Disseminating Obscene Material to a Minor. Pursuant to a previous Court order, dated November 2, 2011, I found based upon the evidence presented at that hearing and documented in the previous Order that that Defendant was not competent to stand trial pursuant to South Carolina Code. Ann 44-23-410, and further, that he was not likely to become competent in the foreseeable future. It was Ordered that Solicitor responsible for the prosecution of Defendant initiate judicial proceedings pursuant to South Carolina Code Ann. 44-17-510 through 44-17-610.

On November 7, 2011, the Solicitor initiated proceedings in Probate Court as directed. On December 12, 2011, the Probate Court dismissed the proceedings upon reading the report of the Designated Examiners finding that the Defendant was not

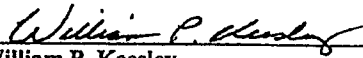
mentally ill There were indications that the Defendant may suffer from mental retardation and accordingly the Solicitor reinitiated proceedings in Probate Court to for the involuntary admission of a person with mental retardation or a related disability.

The Department of Disabilities and Special Needs has expressed concern that the original Order does not give them the authority to proceed as it did not mention Section 44-20-450.

ACCORDINGLY IT IS ORDERED, pursuant to S.C. Code Ann. §44-23-430(2), the Solicitor responsible for the prosecution of Defendant shall initiate judicial admission proceedings in the Lexington County Probate Court pursuant to S.C. Code Ann. §44-17-510 through §44-17-610 and/or §44-20-450 within fourteen (14) business days from the date of this Order.

IT IS SO ORDERED.

2


William P. Keesley
Presiding Judge
11th Judicial Circuit

Date: 2/27/12

RECEIVED

AUG 14 2012

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Rhonda W. Patterson,
Assistant Solicitor

Petitioner)

IN THE MATTER OF:

Rocky A. Linkhorn

(An alleged intellectually disabled person)

DOB: 11/03/74

LEGAL SERVICES IN THE PROBATE COURT
Case No.. 2012MH3200002

NOTICE and MOTION TO
DISMISS

FILED

AUG 3 2012

PROBATE JUDGE
LEXINGTON COUNTY, SC

TO:

Rhonda W. Patterson, Petitioner
Arthur E. White, Jr., Attorney for Mr. Linkhorn

Please take Notice, the South Carolina Department of Disabilities and Special Needs by and through its undersigned attorney, will move ten (10) days after service hereof or as soon thereafter as may be heard, for an Order pursuant to Rule 12 (b)(1)&(6) of the South Carolina Rules of Civil Procedure to dismiss the Petition for Judicial Admission received by the South Carolina Department of Disabilities and Special Needs on January 20, 2012, by regular mail. The South Carolina Department of Disabilities and Special Needs requests that this court dismiss the Petition. The grounds for this Motion are as follows:

1. The Diagnostic Evaluation found that Mr. Linkhorn does not have an intellectual disability and is not in need of services from the South Carolina Department of Disabilities and Special Needs.
2. The court has no jurisdiction to hear the case for commitment to the South Carolina Department of Disabilities and Special Needs as there is no indication of an intellectual disability (mental retardation).

A TRUE COPY:

ATTEST:

Peggy Backman
FOR Probate Judge, Lexington County, S. C.

1

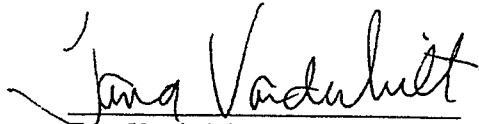
3. Pursuant to S.C. Code §44-20-490(1), the petition shall be dismissed.

Based on the above, the Petition for Judicial Admission must be dismissed.

Respectfully submitted,

August 6, 2012

Columbia, South Carolina


Tana Vanderbilt, General Counsel

South Carolina Department of Disabilities
and Special Needs
P.O. Box 4706
Columbia, SC 29240
Phone: (803) 898-9683
Fax: (803) 898-9656

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
Rhonda W. Patterson)
Assistant Solicitor)
PETITIONER)
)
IN THE MATTER OF:)
)
Rocky A. Linkhorn)
An alleged intellectually disabled person)
DOB: 11-03-74)

IN THE PROBATE COURT
CASE NO.. 2012MH3200002

ORDER FOR
DIAGNOSTIC EVALUATION

RECEIVED

JAN 20 2012

LEGAL SERVICES

A Petition for the Judicial Admission of Rocky A. Linkhorn has been filed in this Court. In accordance with S.C. Code Ann. §44-20-450 (Supp. 2011), a diagnostic report referred to in S.C. Code Ann. §44-20-390 (Supp. 2011) must be submitted to the Court at the hearing in this matter.

NOW, THEREFORE, IT IS ORDERED that a diagnostic evaluation be done by the South Carolina Department of Disabilities and Special Needs pursuant to S.C. Code Ann. §44-20-390 (Supp. 2011). The purpose of the diagnostic evaluation is to determine if Rocky A. Linkhorn is intellectually disabled and in need of services from the South Carolina Department of Disabilities and Special Needs. South Carolina Department of Disabilities and Special Needs will file the diagnostic report with the Court upon completion of the evaluation.

AND IT IS SO ORDERED.

Date January 18, 2012

Lexington, South Carolina

Daniel R. Eckstrom
Judge of Probate Court PB

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICECOMPETENCE TO STAND TRIAL EVALUATIONName: LINKHORN, RockySCDMH#: 981-0170Date of Birth: [REDACTED]Dates of Evaluation: 03/02/11 and 05/11/11

Evaluators: Marla L. Domuno, Ph.D. (SCDMH examiner on 03/02/2011 & 05/11/11)
Monica Wright, Psy.D. (SCDDSN examiner on 05/11/11)
Carol M. David, LISW-CP (SCDMH second examiner on 03/02/2011)

Identifying & Referral Data: Mr. Rocky Linkhorn was ordered by the Lexington County Court of General Sessions to undergo an evaluation of his competence to stand trial because, "... the defendant has a history of mental health problems." According to that court order, Mr. Linkhorn is currently charged with Criminal Sexual Conduct with a Minor or Attempt - Victim Under 11 years of Age - First Degree, Obscene/Disseminating Obscene Material to a Minor 12 Years or Younger, and Sex/Lewd Act - Committing or Attempting Lewd Act Upon a Child Under 16. He is waiting adjudication of these charges at the Lexington County Detention Center.

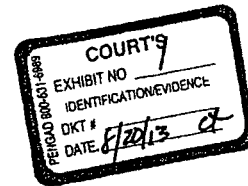
Mr. Linkhorn was originally seen by the above South Carolina Department of Mental Health (SCDMH) evaluators on 03/02/11 for an evaluation of his competence to stand trial. Because of indications of both mental illness and intellectual/cognitive deficits, a joint evaluation was requested with the South Carolina Department of Disabilities and Special Needs (SCDDSN) and was conducted today (05/11/11). SCDDSN evaluator, Dr. Wright, has had the opportunity to review this report and concurs with the forensic opinion(s) and diagnoses contained, herein.

Sources of Information:

1. Interviews with Mr. Linkhorn on 03/02/11 and 05/11/11 for a total of approximately 3 hours 15 minutes.
2. State of South Carolina, County of Lexington, Court of General Sessions, Order for Competency to Stand Trial Evaluation Pursuant to *State v. Blair* (received 02/11/11)
3. State of South Carolina, County of Lexington, Order for Criminal Responsibility and Capacity to Conform Evaluation (M'Naughten), received 02/11/11
4. Review of Mr. Linkhorn's current SCDMH Forensic Evaluation Service outpatient chart.
5. Information pertaining to Mr. Linkhorn's current charges including:
 - a. Arrest Warrants M-301091, M-301093, and M-301092
 - b. Lexington County Sheriff's Department Case File Checklist, Case File Summary,

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

Page 1 of 8

LINKHORN, Rocky
#981-0170

- Incident Report, Supplemental Incident Report, Investigative Reports, Supplemental Reports, Crime Scene Report, and Crime Scene Sign-In Log (case#10064996)
- c. Medical records of the alleged victim (Lexington Medical Center, dated 07/14/10 – 07/15/10)
 - d. South Carolina Law Enforcement Division Sexual Assault Examination Protocol (dated 07/14/10)
 - e. South Carolina Department of Health and Environmental Control Patient Care Form (dated 07/14/10)
 - f. CAD Incident Report (dated 07/14/10; mostly unreadable due to poor copy)
 - g. News Release from the Lexington County Sheriff James R. Metts, Ed.D. (dated 07/16/10)
 - h. Search Warrant & Return
 - i. Affidavit
 - j. Voluntary Statements by PFC Erin Johnson, Owen Linkhorn, Felicia Linkhorn, and Rocky Linkhorn
 - k. Lexington County Sheriffs [sic] Office Booking Forms
 - l. South Carolina Department of Motor Vehicles 10 Year Driver Record for Mr. Linkhorn
6. Mr. Linkhorn's adult criminal record (NCIC).
 7. Correctional Care Services and Lexington County Detention Center records (dated 07/27/10 – 02/16/11).
 8. William S. Hall Psychiatric Institute records (dates of admission: 03/18/98 – 04/09/98).
 9. Columbia Area Mental Health Center record (dated 11/09/00).
 10. CHESCO Services records (dated 01/03/2000 – 05/19/00).

Limits on Confidentiality: At the outset of each evaluation, Mr. Linkhorn was notified of these examiners' role, the purpose of this evaluation, and the limits on confidentiality. Upon inquiry, he exhibited a poor understanding of this information. Presented here are Mr. Linkhorn's responses during today's interview, on 05/11/11. Specifically, despite educative efforts, he was unaware who ordered this evaluation and several times indicated its purpose as "to find out if I'm retarded." While he identified this exam as confidential, after considerable prompting and referencing an information sheet, he indicated "the judge .. solicitor and the lawyer" would receive a copy of the resulting report. He suggested these examiners to be his advocates and was provided corrective information. He declined an offer to telephone his attorney prior to initiating this exam. He voluntarily signed an information form about this evaluation and indicated a willingness to proceed.

Personal History: According to Mr. Linkhorn, he was born in Daytona, Florida (FL), and raised in New Smyrna Beach, FL, by his biological mother. He described his childhood as "average" and denied abuse.

Per his report, he terminated his formal education during the 8th grade "because I met a woman" who later became his common-law wife. He reported variable grades, repetition of the

second grade, and placement in classes for "disobedient kids"; he acknowledged multiple suspensions throughout his schooling primarily for fighting with peers. Mr. Linkhorn's mother informed SCDMH staff in 1998 that Mr. Linkhorn enjoyed school and attended mainstream classes. CHESCO Services records reflect a Verbal IQ score of 55 (mild to moderate mental retardation range), a Performance IQ score of 75 (borderline range), and a Full IQ score of 61 (mild mental retardation range, WASI) administered in May 2000 when Mr. Linkhorn was 25-years-old. Those records also indicate that Mr. Linkhorn's mother reported her son to be a "slow learner" with C-average grades. During today's exam, Mr. Linkhorn reported past employment primarily in construction and denied military service and receipt of disability. ✓

When asked about his substance use history, Mr. Linkhorn reported consuming alcohol starting at age 19 years and currently drinks less than a 12-pack of beer per month; he denied symptoms of abuse or dependence although later in the exam admitted to incurring a DUI. William S. Hall Psychiatric Institute (WSHPI) records indicate that in 1998, he reported a 15-year use of marijuana and a 12-year use of alcohol. During today's exam, Mr. Linkhorn acknowledged recent use of marijuana and crack-cocaine, but denied symptoms of abuse or dependence.

Regarding his medical history, Mr. Linkhorn denied all medical problems and illnesses, barring asthma, surgery on his eye, and deficits related to an anoxic brain injury. Specifically, available records WSHPI records indicate Mr. Linkhorn was admitted to that facility in March 1998 after attempting suicide via hanging while in jail. Per those records, Mr. Linkhorn was unable to speak, walk, or swallow, and had minimal motor control as a result; he was transferred to the SCDMH's Byrnes unit for medical treatment, and readmitted to WSHPI on 03/27/98 at which time he had regained those abilities. Those records refer to past treatment at Lexington Medical Center for a suicide attempt at an unspecified date. Records from the Columbia Area Mental Health Center document one date of contact (11/09/00) when Mr. Linkhorn requested medication refills of Haldol (antipsychotic), Risperdal (antipsychotic) and Cogentin (for medication side effects); a diagnosis of dementia secondary to brain damage was assigned. ✓

When asked about his psychiatric history, Mr. Linkhorn denied experience with any related symptoms (e.g., psychosis, mood disorders) or mental health treatment. When asked about the 1998 hanging incident and subsequent psychiatric admission (mentioned above), Mr. Linkhorn responded, "That I wouldn't know of" and denied memory for the event. Regarding if he has ever felt depressed, he responded, "I must have, for trying to kill myself" although was unable to recall experiencing related symptoms. As he has past clinicians, Mr. Linkhorn asserted that he has not slept since he was 19 years of age, explaining that he knows he does not sleep because no one wakes him. He reported others (e.g., his cellmates) have told him otherwise, noting, "I think they're full of crap." He likewise reported a fear of falling asleep and having a reoccurring dream of his (former) wife cheating on him. Mr. Linkhorn also asserted a belief that his current age is "19" and frequently answered "19" to various questions and when asked his age at the time of significant life events. He denied symptoms suggestive of pedophilia. JFM

Records generated during his current incarceration indicate Mr. Linkhorn appears "vulnerable to influences of others," is very concrete, and complains of poor sleep. While in jail, per records, he has also endorsed suicidal thoughts because "suicide would get him out of trouble" and homicidal intentions towards the alleged victims. Those records reflect his current diagnoses to include personality change due to anoxic brain injury, borderline intellectual functioning, alcohol dependence in full sustained remission, polysubstance abuse versus dependence in full sustained remission, cognitive disorder secondary to anoxic brain injury, "sleep perception disorder likely secondary to brain injury," and personality disorder, not otherwise specified; he has been prescribed Remeron (antidepressant).

Current Mental Status: The following responses and observations pertain to the present exam, on 05/11/11, unless otherwise noted. A mental status examination performed today revealed a 36-year-old, Caucasian male who presented with adequate, personal hygiene and clean clothes. No auditory, visual, or motor abnormalities were noted. He exhibited good eye contact and his use of mannerisms and gestures was within normal limits. He was cooperative with the evaluation.

Mr. Linkhorn did not exhibit significant deficits in his immediate memory, attention, or concentration. He had difficulty recalling the details of significant life events and two of three words after a 12-minute delay, even with cues, suggesting deficits in his recent and long-term memory abilities. Mr. Linkhorn identified the month after March as "May" and could not name the current U.S. President, indicating deficits in his general fund of knowledge. He stated an inability to interpret one proverb and interpreted another proverb by repeating it back; this, coupled with his difficulty identifying the commonalities between objects, suggests deficits in his ability to think in the abstract.

Although oriented to his situation, Mr. Linkhorn identified the date as "April ... 2006" [05/11/11], the current day of the week to be "Sunday" [Wednesday], his location to be "Lexington" [Columbia], and the approximate time to be "close to lunchtime" [9:45am]. He identified his age as "46" although, as in the last exam, reported a belief that he is "19"; in a previous exam, he explained this to be because he has not had a birthday [celebration] since his 19th birthday. Mr. Linkhorn's speech was clear, of normal volume, and of slow to average rate. He presented with goal-directed, concrete, and linear thinking.

When asked, Mr. Linkhorn described his current mood as "calm" and his typical mood as "tired," explaining (as he did in a previous exam) that he has not slept since he was 19 years of age. He denied current thoughts of wanting to hurt himself or others, although acknowledged general thoughts of wanting to die secondary to fatigue. He characterized his energy and appetite in positive terms. During today's exam, Mr. Linkhorn's affect [observed emotional expression] appeared consistent and within normal limits. He denied current symptoms of mood disturbance (e.g., depression) or psychosis (e.g., hearing voices) and no overt signs of such were observed. He reported a current prescription for a sleep aid.

Diagnostic Impressions: Based on the available data, it appears that Mr. Linkhorn's symptoms are best characterized by a diagnosis of dementia due to other general medical conditions (anoxic brain injury). Dementia describes an individual who suffers from memory impairment and other cognitive disturbances (e.g., language disturbance, difficulty identifying objects, problems with executive functioning), that represents a significant decline from previous functioning and cause substantial impairment in ability to function in the social and occupational realms. The "due to other general medical conditions" indicates that a general medical condition is etiologically related to the associated deficits and symptoms. Namely, Mr. Linkhorn presents with a number of cognitive deficits (e.g., memory difficulties, learning problems, concrete thinking, and problems with executive functioning) related to an anoxic brain injury he suffered in 1998. Available data do not support a diagnosis of mild mental retardation.

Although available records reveal that Mr. Linkhorn has been frequently diagnosed with personality change due to this brain injury, there is no evidence available to these examiners (e.g., from family) to suggest his personality was significantly altered after this event. In addition, although he has expressed suicidal thoughts during his current incarceration, and may have exhibited a suicidal gesture prior to his 1998 attempt, this appears to be the manifestation of poor coping skills (e.g., believes "suicide would get him out of trouble") rather than indicative of a mental illness (e.g., depression); available records do not provide sufficient evidence of a past history of a mood disorder. Likewise, although there is some suggestion from mental health center records that Mr. Linkhorn may have exhibited psychosis (as is implied from his reported prescriptions of two antipsychotic medications in 2000), and he expressed several odd beliefs during today's exam (e.g., that he is 19 years old), these appear to be the consequence of his brain injury and resulting concrete thinking, and is not suggestive of psychosis. Moreover, when questioned about these assertions, Mr. Linkhorn was able to consider alternative opinions (e.g., that he is in his 30s), thus providing evidence that these beliefs do not reach the level of delusions [false, fixed beliefs].

Information Relevant to Competence to Stand Trial: Pursuant to S.C. Code Ann. §44-23-410, the legal criteria for determining fitness (competence) to stand trial is as follows: "[a person] is not fit to stand trial because the person lacks the capacity to understand the proceedings against him [her] or to assist in his [her] own defense as a result of a lack of mental capacity ..."

According to Mr. Linkhorn, he is currently charged with "rape." He was provided education regarding the names of his charges and when asked later in the exam, stated he has "three" charges but could not recall their names. Per his account, these charges allegedly occurred "January 19th" of an unknown year, although Mr. Linkhorn reported being incarcerated for "six months." He provided a brief, logical account of what he is accused of doing to warrant his charges and identified the alleged victim by name; he then commented, "Damn! I wish I could remember the names of those kids who got me into this mess," referring to two, alleged witnesses. Mr. Linkhorn provided vague definitions of his charges, indicating a general understanding of their meanings, although appeared embarrassed to elaborate further. He

noted the alleged behaviors to be considered illegal, "Because if a woman don't want to have sex with you." When asked why sexual activities between a child and adult are illegal, he responded that the child could become pregnant. He also suggested that a child of five years of age is able to consent to sexual activity with an adult.

According to Mr. Linkhorn, his charges are serious "because I'm locked up." When asked why others may think his charges are serious, he responded, "They don't" and provided a simplistic reason for this assertion. After education, and when asked later in the exam, he identified his charges as "felonies" and noted the more serious of the two charges to be "not the misdemeanor one." He was unaware of the maximum penalties for his charges and stated, "I would ask my lawyer but I never talk to him." He indicated "if I had sex with her" to be a charge more serious, and "driving without a license" to be a charge less serious, than his own.

When asked, Mr. Linkhorn identified "my lawyer, the judge and you guys ... my sister ... that little girl [the alleged victim]" as individuals typically present in a courtroom; he identified himself as the defendant. According to Mr. Linkhorn, "my lawyer" is his advocate whose job is "protecting me, defending me," although was unable to say how, and to obtain a "not guilty" verdict in a trial. He acknowledged an ability to reject his attorney's advice but voiced a desire to follow counsel's recommendations "to get out of trouble." Mr. Linkhorn identified his attorney as "Casey Cornwell" and stated they have met once. When asked of his impressions of counsel, Mr. Linkhorn stated "I don't want to talk to him again," citing lack of communication as his primary complaint. He expects his lawyer to "get me out of this mess," although did not know how, and can "do what I'm doing now" [cooperating in the present exam] to help counsel in this regard.

Although he indicated the prosecutor is "against you," even after education about the solicitor, Mr. Linkhorn was unable to recall any information about the solicitor's job (e.g., stated the solicitor represents "you" and wants a verdict of "innocent" in a trial). He identified the "judge" as in charge of the courtroom, noting, "He's the one who sentences you ... [he is] on his own [side] until he rules."

Should he wish to proceed to trial, Mr. Linkhorn asserted he would have to plead "guilty," even after repeated education. Per his account, the jury "helps the judge [decide] if you're guilty or innocent ... they vote on it", despite education, Mr. Linkhorn later stated the jury is on the defendant's side. He noted there to be "12" jurors on a jury and was provided information about a jury's unanimity. If found not guilty in a trial, per his account, the defendant goes "back home" and if found guilty, "they stay in jail" for a sentence length determined by "the judge." He acknowledged probation as a possible penalty when suggested and provided one example of a probationary condition ("you're not allowed to smoke drugs") which an individual will "get back in jail" for violating. He was provided information about the role of a witness. Mr. Linkhorn defined evidence as "It means, do you have anything against me?" and provided an example of possible evidence in his own case.

Mr. Linkhorn was given several explanations about plea bargaining but, when asked to recall this information later in the exam, stated, "I wouldn't know that one, either." He acknowledged hearing of a plea relating to mental illness (Not Guilty by Reason of Insanity) indicating that a fellow inmate told him "that it'd be good."

Mr. Linkhorn was asked to comment on several hypothetical situations that might arise during the adjudication of his charges. For example, if confused at any time during courtroom proceedings, Mr. Linkhorn stated the defendant should "ask ... your lawyer." If a witness lied about him in court, Mr. Linkhorn stated a defendant should "tell your lawyer" but was unable to identify what counsel could do. Should the solicitor approach him in the absence of his attorney, Mr. Linkhorn stated he would "Tell him to hold on, wait a minute ... because I need him [his lawyer] there [to] help me." Per Mr. Linkhorn's account, people in court should behave "not guilty" and was provided information about a contempt of court charge.

In discussing his case today, Mr. Linkhorn voiced a plea preference but was unable to support this choice with logical reasoning. He did appear motivated to resolve his charges.

Clinical Impressions Regarding Competence to Stand Trial: As noted, Mr. Linkhorn's symptoms appear to be best characterized by a diagnosis of dementia due to other general medical conditions (anoxic brain injury). Based on the available data, it appears Mr. Linkhorn currently lacks the capacity to understand the proceedings against him and to assist in his own defense as a result of a lack of mental capacity.

During today's exam, Mr. Linkhorn's thought processes and speech were logical, coherent, and organized, indicating he should have no difficulties communicating rationally with his attorney. His responses to hypothetical situations indicate he would be able to utilize counsel effectively should he become confused or distressed with legal proceedings. He acknowledged appropriate courtroom behavior and his demeanor during today's exam suggests he would be able to exhibit such behavior in the courtroom and attend adequately to related proceedings. His presentation during today's evaluation indicated Mr. Linkhorn would likely testify coherently, should his case proceed to trial. At no time did Mr. Linkhorn demonstrate any delusional beliefs about legal processes and/or members of the Court.

Despite the above abilities, the current exam revealed a number of deficits in Mr. Linkhorn's factual knowledge of the legal system. Although he was provided corrective education, many times he appeared to have difficulty understanding, retaining, recalling and applying this newly learned information; these memory difficulties are likely the consequences of dementia and would be expected to inhibit Mr. L's ability to retain and utilize at least some of any new information provided to him by his attorney. His limited and simplistic understanding of the seriousness of his charges and why the alleged behaviors are illegal may also impede his ability to rationally consider various legal strategies (e.g., a plea bargain).

In summary, based on the above data, it is our clinical opinion that Mr Linkhorn is evidencing current symptoms of a mental illness that is significantly compromising his present capacity to understand the proceedings against him or to assist in his own defense. In addition, it is our clinical opinion that it is likely some of Mr Linkhorn's deficits as outlined above could improve, if provided appropriate psychological and/or psychiatric treatment in a structured, inpatient setting.

In accordance with South Carolina Code of Law §44-23-430, should the Court adjudicate Mr. Linkhorn as "competent [fit] to stand trial," it shall order the criminal proceedings resumed. Should the Court find Mr. Linkhorn "not competent [fit] to stand trial," it is recommended he be court-ordered for hospitalization in the Forensic Division of the Department of Mental Health for 60 days in order to help him attain competence. If the Court orders Mr. Linkhorn to be hospitalized, it is requested that the order be forwarded immediately to the Forensic Evaluation Service so he can be placed on the waiting list for admission.

Recommendations: It should be noted that Mr. Linkhorn stated that if found guilty of the present offenses he would attempt to kill himself by "stickin' my head in the toilet." While he denied current suicidal thoughts, it is recommended that, should Mr. Linkhorn be adjudicated guilty, he be assessed immediately by the appropriate mental health personnel.


Marjia L. Domino, Ph.D.
Licensed Clinical Psychologist

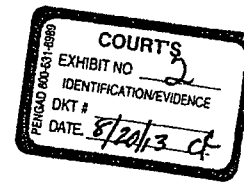
05/17/2011
Date



Columbia Behavioral Health System
Forensic Center
7901 Farrow Road
Columbia, South Carolina 29203
Information: (803) 935-5600
FAX: (803) 935-5544

March 16, 2011

Casey D. Cornwell, Esq.
407 ½ W. Main St.
Lexington, SC 29072



Re: The State of South Carolina v Rocky Linkhorn
DMH Case #981-0170
Lexington County, Court of General Sessions

Dear Attorney Rocky Linkhorn,

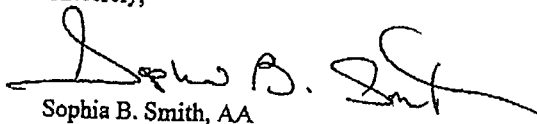
In accordance with the court order issued by the Honorable R. Ferrell Cochran Jr., a forensic evaluation was initiated by the Forensic Evaluation Service (FES) of the Department of Mental Health (DMH). However, no report can be issued at this time due to the following:

1. ☐ The defendant, who is in custody, was not transported by law enforcement for the first scheduled appointment. The defense attorney should confirm the defendant's transportation arrangements for the next scheduled appointment.
2. ☐ The defendant, who is in custody, was not transported by law enforcement for the second scheduled appointment. The defense attorney must contact the DMH-FES within 15 days of the date of this letter in order to have the evaluation process resumed.
3. ☐ The defendant, who is not in custody, failed to appear for the first scheduled appointment. The defense attorney should confirm the defendant's transportation arrangements for the next scheduled appointment. As provided for in the court order, if the defendant fails to meet this next appointment, he or she will be taken into custody in order to complete the evaluation.
4. ☐ The defendant refused to cooperate due to desire to not participate, to speak with attorney, or to have attorney present for the interview process. The defense attorney must contact the DMH-FES within 15 days of the date of this letter in order to have the evaluation process resumed.

- 5 ☐ A 15 day extension is needed to complete the evaluation.
- 6 ☐ The defendant needed emergency hospitalization. The DMH-FES arranged this.
- 7 ☒ The defendant needs a joint evaluation with the Department of Disabilities and Special Needs. The DMH-FES will arrange this.
- 8 ☐ The defendant needs a 15-30 day period of inpatient evaluation. The DMH-FES will arrange this.
- 9 ☐ The forensic examiner needs a psychological or medical consultation on the defendant. The DMH-FES will arrange this.
- 10 ☐ Other:

As noted above, if no report can be issued due to reason number 2 or 3, the defense attorney must contact the DMH-FES within 15 days of the date of this letter in order to have the evaluation process resumed. To have the process resumed, please contact Ms. Sophia Smith (803-935-5600). If after 15 days no contact has been made, the Court will be notified that the evaluation cannot be completed due to reason 2 or 3. If no report can presently be issued for a reason(s) other than number 2 or 3, the DMH-FES will continue the evaluation process and no action on your part is necessary.

Sincerely,


Sophia B. Smith, AA

cc: Rhonda Patterson, Sol.
Melinda Fair, DDSN

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICECOMPETENCE TO STAND TRIAL EVALUATION (Restoration)

Name: LINKHORN, Rocky

SCDMH#: 981-0170

Date of Birth: [REDACTED]

Dates of Evaluation: 03/02/11, 05/11/11, and 10/13/11

Evaluators: Marla L. Domino, Ph.D. (SCDMH examiner on 03/02/11, 05/11/11, & 10/13/11)
Monica Wright, Psy.D. (SCDDSN examiner on 05/11/11 & 10/13/11)
Carol M. David, LISW-CP (SCDMH second examiner on 03/02/2011)

Identifying & Referral Data: Mr. Rocky Linkhorn was ordered by the Lexington County Court of General Sessions to undergo an evaluation of his competence to stand trial because, "... the defendant has a history of mental health problems." According to that court order, Mr. Linkhorn is currently charged with Criminal Sexual Conduct with a Minor or Attempt - Victim Under 11 years of Age - First Degree, Obscene/Disseminating Obscene Material to a Minor 12 Years or Younger, and Sex/Lewd Act - Committing or Attempting Lewd Act Upon a Child Under 16.

Mr. Linkhorn was initially seen by the above South Carolina Department of Mental Health (SCDMH) evaluators on 03/02/11 for an evaluation of his competence to stand trial. Because of indications of both mental illness and intellectual/cognitive deficits, a joint evaluation was requested with the South Carolina Department of Disabilities and Special Needs (SCDDSN) and was conducted on 05/11/11 with SCDDSN evaluator, Dr. Monica Wright. At that time, it was the opinion of those examiners that Mr. Linkhorn lacked the capacity to understand the proceedings against him and to assist in his own defense as a result of a lack of mental capacity (dementia due to anoxic brain injury). He was subsequently adjudicated as incompetent to stand trial by the Lexington County Court and was ordered for up to 60 days of treatment and competency restoration at the SCDMH; Mr. Linkhorn was admitted on 08/18/11. The present exam is a reassessment of those abilities considered relevant to competency to stand trial towards the end of that 60-day period.

It should be noted that Dr. Wright has had the opportunity to review this report and concurs with the forensic opinion(s) and diagnoses contained, herein.

JEM

Sources of Information.

1. Interviews with Mr. Linkhorn on 03/02/11, 05/11/11, and 10/13/11, for a total of approximately 4 hours 30 minutes.
2. State of South Carolina, County of Lexington, Court of General Sessions, Finding of Present Lack of Competence to Stand Trial but Likely to Become Competent with Treatment, Order of Commitment up to Sixty Days (received 07/19/11).
3. State of South Carolina, County of Lexington, Court of General Sessions, Order for Competency to Stand Trial Evaluation Pursuant to *State v Blair* (received 02/11/11).
4. State of South Carolina, County of Lexington, Order for Criminal Responsibility and Capacity to Conform Evaluation (M'Naughten), received 02/11/11.
5. Review of Mr. Linkhorn's current SCDMH Forensic Evaluation Service outpatient chart.
6. Review of Mr. Linkhorn's current SCDMH Forensic Evaluation Service inpatient chart (date of admission: 08/18/11).
7. Information pertaining to Mr. Linkhorn's current charges including:
 - a. Arrest Warrants M-301091, M-301093, and M-301092
 - b. Lexington County Sheriff's Department Case File Checklist, Case File Summary, Incident Report, Supplemental Incident Report, Investigative Reports, Supplemental Reports, Crime Scene Report, and Crime Scene Sign-In Log (case#10064996)
 - c. Medical records of the alleged victim (Lexington Medical Center, dated 07/14/10 - 07/15/10)
 - d. South Carolina Law Enforcement Division Sexual Assault Examination Protocol (dated 07/14/10)
 - e. South Carolina Department of Health and Environmental Control Patient Care Form (dated 07/14/10)
 - f. CAD Incident Report (dated 07/14/10, mostly unreadable due to poor copy)
 - g. News Release from the Lexington County Sheriff James R Metts, Ed.D. (dated 07/16/10)
 - h. Search Warrant & Return
 - i. Affidavit
 - j. Voluntary Statements by PFC Erin Johnson, Owen Linkhorn, Felicia Linkhorn, and Rocky Linkhorn
 - k. Lexington County Sheriffs [sic] Office Booking Forms
 - l. South Carolina Department of Motor Vehicles 10 Year Driver Record for Mr. Linkhorn
8. Mr. Linkhorn's adult criminal record (NCIC).
9. Correctional Care Services and Lexington County Detention Center records (dated 07/27/10 - 02/16/11).
10. William S. Hall Psychiatric Institute records (dates of admission 03/18/98 - 04/09/98)
11. Columbia Area Mental Health Center record (dated 11/09/00)
12. CHESCO Services records (dated 01/03/2000 - 05/19/00).

Limits on Confidentiality: At the outset of each evaluation, Mr. Linkhorn was notified of these examiners' role, the purpose of this evaluation, and the limits on confidentiality. Upon inquiry, he exhibited an adequate understanding of this information. Presented here are Mr. Linkhorn's responses during today's interview, on 10/13/11. Specifically, despite educative efforts, he initially stated this evaluation was ordered by "mental health," but then amended this response to "the judge." After education, he indicated its purpose was to determine "if I'm capable of standing trial." After prompting, he stated "my lawyer, the solicitor and the judge" to be recipients of the resulting report. As in previous exams, Mr. Linkhorn suggested these examiners to be his advocates and was provided corrective information. He declined an offer to telephone his attorney prior to initiating this exam. He voluntarily signed an information form about this evaluation and indicated a willingness to proceed.

Personal History: According to Mr. Linkhorn, he was born in Daytona, Florida (FL), and raised in New Smyrna Beach, FL, by his biological mother. He described his childhood as "average" and denied abuse.

Per his report, he terminated his formal education during the 8th grade "because I met a woman" who later became his common-law wife. He reported variable grades, repetition of the second grade, and placement in classes for "disobedient kids"; he acknowledged multiple suspensions throughout his schooling primarily for fighting with peers. Mr. Linkhorn's mother informed SCDMH staff in 1998 that Mr. Linkhorn enjoyed school and attended mainstream classes. CHESCO Services records reflect a Verbal IQ score of 55 (mild to moderate mental retardation range), a Performance IQ score of 75 (borderline range), and a Full IQ score of 61 (mild mental retardation range; WASI) administered in May 2000 when Mr. Linkhorn was 25-years-old. Those records also indicate that Mr. Linkhorn's mother reported her son to be a "slow learner" with C-average grades. During today's exam, Mr. Linkhorn reported past employment primarily in construction and denied military service and receipt of disability.

When asked about his substance use history, Mr. Linkhorn reported consuming alcohol starting at age 19 years and currently drinks less than a 12-pack of beer per month; he denied symptoms of abuse or dependence although later in the exam admitted to incurring a DUI. William S. Hall Psychiatric Institute (WSHPI) records indicate that in 1998, he reported a 15-year use of marijuana and a 12-year use of alcohol. During today's exam, Mr. Linkhorn acknowledged recent use of marijuana and crack-cocaine, but denied symptoms of abuse or dependence.

Regarding his medical history, Mr. Linkhorn denied all medical problems and illnesses, barring asthma, surgery on his eye, and deficits related to an anoxic brain injury. Specifically, available records WSHPI records indicate Mr. Linkhorn was admitted to that facility in March 1998 after attempting suicide via hanging while in jail. Per those records, Mr. Linkhorn was unable to speak, walk, or swallow, and had minimal motor control as a result; he was transferred to the SCDMH's Byrnes unit for medical treatment, and readmitted to WSHPI on 03/27/98 at which time he had regained those abilities. Those records refer to past treatment at Lexington Medical Center for a suicide attempt at an unspecified date. Records from the Columbia Area Mental

Health Center document one date of contact (11/09/00) when Mr Linkhorn requested medication refills of Haldol (antipsychotic), Risperdal (antipsychotic) and Cogentin (for medication side effects); a diagnosis of dementia secondary to brain damage was assigned.

When asked about his psychiatric history, Mr. Linkhorn denied experience with any related symptoms (e.g., psychosis, mood disorders) or mental health treatment. When asked about the 1998 hanging incident and subsequent psychiatric admission (mentioned above), Mr. Linkhorn responded, "That I wouldn't know of" and denied memory for the event. Regarding if he has ever felt depressed, he responded, "I must have, for trying to kill myself" although was unable to recall experiencing related symptoms. As he has to past clinicians, Mr. Linkhorn asserted that he has not slept since he was 19 years of age, explaining that he knows he does not sleep because no one wakes him. He reported others (e.g., his cellmates) have told him otherwise, noting, "I think they're full of crap." He likewise reported a fear of falling asleep and having a reoccurring dream of his (former) wife cheating on him. Mr. Linkhorn also asserted a belief that his current age is "19" and frequently answered "19" to various questions and when asked his age at the time of significant life events. He denied symptoms suggestive of pedophilia.

Records generated during his recent incarceration indicate Mr. Linkhorn appears "vulnerable to influences of others," is very concrete, and complains of poor sleep. While in jail, per records, he has also endorsed suicidal thoughts because "suicide would get him out of trouble" and homicidal intentions towards the alleged victims. Those records reflect recent diagnoses of personality change due to anoxic brain injury, borderline intellectual functioning, alcohol dependence in full sustained remission, polysubstance abuse versus dependence in full sustained remission, cognitive disorder secondary to anoxic brain injury, "sleep perception disorder likely secondary to brain injury," and personality disorder, not otherwise specified; he has been prescribed Remeron (antidepressant).

Course of Hospitalization. On 08/18/11, Mr. Linkhorn was admitted to the inpatient, forensic unit of the SCDMH after adjudicated as incompetent to stand trial by the Lexington County Court. Throughout that admission, per his inpatient chart, Mr. Linkhorn has been described as pleasant, cooperative, medication compliant, inappropriately smiling, and "somewhat friendly but with an odd, vacuous expression." It is noted he has complained of insomnia with no objective observations of such. His current inpatient chart indicates that, despite repeated educative efforts by his treatment staff and in competency restoration groups, Mr. Linkhorn has been unable to retain information related to the court system and his charges (e.g., he is unable to parrot back the names of his charges, why the alleged behavior is considered illegal). He was given a prescription of Amantadine (antiviral and antiparkinsonian medication) with no benefit. His diagnoses are listed as dementia (or cognitive disorder) secondary to anoxic brain injury and cannabis dependence.

Current Mental Status: The following responses and observations pertain to the present exam, on 10/13/11, unless otherwise noted. A mental status examination performed today revealed a 36-year-old, Caucasian male who presented with adequate, personal hygiene and clean clothes.

No auditory, visual, or motor abnormalities were noted. He exhibited good eye contact and his use of mannerisms and gestures was within normal limits, although Mr Linkhorn had a tendency to look down in his lap when he did not know an answer. He was cooperative with the evaluation.

Mr. Linkhorn did not exhibit significant deficits in his attention or concentration. He was unable to immediately repeat one of three words, identifying this last word to be "Vaseline - that's wrong, that's what I need for my arm." He recalled all three of these words after a seven-minute delay, with cues. As previously, Mr. Linkhorn identified the month after March to be "May" and could not name the current U.S. President (and stated him to be "white"), indicating deficits in his general fund of knowledge. His literal translation of a proverb and difficulty identifying the commonalities between objects, suggested deficits in his ability to think in the abstract.

Although oriented to his situation, month, time, and state, Mr. Linkhorn identified the year as "2010, I guess" [2011], the current day of the week to be "Tuesday" [Thursday] and his location to be "Lexington County" [Columbia]. He identified his age as "49" [36]; in the last exam, he stated his age to be "46" although then reported a belief that he is "19" which he had previously explained was because he has not had a birthday [celebration] since his 19th birthday. Mr. Linkhorn's speech was clear, of normal volume, and of slow to average rate. He presented with very concrete thinking and was frequently slow to respond, suggesting delays in his ability to process information. He also showed a tendency to provide answers he believes are appropriate, which he is unable to support or elaborate on when asked. Unlike before, Mr. Linkhorn would on occasion interject with irrelevant statements. For example, when discussing the nature of the accusations against him, he spontaneously stated "the one thing I want is the address" (of his aunt's neighbors), who he is planning on living with when/if released.

When asked, Mr. Linkhorn described his current mood as "average, but tired ... I haven't slept since I was 19" and his typical mood as "average ... happy." He denied current thoughts of wanting to hurt himself or others. He characterized his energy and appetite in positive terms. Mr. Linkhorn's affect [observed emotional expression] appeared consistent and within normal limits although he frequently smiled at inappropriate times. He denied current symptoms of mood disturbance (e.g., depression) or psychosis (e.g., hearing voices) and no overt signs of such were observed. He reported a current prescription for a sleep aid.

Diagnostic Impressions Based on the available data, it appears Mr. Linkhorn's symptoms are best characterized by a diagnosis of dementia due to other general medical conditions (anoxic brain injury). Dementia describes an individual who suffers from memory impairment and other cognitive disturbances (e.g., language disturbance, difficulty identifying objects, problems with executive functioning), that represent a significant decline from previous functioning and cause substantial impairment in ability to function in the social and occupational realms. The "due to other general medical conditions" indicates that a general medical condition is etiologically related to the associated deficits and symptoms. Namely, Mr. Linkhorn presents

with a number of cognitive deficits (e.g., memory difficulties, learning problems, concrete thinking, and problems with executive functioning) related to an anoxic brain injury he suffered in 1998. Available data do not support a diagnosis of mild mental retardation.

Although available records reveal that Mr. Linkhorn has been frequently diagnosed with personality change due to this brain injury, there is no evidence available to these examiners (e.g., from family) to suggest his personality was significantly altered after this event. In addition, although he has expressed suicidal thoughts during his recent incarceration, and may have exhibited a suicidal gesture prior to his 1998 attempt, this appears to be the manifestation of poor coping skills (e.g., believes "suicide would get him out of trouble") rather than indicative of a mental illness (e.g., depression); available records do not provide sufficient evidence of a past history of a mood disorder. Likewise, although there is some suggestion from mental health center records that Mr. Linkhorn may have exhibited psychosis (as is implied from his reported prescriptions of two antipsychotic medications in 2000), and he has expressed several odd beliefs (e.g., that he is 19 years old), these appear to be the consequence of his brain injury and resulting concrete thinking, and is not suggestive of psychosis. Moreover, when questioned about these assertions, Mr. Linkhorn was able to consider alternative opinions (e.g., that he is in his 30s), thus providing evidence that these beliefs do not reach the level of delusions [false, fixed beliefs].

Information Relevant to Competence to Stand Trial: Pursuant to S.C. Code Ann. §44-23-410, the legal criteria for determining fitness (competence) to stand trial is as follows: "[a person] .. is not fit to stand trial because the person lacks the capacity to understand the proceedings against him [her] or to assist in his [her] own defense as a result of a lack of mental capacity . . ."

According to Mr. Linkhorn, he has "two" charges of "rape" and "miscene [sic] material to a minor," explaining that "rape" was the term listed on the incident report. While this is correct, Mr. Linkhorn was provided repeated explanation and education as to the formal names of his charges (and why none of them are "rape") but, more often than not, continued to refer to them as "rape." He did, at one point in the exam, assert he has "three" charges including "criminal sexual thing with a minor" but could not recall the other two and, despite further education, subsequently referred to his charges as "rape." As before, he identified these charges as allegedly occurring "January 19th" of an unknown year and, as before, was provided correction.

According to Mr. Linkhorn, he incurred his charges when police accused him of "having sex with her," identifying the alleged victim as "my sister's daughter"; he was provided correction about the accusations against him yet continued to contend that he was accused of having sexual intercourse with the alleged victim. He likewise noted he is accused of showing the alleged victim "a sexual movie" while they were both "naked."

Mr. Linkhorn defined Criminal Sexual Conduct as "sex with a minor against her will," disseminating obscene material as "a sexual movie .. something to do with not showing [it] to a minor" and lewd act to mean those involved "got naked." When asked if his charges are

serious, he responded, "Yes, I suppose they are [because of] all the time I could get" and "because she's a minor." When asked why the alleged behaviors are considered illegal, he stated "She's too young ... she's four or five" but had difficulty elaborating further. He stated an individual of "18" years is the youngest age able to consent to sexual activity with an adult. Mr. Linkhorn identified his charges as "felonies" and noted a "misdemeanor is not as serious." He was provided education about the maximum penalties for his charges which he could not recall when queried later. He indicated "smoking crack and driving" to be a charge more serious, and "drinking" to be a charge less serious, than his own.

Mr. Linkhorn identified pleas of "guilty" and "not guilty." He defined guilty to mean "you're not innocent .. you did it" after which "you get sentenced." He noted not guilty to mean "you didn't do it" after which "you're let go" and was provided correction. According to Mr. Linkhorn, a plea of Not Guilty by Reason of Insanity means "you're insane you're handicapped." He was given several explanations about plea bargaining but, when asked to recall this information later in the exam, stated, "I can't read," referring to paperwork related to his case.

When asked, Mr. Linkhorn identified "the judge, your attorney and witnesses" as individuals typically present in a courtroom; he identified himself as the defendant. According to Mr. Linkhorn, "your lawyer" is the defendant's advocate whose job is "to protect you . from not being guilty ... talk to the judge ... [show] stuff to prove you innocent" and to obtain an "innocent" verdict in a trial. He acknowledged an ability to reject his attorney's advice but voiced a desire to follow counsel's recommendations because one's attorney may "prove that you're innocent." Mr. Linkhorn identified his attorney as "Elizabeth Fullwood" and stated they have met once. When asked of his impressions of counsel, Mr. Linkhorn stated "I don't know ... she's black and she's my lawyer. She didn't get me out of trouble because I'm in here"; it is notable that Ms. Fullwood is Caucasian and Mr. Linkhorn likewise misidentified the race of the current U.S. President. He expects his lawyer to "get me out of trouble .. say I'm innocent" and can "work with [her]" to help in this regard.

As before, even after multiple educative attempts, Mr. Linkhorn was unable to recall information about the solicitor's job beyond stating, "I know he's not your lawyer, right?" He identified "the judge" as in charge of the courtroom, noting, "He does the judging against you ... if you're guilty or innocent" and is on "no one's" side.

Should he wish to proceed to trial, Mr. Linkhorn asserted he would have to plead "nothin'" and responded to this same question with "guilty," even after education. Per his account, the jury "help the judge make the judging" and decide "if you're innocent or guilty", he stated the jury to be on "neither" side. He noted there to be "12" jurors on a jury and "all of them" must agree on the verdict. He noted evidence to mean "you're guilty" and was provided correction; he listed a "gun" and a "mask" as examples of evidence. He acknowledged probation as a possible penalty when suggested and provided examples of probationary conditions (e.g., "[cannot] smoke drugs ... no drinking") which an individual will "sit in jail longer than I've

been sittin' in jail" for violating. He guessed a witness "proves you're innocent .. sit in the courtroom and do something like a verdict" and was provided correction. While he was unaware of the evidence the solicitor has against him when explicitly asked, and stated a defendant could ask "your lawyer" for this information, he identified some of such possible evidence in the course of discussing his case.

Mr Linkhorn was asked to comment on several hypothetical situations that might arise during the adjudication of his charges. For example, if confused at any time during courtroom proceedings, Mr Linkhorn stated the defendant should "ask your lawyer." If a witness lied about him in court, Mr. Linkhorn stated a defendant should "tell your lawyer" but was unable to identify what counsel could do in this situation. Should the solicitor approach him in the absence of his attorney, Mr. Linkhorn stated he would "ask for him [his lawyer]" but was unable to explain why and so was provided education. Per Mr Linkhorn's account, people in court should behave "good" and was educated about a contempt of court charge.

In discussing his case today, Mr. Linkhorn voiced several plea preferences but was unable to support these choices with logical reasoning, which appeared to reflect a naivety about the legal system and his charges. He did appear motivated to resolve his charges.

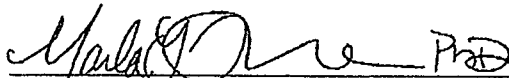
Clinical Impressions Regarding Competence to Stand Trial. As noted, Mr. Linkhorn's symptoms appear best characterized by a diagnosis of dementia due to other general medical conditions (anoxic brain injury). Based on the available data, it appears Mr. Linkhorn currently lacks the capacity to understand the proceedings against him and to assist in his own defense as a result of a lack of mental capacity.

During today's exam, Mr. Linkhorn's thought processes and speech were primarily logical, coherent, and organized, indicating he should have no difficulties communicating rationally with his attorney. His responses to hypothetical situations suggest he could utilize counsel effectively should he become confused or distressed with legal proceedings. He acknowledged appropriate courtroom behavior and his demeanor during today's exam suggests he would be able to exhibit such behavior in the courtroom. At no time did Mr. Linkhorn demonstrate any delusional beliefs about legal processes and/or members of the Court.

Despite the above abilities, the current exam revealed a number of deficits in Mr. Linkhorn's factual knowledge of the legal system. Although he was provided corrective education (by these examiners and his inpatient treatment team), most times he appeared to have difficulty understanding, retaining, recalling and applying this newly-learned information; these memory difficulties are likely the consequences of dementia and would be expected to inhibit Mr. L's ability to retain and utilize at least some of any new information provided to him by his attorney. His limited and concrete understanding of the seriousness and nature of his charges (likewise the consequence of his brain injury) may also impede his ability to rationally consider various legal strategies (e.g., a plea bargain). This concrete thinking style also would hinder his ability to assist his attorney in his own defense (e.g., generate exculpatory evidence).

In summary, despite a 60-day period of court-ordered hospitalization to help Mr. Linkhorn attain competence, it is opined that he continues to lack the capacity to understand the proceedings against him and to assist in his own defense as a result of a lack of mental capacity (dementia). Therefore, in accordance with South Carolina Code of Law 44-23-430 (3), it is requested that if Mr. Linkhorn is adjudicated incompetent, the solicitor initiate judicial admission proceedings within 14 business days. If Mr. Linkhorn is to be committed, it is requested that orders declaring him incompetent and authorizing his judicial commitment be forwarded to the Forensic Evaluation Service.

Recommendations: It should be noted that Mr. Linkhorn previously stated that if found guilty of the present offenses he would attempt to kill himself by "stickin' my head in the toilet." While he denied current suicidal thoughts, it is recommended that, should Mr. Linkhorn be adjudicated guilty, he be assessed immediately by the appropriate mental health personnel.



Marla L. Domino, Ph.D.
Licensed Clinical Psychologist

10/21/11

Date

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DIAGNOSTIC REPORT

NAME: Rocky Linkhorn
Address: Lexington County, SC
Date of Evaluation: 7/30/2012
Psychologist: Gordon E. Brown, Jr., Ph.D

Gender: Male
Race: Caucasian
Date of Birth: [REDACTED]

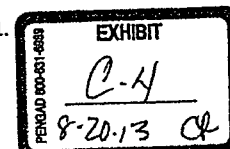
Purpose of Evaluation:

This evaluation was conducted pursuant to an order dated 1/18/2012 and signed by the Honorable Daniel R. Eckstrom, Judge of Probate, Lexington County. The order required that Mr. Linkhorn be evaluated by the South Carolina Department of Disabilities and Special Needs pursuant to S.C. Code Ann. §44-20-390 (Supp. 2011) for the purpose of examination as to whether he is intellectually disabled and in need of the Department's services.

Evaluation Procedures:

Mr. Linkhorn has not been interviewed by the undersigned. Information in this report is based on results of a Competency to Stand Trial evaluation conducted by Maria L. Domino, Ph.D. (Department of Mental Health), and Monica Wright, Psy.D. (Department of Disabilities and Special Needs) on 10/13/2011; it is also based on the SCDDSN Eligibility Determination Letter dated 7/30/2012. In addition, the following documents and records were reviewed:

Order for Diagnostic Evaluation dated 1/18/2012.
 Notice of Right to Counsel and Right of Guardian ad Litem; Appointment of Counsel; and Appointment of Guardian ad Litem, dated 1/18/2012.
 Petition for Judicial Admission dated 1/5/2012
 Amended Order, Finding of Lack of Competence to Stand Trial for the Foreseeable Future and Ordering Probate Commitment Proceedings, dated 2/27/2012.
 Finding of Lack of Competence to Stand Trial for the Foreseeable Future and Ordering Probate Commitment Proceedings, dated 11/2/2011.
 Order for Competency to Stand Trial Evaluation dated 2/8/2011.
 Relevant Legal Documents, multiple dates.
 Competence to Stand Trial Evaluation (Restoration) Report, SCDMH, date of evaluation 10/13/2011.
 Competence to Stand Trial Evaluation Report, SCDMH, date of evaluation 5/11/2011.
 Psychiatric Social Work Assessment, SCDMH, dated 3/2/2011.
 Psychiatric Social Work Assessment, William S. Hall Psychiatric Institute, dated 3/31/1998.
 Discharge Summary, William S. Hall Psychiatric Institute, for admission 3/18 to 4/9/1998



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Physician's Medication Orders and Service Notes, Columbia Area Mental Health Center, dated 11/9/2000.
Medical Records, Correct Care Solutions (Lexington County Detention Center), multiple dates from 7/27/2010 to 2/16/2011.

Information from SCDDSN Consumer Data Support System, print dates 3/22/2011 and 7/30/2012.

Justification Regarding SCDDSN Services dated 5/19/2000.

SCDDSN Eligibility Determination dated 5/16/2000.

SCDDSN Psychological Assessment Data dated 5/1/2000

Social History, SCDDSN, dated 1/3/2000.

SCDDSN Consumer Assessment Team Eligibility Determination Letter dated 7/30/2012.

Relevant History:

Rocky Linkhorn is a 37-year-old Caucasian male. Information in this section is predominantly from Dr. Domino's report dated 10/13/2011 and from the SCDDSN Eligibility Determination Letter dated 7/30/2012.

Mr. Linkhorn reported that he was born and raised in Florida. He lived with his biological mother and described his childhood as "average" and without abuse. He reported dropping out of school in the eighth grade after meeting the woman who was to become his common-law wife. SCDMH records in 1998 indicate that Mr. Linkhorn's mother said he enjoyed school and was in regular education classes; SCDDSN records in 2000 indicate that she reported that he was a "slow-learner" with C grades. Mr. Linkhorn reported having been employed in construction and denied receipt of disability payments. The DDSN social history obtained in 2000 indicates that Mr. Linkhorn has worked as a roofer and as a carpenter. At the time of that evaluation, Mr. Linkhorn was living in a personal care home. He was denied eligibility for DDSN services in 2000 because "he does not have concurrent intellectual and adaptive deficits" and it was concluded that "therefore he does not meet DDSN eligibility nor a diagnosis of mental retardation."

Mr. Linkhorn's records indicate a suicide attempt by hanging in 1998 while in jail and also refer to a previous attempt. He was hospitalized at William S. Hall Psychiatric Institute from 3/18/1998 through 4/9/1998 following his suicide attempt on 3/13/1998. He apparently required intensive medical treatment from 3/13 until 3/27/1998. Upon discharge from Hall, he was given diagnoses of Personality Change due to Anoxic Brain Injury (although Dr. Domino's later report questions the issue of personality change), Polysubstance Abuse, and Encephalopathy Secondary to Anoxic Brain Injury.

Dr. Domino reports the following diagnostic impressions in her final evaluation:

Based on the available data, it appears Mr. Linkhorn's symptoms are best characterized by a diagnosis of dementia due to other general medical conditions (anoxic brain injury). Dementia describes an individual who suffers from memory impairment and other cognitive disturbances . . . that represent a significant decline from previous functioning and cause substantial impairment in ability to function in the social and occupational realms. The "due to other general medical conditions" indicates that a general medical condition is etiologically related to the associated deficits and symptoms. Namely, Mr. Linkhorn presents with a number of cognitive deficits (e.g., memory difficulties, learning problems, concrete thinking, and problems with executive functioning) related to anoxic brain injury he suffered in 1998. Available data do not support a diagnosis of mild mental retardation.

Psychological Test Results:

No acceptable tests results are available. Scores reported below were obtained in a DDSN evaluation on 5/1/2000 using the Wechsler Abbreviated Scale of Intelligence (WASI) and the Street Survival Skills Questionnaire (SSSQ). The WASI is not acceptable as a measure of intelligence because it is an "abbreviated" version of the Wechsler

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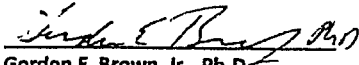
Adult Intelligence Scale, and the SSSQ is not acceptable as a valid measure of adaptive functioning. Nevertheless, those are the only test scores that are available.

5/1/2000	Wechsler Abbreviated Scale of Intelligence	Full-4 IQ	61
		Verbal IQ	55
		Performance IQ	75
	Street Survival Skills Questionnaire	Quotient	80

Summary and Conclusion:

Mr. Linkhorn clearly presents with significant cognitive impairment. A diagnosis of intellectual disability requires significant and concurrent deficits in intellectual and adaptive functioning prior to the age of 18. There is no available data to establish onset of Mr. Linkhorn's cognitive difficulties prior to the age of 18. Records seem to clearly correlate the onset of difficulties with an incident in 1998, when at the age of 23 Mr. Linkhorn attempted to hang himself and was subsequently given a diagnosis of encephalopathy secondary to anoxic brain injury. His current diagnosis of dementia includes the criterion of a significant decline from previous level of functioning. The DDSN Eligibility Determination Letter dated 7/30/2012 indicates that Mr. Linkhorn does not meet the criteria for a diagnosis of intellectual disability and he is therefore not eligible for DDSN services under that category. This examiner concurs with that decision.

Presence of Intellectual Disability: NO
Need for DDSN Services: NO


Gordon E. Brown, Jr., Ph.D.
Chief Psychologist/State Level Psychological Examiner
SC License # 429
SCDDSN Central Office

Date Signed: 5/2/12



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
Rhonda W. Patterson)
Assistant Solicitor)
PETITIONER)
)
IN THE MATTER OF:)
)
Rocky A. Linkhorn)
An alleged intellectually disabled person)
DOB: 11-03-74)

IN THE PROBATE COURT
CASE NO.: 2012MH3200002

**ORDER FOR
DIAGNOSTIC EVALUATION**

A Petition for the Judicial Admission of Rocky A. Linkhorn has been filed in this Court. In accordance with S.C. Code Ann. §44-20-450 (Supp. 2011), a diagnostic report referred to in S.C. Code Ann. §44-20-390 (Supp. 2011) must be submitted to the Court at the hearing in this matter.

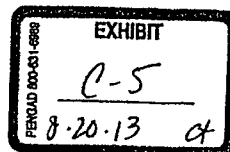
NOW, THEREFORE, IT IS ORDERED that a diagnostic evaluation be done by the South Carolina Department of Disabilities and Special Needs pursuant to S.C. Code Ann. §44-20-390 (Supp. 2011). The purpose of the diagnostic evaluation is to determine if Rocky A. Linkhorn is intellectually disabled and in need of services from the South Carolina Department of Disabilities and Special Needs. South Carolina Department of Disabilities and Special Needs will file the diagnostic report with the Court upon completion of the evaluation.

AND IT IS SO ORDERED.

Date January 18, 2012

Lexington, South Carolina

Daniel R. Eckstrom
Judge of Probate Court *pb*



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Rhonda W. Patterson,)
Assistant Solicitor)
Petitioner))
IN THE MATTER OF:)
Rocky A. Linkhorn)
(An alleged intellectually disabled person)
DOB: 11/03/74)

IN THE PROBATE COURT
Case No.. 2012MH3200002

NOTICE and MOTION TO
DISMISS

FILED

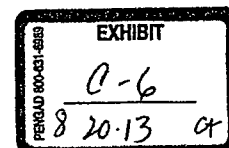
AUG

PROBATE JUDGE
LEXINGTON COUNTY, SC

TO: Rhonda W. Patterson, Petitioner
Arthur E. White, Jr., Attorney for Mr. Linkhorn

Please take Notice, the South Carolina Department of Disabilities and Special Needs by and through its undersigned attorney, will move ten (10) days after service hereof or as soon thereafter as may be heard, for an Order pursuant to Rule 12 (b)(1)&(6) of the South Carolina Rules of Civil Procedure to dismiss the Petition for Judicial Admission received by the South Carolina Department of Disabilities and Special Needs on January 20, 2012, by regular mail. The South Carolina Department of Disabilities and Special Needs requests that this court dismiss the Petition. The grounds for this Motion are as follows:

1. The Diagnostic Evaluation found that Mr Linkhorn does not have an intellectual disability and is not in need of services from the South Carolina Department of Disabilities and Special Needs.
2. The court has no jurisdiction to hear the case for commitment to the South Carolina Department of Disabilities and Special Needs as there is no indication of an intellectual disability (mental retardation)



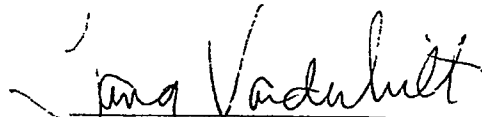
3. Pursuant to S.C. Code §44-20-490(1), the petition shall be dismissed.

Based on the above, the Petition for Judicial Admission must be dismissed.

Respectfully submitted,

August 6, 2012

Columbia, South Carolina


Tana Vanderbilt, General Counsel

South Carolina Department of Disabilities
and Special Needs
P.O. Box 4706
Columbia, SC 29240
Phone: (803) 898-9683
Fax: (803) 898-9656

*General Sessions Order following Blair Hearing on Defendant's Competence To Stand Trial
Finding Defendant Not Competent, and Not Likely to Become Competent §44-23-430(2)
Optional language for use if §44-23-430(3) hospitalization to restore competence is unsuccessful*

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF GENERAL SESSIONS

) Indictment No(s): 2011-GS-32-0242;
243;244

) A/Warrant No(s): M301091;092;093

FILED

FEB 28 2012

The State of South Carolina,

) **AMENDED ORDER**

) **FINDING OF LACK OF**

) **COMPETENCE TO STAND TRIAL**

) **FOR THE FORESEEABLE FUTURE**

) **AND ORDERING**

) **PROBATE COMMITMENT PROCEEDINGS**

PROBATE JUDGE
LEXINGTON COUNTY, SC

vs.

ROCKY LINKHORN,
Defendant

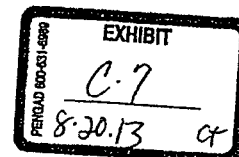
This matter was before me pursuant to S. C. Code Ann. §44-23-430 (1976) for a hearing on the issue of Defendant's competence to stand trial.

The Defendant is charged with Criminal Sexual Conduct with a Minor, Lewd Act Upon a Minor, and Disseminating Obscene Material to a Minor. Pursuant to a previous Court order, dated November 2, 2011, I found based upon the evidence presented at that hearing and documented in the previous Order that that Defendant was not competent to stand trial pursuant to South Carolina Code. Ann 44-23-410, and further, that he was not likely to become competent in the foreseeable future. It was Ordered that Solicitor responsible for the prosecution of Defendant initiate judicial proceedings pursuant to South Carolina Code Ann. 44-17-510 through 44-17-610.

On November 7, 2011, the Solicitor initiated proceedings in Probate Court as directed. On December 12, 2011, the Probate Court dismissed the proceedings upon reading the report of the Designated Examiners finding that the Defendant was not

SCCA 221(c) (11/2007)

Page 1 of 2



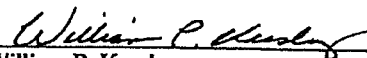
mentally ill There were indications that the Defendant may suffer from mental retardation and accordingly the Solicitor reinitiated proceedings in Probate Court to for the involuntary admission of a person with mental retardation or a related disability.

The Department of Disabilities and Special Needs has expressed concern that the original Order does not give them the authority to proceed as it did not mention Section 44-20-450.

ACCORDINGLY IT IS ORDERED, pursuant to S.C. Code Ann. §44-23-430(2), the Solicitor responsible for the prosecution of Defendant shall initiate judicial admission proceedings in the Lexington County Probate Court pursuant to S.C. Code Ann. §44-17-510 through §44-17-610 and/or §44-20-450 within fourteen (14) business days from the date of this Order.

IT IS SO ORDERED.

2


William P. Keesley
Presiding Judge
11th Judicial Circuit

Date: 2/27/12



State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

J Michael Baxley
Judge

531 East Carolina Avenue
Hartsville, SC 29550 4311
Phone (843) 383-4114
Fax (843) 383-4116
jbaxley@sccourts.org

April 10, 2013

Beattie I. Butler, Esquire
Ninth Circuit Public Defender
O T Wallace Building
101 Meeting Street, 5th Floor
Charleston, SC 29401

Re: State v Rocky Linkhorn, 2011-GS-32-0242, 0243, 0244

Dear Mr. Butler:

Thank you for your professional courtesy in agreeing to serve as a court-appointed legal expert witness in the above cases. Defendant Linkhorn is charged with Criminal Sexual Conduct with a Minor, Lewd Act Upon a Minor, and Disseminating Obscene Material to a Minor. He is currently in the Lexington County Detention Center, having been found by Judge Keesley not competent to stand trial and unlikely to become competent. Mr. Linkhorn has some degree of mental illness, and also has anoxic brain injury due to a suicide attempt while in detention. He has been denied services by both SCDMH and SCDDSN. The solicitor has filed a Rule to Show Cause against both agencies, and this matter has been declared complex and referred to this Court for disposition.

Enclosed please find a copy of previous evaluation reports from both DMH and DDSN that have been given to this office by counsel (there may be other reports or records we have not been given), the motion for a Rule to Show Cause, and a proposed letter to be sent to counsel outlining the perceived issues before the Court. Please feel free to contact counsel directly should you need further information that may be in their files, as well as this office if you need Court authority to require agency cooperation in the event you need additional documentation or undertake further investigation. Should you wish to personally interview Mr. Linkhorn, you will certainly be given that opportunity.

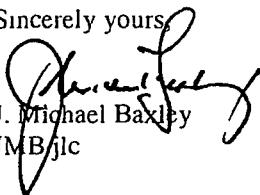
Please note that DDSN has denied services based on a paperwork review, apparently taking the position that a brain-injured individual is automatically ineligible for services. This will be a core issue in this case for which your testimony is sought. You are being requested to appear in the case because of your substantial historical role in the provision of forensic services to General Sessions defendants in South Carolina, your previously-expressed interest in this specific issue, and your legal insight into the operations of DMH, DDSN, and the General Sessions courts. As the court-appointed expert in this matter, we request your insight and

opinion on the following issue: Is a brain injury an "other related disability" as contemplated in chapter twenty-three of title forty-four of the South Carolina Code of Laws such that DDSN cannot automatically exclude such individuals from services upon referral from General Sessions courts?

In order to answer this question, it would be beneficial if your testimony could provide an independent medico-legal review of the bases upon which DDSN has reached the decision to deny services in this case; determine whether there exists statutory, regulatory, or professional standards that support such a conclusion; discuss the impact of this decision upon the individual treatment and care of Mr. Linkhorn and similarly-situated persons; discuss whether this decision is consistent with the overall statutory mission of DDSN, opine as to whether the recent statutory amendment deleting the term "mental retardation" and replacing it with "intellectual disability" affects the scope of the statute; and, express an opinion as to whether this policy decision of DDSN, when applied to criminal defendants under order for forensic examination by the General Sessions court pursuant to SC Code Ann 44-23-410, is consistent with state law and in the interests of justice. If your time permits, an overview of what our neighboring states, or perhaps states with similar forensic examination statutes, are doing in this realm would be instructive. Additionally, any other testimony you believe pertinent to this issue would be welcomed.

Thank you for your willingness to become involved in this matter, and we look forward to working with you. Realizing that your involvement in this case may require significant time, please advise whether there will be a charge for your services or request for reimbursement of the costs of investigation and research you undertake. This letter is not intended as a private communication, a copy will be provided to counsel in the case.

Sincerely yours,



J. Michael Baxley
JMB/jlc

cc. Rhonda W. Patterson, Esquire
Elizabeth C. Fullwood, Esquire
Mark W. Binkley, Esquire
Tana G. Vanderbilt, Esquire



State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

J. MICHAEL
BAXLEY
JUDGE

531 EAST CAROLINA AVENUE
HARTSVILLE, SOUTH CAROLINA 29550
TELEPHONE (843) 383-4114
FAX (843) 383-4116
E-MAIL: jrbaxley@sccourts.org

April 12, 2013

Rhonda W. Patterson, Esquire
Eleventh Circuit Solicitor's Office
205 East Main Street
Lexington, SC 29072

Elizabeth C. Fullwood, Esquire
Eleventh Circuit Public Defender
407½ West Main Street
Lexington, SC 29072

Mark W. Binkley, Esquire
SC Department of Mental Health
Post Office Box 485
Columbia, SC 29202

Tana G. Vanderbilt, Esquire
SC Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, SC 29240

In Re: State v. Linkhorn, 2011-GS-32-0242, 243, 244 (CSC, Lewd Act, Obscenity)

Counsel:

As a follow-up to recent telephone conferences with prosecution and defense counsel on the above listed cases, please accept this communication as an effort to outline the Rule to Show Cause (RTSC) issues that the Court perceives to be at bar in State v. Linkhorn. So that all counsel will be of the same understanding, this letter is also addressed to general counsel for both SCDMH and SCDDSN, and formal notice is hereby provided to those agencies that this case has been assigned to this office for disposition. A copy of Justice Toal's Order is enclosed. So that all witnesses will understand the nature of the proceeding, the Court has no objection to your sharing this correspondence with any expert witnesses you intend to call. Also set forth below is a brief discussion of the anticipated evidence necessary for a decision on each issue.

At the RTSC hearing, the Court will seek to decide the following issues:

1. **What is the primary condition that has rendered Defendant not competent and not likely to restore as found by Judge Keesley on November 2, 2011?**

This medical decision will determine what agency is eventually charged with the treatment and care of the Defendant. Evaluation reports from both DDSN and DMH examiners are already in the record. Those

reports can be used as evidence even if the original examiners do not appear at the RTSC hearing [See SC Code 44-23-410(2)] Because competency is not necessarily static (even with an intellectual disability), and out of fairness to the agencies, both agencies should be given the opportunity to re-examine Defendant if they wish. It is anticipated that defense will retain an independent expert on this issue, and it is the Court's understanding that defense has contacted Dr. Richard Frierson for this purpose.

2. **If the medical evidence is not dispositive as to which condition is primary with respect to Defendant's current lack of competence, then the Court must determine by a preponderance of the evidence which agency can best provide care and treatment for the Defendant, and/or whether the services of both agencies would be beneficial to Defendant.**

In a voluntary admission setting, the agencies themselves determine who is eligible for hospitalization or services (for SCDMH, see 44-17-310; for SCDDSN, see 44-20-390(C)). The agencies serve as gatekeepers because agency intake staff and examiners know best the treatment and care options and modalities available through the particular agency. For involuntary admission such as this case, particularly where the agencies contest the commitment, evidence must be offered as to what treatment/care options beneficial to Defendant are available through a particular agency; what treatment/care goals are believed to be achievable by that agency with Defendant based on his level of cognition and/or illness; the ability of the agency to manage and control Defendant and at the same time protect the security needs of the general public and specific prior victims, and, all other factors counsel deems necessary to this decision.

3. **In the event the Court concludes that DDSN is an appropriate agency for Defendant's care either entirely or in part, the Court will then consider whether DDSN's interpretation of the statutory term "intellectual disability or related disability" to exclude Defendant and others with brain injuries is permissible (See S.C. Code Ann. § 44-23-410 et. seq.).**

This decision is both medical and legal. Defense and prosecution counsel are encouraged to be prepared to argue this issue as it relates to this specific case. For a systemic discussion of this issue, its history in South Carolina jurisprudence, and the ramifications for defendants and stakeholders, the Court intends to call an expert witness, who is hereby disclosed to be Beattie I. Butler, Esquire, of the Charleston County Public Defender's office. A letter requesting Mr. Butler's involvement in this case is attached.

4. Discovery.

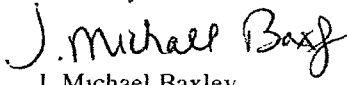
Court Administration has already determined this RTSC to be complex. While formal discovery beyond Brady and Rule 5, SCCrP, is uncommon in General Sessions matters, the Court is specifically authorized to issue such discovery "orders as are appropriate" [See Rule 5(d)(1)]. Due to the potential import of this decision, and the possibility of appellate review, the Court is willing to issue an order permitting depositions of forensic examiners, agency staff, and other expert witnesses. Out of fairness, counsel for the agencies will be permitted to fully participate in any such depositions, and even issue notices of such depositions that they deem necessary. No deposition of the Defendant will be permitted as he has been determined not competent.

5. Scheduling.

Counsel is requested to prepare a consent scheduling order, with the input of counsel for DMH and DDSN as well as expert witness Butler, setting forth all deadlines and timelines for this matter, including a date certain for trial. It is expected that this case will be expert-intensive, and the Court recognizes that medical forensic examiners have pressed schedules that involve duties necessary to the treatment of many individuals and the orderly progression of statewide forensic operations of the General Sessions courts. Thus, it is anticipated that ample time will be needed to accommodate the various schedules involved; however, by the same token, the Court is aware that the Defendant is currently incarcerated in the Lexington County Detention Center, which is not an appropriate place for care and treatment of a mentally ill and/or intellectually disabled individual.

I ask that you, together with agency counsel, prepare a scheduling order and submit it electronically to this office (jbaxley1c@sccourts.org) within thirty (30) days of the date of this letter. Please do not hesitate to contact me should you have any questions or comments, and thank you for your attention to this matter.

Sincerely,


J. Michael Baxley
JMB/jld

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON —) 2011-GS-32-00242
 2011-GS-32-00243
 2011-GS-32-00244

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
)
ROCKY A. LINKHORN)
)
 DEFENDANT —)

August 20, 2013
Lexington, South Carolina

B E F O R E:

HON. J. MICHAEL BAXLEY, JUDGE

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

C. DAYTON RIDDLE, III, ASSISTANT SOLICITOR
RHONDA W. PATTERSON, ASSISTANT SOLICITOR
Attorneys for the STATE

ELIZABETH C. FULLWOOD, ASSISTANT PUBLIC DEFENDER
Attorney for the DEFENDANT

CAROL M. THUEME, RPR
Official Court Reporter

ALSO PRESENT:

Ms. Monique D. Montgomery, Esq.
Appearing for Department of Mental Health

Ms. Tana G. Vanderbilt, Esq.
Appearing for Department of Disabilities
and Special Needs

I N D E X

WITNESSES:

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DR. RICHARD FRIERSON:

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BEATTY BUTLER:

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EXHIBITS

Court's Exhibits

		ID	EVD
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1 (WHEREUPON, The Court's Exhibits Nos. 1, 2, 3
2 were marked for purposes of the record.)

3 THE COURT: All right. Ladies and gentlemen,
4 good morning. I'm Judge Baxley. We're here in the matter
5 of the State versus Rocky Linkhorn and on a rule to show
6 cause which has been filed in that matter by the
7 prosecution against the Department of Mental Health and
8 the Department of Disabilities and Special Needs. Our
9 court reporter today is Ms. Carol Thueme in case someone
10 needs a copy of our transcript. And if someone needs to
11 contact my office, Jamie Scruggs, my law clerk, is here as
12 well with us today.

13 Let's let the record reflect we have had a
14 discussion in chambers between counsel for the various
15 entities who are present today. And let's go around and
16 begin by letting everyone introducing themselves and then
17 I will give a brief synopsis and then we'll go to the
18 prosecution to give us a history of this matter and how we
19 got here today. So let's begin with the prosecution
20 today. If Counsel would introduce themselves.

21 MS. PATTERSON: Thank you, Your Honor. Good
22 morning. My name is Rhonda Patterson. I'm an assistant
23 solicitor here in the Lexington County Solicitor's office.

24 MR. RIDDLE: Your Honor, I'm Dayton Riddle. I'm
25 with the Solicitor's office as well.

1 THE COURT: Thank you.

2 And for defense?

3 MS. FULLWOOD: I'm Elizabeth Fullwood. I'm with
4 the 11th Circuit Defender's Office. I'm here with my
5 client, Rocky Linkhorn.

6 THE COURT: Welcome, Mr. Linkhorn. How are you,
7 sir?

8 THE DEFENDANT: Pretty good.

9 THE COURT: Good.

10 All right. We have other attorneys here for the
11 agencies as well.

12 MS. MONTGOMERY: Monique Montgomery, Your Honor,
13 for the Department of Mental Health.

14 MS. VANDERBILT: Tana Vanderbilt, General
15 Counsel, DDSN.

16 THE COURT: All right. And welcome, ladies and
17 gentlemen.

18 And, Mr. Linkhorn, just to make sure that we
19 have an understanding of why you're here today, you've
20 been in the jail here for quite sometime, a couple of
21 years actually, more than two years. While there has been
22 an issue debated about whether you should be involuntarily
23 committed for treatment by the probate court after you
24 were found to be not competent to proceed to trial, and
25 I'm sure you've had an opportunity with Ms. Fullwood to

1 discuss where you find yourself today, but our effort
2 today is to attempt to prevent you from just remaining
3 indefinitely at the detention center. South Carolina
4 statutes say that a person who has an intellectual
5 disability or who has a mental illness, which is not to
6 say that you have a mental illness, but someone who may
7 have an intellectual disability should not simply be held
8 in jail for that reason and, thus, the Solicitor filed a
9 rule to show cause.

10 This case was referred to me. Again, I'm Judge
11 Baxley. I'm not from here in Lexington County, I'm from
12 Darlington County, and Court Administration conferred
13 jurisdiction of this case under what we call complex
14 jurisdiction to this Court and, thus, I am here today to
15 preside over this hearing.

16 Now, Ms. Patterson, if you or Mr. Riddle will
17 give us your understanding of the history of how we came
18 to be here today, we'll be glad to hear from you at this
19 time.

20 MS. PATTERSON: Thank you, Your Honor.

21 Your Honor, Mr. Linkhorn has been indicted in
22 2011-GS-32-242 for criminal sexual conduct with a minor in
23 the 1st degree; in 2011-GS-32-243, lewd act;
24 2011-GS-32-244, disseminating obscene materials to a
25 minor.

1 Your Honor, these offenses, the criminal sexual
2 conduct with a minor in the 1st degree, that offense alone
3 carries 25 to life. These are very, very serious
4 allegations, very, very serious charges. They occurred
5 July 14, 2010, and Mr. Linkhorn was arrested and has been
6 incarcerated ever since his arrest.

7 THE COURT: And can you tell us what it is the
8 State alleges specifically that Mr. Linkhorn did so our
9 record will be complete on that issue.

10 MS. PATTERSON: Yes, sir, Your Honor.

11 The victim in this case was four years of age.
12 It was Mr. Linkhorn's niece. And it's my understanding he
13 lives in a trailer that was immediately behind her house.
14 And he was charged with baby-sitting she and her sibling
15 or siblings -- I can't remember if it's one or two
16 siblings -- while the mother worked.

17 On this particular occasion, Mr. Linkhorn was
18 baby-sitting the victim, the four-year-old victim, and her
19 ten-year-old brother. The ten-year-old walked in -- he
20 was looking for his little sister because an aunt was
21 coming to pick them up to take them to church. So he was
22 walking around the house looking for his little sister.
23 He entered into Mr. Linkhorn's residence and found his
24 sister on top of Mr. Linkhorn and both of them did not
25 have on any clothes.

1 He immediately grabbed his sister, ran out of
2 the house, his aunt was coming up, and he told his aunt
3 what he saw. Law enforcement was immediately contacted,
4 came out to the scene, and it was also discovered that at
5 the time of this act, pornography was shown on the
6 television.

7 Law enforcement did a search and confiscated the
8 pornography. They spoke to Mr. Linkhorn and he admitted
9 to committing this act on his niece.

10 The victim was taken to Lexington Medical Center
11 where a sexual assault kit was done on her. DNA was sent
12 to SLED, an analysis came back and Mr. Linkhorn's pubic
13 hair was found on the victim.

14 As I stated, Your Honor, this is very, very
15 serious charges. We take it serious in my office.

16 At the time that Mr. Linkhorn was arrested he
17 was represented by Mr. Casey Cornwell from the Public
18 Defender's Office who came to me and expressed concerns
19 about Mr. Linkhorn's mental state. At that time, Your
20 Honor, we went before the General Sessions judge -- I
21 think it was Judge Knox McMahon -- and he ordered that
22 based on Mr. Cornwell's concerns, that Mr. Linkhorn be
23 evaluated through the Department of Mental Health. That
24 evaluation was done, Your Honor, March 2nd of 2011, and
25 the report that we got back from the Department of Mental

1 Health was that Mr. Linkhorn needed a joint evaluation
2 with the Department of Disabilities and Special Needs and
3 they stated that they would -- DMH would arrange this.
4 That was arranged and that was done May 11 of 2011, at
5 which time Dr. Marla Domino with the Department of Mental
6 Health and Dr. Monica Wright with the Department of
7 Disabilities and Special Needs, they performed the
8 examination on Mr. Linkhorn as well as a second examiner
9 from the Department of Mental Health, Carol David.

10 Your Honor, based on that examination they
11 reported that Mr. Linkhorn had current symptoms of a
12 mental illness that has significantly compromised his
13 present capacity to understand the proceedings against him
14 or to assist in his own defense. And they recommended
15 that Mr. Linkhorn be hospitalized in an attempt to restore
16 competency.

17 We brought him back in front of the judge, Your
18 Honor. I can't remember who the judge was, I don't have
19 that readily in front of me, but he was ordered to be
20 hospitalized. That hospitalization was done, Your Honor,
21 August 8 of 2011. And it was reported back to the Court
22 October 13 that despite the 60-day hospitalization, Mr.
23 Linkhorn continued to lack the capacity to understand the
24 proceedings against him as a result of a lack of mental
25 capacity.

1 I think at this time, Your Honor, Ms. Beth
2 Fullwood had begun to represent Mr. Linkhorn because
3 Mr. Cornwell did leave the Public Defender's Office. So
4 we went back in front of Judge Keesley on November 2,
5 2011, and at that time Judge Keesley signed off on an
6 order that stated that Mr. Linkhorn was previously found
7 by the Court to lack the competency to stand trial, but
8 was unlikely to become -- but was likely to become
9 competent with appropriate treatment. Thereafter, the
10 defendant was hospitalized through the facilities of the
11 South Carolina Department of Mental Health for observation
12 and treatment in an effort to restore his competence to
13 stand trial. This restoration effort was unsuccessful and
14 thus the Court has determined that the defendant is now
15 unlikely to become competent in the foreseeable future.
16 Based upon the examiner's report, "I find that the
17 defendant is currently incompetent to stand trial for the
18 reasons set forth in South Carolina Code Annotation at
19 44-23-410, and unlikely to become competent in the
20 foreseeable future. Therefore, it is ordered that the
21 defendant be hospitalized through the South Carolina
22 Department of Mental Health pursuant to 44-23-430,
23 Section 2. The defendant shall immediately be taken into
24 custody by the sheriff and the sheriff's office is hereby
25 authorized and required to transport the defendant to the

1 facility designated by South Carolina Department of Mental
2 Health following confirmation that a bed is available."

3 Judge Keesley signed that order November 2. I,
4 in turn, filed it with our probate court to initiate
5 probate proceedings. I turned in the petition for
6 judicial admission on November 7, 2011, based on Judge
7 Keesley's order.

8 Mr. Linkhorn was seen by two examiners from the
9 local Department of Mental Health, Ms. Susan Harris and
10 Dr. Anna Cherry. They went out and visited with Mr.
11 Linkhorn, and both of the examiners report that Mr.
12 Linkhorn did not currently or presently -- currently or in
13 the past have any symptoms of a mental illness. He
14 reports being called mentally retarded as a child and
15 being in special education. He does report, and records
16 indicate, being in a motor vehicle accident and having a
17 traumatic brain injury at age 19. He reports not sleeping
18 since 19. And the South Carolina Department of
19 Disabilities and Special Needs reports a diagnosis of
20 dementia due to an anoxic brain injury, which indicates he
21 would unlikely benefit substantially from the Department
22 of Mental Health. However, both examiners made
23 recommendations referring Mr. Linkhorn to Department of
24 Disabilities and Special Needs traumatic brain injury
25 program with follow-up with mental health as needed.

1 THE COURT: Ms. Patterson, it's my
2 understanding, just so the record will be clear, I believe
3 that Mr. Linkhorn had an unsuccessful suicide attempt
4 while at the Lexington County jail; is that correct?

5 MS. PATTERSON: Not at the Lexington County
6 jail, Your Honor. That was done on a previously
7 incarceration, I think, in 1998.

8 THE COURT: All right. Very good. Thank you.
9 Excuse me.

10 MS. PATTERSON: After the examiners filed their
11 opinions, Your Honor, to the probate court, they filed a
12 motion to dismiss proceedings because Mr. Linkhorn did not
13 have a mental illness. At that time, Your Honor, I think
14 Judge Eckstrom from the Lexington County Probate Court did
15 order a diagnostic evaluation be done by the Department of
16 Disabilities and Special Needs to determine if Mr.
17 Linkhorn is intellectually disabled and in need of
18 services from the department.

19 In between all that time, Ms. Vanderbilt,
20 counsel with the Department of Disabilities and Special
21 Needs, she filed a notice and motion to dismiss as well
22 based on Judge Keesley's previous order at that time
23 because she said their department was not -- since the
24 subsection of their department was not mentioned in that
25 order, that they were not -- that they cannot be held to

1 even evaluate Mr. Linkhorn from my understanding because
2 the order did not specifically mention their department
3 and the code that covered their department. So in return,
4 I went to Judge Keesley and he actually signed an amended
5 order, and in that amended order he did mention the
6 previous order and that it was dismissed, and he said in
7 this amended order that there were indications that Mr.
8 Linkhorn may suffer from mental retardation and,
9 accordingly, the solicitor reinitiated proceedings in
10 probate for the involuntary admission of a person with
11 mental retardation or related disability.

12 The Department of Disabilities and Special Needs
13 has expressed concern that the original order does not
14 give them the authority to proceed, as it did not mention
15 Section 44-20-450. Accordingly, it is ordered pursuant to
16 South Carolina Code Annotation 44-23-430, Subsection 2,
17 the solicitor responsible for the prosecution of defendant
18 shall initiate judicial admission in the Lexington County
19 Probate proceedings pursuant to South Carolina Code
20 44-17-510 through 44-17-620 and/or 44-20-450 within 14
21 business days, which we were trying to cover and just make
22 sure that both departments -- that some agency would be
23 responsible for treating Mr. Linkhorn.

24 THE COURT: And tell me, what is the response
25 the department made to that subsequent -- the Department

1 of Disabilities and Special Needs made to that subsequent
2 petition?

3 MS. PATTERSON: The next document that I
4 received was dated August 3, 2010, from Ms. Tana
5 Vanderbilt from the Department of Disabilities and Special
6 Needs, and it was really to the probate court but I was
7 CC'ed on it as well. And what that was, Your Honor, was a
8 copy of a diagnostic report as required by Judge
9 Eckstrom's order from January 18, in which that was the
10 diagnostic report from Dr. Gordon Brown where he reviewed
11 some documents and made this report to Ms. Vanderbilt.

12 THE COURT: And, again, the date of that
13 document, did you say July 30, 2012?

14 MS. PATTERSON: The diagnostic report was
15 dated -- the date of the evaluation was July 30, 2012. I
16 received a copy August 3, 2012, from Ms. Vanderbilt.

17 THE COURT: And then thereafter I believe you
18 filed this rule to show cause; am I correct?

19 MS. PATTERSON: I did, Your Honor.

20 THE COURT: All right. Then I believe that's
21 sufficient, Ms. Patterson, for the history.

22 We have Ms. -- I should say The Honorable Julie
23 Hill Thompson who is here from the probate court. Where
24 is she? There she is in the back.

25 Can you tell us, please, what is the current

1 status in the probate court of the petition filed with
2 respect to DDSN?

3 JUDGE THOMPSON: We have dismissed that one as
4 well.

5 THE COURT: All right. And dismissed it under
6 what circumstances, please?

7 JUDGE THOMPSON: Dismissed it because it's here
8 to be decided. It was dismissed in probate court based
9 upon circuit court jurisdiction of this matter as
10 confirmed with the Solicitor's office.

11 THE COURT: And what date is that notation in
12 your file made?

13 JUDGE THOMPSON: It wasn't dated, but I believe
14 it was done in January of '13, I believe.

15 THE COURT: That's January of 2013?

16 JUDGE THOMPSON: Yes.

17 THE COURT: And that notation is from Judge
18 Eckstrom?

19 JUDGE THOMPSON: Yes.

20 THE COURT: All right. So then would it be
21 correct to say that the petition was not dismissed on its
22 merits but dismissed because there was a rule to show
23 cause which returned this matter back to the General
24 Sessions court; is that correct, Ms. Thompson?

25 JUDGE THOMPSON: Yes.

1 THE COURT: Thank you.

2 All right. Anything further now before I end
3 the history, Ms. Patterson? I believe you've covered it
4 from the Court's perspective, but do you have anything
5 else you wish to add?

6 MS. PATTERSON: Your Honor, I just wanted to
7 enter into evidence, and I think it's stipulated by
8 defense counsel, Ms. Fullwood, just three of the previous
9 reports that were previously stipulated in the prior court
10 proceedings regarding the evaluations that Mr. Linkhorn
11 has already undergone by Department of Mental Health and
12 Department of Disabilities and Special Needs.

13 THE COURT: All right. Let's just make those
14 joint exhibits to the record, please. And we'll make that
15 as No. 1.

16 MS. PATTERSON: That's all the State has at this
17 time.

18 THE COURT: Thank you. So they're marked as
19 Court's Exhibits 1, 2, and 3 for the record, and so noted.

20 Now, Ms. Fullwood, you told me that Dr. Frierson
21 has a plane flight. What time does he have to leave this
22 morning?

23 MS. FULLWOOD: Around noon, Your Honor.

24 THE COURT: All right. Very good. Before we
25 take him as our first witness in an effort to accommodate

1 his schedule as well, let me hear from the defense if you
2 have a response to what you've heard, whether you have a
3 position in this matter, and then we'll hear from the two
4 agencies who are the subject of this rule for any issues
5 they wish to raise before we take testimony.

6 Anything from defense at this point?

7 MS. FULLWOOD: Our position at this point is
8 that he's being lawfully warehoused in the county jail
9 simply because of his disability and it's unlawful under
10 Section 44-23-220 of the code.

11 THE COURT: All right. Thank you.

12 And now let's go to counsel for the agencies who
13 were notified of this proceeding.

14 I mentioned when I first began this morning that
15 we had had a conference in chambers. The Court is aware
16 and already introduced on the record that Ms. Monique Lee
17 is here for the Department of Mental Health, counsel for
18 the department, and Ms. Tana Vanderbilt is here as counsel
19 for DDSN.

20 Let's hear first from the DMH if you have a
21 response to this proceedings or anything you wish to add
22 or objections you wish to raise at this point.

23 MS. MONTGOMERY: Thank you, Your Honor.

24 The department, as was stated by Ms. Patterson,
25 the petition was dismissed in probate court due to no

1 mental illness, a brain injury. At that point the only
2 order DMH had ever been ordered was to do restoration.
3 Our agency does the restoration program. That was
4 complied with. I believe at that point we were
5 discharged. All the diagnosis I've seen is secondary to a
6 brain injury, either dementia or psychosis. So our
7 position is at this point that he does not have a mental
8 illness, it's a brain injury, and that's not -- the
9 Department of Mental Health doesn't serve people with
10 brain injury by statute. That's the Department of
11 Disabilities and Special Needs.

12 THE COURT: All right. Thank you.

13 And, Ms. Vanderbilt, on behalf of DDSN, do you
14 have something you wish to raise initially?

15 MS. PATTERSON: Yes, sir, Your Honor.

16 The agency received the motion for the rule to
17 show cause in April of this year and it was based on the
18 amended order that Ms. Patterson just referred to from
19 Judge Keesley, which is dated February 27, 2012. And in
20 that order, the only thing that is ordered is the fact
21 that the Solicitor is to file the petition in probate
22 court. The Department of Disabilities and Special Needs
23 has never been ordered to provide services to Mr.
24 Linkhorn. So we object to the fact that there is anything
25 that we have done as far as the rule to show cause. We've

1 never been ordered to provide anything, so we object to
2 jurisdiction at this point because there's no order that
3 we're in violation of.

4 However, to go on, according to this case, as
5 the petition was filed in probate court, we did file our
6 diagnostic report as was done pursuant to the order from
7 Judge Eckstrom. As the order in probate court says, we
8 have to make the determination whether or not the
9 individual has an intellectual or related disability, we
10 filed the report in probate court. I have never heard
11 until this morning that that petition has been dismissed.
12 I called the probate court, I kept asking to have a
13 hearing on my motion or to go forward with the hearing. I
14 never received anything that that had been dismissed.
15 This was the first time I've ever heard that that pending
16 petition to my agency has been dismissed.

17 THE COURT: All right. But isn't it correct,
18 Ms. Vanderbilt, that the agency's position is, based on
19 this diagnostic report which was just placed into
20 evidence, that Mr. Linkhorn is not eligible for
21 involuntary services through the probate court?

22 MS. VANDERBILT: Yes, sir, based on the fact
23 that our statute says that the petition for judicial
24 admission could only be based on intellectual disability
25 or related disability. And as has been said, he has a

1 brain injury, and that is a totally separate statute under
2 the code that says that the HASCI division is 44-38-370,
3 and that is not included under the way a person can be
4 involuntarily committed to the agency.

5 THE COURT: Now, you used a term of art, "the
6 HASCI division." Would you please --

7 MS. PATTERSON: I'm sorry, Head and Spinal Cord
8 Injury -- I'm sorry, Your Honor -- Division of the agency.
9 And as I said, that's separate and apart in the statute
10 44-38-370, and according to our statutes, there was no
11 provision that anybody involuntarily committed to receive
12 services from that division.

13 THE COURT: But isn't it -- and forgive me for
14 breaking in -- but isn't it the department's position that
15 a probate judge cannot involuntarily commit anyone to the
16 Head and Spinal Cord Injury section of DDSN?

17 MS. VANDERBILT: Yes, sir, based on what our
18 statute said. Our Statute is 44-24-50, talks about how
19 either the Solicitor can file and how when the diagnostic
20 report is filed with the probate court and the order from
21 the probate court says intellectual disability and related
22 disability, that's clearly what the statute says, and it's
23 our position that if head and spinal cord injury is
24 supposed to be included, that would have been included in
25 the statute where you can file for the involuntarily

1 commitment. It's not included under that part of the
2 statute.

3 THE COURT: All right. So would I be correct in
4 saying that it's your position that Mr. Linkhorn would be
5 eligible for services under the Head and Spinal Cord
6 Division, but that would be a voluntary admission, one
7 that would require his agreement and under the -- whatever
8 placement or care that would be decided by the department;
9 would that be a correct statement?

10 MS. VANDERBILT: Yes, sir. According to the
11 statute, according to 44-38-307, it's services under the
12 HASCI division. I had informed all parties back in April
13 that the agency did find him eligible under those services
14 and that we were willing to work, you know, would he agree
15 to go and receive those services, to work to place him
16 somewhere, and I have not received any response in regards
17 to that issue.

18 THE COURT: And if Mr. Linkhorn disagreed or
19 refused services or was not competent to make that
20 decision, what would be the department's position as to
21 what would happen with Mr. Linkhorn?

22 MS. VANDERBILT: As far as whether he would stay
23 in services or receive services?

24 THE COURT: Exactly. So whether DDSN would
25 assist him?

1 MS. VANDERBILT: Well, as I said, the statute
2 clearly says that he cannot be involuntarily committed, so
3 he would have to agree to receive services under the Head
4 and Spinal Cord Division.

5 THE COURT: All right. Now, you stated also
6 earlier when we were talking that you had certain
7 objections to the jurisdiction or the procedural status
8 that we find ourselves today, and I want to give you an
9 opportunity to place those on the record clearly as well.

10 MS. VANDERBILT: Yes, sir.

11 As I said, from -- the position of the agency
12 is, there is no order out there that we are in violation
13 of, in order to provide these services. That's what the
14 rule said.

15 The rule that was served on the agency by the
16 Solicitor's office says, Special Needs be ruled into this
17 Court to show cause for services being denied to this
18 defendant as previously ordered by this Court. There is
19 no court order ordering us to provide services to Mr.
20 Linkhorn. I just want to make that clear for the record.
21 So we're not in violation, so therefore, the rule should
22 be dismissed as to the Department of Disabilities and
23 Special Needs.

24 So again, I'm going to object to the
25 jurisdiction as we've never been added as a party to any

1 of his proceedings. We weren't a party to the General
2 Sessions action. We obviously received this rule, but we
3 never -- there was never a motion to join us as a party to
4 anything, so I would say that this Court does not have
5 jurisdiction over the Department of Disabilities and
6 Special Needs to order anything for us to do.

7 And then also in regards to the issue for
8 ordering services, again, I think the Court has
9 jurisdiction over Mr. Linkhorn, so the Court could order
10 Mr. Linkhorn to cooperate with the Department of
11 Disabilities and Special Needs in the HASCI Division, but
12 according to our statute, 44-24-30 states that the
13 director has the final authority over applicant
14 eligibility, determination for services, and admission
15 order. So, therefore, I would argue that the Court does
16 not have jurisdiction to order that.

17 And again, we filed a return --

18 MR. RIDDLE: Your Honor, I don't mean to
19 interrupt, but can I ask her to restate that again? I
20 didn't quite understand it.

21 If you could just back up about two sentences
22 and start again, I would appreciate it.

23 MS. VANDERBILT: Okay. I'm not sure. Which
24 part?

25 Our statute says that our director or her

1 designee has the final authority over applicant
2 eligibility, determination for services, and admission
3 order. So, therefore, the Court cannot order that. But
4 what I did say, if you're talking about what I'm saying,
5 is that the Court has jurisdiction over Mr. Linkhorn
6 pursuant to the General Sessions matter here, and I
7 believe the Court could order Mr. Linkhorn to cooperate
8 with the agency. But I do not think the Court has
9 jurisdiction to order the agency to accept him or to place
10 him because that violates our statute.

11 And again, as I said, the Court doesn't have any
12 jurisdiction or any type of placement. We did file a
13 return to the rule, but as I said, the rule said we were
14 in violation of a court order. There is no court order
15 ordering the Department of Disabilities and Special Needs
16 to provide services to Mr. Linkhorn; therefore, I would
17 request that the rule against us be dismissed.

18 THE COURT: All right. In order to respond to
19 your comments and your motion, I need to have some further
20 information from Associate Judge Thompson.

21 And, ma'am, do you mind while you're still here
22 with us, would you step forward for a moment and let me
23 ask some questions as well as give the other lawyers an
24 opportunity to ask questions in response.

25 So what I'd like to do is, although I'm certain

1 you didn't anticipate this, is let me call you as a
2 witness and ask you if you would come forward and please
3 accept the oath of a witness.

4 JULIE HILL THOMPSON, after being duly sworn,
5 testified as follows:

6 THE CLERK: Have a seat, please. And state your
7 name for the record.

8 THE WITNESS: Julie Thompson.

9 EXAMINATION

10 BY THE COURT:

11 Q All right. And, Ms. Thompson, what is your position
12 with the Lexington County Probate Court?

13 A Associate probate judge.

14 Q All right. And in that capacity, do you handle all
15 the involuntary commitment proceedings in Lexington
16 County?

17 A Not all of them, but most of them.

18 Q All right. And how long have you held that position?

19 A Since 1997.

20 Q And I believe you are an attorney; am I correct?

21 A Yes.

22 Q And when did you graduate from law school?

23 A 1996.

24 Q All right. I asked you some questions earlier and
25 you answered from the back of the room. And now that

1 you're under oath, let me ask, were those responses you
2 provided accurate and true to the best of your knowledge?

3 A Yes.

4 Q And you heard Ms. Vanderbilt tell us that there has
5 not been a dismissal and, thus, this case today is not
6 postured appropriately because they are not in violation
7 of an order from the probate court. And I want to talk a
8 little bit about the procedure of how you handle an
9 involuntary commitment.

10 If you have an involuntary petition from the
11 Solicitor's office before you, do you then hold a hearing
12 on that and both of the agencies, if there is a question
13 of whether a person is not competent because they're
14 mentally ill or not competent because they have an
15 intellectual disability, both those agencies respond to
16 that petition; is that correct?

17 A We don't hold a hearing. The petition is filed.

18 Q Okay.

19 A At which point we order exams. And when the exams
20 are filed, at that point if there is a mental illness or
21 there is intellectual disability, at that point we hold a
22 hearing.

23 Q All right. And if the agency responds to you that
24 they do not provide services for this individual, then
25 what response do you make with regard to the involuntary

1 commitment petition?

2 A I'm sorry. Can you ask me that again?

3 Q Let's talk specifically about this case. You, your
4 court -- and this matter was actually before you, was it
5 not?

6 A Well, it didn't go to a hearing.

7 Q All right.

8 A So I did not hear anything, but I'm familiar with the
9 cases.

10 Had it gone to a hearing, I don't know if I
11 would have been the one to hear it or not. Maybe.

12 Q But is it correct to say that when you filed this,
13 you requested the diagnostic reports from both agencies;
14 is that correct?

15 A Yes.

16 Q And the DMH report came back and said that Mr.
17 Linkhorn is not mentally ill --

18 A Right.

19 Q -- that his primary condition is an anoxic brain
20 injury. Then you dismissed the proceedings against the
21 Department of Mental Health; is that correct?

22 A Yes. It has Judge Eckstrom's name on there because
23 when it comes back, it's just staff dismisses it because
24 that's what we're supposed to do.

25 Q And so when I said "you," I meant your office

1 dismissed DMH?

2 A Yes.

3 Q All right. Now, by the same token, if the DDSN comes
4 forward in a diagnostic report, which we have in evidence
5 now, which is -- the date of the evaluation was 7-30-2012,
6 and says we do not provide services, then what would be
7 the response of the probate court to that document?

8 A I believe that we would normally dismiss that as
9 well, if you're saying they're not -- they're not going to
10 receive services.

11 Q So, in other words, just putting it exactly what's
12 happened here, if the Department of Disabilities and
13 Special Needs says we do not provide services for a brain
14 injury, then the probate court finds a lack of
15 jurisdiction and dismisses that petition with respect to
16 the Department of Disabilities and Special Needs. Is this
17 a correct statement of how the process works?

18 A Yes.

19 Q All right. So anything you would add to that
20 statement?

21 A No.

22 Q All right. So then, in effect, the agencies
23 themselves in your court are the gatekeeper of whether or
24 not they can provide services for this particular
25 individual who happens to be the subject of the

1 involuntary commitment; is that correct?

2 A Yes.

3 THE COURT: All right. Thank you.

4 Now, there may be questions from counsel. We'll
5 start with the case counsel, which is the prosecution and
6 defense.

7 Any questions for Ms. Thompson from the
8 prosecution?

9 EXAMINATION

10 BY MR. RIDDLE:

11 Q Judge Thompson, good morning.

12 A Good morning.

13 Q In this particular case, you first got the petition
14 from Ms. Patterson asking that Mr. Linkhorn be evaluated
15 by DMH to determine whether or not he was incompetent as a
16 result of mental health issues, correct?

17 A Right.

18 Q And he was evaluated and that petition was dismissed?

19 A Yes.

20 Q And then Judge Keesley subsequently signed an amended
21 order in circuit court and a second petition was filed in
22 your court; is that correct?

23 A Yes.

24 Q And that was a -- for a short form of that, that was
25 a DDSN petition, a commitment under DDSN, correct?

- 1 A Yes.
- 2 Q And did Judge Eckstrom order an evaluation to be done
3 on Mr. Linkhorn pursuant to that second petition?
- 4 A Yes, I'm sure he did.
- 5 Q Let me show you this and ask if you recognize it. Is
6 this a copy of the order that he would have done?
- 7 A Yes.
- 8 Q And that order was signed by your boss, Judge
9 Eckstrom, on January 18 of 2012?
- 10 A Yes.
- 11 Q And does that order order DDSN to evaluate him?
- 12 A Yes.
- 13 Q Okay. And determine whether or not he's in need of
14 services?
- 15 A Yes.
- 16 Q And did you receive an evaluation as a result of
17 that?
- 18 A Yes.
- 19 Q Okay. Let me show you another document, please. Was
20 that diagnostic report dated 7-30 of 2012?
- 21 A Yes.
- 22 Q Okay. And in that, did DDSN purport to find that he
23 was not eligible for services; is that correct?
- 24 A Yes.
- 25 Q Okay. And that was as a result of a brain injury

1 that he suffered in 1998 at age 23, correct?

2 A Yes.

3 Q All right. And that report was actually dated 8-2 of
4 2012; is that correct?

5 A Yes, looks like it.

6 Q All right. And when this report came in, did you all
7 also receive a motion to dismiss filed by DDSN?

8 A I don't know if it was filed at the same time.

9 Q At or about the same time?

10 A Let's see. Notice of motion and motion to dismiss.
11 I have one from February of '12, but that's not the one.
12 That's the first one.

13 Q Yes, ma'am. Let me show you this. Is that a notice
14 of motion and motion to dismiss?

15 A Yes. August 2012.

16 Q And that's filed August 6 of 2012, correct?

17 A Yes.

18 Q Well, it's dated August 6 of 2012. I can't read the
19 filing date on there.

20 A Yes. Sorry about that.

21 Q And the report that we just looked at, that report
22 was signed by Dr. Brown from DDSN on 8-2?

23 A Yes.

24 Q So roughly four days later, correct?

25 A Yes.

1 Q Okay. And in that motion to dismiss, does DDSN take
2 the position that Mr. Linkhorn is not in need of services
3 from the Department of Disabilities and Special Needs?

4 A Yes.

5 Q Okay. And further, that your court has no
6 jurisdiction to hear the case for commitment to the
7 Department of Disabilities and Special Needs, correct?

8 A Yes.

9 Q Okay. Ordinarily, and I think the Judge covered this
10 with you. When you receive a petition like that, you all
11 would ordinarily just dismiss the petition, correct?

12 A Yes.

13 Q Okay. Now, in this particular case, is that what in
14 fact ultimately happened, just not immediately?

15 A Right.

16 Q And there was never a hearing done on the motion to
17 dismiss or on the underlying petition, correct?

18 A Right. The same as in the DMH case -- I mean, not
19 exactly the same, but we don't hold a hearing in the DMH
20 case either.

21 Q Right. So in this particular case, we have an
22 individual who is not competent to stand trial, correct?

23 A Yes.

24 Q And he's been found that way by Judge Keesley?

25 A Right.

1 Q And he has no mental health issues?

2 A Right.

3 Q So he's clearly not appropriate for the Department of
4 Mental Health to cover?

5 A Right.

6 Q All right. And we have the Department of
7 Disabilities and Special Needs saying he has no
8 intellectual disability or related disability?

9 A Yes.

10 Q So he is not eligible to be committed in the probate
11 court, correct?

12 A Right.

13 Q And he is just left hanging out there, correct?

14 A Yes.

15 MR. RIDDLE: Thank you. That's all I have at
16 this time.

17 THE COURT: Questions from the defense?

18 MS. FULLWOOD: No questions, Your Honor.

19 THE COURT: Very good. Questions from DMH?

20 MS. MONTGOMERY: No, Your Honor.

21 THE COURT: And from DDSN?

22 MS. VANDERBILT: Yes, just a few.

23 EXAMINATION

24 BY MS. VANDERBILT:

25 Q As far as the dismissal of this action, was DDSN ever

1 notified?

2 A No.

3 Q Was Mr. White who was appointed as his attorney,
4 guardian ad litem, ever notified?

5 A I don't believe anybody was notified.

6 MS. VANDERBILT: Thank you, Your Honor.

7 As I said, this is the first time I've ever
8 heard today that this action had been dismissed in probate
9 court. I called the probate court a couple of times and
10 tried to set a motion hearing and never heard anything. I
11 was told basically to quit calling the court, so...

12 THE COURT: All right. Thank you.

13 MS. VANDERBILT: Another question.

14 BY MS. VANDERBILT:

15 Q As far as what the diagnostic evaluation is based on,
16 what the order says, to determine whether or not he has an
17 intellectual disability, the order issued by Judge
18 Eckstrom, nothing to do with head and spinal cord injury?

19 A Right.

20 MS. VANDERBILT: Thank you.

21 THE COURT: All right. Thank you, ma'am. You
22 may step down. Thank you for your courtesy appearing as a
23 witness and an officer in the Court at the same time.

24 THE WITNESS: Sure.

25 THE COURT: All right. Ms. Vanderbilt, based on

1 the testimony we've just received, the Court is going to
2 deny your motion to -- for jurisdictional or procedural
3 reasons to stand this hearing down because what the
4 evidence has shown is that the Department of Disabilities
5 and Special Needs took a position, issued a diagnostic
6 report which said that Mr. Linkhorn was not eligible for
7 services, and then moved to dismiss the involuntary
8 commitment petition. Even though the department may not
9 have been notified, that indeed what you asked to be done
10 was done, the Court does not find that to be a fatal flaw
11 in these proceedings. What we have here is a gentleman
12 who has been in the detention center here in Lexington
13 County for -- as I mentioned earlier, for over two years
14 while these issues have languished, and I find the
15 department has bound themselves by their position to
16 dismiss this case because you state he is ineligible for
17 services as an involuntary commitment as a brain-injured
18 individual, so I'm going to respectfully deny your request
19 that this case terminate here at the outset for those
20 procedural reasons you've raised.

21 And, ma'am, let me ask you one question if I
22 may. I note, and it's come into evidence here, this
23 diagnostic report is done on a paperwork review.

24 By what authority does DDSN conduct a diagnostic
25 examination on a paperwork review?

1 MS. VANDERBILT: Well, Your Honor, that is the
2 procedure. The term "intellectual disability" has to be
3 determined, whether or not the person has adaptive scores
4 and an intellect and an IQ of 70 or below, and we
5 basically look at records. School records are very
6 determinative to determine whether or not a person has an
7 intellectual disability because that has to be determined
8 before the person reaches age 18.

9 THE COURT: So without the examiner laying eyes
10 on the person, your agency can return a diagnostic report
11 saying that they're not eligible for services?

12 MS. VANDERBILT: Yes, sir.

13 THE COURT: Thank you.

14 MS. VANDERBILT: Well, Your Honor, may I be
15 heard on the fact that there's no order from the probate
16 court that the Solicitor could have appealed denying the
17 services. That's one of my issues that I raised. I mean,
18 I think -- we've never received an order for that, and the
19 Solicitor's office never received an order from that.
20 There's nothing that could have been appealed based on
21 denial based on that.

22 THE COURT: But this is not an appeal from the
23 probate court. What the Solicitor chose to do is return
24 this matter to the General Sessions Court which has
25 ultimate authority over the disposition of criminal cases,

1 taking the position that when your agency denied services,
2 Mr. Linkhorn has simply remained in the jail for that
3 reason, and that's the issue before us today.

4 This Court finds that even though this is not an
5 appeal of the probate court proceedings, that this Court
6 has the inherent authority to determine because Mr.
7 Linkhorn is under the jurisdiction of this Court, whether
8 or not the department's actions have been appropriate in
9 these proceedings below after Judge Keesley has ordered
10 this matter for -- to be filed for involuntary commitment.

11 I'm aware of your procedural objections, your
12 jurisdictional questions. I respectfully deny those
13 motions and we will proceed into the hearing at this time.

14 MS. VANDERBILT: Your Honor, can I ask what
15 order then we are in violation of? In the rule it says
16 we're in violation of a court order for refusal to provide
17 services. What court order is the agency in violation of?

18 THE COURT: Well, just a moment. Let me review
19 that language.

20 Well, as I read it, it says to show just cause
21 for services being denied to this defendant as previously
22 ordered by this Court.

23 Now, again, that language -- and you attack it
24 technically, but the Court did order that Mr. Linkhorn be
25 referred for services through the probate court. Your

1 agency moved to dismiss that petition. So again, the
2 position of the department is clear, and the Court finds
3 that the motion, the issues are sufficiently ripe for
4 adjudication.

5 So without pointing to a specific, quote, order,
6 close quote, that you violated, the Court finds that this
7 rule is appropriate for the Court to investigate to get to
8 the bottom of this as to what happened, how we find
9 yourselves where we do today, and specifically Mr.
10 Linkhorn remaining in the Lexington County jail for the
11 time that he has. And so your motions are overruled.

12 MS. VANDERBILT: Thank you.

13 THE COURT: Now, would you mark those
14 exhibits --

15 MR. RIDDLE: I just wanted to check and see what
16 Ms. Patterson has already put in and offer those.

17 Your Honor, and I don't have copies, but I would
18 like leave to make a copy of these. And I would like to
19 file a copy of the petition -- the second petition, the
20 one related to DDSN, I'd like to make a copy of that
21 petition that was filed in the probate court an exhibit in
22 this hearing.

23 I would also like to mark a copy of the motion
24 to dismiss that was filed by DDSN in the probate court as
25 an exhibit in this hearing as well as Judge Eckstrom's

1 order and a copy of the diagnostic report that was done by
2 DDSN pursuant to Judge Eckstrom's order for the
3 evaulation, I would like to mark that, a copy. I do have
4 a copy of that one. It's already been marked as Court's 4
5 at this time, but I would like to file or -- excuse me --
6 mark copies of those three documents, the petition, the
7 motion to dismiss and Judge Eckstrom's order. I
8 apologize.

9 THE COURT: For completeness of the record, the
10 Court will permit that. You may substitute your copies
11 when you make them.

12 (WHEREUPON, The Court's Exhibit No. 4 was marked
13 for purposes of the record.)

14 THE COURT: All right. Let's move into the
15 evidence in this matter. And the Court perceives, as I
16 have sent a letter to all counsel, that we really have
17 decided -- well, the Court sent a letter that was -- and
18 I'm not certain of the exact date of it, which outlined
19 the issues which will be up for consideration today. One
20 of these has to do with what is the primary condition
21 which renders Mr. Linkhorn not competent, is it mental
22 illness or is it intellectual disability or a related
23 disability or brain injury, and then the question before
24 this Court is whether or not DDSN's determination that a
25 brain injury is not included in the term "intellectual

1 disability or related disability" is also before us today.

2 And so on that issue I believe you wish to call
3 Dr. Frierson first, and let's do that so we can
4 accommodate his schedule.

5 MR. RIDDLE: Your Honor, if it please the Court.

6 Dr. Frierson, as you know, you authorized -- I
7 say "you." A circuit court judge authorized some funds
8 for Ms. Fullwood to hire Dr. Frierson.

9 THE COURT: Right.

10 MR. RIDDLE: If it's all right with the Court,
11 we'd like for Ms. Fullwood to put Dr. Frierson up on
12 direct. She's been talking with him and I think she's in
13 a position where she can handle this much more
14 efficiently.

15 THE COURT: Thank you.

16 Ms. Fullwood, please call your first witness.

17 MS. FULLWOOD: We'd call Dr. Richard Frierson.

18 THE COURT: Please come forward and take the
19 oath of a witness.

20 RICHARD FRIERSON, M.D., after being duly sworn
21 and affirmed, testified as follows:

22 THE CLERK: Have a seat up here. And state your
23 full name and spell your last for the record, please.

24 THE WITNESS: My name is Richard Lesesne
25 Frierson, F-R-I-E-R-S-O-N.

DIRECT EXAMINATION

BY MS. FULLWOOD:

Q Doctor Frierson, can you give us a concise description of your medical education, training, and work experience.

A Yes. I received my medical doctorate or M.D. degree in 1988 from the University of South Carolina School of Medicine. Completed four years of residency in general psychiatry in 1992 at the William S. Hall Psychiatric Institute. Completed a one-year fellowship in forensic psychiatry in 1993 at William S. Hall Psychiatric Institute.

I am board certified by the American Board of Psychiatry and Neurology in both the field of general psychiatry and forensic psychiatry.

Q And where are you employed at this time?

A I'm employed by the University of South Carolina School of Medicine. I'm professor of clinical psychiatry and vice chair of the department for education.

Q Prior to that employment, did you work for the Department of Mental Health in its forensic division?

A Yes.

Q And what was your position there?

A I was chief of outpatient forensic services from 1995 up until about 2004.

1 Q And what would that work entail, dealing with the
2 outpatient aspect of it?

3 A I was in charge of trying to make sure that criminal
4 defendants from throughout the state of South Carolina
5 were evaluated for competency to stand trial or criminal
6 responsibility at the Forensic Services Division. I still
7 do that work, some of that work. I'm not in charge of
8 that service, but I do evaluations currently through a
9 contract that the university has with the Department of
10 Mental Health.

11 Q So as part of your employment with Hall, did you
12 evaluate individuals for competency to stand trial and
13 criminal responsibility?

14 A Yes.

15 Q Can you give us a ballpark figure of how many?

16 A Thousands. Over two thousand.

17 Q And you're still performing that type of work but not
18 on a regular basis?

19 A Yes.

20 MS. FULLWOOD: All right. Your Honor, I'd move
21 to have Dr. Frierson certified as an expert in the field
22 of forensic psychiatry.

23 THE COURT: Is there an objection from any
24 party?

25 MR. RIDDLE: The State stipulates.

1 THE COURT: All right.

2 MS. MONTGOMERY: No objection.

3 MS. VANDERBILT: No objection.

4 THE COURT: All right. Hearing none, Dr.

5 Frierson is well known to the Court and to the parties
6 here and is so admitted as an expert.

7 BY MS. FULLWOOD:

8 Q Dr. Frierson, did I retain you to examine Mr.
9 Linkhorn and his background to try to get a diagnostic
10 impression of him and opinion as to what type of treatment
11 he needs?

12 A Yes.

13 Q Okay. And in doing this work, did you have access to
14 records concerning Mr. Linkhorn?

15 A Yes. I had access to the 1998 records from the
16 Department of Mental Health, which was immediately after
17 his anoxic brain injury. I had the subsequent court
18 reports from the Department of Mental Health related to
19 competency evaluation in the current case. I had the DDSN
20 report done by Dr. Gordon Brown dated July 30, 2012.

21 I spoke with Mr. Linkhorn's sister and I
22 interviewed Mr. Linkhorn on two occasions at the Lexington
23 County Detention Center, April 29 of 2013 and June 12 of
24 2013.

25 Q And could you tell us what your diagnosis of Mr.

1 Linkhorn is?

2 A Mr. Linkhorn suffers from a dementia that is due to
3 an anoxic brain injury that was the result of a suicide
4 attempt by hanging on March 13 of 1998, at the Lexington
5 County Detention Center.

6 Q And could you describe for us your clinical
7 impression as to how that affects the way Mr. Linkhorn
8 functions?

9 A Yes. Mr. Linkhorn has numerous cognitive deficits or
10 intellectual deficits that were likely the result of this
11 injury. He has memory impairment. He forgets things. He
12 has difficulty with his language as compared to his
13 previous functioning. His language is much slower. His
14 speech is much slower. He has difficulty carrying out
15 certain motor activities that we call a cracked fifth,
16 which is something he could do before -- let me just say,
17 I administered something called a St. Louis University
18 Mental Status examination. It's a 30-point screening of
19 someone's cognitive status.

20 Mr. Linkhorn, for example, was able to register
21 five words. I say, I want you to remember these five
22 things: apple, pin, tie, house, car. It took him two
23 attempts just to be able to repeat them. But I knew they
24 got in there because he was able to repeat them. But then
25 five minutes later, he could remember none of them. So he

1 has memory impairment.

2 By, anyway, to make a long story short, on this
3 test which looks at contextual memory, ability to
4 concentrate, ability to calculate, ability to understand a
5 simple story, he scored a 12 out of a possible 30, and
6 that falls in the range of dementia. So that I also
7 looked at my clinical impressions and confirmed that. And
8 in talking with his sister, she was able to give me some
9 very good information about what he can and cannot do.

10 He was actually not living in a trailer as
11 stated previously. He was living in a camper next to his
12 sister's house at the time of his current arrest.

13 He did not have running water. He would have to
14 go into his sister's house to use the bathroom or take a
15 shower.

16 He had to be prodded to maintain his hygiene.
17 She reported that he would frequently put on clean clothes
18 without bathing. He was unable to do laundry.

19 He, just to give an example, he put the pool
20 chemicals for a swimming pool thinking that they were
21 detergent.

22 He has to be supervised in doing a lot of things
23 to maintain hygiene. He cannot manage his money. She was
24 managing his disability check.

25 She said these were changes that were not

1 present before 1998.

2 Q Do you have a medical opinion as to whether or not
3 Mr. Linkhorn can live independently?

4 A Yes.

5 Q What is that opinion?

6 A It's my opinion that Mr. Linkhorn is not capable of
7 living independently without supervision.

8 Q Now, I did not retain you to examine him for
9 competency, did I?

10 A No.

11 Q Nevertheless, did you do a screen for competence?

12 A I did.

13 Q And is your opinion the same as the examiner's, both
14 Mental Health and DDSN?

15 A Yes. It's my opinion that Mr. Linkhorn is not
16 competent and it's unlikely that he would ever be restored
17 to competency.

18 Q Doctor, can you give us your medical opinion as to
19 what type of placement Mr. Linkhorn needs in order to
20 achieve him being able to live his daily life and in the
21 interest of the public in light of the allegations in this
22 case?

23 A It is my opinion that Mr. Linkhorn needs to live in a
24 supervised 24-hour -- either a group home or a facility
25 where he can be supervised in his activities of daily

1 living. And it's also my opinion that he should be in a
2 placement where he does not have access to young children,
3 given the allegations that led to his arrest.

4 Q And would those requirements be met if he were simply
5 allowed to remain in the community?

6 A No.

7 Q Okay. Doctor, I'm going to hand you a printed copy
8 of Section 44-23-10 of the Code of Laws of South Carolina
9 and ask you to read into the record Subsection 21 where a
10 person with an intellectual disability is defined. I've
11 got it highlighted there for you.

12 THE COURT: Please remember our court reporter
13 is taking down what you say as you read.

14 THE WITNESS: Quote, A person with intellectual
15 disability, end quote, means a person other than a person
16 with a mental illness primarily in need of mental health
17 services, whose inadequately developed or impaired
18 intelligence and adaptive level of behavior require for
19 the person's benefit, or that of the public, special
20 training, education, supervision, treatment, care or
21 control of a person's home or community, or in a service
22 facility or program under the control and management of
23 the Department of Disabilities and Special Needs.

24 BY MS. FULLWOOD:

25 Q Dr. Frierson, in your opinion, does Mr. Linkhorn's

1 impairment and his clinical manifestation fall within that
2 statutory definition?

3 A Yes.

4 Q Dr. Frierson, if Mr. Linkhorn came into your office
5 and you had absolutely no idea that he had had a traumatic
6 brain injury, what would your clinical impressions of him
7 be?

8 A It would be my clinical impression if I did not know
9 that he had had the brain injury and was normal prior to
10 that, I knew nothing about it, and I was asked my clinical
11 impression, it would be that he likely has mild mental
12 retardation or now as we call it, mild intellectual
13 disability.

14 MS. FULLWOOD: No further questions, Your Honor.

15 THE COURT: Thank you.

16 Are there questions from the State?

17 MR. RIDDLE: Briefly, Your Honor.

18 THE COURT: Go ahead.

19 CROSS-EXAMINATION

20 BY MR. RIDDLE:

21 Q Dr. Frierson, without getting too much into that last
22 thing that Ms. Fullwood was asking you about, absent the
23 records that you reviewed in this case, it's your opinion
24 that Mr. Linkhorn presents as a person with an
25 intellectual disability or someone who's mentally

1 retarded?

2 A Yes.

3 Q Okay.

4 A That's the clinical way that he presents clinically.
5 What you see in front of you is similar to what you see,
6 or identical almost, to someone with mild intellectual
7 disability. Of course, to diagnose that, the onset before
8 is before 18.

9 Q Correct.

10 A And we have conflicting evidence about his
11 preadaptive -- what his function was like before the head
12 injury. He says he was in special ed. His mother in a
13 1998 social history said he was in regular classes. I
14 actually was able to locate his last school, which was
15 Mills School, and I requested records from them to look at
16 but never received them.

17 Q Okay. In terms of the treatment services provided to
18 Mr. Linkhorn, it would be the same whether or not he is as
19 he presents not knowing anything about him as MR or
20 intellectually disabled versus someone who has dementia
21 due to this anoxic brain injury?

22 A He has the same needs as someone with an intellectual
23 disability.

24 MR. RIDDLE: Thank you, Doctor. That's a much
25 better answer than it was a question. I appreciate it.

1 THE COURT: Thank you.

2 Are there questions from the Department of
3 Mental Health?

4 CROSS-EXAMINATION

5 BY MS. MONTGOMERY:

6 Q I would just ask, based on what you say, does he
7 present as someone that suffers from the major mental
8 illness?

9 A No.

10 Q Would he have the same needs as someone who suffers
11 from a mental illness?

12 A No.

13 MS. MONTGOMERY: Thank you. Nothing further.

14 THE COURT: Thank you.

15 And are there questions from the Department of
16 Disabilities and Special Needs?

17 MS. VANDERBILT: Yes, there are, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. VANDERBILT:

20 Q Your diagnosis is that he has the anoxic brain injury
21 with dementia?

22 A A dementia caused by an anoxic brain injury.

23 Q Okay. Are you saying he also has an intellectual
24 disability?

25 A I use the word "intellectual disability" differently

1 than you do. Yes, he has an intellectual disability. He
2 has an IQ of 61 on full scale, last measured by a brief
3 intelligence measure. That is a disability and that is
4 related to his intellect. Whether it is the same
5 intellectual disability that has been prior referred to as
6 mental retardation, the answer would be no because it
7 didn't have its onset before age 18.

8 MS. VANDERBILT: Thank you. I have no further
9 questions.

10 THE COURT: All right. There being no further
11 questions, then, Dr. Frierson, you are free to step down
12 and free to leave if you wish.

13 THE WITNESS: Thank you.

14 THE COURT: Good to see you. Have a good day,
15 sir.

16 Ladies and gentlemen, let's take approximately a
17 ten-minute break before we proceed into further
18 questioning. We'll be in recess now until 20 to 12:00.

19 (A break was taken.)

20 THE COURT: We're back on the record.

21 Ladies and gentlemen, when we began this
22 morning, I failed to introduce our staff who's working
23 with us today, and I intended to do that as you will have
24 some interaction with them.

25 We have Ms. Myra Counts from the Clerk's office.

1 Thank you, Myra, for your assistance today.

2 Our bailiffs are Mr. Knight, who is on the
3 Court's door here, as well as Mr. Mills, who is in the
4 back.

5 Deputy Jeffcoat was in here earlier. Is he
6 still with us? He was here earlier this morning. And
7 also Mr. Anderson. And this is our staff that's working
8 with us today.

9 All right. I had mentioned earlier I realized
10 the parties may have individuals that they wish to call,
11 but the Court has advised everyone that the Court would
12 call an expert witness, that is, a Court's witness in this
13 case. Is there an objection to taking that witness at
14 this time?

15 MS. PATTERSON: Not from the State, Your Honor.

16 THE COURT: Okay. Defense?

17 MS. FULLWOOD: No, Your Honor.

18 THE COURT: All right. From agency counsel, any
19 objection?

20 MS. MONTGOMERY: No, Your Honor.

21 MS. VANDERBILT: No, Your Honor.

22 THE COURT: All right. Then, Mr. Butler, would
23 you come forward then. The Court will call Beatty Butler.
24 And would you please come forward and take the oath of a
25 witness.

1 BEATTY BUTLER, after being duly sworn, testified
2 as follows:

3 THE WITNESS: My name is Beatty Butler,
4 B-U-T-L-E-R.

5 THE COURT: All right. Mr. Beatty I. Butler.
6 Welcome to the courtroom, Mr. Butler.

7 THE WITNESS: Thank you.

8 THE COURT: And the Court has previously
9 forwarded to the parties the questions that I intend to
10 ask. And then, of course, all parties will be given
11 cross-examination.

12 EXAMINATION

13 BY THE COURT:

14 Q But what I'd ask you to do first, would you give us
15 your background of your legal education and your scope of
16 practice, Mr. Butler.

17 A I graduated law school, South Carolina School of Law
18 in 1996. I've been a public defender ever since. I was a
19 public defender in this county until early 1998. Then I
20 was a public defender in Richland County for five years,
21 and towards the end, was the senior trial attorney for the
22 office. And for the last ten years I've been the chief
23 litigator for the Charleston County Public Defender's
24 Office. At one point my title was director of litigation,
25 but then they switched it, but I don't think there's any

1 difference, really.

2 Q All right. And then specifically focusing on the
3 issues in this case, can you tell us about your experience
4 in representing clients in General Sessions courts who
5 have been diagnosed with a mental illness or an
6 intellectual disability; that is, those clients who have
7 had competency issues.

8 A I've represented dozens if not over a hundred clients
9 who had one or the other or both.

10 Q All right. And have you been involved in previous
11 litigation concerning forensic mental evaluations in South
12 Carolina? If so, tell us about that, please.

13 A Well, aside from just representing clients with
14 either mental illness or intellectual disabilities and
15 having to litigate some of the very issues that we're
16 dealing with here, I also was a part of the process that
17 Your Honor was involved in in revamping the forensic
18 evaluation process. That came about by virtue of
19 litigation. In, I guess, late maybe 2002, the Department
20 of Mental Health had an extensive backlog of cases where
21 people had been ordered to go for treatment and
22 restoration and they weren't taking them, and on behalf
23 of -- I don't know -- a couple dozen Richland County
24 clients, I filed a motion to have the Department of Mental
25 Health held in contempt of court, and that led to what's

1 now an ongoing process of ten years or so where we've been
2 reworking the forensic evaluation process.

3 Beyond that -- I think that's it for that.

4 Q All right. And what role did you play -- you talk
5 about reworking or revamping the forensic evaluation
6 process. What role have you played in promulgating the
7 current forensic evaluation orders, the protocols, and the
8 general procedures we use?

9 A Well, what we wanted to do was we wanted to figure
10 out why it was that the numbers had gotten so high and the
11 backlog so deep. And having worked in the system at that
12 point for several years, and we had a group of people that
13 came from the prosecutor offices and the different
14 agencies, public defender's offices, was the first thing
15 that we did was we separated out the competency evaluation
16 and criminal responsibility evaluation.

17 Whether just by historical accident or
18 tradition, our state had been up to that time had a single
19 order that covered both of those and most evaluations, all
20 evaluations were joint, meaning that they were both for
21 competency and criminal responsibility. The first thing
22 that we did to improve the process was to make those
23 separate and that you could request one without the other.

24 And there were other things, too. We worked on
25 deadlines and time limits and protocols for the agencies.

1 DMH was ordered to participate by virtue of the contempt
2 proceeding. My recollection is that DDSN came to the
3 table, although not ordered, but my recollection is it was
4 somewhat reluctantly, but we were all there trying to work
5 through ways to improve the process.

6 Q All right. And then have you attended forensic
7 evaluations for both mental illness and intellectual
8 disabilities?

9 A I have, yes. There was a time period -- I don't know
10 if it's changed -- where -- and this is one of the bones
11 of contention, where DDSN would not let us be present, but
12 I can't say that was all of them. But I've definitely
13 been present for most -- probably not all, but most of my
14 clients that have been evaluated by DMH.

15 Q All right. And --

16 A Oh, and I've also lectured. I've lectured at public
17 defender conferences and MUSC when asked by DMH on the
18 forensic evaluation process.

19 Q All right. And have you attended probate hearings
20 where there have been involuntary commitments for clients
21 as well?

22 A In one problematic case I represented a client in
23 probate. Even though it was not part of my public
24 defender's duties, it was a case that caught my attention,
25 let's say, in dealing with the agencies and I decided I

1 was going to represent my client in probate court.

2 Q And could you tell us what case that was?

3 A That was the case of James Thurmond who was -- he was
4 serving a sentence, a very lengthy sentence, that must
5 have been from some homicide, probably manslaughter, a
6 very lengthy sentence in the Department of Corrections
7 when he was accused of sexually assaulting a nurse in the
8 Department of Corrections.

9 By the time I got the case, he had been
10 evaluated by both agencies and determined to be not
11 competent, but he had several more years to serve, so
12 nobody really worried about it until he was about to get
13 out. And he had been found not competent and ordered
14 by -- I have the history with me somewhere -- ordered that
15 DDSN was to take responsibility for him after his release.

16 And as his release became imminent, DDSN
17 requested that that process be reopened, and it was. And
18 they took the very adamant position that he was not
19 mentally retarded, but the records were clear that he
20 had -- several tests that determined that he was mentally
21 retarded. And they then took the position, well, he's
22 really mentally ill, and when you take him out of the jail
23 where he's -- if you evaluate him in the Department of
24 Corrections where he's comfortable, he's fine, he's
25 competent. It's only when you take him out to these

1 different agencies or to court does he decompensate. So I
2 went and recorded him at the Department of Corrections and
3 found that he was not any different. And it turned out
4 that -- I think I'm recalling this correctly -- that as a
5 boy, he was a DDSN client, but those records were not --
6 were no longer available.

7 Ultimately, I think the probate court ordered
8 that DDSN take responsibility for Mr. Thurmond and they
9 had to contract with DMH because they didn't have a
10 facility that was suitable for him.

11 Q Would it be safe to say then that you have
12 substantial experience basically in every facet of the
13 forensic evaluation process in South Carolina?

14 A I think so, yes, sir.

15 Q All right. Now, also, have you had any education or
16 training or experience in issues that relate to the equal
17 protection clause of the United States Constitution or the
18 South Carolina Constitution?

19 A I don't know that I would have any more knowledge of
20 that than anybody else who went to law school and took the
21 bar. I mean, I did publish one law review article in a
22 peer review journal as a law student that contained a
23 section on equal protection. I took extra classes on
24 constitutional law that would have dealt with equal
25 protection beyond what we were required to take, but

1 beyond law school education and that one article, I
2 wouldn't -- I couldn't say that I was any more of an
3 expert than anybody else.

4 Q When you say "anybody else," you mean any other
5 practicing attorney?

6 A Any other practicing attorney, yes, sir.

7 THE COURT: All right. Then at this time,
8 ladies and gentlemen, we'll open up the witness for
9 questions of voir dire on expertise. And the Court one
10 intend to consider him as an expert on criminal
11 constitutional procedural laws in South Carolina
12 pertaining to mentally ill and/or intellectually disabled
13 defendants and their competency to stand trial.

14 Any questions from the State with regard to
15 expertise?

16 MS. PATTERSON: No, sir, Your Honor. We
17 stipulate that he is an expert.

18 THE COURT: From defense?

19 MS. FULLWOOD: We stipulate to his
20 qualifications.

21 THE COURT: Very good.

22 From DMH?

23 MS. MONTGOMERY: I don't have any questions,
24 Your Honor.

25 THE COURT: All right. DDSN?

1 MS. VANDERBILT: Yes, sir, I have a couple, Your
2 Honor.

3 THE COURT: Go ahead.

4 CROSS-EXAMINATION

5 BY MS. VANDERBILT:

6 Q You were talking about a Thurmond case. When was
7 that?

8 A I actually was able to dig up one of the filings in
9 that case. Even though it was at my former office, I've
10 got it here.

11 Oh, here it is. That would have been in -- the
12 indictments were from 1994, but when I was having my
13 issues with DDSN over Mr. Thurmond, it was in 2002.

14 Q Okay. So that's over 11 years ago?

15 A Yes.

16 Q Okay. Since that time, how many commitments with
17 Department of Disabilities and Special Needs have you been
18 involved in?

19 A I couldn't give you a number, but I had at least one
20 other definitely notable disagreement with DDSN after I
21 was in Charleston. I couldn't tell you the number of
22 people that I've had evaluated by DDSN or jointly DDSN and
23 DMH.

24 Q That wasn't my question. My question was how many
25 probate commitments?

1 A Oh, probate, where I was the lawyer in probate court?
 2 None. That was the only one.
 3 Q Okay. And you have no clinical background in regards
 4 to intellectual disability?
 5 A No, I do not.
 6 Q Related disability?
 7 A No.
 8 Q Head and spinal cord injuries?
 9 A No.
 10 Q Have you ever written a statute?
 11 A I have not.
 12 Q Okay. Are you familiar with the statutory
 13 definitions of intellectual disability?
 14 A Yes.
 15 Q Of related disability?
 16 A Yes.
 17 Q And of head and spinal cord injury?
 18 A No.
 19 Q Okay. Are you familiar with the statute that gives
 20 the Department of Disabilities and Special Needs director
 21 the final say over eligibility to the agency?
 22 A I reviewed it in preparation for today.
 23 Q Okay. Are you in any way an expert in statutory
 24 interpretation?
 25 A I think all lawyers are in some respect. I would say

1 I'm no more of an expert than any lawyer or any judge.

2 Q Okay. And in regards to medical findings and legal
3 authorities, what would you base your experience on for
4 that?

5 A I'm not sure what you're asking.

6 Q Okay. There was a question that the Judge said that
7 he would -- in making an opinion in regards to DDSN
8 pursuant to South Carolina laws responsible for the care
9 and treatment of Rocky Linkhorn, after a finding of not
10 competent to stand trial and that it's not likely to
11 restore competency, and it talks about medical findings
12 and legal authorities.

13 A I have an opinion about that, that I don't think will
14 be, in essence, my giving a medical opinion.

15 Q Okay. And are you familiar with the fitness to stand
16 trial statute, 44-23-410?

17 A Yes.

18 Q And what does it say under that statute of a person
19 that has criminal charges, if they are not involuntarily
20 committed, what's supposed to happen to them?

21 A If they're not involuntarily committed?

22 Q Yes.

23 A What is supposed to happen to them? Well, the only
24 way that they would not be -- they would not be
25 involuntarily committed would be is if they were

1 determined to be competent or the charges were dismissed
2 against them. I mean, it can't proceed to trial, so those
3 are the only options.

4 Q Okay. Well, the statute says, were not involuntarily
5 committed following judicial admission proceeding shall be
6 released.

7 A Yes, those would be the only options.

8 MS. VANDERBILT: Your Honor, I object to him
9 being qualified as an expert in regard to this. He has
10 had experience and so have all the attorneys here in
11 regards to that. I would say he doesn't meet the
12 qualifications of an expert, particularly in a
13 constitutional argument, he doesn't have any more training
14 in that in regards in particular to the Department of
15 Disabilities and Special Needs.

16 THE COURT: All right. I'm going to concede to
17 your point on the constitutional question; however, the
18 Court's going to overrule your objection because I find
19 that Mr. Butler has not only been a practitioner, but he
20 is engaged in substantial litigation with regard to
21 forensic evaluations. He's been a core part of the effort
22 in South Carolina to bring this process -- well, first to
23 the 20th century and then on to the 21st. He has a full
24 understanding of components and facets of this system and
25 the way it's operated in South Carolina, not only the

1 procedures of it and the practicalities of it, but the
2 statutory mandates of it. So for all these reasons, I'm
3 going to deny any further objection that you make and I'm
4 going to allow him to testify as an expert on the criminal
5 substantive and procedural laws of South Carolina that
6 pertain to mentally ill and are intellectually disabled
7 defendants and their competency to stand trial. And we
8 will proceed into that testimony.

CONTINUED EXAMINATION

10 BY THE COURT:

11 Q Tell us what materials and documents and case law or
12 statutes have you reviewed for today, Mr. Butler.

13 A Well, I already mentioned I reviewed the procedural
14 history of the case of James Thurmond that I was able to
15 find from 2002. I reviewed the order dated by Chief
16 Justice dated March 12, 2013, giving Your Honor
17 jurisdiction over this matter. I reviewed the questions
18 that Your Honor provided all parties. I reviewed a
19 correspondence from Your Honor to the parties involved
20 entitled Draft Subject to Revision which basically lays
21 out what Your Honor sees as the issues.

22 I reviewed a petition for judicial admission
23 filed in Lexington County January 5, 2012. I reviewed an
24 order for diagnostic evaluation received January 20, 2012,
25 signed by Daniel Eckstrom, Judge of Probate Court. I

1 don't know if I'm reading that last name correctly.

2 I reviewed an amended order for finding of lack
3 of competence to stand trial in the case of Rocky Linkhorn
4 received March 6, 2012, signed by Judge Keesley. I
5 reviewed two what I would call mental health evaluations;
6 one is a diagnostic report by a clinician with DDSN,
7 Gordon Brown, dated August 2, 2012, and an earlier
8 evaluation that I took to be a joint evaluation from DMH
9 and DDSN that was dated October 12, 2011.

10 A notice of motion to dismiss filed August 3,
11 2012, on behalf of Tana Vanderbilt with DDSN. Motion for
12 a rule to show cause filed by Rhonda Patterson dated --
13 filed January 2, 2013.

14 A letter from Your Honor to me dated April 10,
15 2013. A letter from Ms. Vanderbilt to Your Honor dated
16 April 22, 2013. A return to rule on behalf of South
17 Carolina Disabilities and Special Needs. I don't see that
18 that was filed. Maybe the cover letter -- and that was
19 dated January 5, 2012.

20 Statutes 44-23-410, 44-23-10, 44-23-430,
21 44-20-450, 44-20-30, 44-23-460, 44-23-220, 44-20-20,
22 44-20-430.

23 A petition for a rule to show cause that I filed
24 against DDSN on behalf of a former client of mine, Kenneth
25 Grant, in Charleston. I reviewed the case of South

1 Carolina Department of Health and Human Services -- I'm
2 sorry, Jane Doe versus South Carolina Department of Health
3 and Human Services, a South Carolina Supreme Court Case,
4 Citation 727 SE2nd 605. I reviewed a case from the state
5 of Georgia, Georgia Department of Human Resources versus
6 Drust, D-R-U-S-T, Supreme Court of Georgia, 448 SE2 364.
7 I reviewed a portion of the North Carolina Code Section
8 15A-1002 and Section 122C3 also from the North Carolina
9 Code.

10 And I also reviewed a statute that was in your
11 questions, Judge, and I didn't have a copy of it, but I
12 reviewed that -- beg the Court's indulgence -- the other
13 statute that I reviewed, 44-23-90.

14 I think that's it.

15 Q All right. And based upon your review of the
16 documents that you've just given us, do you have a legal
17 opinion of whether or not SC DMH or SC DDSN, pursuant to
18 South Carolina law, is responsible for the care and
19 treatment of Rocky Linkhorn after he's been found not
20 competent and not likely to restore.

21 A I do.

22 Q And what is that opinion?

23 A Is that through an involuntary commitment procedure,
24 DDSN would be the responsible agency.

25 Q Okay. And upon what do you -- what legal authority

1 do you base that opinion?

2 A There's a lot of different ways I could try to
3 explain this. It's not easy. It's actually not as easy
4 as I thought it was going to be when I first -- when you
5 first asked me to look at this. But let me try to start
6 big picture.

7 If any criminal defendant in South Carolina is
8 not competent to stand trial, some agency is going to be
9 responsible for them at some point unless and until the
10 case is dismissed, but that's further down the line of
11 process. If a person is not mentally, then the only other
12 agency is DDSN. And I don't think you have to fill in the
13 blanks to figure out how to get there, but that's kind of
14 the big picture.

15 My opinion that DDSN would be the responsible
16 agency is based upon interpreting the statutes -- and I'll
17 go through them -- and relying on principles of statutory
18 construction like preserving the intent. The statute has
19 to be read harmoniously and to preserve the
20 constitutionality of the statute. And I have to say,
21 that's part of my opinion is that to read it otherwise
22 would be to violate the constitutional prohibition of
23 violation of equal protection and separation of powers. I
24 don't know if you want to hear from me when I get to that,
25 but I'll let you know.

1 There are purely practical reasons that some
2 agency has to be responsible for people in Mr. Linkhorn's
3 situation. Obviously, he's presumed innocent but has been
4 charged with a crime. We have the public interest at
5 stake to make sure that these people are monitored and
6 taken care of.

7 There's also the issue of fairness to the
8 defendant. In this case he's been in jail for three
9 years, and our statute recognize that. 44-23-220 says
10 that a person who's mentally ill or intellectually
11 disabled can't be kept for safekeeping in a jail. If he's
12 not competent to be stand trial, he's not supposed to be
13 kept in the jail. He has to go some place. And DDSN's
14 scope of responsibility clearly cover somebody with his
15 condition. That's beyond argument, seems to me. It's
16 just a question of whether or not he can be involuntarily
17 committed through probate.

18 But I think the statute can be interpreted to
19 serve all of those interests just by looking at the
20 statutes themselves. You have to read the statutes as
21 being harmonious, if possible, and I think that you can.
22 Statutes can incorporate other sections of the code by
23 reference. And Chapter 23 and Chapter 20 both reference
24 each other, they cross-reference each other in a way that
25 leaves only one interpretation, which is this: The narrow

1 definition of intellectual disability and related
2 disability that DDSN likes to promote, which requires the
3 age of onset at either the developmental period for
4 intellectual disabilities or age 22 for related
5 disabilities, that narrower definition does not apply to
6 the forensic context. It does not apply to potential
7 clients or defendants who have gone through the forensic
8 evaluation process on their way to probate. Those
9 narrower definitions, my position would be, apply only to
10 all other commitments. And I think that you can read the
11 statute that way.

12 We'll start with 410. So if you look at 410,
13 44-23-410, which is the statute which dictates the
14 forensic evaluation process, 44-23-410 (1) says that a
15 judge shall order examination of the person -- (a) (1),
16 I'm sorry -- order an examination of the person by two
17 examiners designate by DMH if the person is suspected of
18 having a mental illness or designated by DDSN if the
19 person is suspected of having an intellectual disability
20 or related disability. Okay.

21 So the first thing that you do is you look to
22 the definitions in this chapter, Chapter 23, and those are
23 in 44-23-10. And as Dr. Frierson testified to earlier,
24 the operable definition there is in subsection 21,
25 intellectual disability, and my interpretation of this is

1 it's about as broad as it can be and it doesn't have the
2 onset limitation, age of onset limitation. I read this as
3 basically saying if you're not mentally ill but you have
4 an impaired intelligence or your adaptive -- your adaptive
5 level of behavior require these services or if you're
6 inadequately developed, inadequately developed or impaired
7 intelligence and adaptive level of behavior require these
8 services, then you meet the definition of intellectual
9 disability. There's no requirement that it be prior to
10 any certain age. That definition has to carry on with
11 the -- that definition of intellectual disability has to
12 follow the words "intellectual disability" throughout the
13 probate process once initiated in the forensic process.

14 I often thought it was curious why related
15 disability, although referenced in 410, it was not defined
16 in 10, if you follow me. Intellectual disability or
17 related disability. I don't know if that was an
18 oversight, but I would understand why. It would just be
19 superfluous. Any related disability would already be
20 covered in that definition. That definition of
21 intellectual disability is so broad, that to further
22 define related disability would be redundant to me.

23 MS. VANDERBILT: Excuse me. I'm sorry. What
24 are you reading from now?

25 THE WITNESS: I read from 44-23-10, that

1 definition. That definition to me, if you're not -- if
2 you're not mentally ill and incompetent, that definition
3 covers you. And it's that definition that follows the
4 client and the case throughout the forensic process and
5 throughout the probate process, not the narrower
6 definition in Chapter 20, which I'll get to in a minute.

7 And I did note that in 2011, the statute was
8 changed to replace mental retardation -- replace
9 intellectual disability with mental retardation. They
10 could have added the onset limitation if they wanted to,
11 and they chose not to.

12 So then if you go to 44-23-430, both subsections
13 two and three reference then what happens when a person is
14 either not likely to be restored or cannot be restored,
15 the probate process is initiated. I think that you have
16 to read that, the definition that got you there. The
17 definition that gets you to 430 is the definition that's
18 contained still in Chapter 23. And despite the fact that
19 when you get to 44-24-50, that chapter has a different
20 definition, the definition of intellectual disability
21 that's in Chapter 23 still remains the one that's in
22 effect. And that is reflected in 44-24-50.

23 When you get to 44-24-50 -- and I don't think
24 that this is just an accident -- 44-24-50 is the
25 proceedings for involuntary admissions for people with

1 intellectual disabilities or related disabilities. Yes,
2 if you go back to the definitional section in Chapter 20,
3 40-20-30, there is the age of onset limitations. Those
4 don't apply to (a) (8). They very well may apply to (a)
5 (1) through (7), okay? 44-24-50, proceedings for the
6 involuntary admission -- sorry -- 44-24-50 (a),
7 proceedings for the involuntary admission of a person with
8 intellectual disability or related disability to the
9 service of the department may be initiated by the filing
10 of a verified petition with the probate and family court
11 by spouse -- that may very well trigger the definition in
12 Chapter 20 -- relative, parents, parent with legal
13 custody, legal guardian of a person, person in charge of a
14 public or private institution in which the individual's
15 residing, the director of the county department of social
16 services in the county in which the person resides. Okay.
17 Those don't reference anything else. So I think it's fine
18 to look to the definition in Chapter 20 which has the age
19 of onset requirement. But when you get to (8), a
20 solicitor or assistant solicitor responsible for the
21 criminal prosecution pursuant to 44-23-430 subsection two.
22 When you get to subsection 8, it references Chapter 23.
23 These two parts of the code work together. They
24 cross-reference each other in a way that -- that -- the
25 only way that makes sense is that that broader definition

1 applies for involuntary commitments through 44-20-450 when
2 the person has been through the forensic evaluation
3 process.

4 So relying on the principle of incorporation,
5 both Chapter 23 and 20 incorporate by reference that
6 definition, the definition which is the broader
7 definition. And it has to. It has to. Because
8 otherwise -- beg the Court's indulgence -- otherwise,
9 44-23-460 wouldn't make any sense.

10 44-23-460, procedure when a superintendent
11 believes a person charged with a crime no longer requires
12 hospitalization. This contemplates that a person that
13 meets the definition in Chapter 23 has been probated.
14 When the superintendent of a hospital or intellectual
15 disability facility believes that a person against whom
16 criminal charges are pending no longer requires
17 hospitalization, and it goes on. 610 wouldn't make any
18 sense. If a person who met the definition in Chapter 23
19 couldn't be probated, that portion of the statute would be
20 inapplicable. So in order to make them harmonious, you
21 have to continue to use the definition that's in Chapter
22 23.

23 It would also beg the question if you operated
24 with the narrow definition that's in Chapter 20 that
25 requires the age of onset requirement, why would ever

1 evaluate them at all? If they can't ultimately -- if DDSN
2 couldn't commit them through probate, why would they
3 evaluate them in the first place? It wouldn't make any
4 sense. That broader definition is the only one that makes
5 sense when you look at the code as a whole. That would
6 render the definition in 44-23-10 meaningless if -- if --
7 it would be rendered meaningless if -- right, because then
8 DDSN wouldn't have to evaluate that person in the first
9 place, if they couldn't ultimately commit them. But
10 because it requires them to evaluate them, to read the
11 statute harmoniously, you have to use that definition
12 throughout.

13 I also read 44-24-30 as supporting this
14 position. 44-24-30, final authority over applicant
15 eligibility, et cetera. The director or his designee has
16 the final authority over applicant eligibility,
17 determination of services and admission order subject to
18 policies adopted by the commission.

19 I think that cannot apply to -- cannot apply to
20 clients or defendants who were sent to probate through the
21 forensic admission process because otherwise, you'd have
22 the agency performing a judicial function and would
23 basically read out the portions of the forensic evaluation
24 statute and the commitment statute, which gives the
25 judge -- the judge gets that authority, and so I would

1 think you'd have a separation of powers problem if you
2 were to allow it to mean -- I could understand how that
3 could mean voluntary commitments where the judges don't
4 necessarily make those decisions or the providing of
5 services, but where a judge is authorized to make those
6 decisions, to have it be an override by an agency seems to
7 me would create a separation of powers issue. And also,
8 to arbitrarily make the distinction between -- let's just
9 give an example. Somebody who is -- the onset is age 17
10 and 364 days and then somebody whose onset is on their
11 18th birthday, to draw that distinction seems to me to be
12 arbitrary. I can't think of any reasonable basis to draw
13 it, and I think that would give rise to equal protection
14 concerns.

15 And it need not be so --

16 MS. VANDERBILT: Your Honor, I'm going to object
17 as far as equal protection. I thought we decided he was
18 not an expert in that area.

19 THE COURT: All right. I'm going to note your
20 objection for the record, but again, the testimony by
21 Counsel was that he would be equally -- he would be
22 equally situated to any other lawyer to -- on issues that
23 are constitutional. So I'm not going to strike that from
24 the record. I'm going to leave it where it is and
25 overrule your objection.

1 You may proceed.

2 THE WITNESS: And it wouldn't need to be so
3 hypothetical. You could imagine this situation, because
4 at least in my experience, the way this -- the age of
5 onset gets applied is DDSN has taken the position, you
6 haven't shown me that --

7 MS. VANDERBILT: Your Honor, again, I object.
8 He's already testified he's -- when I was asking about his
9 qualifications, he has no clinical background, so I don't
10 think he can testify about the age of onset.

11 THE COURT: Overruled.

12 THE WITNESS: DDSN will take the position --
13 I'll just give you a real example, the case of Kenneth
14 Grant. Judge Pieper ordered them to do an evaluation
15 based upon a finding from DMH that my client was -- was
16 not mentally retarded -- I mean not mentally ill but
17 mentally retarded, and DDSN refused to even look at my
18 client. They wouldn't even schedule the evaluation. They
19 wouldn't observe him, they wouldn't examine him because I
20 had not, and they didn't tell me this but eventually it
21 came around, because I had not provided evidence that my
22 client had been diagnosed as mentally retarded or
23 intellectually disabled prior to the age of 18. So the
24 age of onset requirement in my practice as a lawyer really
25 ends up meaning we can't prove that the age of onset was

1 prior to age 18.

2 So I'll give you what isn't such a farfetched
3 hypothetical. You can imagine some poor kid in a rural
4 part of the state who would meet the definition of mental
5 retardation except that he's in a school system that's not
6 very good, his parents probably aren't the smartest and
7 don't notice these things, and they don't care when he
8 stops going to school and nobody notices until he commits
9 a crime, or is accused of committing a crime, and if it
10 happens to be the day after his 18th birthday, DDSN will
11 say he's not mentally retarded.

12 Now, I understand that the age of onset
13 requirement is, as I understand it, part of the definition
14 in the DSM and probably for other professional
15 associations, but there's a reason why that's not included
16 in the forensic evaluation process in the definition of
17 our statute. It's because it would be completely
18 arbitrary to make that distinction and unfair to the
19 client that I just gave you the example of. I mean, that
20 person was mentally retarded from the time he was mentally
21 retarded. It doesn't matter that nobody noticed it until
22 he was accused of a crime.

23 So I think that it would give rise to equal
24 protection concerns. I also think for reasons I already
25 stated it would give rise to separation of powers concerns

1 if you would allow the agency to make the final call. And
2 I appeal to the case of Doe versus South Carolina
3 Department of Health and Human Services. And I cite this
4 with a caveat. This opinion ought to come with a bottle
5 of aspirin. And it is, to me, so complicated dealing with
6 the federal agencies and the state agencies, but the
7 holding out to at least apply by analogy, it seems to me,
8 which was there DDSN wanted to operate with this same
9 definition in denying somebody services and our Supreme
10 Court held, thus, the informal agency policy issued by
11 DDSN purporting to implement an age 18 onset requirement
12 should be disregarded in determining what classes of
13 mentally retarded South Carolinians are entitled to
14 Medicaid waiver services because it lacks the force and
15 effect of law and is in direct conflict with regulation
16 88-210(F), which defines the developmental period as
17 extending to age 22.

18 I know that the context here is different, but
19 it seems to me that the principle is the same. If that
20 statute which gives the final call to the agency could
21 trump the judge, it seems like that they would also never
22 be responsible if they didn't want to be, so I appeal to
23 that as well.

24 I did look to other states just out of
25 curiosity. I looked at Georgia in the case of Georgia

1 Department of Human Resources versus Drust, 448 SE2nd 364.
2 This was a person, the defendant in a criminal case had
3 tried to kill himself by shooting himself and inflicted
4 traumatic brain injury. The Department of Human Resources
5 says unless he's mentally retarded or mentally ill, we're
6 not responsible for him.

7 Reading from the opinion: Department of Human
8 Resources appeals, arguing that that the statute -- their
9 forensic evaluation statute -- applies to incompetency
10 caused by mental illness or retardation, not to
11 incompetency caused by traumatic brain injury.

12 And the Georgia Supreme Court disagreed with
13 them and said there's nothing in the code which supports
14 the agency's contention that such transfers are only to be
15 made when the defendant is mentally incompetent as a
16 result of mental illness, retardation. The trial court
17 did not err in transferring the defendant to the
18 department simply because no incompetency stemmed from a
19 traumatic brain injury.

20 So for whatever it's worth, the Georgia statute
21 and cases interpreting it would include brain injuries in
22 the definition of intellectual disability.

23 And in North Carolina -- beg the Court's
24 indulgence -- oh, here it is. In North Carolina, the
25 definition of developmental disability in their Section

1 122C-3, development disability means a severe chronic
2 disability of a person which is attributable to a mental
3 or physical impairment -- a combination of mental and
4 physical impairments is manifested before the age of 22
5 unless the disability is caused by a traumatic head injury
6 and is manifested after the age of 22.

7 So as complicated as some of this is, I think
8 that my position is that nothing more than 44 -- the
9 commitment statute for DDSN which in subsection 8 says,
10 This action can be brought by the Solicitor when brought
11 pursuant to 44-23-410 or 430. Chapter 23, to me, is clear
12 as a reason as to use only the broader definition that's
13 in that chapter, in Chapter 23, and not the narrow
14 definition. I mean, there are all these other policy
15 reasons, all these other principles of statutory
16 construction that you can appeal to, but you can read the
17 statute harmoniously because they cross-reference each
18 other just in the way that you would think that they would
19 and it makes sense.

20 THE COURT: Then, Mr. Butler, you actually have
21 covered all the other questions the Court intended to ask.

22 THE WITNESS: I kind of expected I'd do that.
23 Sorry about that.

24 THE COURT: That's fine. I have no further
25 questions for you. And now would move to the parties.

1 Is there cross-examination by the State?

2 MR. RIDDLE: I hope briefly, Your Honor, yes,
3 sir.

4 THE COURT: Go ahead.

5 CROSS-EXAMINATION

6 BY MR. RIDDLE:

7 Q I just want to make sure that I got everything you
8 were saying.

9 A No, I speak quickly, so I don't mind.

10 Q Yes, sir, you do. It's hard to keep up with you
11 sometimes.

12 As I understood it, what your opinion is is that
13 under 44-23-10, section 21 --

14 A Right.

15 Q -- the definition of an intellectual disability does
16 not have an age of onset of limitation, correct?

17 A Yeah, but you don't need my opinion for that.

18 Q Right. As it relates to the forensic process?

19 A Right.

20 Q And there is no related disability definition in
21 23- 10 because you believe it would be redundant --

22 A I believe so.

23 Q -- based on your interpretation of the entirety of
24 the relevant sections of Chapter -- or, excuse me -- Title
25 44?

1 A I think so, yes.

2 Q Okay. And it would be your contention that the
3 definition section -- or excuse me -- the definition used
4 in Section 23-10, Section 21, extends throughout the
5 process as it relates to any person who is facing criminal
6 charges, and that's the distinction that draws (A) (7) --
7 or excuse me -- (A) (1) through (7) in 24-50 apart from
8 Section (A) (8). Am I understanding that?

9 A Yes. And I'm glad you asked me again because I
10 probably neglected to say, and that makes sense, it makes
11 sense that (A) (1) through (7) would perhaps be treated
12 differently because those people have not been accused of
13 a crime.

14 Q Okay. And, therefore, you use the different, more
15 broader definition, correct?

16 A Right. Right. And as subsection 8 does. It's
17 referenced within that top portion of the statute.

18 Q And the legislature has provided to the courts, the
19 prosecutors, the defense lawyers, the public defenders in
20 South Carolina essentially two means of dealing with
21 people that are incompetent to stand trial; those that
22 have mental health issues on one hand through DMH,
23 correct?

24 A Right.

25 Q And those that have cognitive disability type issues

1 on the other hand through DDSN?

2 A Right. Everybody else is the way of putting it.

3 Q Correct.

4 A If you're not mentally ill but you have these

5 deficits, then it's DDSN's responsibility.

6 Q Okay. And did you find in any of your research that

7 there was a third option out there for those of us who

8 practice in this realm to deal with?

9 A No.

10 Q Those are the only two options?

11 A Those are the only two.

12 Q Okay. And those are the only choices that the Court

13 has that they can impose, correct?

14 A That I'm aware of.

15 Q All right. Now, the broader definition of someone

16 with an intellectual disability that's used in the

17 forensic process and in your opinion throughout the

18 probate process --

19 A For those people, yes.

20 Q -- would that encompass somebody who would meet

21 eligibility for case services requirements under

22 44-38-370, in your opinion?

23 A Yes.

24 Q Do you see anything in the overall legislative scheme

25 that would indicate that a criminal defendant who has

1 those type of issues as shown in 44-38-370 would be
2 allowed to choose whether or not to participate in the
3 services of DDSN?

4 A No. And for good reason.

5 Q Tell us, what reasons?

6 A I mean, it's kind of like asking -- me asking one of
7 my clients do you want to go to prison for ten years or go
8 home. I can tell you with absolute certainty a hundred
9 times out of a hundred they're going to want to go home.

10 Q All right. And do you see anything in the overall
11 statutory scheme that is in place that would mean that
12 that is a voluntary procedure for defendants to undergo?

13 A No.

14 Q Okay. Would that be in the Court's inherent
15 authority to order DDSN to provide the services and the
16 individual planning and treatment that's provided for in
17 44-38-370?

18 A Yes, when it arises in the forensic context.

19 Q Right.

20 A Yes.

21 Q In cases where there might be a head injury or a
22 spinal cord injury?

23 A I think head injury and spinal cord injury falls
24 under intellectual disability or related disability when
25 you're looking at Chapter 23.

1 MR. RIDDLE: All right. That's all I have at
2 this time, Your Honor.

3 THE COURT: All right. Thank you.

4 Is there questions from defense?

5 MS. FULLWOOD: Briefly, Your Honor.

6 THE COURT: Go ahead.

7 CROSS-EXAMINATION

8 BY MS. FULLWOOD:

9 Q Mr. Butler, would you agree that Chapter 23 of Title
10 44 as far as the hearing of competence to stand trial and
11 procedures thereafter demonstrate a legislative intent to
12 offer protections for both the defendant in question and
13 the public at large?

14 A I can't think of any other reason behind them. So,
15 yeah. I mean, if it's not expressly provided, I can't
16 think of any other reasons.

17 Q Right. And, in fact, the statute -- the statute
18 entitled 23, I mean Chapter 23, provides for ongoing
19 judicial oversight after commitment; is that not correct?

20 A Yes, yes.

21 Q And don't you agree that that was for the intent to
22 provide the public at large protection when we're dealing
23 with criminal defendants?

24 A Right. And I think it's 460, you've got to come back
25 to court and the judge makes the ultimate decision.

1 Q Exactly.

2 And, Mr. Butler, in your opinion, did the
3 General Assembly intend to exclude from commitment and
4 treatment under -- in the context of Chapter 23 of Title
5 44, those persons who have a disability as a result of a
6 brain, head or spinal cord injury?

7 A No, those people would meet that definition, just as
8 Dr. Frierson testified that Mr. Linkhorn does.

9 Q It wouldn't make any sense whatsoever if that narrow
10 group were excluded from the provisions of the statute,
11 would it?

12 A I can't think of any reason to treat that class of
13 people any differently. And like I said, I think the
14 statute covers them.

15 MS. FULLWOOD: Yes, sir.

16 No further questions.

17 THE COURT: Questions from DMH?

18 MS. MONTGOMERY: No, Your Honor.

19 THE COURT: Are there questions from DDSN?

20 MS. VANDERBILT: Yes, Your Honor.

21 THE COURT: Go ahead.

22 CROSS-EXAMINATION

23 BY MS. VANDERBILT:

24 Q So what you -- your interpretation is that 44-20, the
25 provisions for judicial admission to the Department of

1 Disabilities and Special Needs is setting up two classes
2 of people who can be involuntarily committed to the
3 agency, those who have criminal charges pending and those
4 who don't?

5 A Yes.

6 Q And you don't think that's a denial of equal
7 protection?

8 A No, because they're not similarly situated. The
9 latter class, although presumed innocent, still have a
10 reason to think that they very well may have committed a
11 criminal offense. So, no, I don't think they're similarly
12 situated.

13 Q And your interpretation is that under 44-23-1021,
14 that persons with intellectual disability covers the whole
15 gamut of people served by the Department of Disabilities
16 and Special Needs?

17 A It could, yes, especially in the forensic context.

18 Q And the fact that it does not specifically mention
19 people with related disabilities nor does it mention a
20 person with a head and spinal cord injury?

21 A That's correct.

22 Q But your interpretation is it covers all?

23 A Yes.

24 Q So the legislative intent is that not usually -- if
25 it's not there, it's been left out on purpose?

1 A I think it's in there. And I'm really echoing the
2 testimony of Dr. Frierson, that Mr. Linkhorn, who has a
3 traumatic brain injury that occurred after the
4 developmental period, after age 22, fit that definition.
5 He's basically saying the same thing that I'm saying
6 except applying it to this case.

7 Q And then as far as the Department of Disabilities and
8 Special Needs when it talks about filing the petition in
9 probate court, it specifically says for persons with
10 intellectual disability or related disability, you again
11 are enlarging that to include people with head and spinal
12 cord injuries?

13 A No. I'm using the definition that's provided in
14 44-23-10 which is incorporated by reference in subsection
15 8 when it refers to 44-23-430.

16 Q But again, that's only the -- only said intellectual
17 disability?

18 A Ask me that last part again.

19 Q The part that you're talking about, the definition
20 for 10 only says intellectual disability?

21 A I don't know what 10 is.

22 Q I'm sorry. It's 21. I'm sorry. It's 44-23-1021.

23 A It only says intellectual disability, that's right.
24 But if you look at the statute, it's either 4-10 or 4-30
25 that says intellectual disability or related disability.

1 Related disabilities are covered. What I said was I often
2 thought it was curious why they didn't define related
3 disability until I started thinking about it in
4 preparation for this. Any definition of related
5 disability seems to me in that context would be redundant.
6 It wouldn't be necessary because it's an "or," it's a
7 disjunctive. Intellectual disability or related
8 disability, I think intellectual would cover anybody
9 except the mentally ill, so I don't know what related
10 disability would add.

11 Q Okay. And so are you familiar with the definition of
12 related disability under 44-20-30 --

13 A Yes, I am.

14 Q -- Department of Disabilities and Special Needs?

15 A Yes, I am.

16 Q And also the definition of the intellectual
17 disability as relayed there?

18 A Yes.

19 Q Do you know what those are based on?

20 A I do not. I know the difference. The difference is
21 one requires the onset in developmental period, one
22 requires the onset at 22.

23 Q And, again, you're not in a position to know why
24 these are put in the statutes?

25 A I'm not.

1 Q And also I believe 40 -- the statute you're talking
2 about in regards to 44-23-1021 goes on to say also under
3 the control and management of the Department of
4 Disabilities and Special Needs.

5 A Okay.

6 Q Okay. So does that not mean the Department of
7 Disabilities and Special Needs has the say-so over what
8 happens in regard to people with intellectual
9 disabilities?

10 A Not more so than a judge as far of the forensic
11 process and the probate process I don't think.

12 Q So the statute that says the agency director has
13 final authority over everything, that just doesn't apply
14 in criminal cases?

15 A It doesn't apply in criminal cases where the person
16 has been found not competent and then judicially
17 committed.

18 Q Judicially committed?

19 A Right, judicially committed, not agency committed.

20 Q Okay. And you're aware in this case that apparently
21 the petition for judicial admission to the Department of
22 Disabilities and Special Needs has been dismissed?

23 A I heard that today, but that doesn't fully affect me.

24 Q So there's no involuntary commitment?

25 A I'm sorry?

1 Q So there's no involuntary commitment of Mr. Linkhorn?

2 A I can't speak to that. I don't know why that is. If
3 you're asking me what agency's responsible for him, it's
4 DDSN.

5 Q And that's your opinion?

6 A Yes.

7 MS. VANDERBILT: Thank you.

8 THE COURT: All right. Now, we don't require
9 you to leave, but is there any objection to releasing this
10 witness if he wishes to leave from any party?

11 MS. PATTERSON: No, sir.

12 MS. FULLWOOD: No, Your Honor.

13 THE COURT: Then hearing none, Mr. Butler,
14 you're free to leave, but again, you don't have to leave.
15 Thank you.

16 Tell me, does the State have further witnesses?

17 MS. PATTERSON: No, sir, not at this time.

18 THE COURT: Defense have further witnesses?

19 MS. FULLWOOD: No, Your Honor.

20 THE COURT: Does DMH have any further witnesses?

21 MS. MONTGOMERY: No, Your Honor.

22 THE COURT: DDSN have any further witnesses?

23 MS. VANDERBILT: Your Honor, if I might take a
24 few minute to discuss that.

25 THE COURT: All right. We'll stand down and

1 take about a five-minute break and let you make that
2 decision.

3 Ms. Lee, did you have a comment?

4 MS. MONTGOMERY: Yes, Your Honor. Can I release
5 Dr. Cherry and Ms. Harris?

6 THE COURT: You may. You may release your
7 further witnesses.

8 We'll be in recess now for approximately five to
9 ten minutes.

10 (WHEREUPON, The Court's Exhibits Nos. 5, 6, 7
11 were marked for purposes of the record.)

12 (A break was taken.)

13 THE COURT: We're back on the record now.

14 Are there witnesses from DDSN?

15 MS. VANDERBILT: No, Your Honor.

16 THE COURT: Very good. Then what I'd like to do
17 is come across the various counsel and let you make a
18 closing comment or statement if you wish. We'll be glad
19 to hear from you in that regard. Don't require it, but
20 give you that opportunity. And then the Court will be
21 prepared to either rule in this matter or advise you that
22 I need to take it under advisement. We'll see.

23 All right. From the State, is there a closing
24 comment?

25 MR. RIDDLE: I didn't want to jump in

1 Ms. Patterson's spot, but this is just a housekeeping
2 matter.

3 I told Your Honor that I was going to make some
4 documents.

5 THE COURT: Please.

6 MR. RIDDLE: Court's 5 is going to be Judge
7 Eckstrom's order for an evaluation signed on January 18 of
8 2012. Court's 6 is the notice of motion and motion to
9 dismiss filed by the Department of Disabilities and
10 Special Needs in the probate action on August 6 of 2012.
11 That went along with the designated examiner's report by
12 Dr. Brown which has previously been referenced and I
13 believe admitted as Court's 4. That's correct.

14 THE COURT: All right.

15 MR. RIDDLE: And then Court's 7 is Judge
16 Keesley's amended order, which is actually -- a copy of
17 that's in the file already.

18 THE COURT: Very good.

19 MR. RIDDLE: And that would be the housekeeping
20 matters.

21 THE COURT: Thank you, Mr. Riddle.

22 And before we begin our closing comments, let me
23 as again, Ms. Patterson, what was the date that you gave
24 us earlier that the defendant was initially arrested on
25 these charges?

1 MS. PATTERSON: He was arrested -- can I look in
2 the clerk's file, Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. PATTERSON: I know it occurred July 14,
5 2010. I do think he was arrested on the same day.

6 MR. RIDDLE: July 16 was the bond setting. Your
7 Honor, the original warrant does not show when the bond
8 was -- when the warrant was served, but the warrant was
9 signed July 14 of 2010, and he appeared before a
10 magistrate on the 16th of 2010, of July.

11 THE COURT: So it's likely then the date of the
12 incident, July 14, 2010?

13 MS. PATTERSON: Yes, Your Honor.

14 THE COURT: Very good. And, Ms. Fullwood, in
15 your opening statement you referenced a statute that you
16 believe is volitive that the defendant is being held in
17 the detention center. Give me that statute again, please.

18 MS. FULLWOOD: I hope I wrote it down correctly.
19 I've got written down here 44-23-220.

20 THE COURT: Okay. Thank you.

21 Now, to the State. Again, the Court does not
22 require a closing statement, but if you wish to sum up or
23 to respond to the evidence as you have seen, you may do
24 so, Ms. Patterson.

25 MS. PATTERSON: Thank you, Your Honor. May it

1 please the Court.

2 THE COURT: Thank you. Go ahead.

3 MS. PATTERSON: I think it's evident from the
4 testimony that's been given today that Mr. Linkhorn
5 suffers from an intellectual disability. And as I stated
6 at the onset, no, I'm not a doctor, I'm not a clinician as
7 everyone knows; however, I do know that I have a
8 responsibility as a prosecutor, I have a responsibility to
9 my office, I have a responsibility to Lexington County to
10 protect the community, to protect just the prosecution
11 process.

12 I know Mr. Linkhorn has been evaluated. I think
13 as stipulated through all parties, he has not been
14 diagnosed with a mental illness; however, he does have a
15 intellectual disability. And as Dr. Frierson testified,
16 he needs 24-hour treatment. Department of Mental Health
17 can't be held to provide Mr. Linkhorn this treatment
18 because he hasn't been diagnosed with a mental illness,
19 and the other agency, the only other agency is the
20 Department of Disabilities and Special Needs.

21 It is our position, Your Honor, that they have
22 the obligation, they have the duty to provide this
23 treatment because he does fit under the broad definition,
24 as Mr. Butler presented, as someone with an intellectual
25 or related disability. We may not have gotten him

1 procedurally-wise in the correct way, but we are here.
2 And I just ask Your Honor to give me some guidance to hold
3 the appropriate agency responsible, whoever Your Honor
4 deems that to be, but in your opinion it is DDSN, to hold
5 them responsible for providing Mr. Linkhorn the
6 involuntary commitment so he can get the treatment that he
7 needs to protect the community, to protect himself, to
8 protect the process.

9 We've heard again from Dr. Frierson who
10 diagnoses Mr. Linkhorn with dementia as a result of an
11 anoxic brain injury from a 1998 suicide attempt. He has
12 numerous cognitive deficits, memory impairment, slowed
13 speech. He has to be supervised, Your Honor. He has an
14 IQ, I think Dr. Frierson said, of 61. He scored 12 out of
15 30 on a cognitive test. He cannot be left alone or he
16 cannot be held to determine if he indeed wants the
17 treatment that they are suggesting that he does qualify
18 for, we think he needs to be involuntarily committed, Your
19 Honor. And it is our position that Your Honor holds the
20 Department of disabilities and Special Needs accountable
21 for providing Mr. Linkhorn with that treatment.

22 Thank you.

23 THE COURT: All right. Thank you.

24 Anything from defense?

25 MS. FULLWOOD: Briefly, Your Honor.

1 Your Honor, I completely agree with Mr. Butler's
2 interpretation of the statutes that are at issue in this
3 case, and I would urge the Court to adopt that
4 interpretation of the statutes.

5 You know, when we're talking about statutory
6 construction, they always say, well, your primary rule is
7 to effectuate the intent of the legislature. Well, I
8 think it's clear that when the General Assembly enacted
9 Chapter 23 of Title 44, it intended to offer defendants
10 procedural protections and safeguards, and at the same
11 time to provide for public safety to -- in the form of
12 involuntary commitment and thereafter judicial oversight
13 of that individual. I do think that that is clear. And
14 his interpretation promotes that intent.

15 Another rule of statutory construction is that
16 you follow the plain language of the statute. And there
17 is no ambiguous language in any of this. The definition
18 that should correctly be utilized by the probate courts in
19 a judicial -- involuntary judicial commitment for a man in
20 Mr. Linkhorn's circumstances is for -- the definition of
21 intellectual disability is clear. It is crystal clear.
22 And it's also clear from Dr. Frierson's testimony, he
23 falls under it. Like Dr. Frierson said, if he just
24 presented himself without any knowledge of Mr. Linkhorn's
25 history, he would believe that he did suffer from mental

1 retardation and that he had the same treatment needs.

2 And finally, Judge, when we're talking about
3 interpreting statutes, there's the rule that when you're
4 talking about a general statute versus a specific statute,
5 the specific statute takes precedence, and I think that's
6 what we have here. Chapter 23 of Title 44 is a specific
7 statute that applies to mentally ill and cognitively
8 impaired defendants in the court of General Sessions. It
9 has a specific definition of what those impairments mean,
10 and the General Assembly specifically intended to have
11 those definitions applied during all phases of those
12 individuals' involvements with the court, whether it's in
13 General Sessions court or Probate court or whether or not
14 they can be involuntarily committed and whether or not the
15 agencies have to accept them. It's specific, it's quite
16 clear. And again, I think Mr. Butler put it more
17 concisely and clearly than I ever could.

18 I again point out to Your Honor that he is
19 simply being warehoused. This in violation of state law,
20 and it's also violating his right to due process of law,
21 because there is no process at this point. His case has
22 simply stagnated due to a dispute over whether or not he
23 can receive the treatments he needs from a state agency.

24 Finally, I would say that for him to be denied
25 services that a similarly situated person with the same

1 treatment needs would have received simply by virtue of
2 when they acquired their disability violates his right to
3 equal protections of the law. Now, I am aware that the
4 U.S. Supreme Court has held that mentally retarded persons
5 are a group that is entitled to protection, they have not
6 held that it's a suspect group, but it's a group entitled
7 to protection, I would say that holding would extend to
8 someone like Mr. Linkhorn who may not be the highly
9 technical term of art definition of mental retardation,
10 but certainly has similar cognitive deficits. And we hope
11 that this matter is resolved soon so that Mr. Linkhorn can
12 get to the next phase of what he -- of taking care of
13 this matter rather than just sitting in a jail.

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

15 And then before I hear from the DMH, let me say
16 that based on the evidence before me today, as well as the
17 prevailing case law, I'm going to dismiss against the
18 Department of Mental Health this rule to show cause.
19 You're free to leave or you're free to speak if you wish
20 in closing, but the Court finds that DMH should be
21 released from the rule.

22 Is there closing comment from DMH?

23 MS. MONTGOMERY: No, Your Honor. Thank you.
24 You've just ruled on that, so I have nothing to add.

25 THE COURT: Thank you.

1 And then now from the DDSN in closing.

2 MS. VANDERBILT: Yes, Your Honor.

3 Again, I would renew the fact that there is no
4 order that we're here under as far as violating any rule,
5 so I would again say that we're not submitting to the
6 jurisdiction of this Court. We've never been added as a
7 party to this case. And so as far as the procedural
8 aspects, I don't think we're properly before the Court.

9 The Court cannot order anybody -- this Court
10 cannot order it to make an involuntary commitment. That
11 is only the jurisdiction of the probate court.

12 Everybody's talking about statutory
13 construction. As I have said, there is a whole different
14 statute concerning brain injury. The legislature would
15 not have set that off if they didn't mean it. It's clear
16 from our statutes as far as any judicial commitment has to
17 be related to an intellectual disability or related
18 disability, and head and spinal cord is not under that
19 part of the statute. So to talk about statutory
20 construction, as I said, Ms. Fullwood said, it's clear,
21 it's clear to me that if the legislature intended because
22 the HASCI statute is a later statute, if they intended to
23 put that in in regard to involuntary commitment, that
24 would have been covered. If they wanted to include that
25 under the definition of intellectual disability or related

1 disability, they would have, and it's just not there. So
2 I would say at this point in time that the only way that
3 Mr. Linkhorn could be provided services of the agency is
4 if he voluntarily wants to receive them or this Court
5 somehow orders him to cooperate with the Department of
6 Disabilities and Special Needs in receiving those
7 services.

8 Thank you.

9 THE COURT: All right. Thank you.

10 Just a moment, please, ladies and gentlemen.

11 (Pause.)

12 THE COURT: All right. The Court is prepared to
13 rule in this matter. It's not necessary that the matter
14 be taken under further advisement. I appreciate the way
15 that all counsel have prepared and presented these issues
16 today. This is an unusual issue and one that's a fairly
17 refined point of law. And I'm grateful for the
18 professional witnesses who have come in as well and given
19 their medical and legal opinions as to where we find
20 ourselves.

21 The Court is going to issue two rulings today in
22 two separate documents that I would ask one to be prepared
23 by the State and one to be prepared by defense.

24 And first the order for the State. I'm going to
25 grant the rule to show cause against the Department of

1 Disabilities and Special Needs, and I do this in the
2 following way: I'm going to ask that the Solicitor
3 prepare for me another order that would find a lack of
4 competence to stand trial and ordering probate commitment
5 proceedings. And as a part of that order, I'm going to
6 require in the interim -- I'm going to ask that you
7 prepare this order for me within the next day or so. But
8 in the interim, under -- on page two of the order, and I'm
9 talking again about the standard forms that we use for
10 Court Administration, this is Form 221C, it has a section
11 that we are required to fill out for the immediate status
12 of the defendant while the involuntary petition is
13 pending, and I'm going to require that the DDSN within
14 five days of the date of this order take custody of Mr.
15 Linkhorn and he will be removed from the jail. I'm going
16 to anticipate an argument from the DDSN that they do not
17 have a secure facility for Mr. Linkhorn, but I'm going to
18 require that if -- and if there is a lack of a secure
19 facility, then they procure bed space for Mr. Linkhorn at
20 GeoCare which does provide a secure facility at the
21 expense of DDSN. If DDSN appeals this order, I'm going to
22 require that they comply with that requirement, though,
23 because Mr. Linkhorn has been in the jail for 1,133 days
24 by this Court's reckoning, and I lay that squarely at the
25 feet of DDSN. It's inappropriate. Mr. Linkhorn should

1 not be in the jail. He is not convicted of a crime.
2 There is a statute directly on point, 44-23-220 which
3 states that a person shall not be held for safekeeping in
4 a jail, which is basically what's happening to Mr.
5 Linkhorn except I would say rather than safekeeping, he's
6 just simply been languishing in the jail while this matter
7 has been disputed, and that dispute has arisen because of
8 DDSN's application of a narrow definition to an
9 intellectual disability and related disability, and thus,
10 that is the statement or the order that I wish for the
11 Solicitor to prepare with regard to Mr. Linkhorn's
12 immediate setting.

13 MS. VANDERBILT: Your Honor, I just ask, is that
14 five days from the date we receive the order?

15 THE COURT: That is. I'm going to give you five
16 business days. I realize that you will need to make some
17 arrangements for bed space at GeoCare, but I anticipate
18 signing that order if not today, tomorrow, so please be
19 aware that time is coming rather quickly.

20 And then secondly, I'm going to ask Ms. Fullwood
21 to prepare an order which would be statewide in this case,
22 but would be a statewide impact that would -- as a
23 granting of the rule to show cause, I'm going to prohibit
24 the DDSN from raising in the probate courts and
25 involuntary commitment proceedings the defense or the

1 position or the request for dismissal because an
2 individual has a brain injury; that this Court makes a
3 finding, and I do not base this on constitutional grounds,
4 I base it on the plain meaning and unambiguous reading of
5 the statutes as explained by Mr. Butler, and I adopt his
6 analysis completely, that the statutes are self -- they
7 anticipate one another and they are interlocking so that
8 they actually can be read in a way that is consistent, and
9 that when someone has an involuntary commitment proceeding
10 before the probate court that is under Section 8 that is
11 brought by the solicitor, that DDSN may not raise the
12 issue of a brain injury not being a related -- an
13 intellectual disability or related disability because the
14 Court finds as a matter of law it is. And that is the
15 order that I would request from the defense.

16 Now, I would like for you to send that order
17 electronically, Ms. Fullwood, to jbaxley1c@sccourts.org.
18 I'd ask you to let the other attorneys review it, not to
19 agree with it, but to review it for misstatement of their
20 position.

21 And I do this, Ms. Vanderbilt, so that --
22 anticipating that the DDSN will disagree with this ruling
23 and, thus, may appeal it, the issue will be crystallized
24 so that our policy court, the Supreme Court, can enter
25 what would, in fact, be a public policy decision.

1 Is there anything further before we close the
2 record in this case from the State, that is the
3 prosecution?

4 MR. RIDDLE: If you could just restate the
5 number of days he's been in jail that you said to us
6 because I wanted to include that in our order, but that
7 was the one thing that went over my head.

8 THE COURT: My calculation is 1,133.

9 MR. RIDDLE: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MS. FULLWOOD: If I could get some
12 clarification. I'm sorry, I was writing and trying
13 listen.

14 THE COURT: Well, let me give you some
15 explanation of why I do it this way.

16 First of all, I cannot compel the probate court
17 to involuntarily commit someone or not. But I can compel
18 the parties who are part of this General Sessions
19 commitment process and prohibit them from raising certain
20 defenses, and my instruction to the DDSN is that they may
21 no longer under a commitment under subsection 8 of the
22 involuntary commitment statute raise a defense and request
23 a dismissal based on the fact that the defendant is a
24 brain-injured individual. This Court does not accept the
25 artificial onset date that has been employed by DDSN to

1 defeat the jurisdiction of the probate court but, in my
2 opinion, clearly defeat the ends of justice and
3 specifically in this case resulting in Mr. Linkhorn
4 staying in jail well over a thousand days, far beyond what
5 would be necessary and what would be appropriate.

6 MS. FULLWOOD: Yes, sir. And did I hear you
7 correctly to say that the order's to state that a brain
8 injury is a related disability as a matter of law?

9 THE COURT: That's correct.

10 MS. FULLWOOD: Thank you. That's the part I
11 wasn't sure I caught correctly.

12 THE COURT: Yes, that is correct, it is a
13 related disability pursuant to the statute. The
14 definition's contained in the statutes and the wording of
15 the statutes. The Court finds that to be an obvious
16 analysis.

17 MS. FULLWOOD: Yes, sir. Thank you.

18 MR. RIDDLE: The last thing is, obviously based
19 on the Court's rulings and based on Judge Thompson's
20 testimony, I think we're going to need to reinstitute
21 judicial commitment proceedings. I don't know whether to
22 put that in our part of the order or if it goes in
23 Ms. Fullwood's half.

24 THE COURT: Well, what I want the State to do is
25 just to use Form 221C, which is the involuntary commitment

1 form that's on the website.

2 MR. RIDDLE: Right.

3 THE COURT: And that's all I'm asking the State
4 to do.

5 MR. RIDDLE: Okay.

6 THE COURT: If you'll just give me another
7 involuntary commitment. And as part of that, I'm going to
8 require DDSN to take Mr. Linkhorn out of custodial
9 detention care and into a care and treatment setting.

10 MR. RIDDLE: Right.

11 THE COURT: So if you would just provide me Form
12 221C with a correct caption, I'll do the rest.

13 MR. RIDDLE: Yes, sir.

14 THE COURT: That's all we need from the State.

15 All right. Then there being nothing further
16 from these proceedings, the Court will declare these
17 adjourned.

18 Mr. Linkhorn, sir, you're going back to jail for
19 about another week and then you're going to be taken to a
20 hospital setting. So good luck to you.

21 This case is now in recess.

22 MR. RIDDLE: Thank you, Your Honor.

23 MS. FULLWOOD: Thank you, Your Honor.

24 (The proceedings were concluded.)

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
J. Michael Baxley, Circuit Court Judge

Indictment Nos. 2011-GS-32-0242
2011-GS-32-0243
2011-GS-32-0244

EX PARTE:

South Carolina Department of Disabilities
and Special Needs, ... Appellant.

IN RE:

State of South Carolina, ... Respondent,

v.

Rocky A. Linkhorn, ... Respondent.

AFFIDAVIT OF DAVID A. GOODELL

PERSONALLY APPEARED BEFORE ME, DAVID A. GOODELL, who
being duly sworn, deposes and says:

RECEIVED
DEC 17 2013
SC Court of Appeals

1. I am the Associate State Director of Operations for the South Carolina Department of Disabilities and Special Needs ("DDSN"). I have held that position since March 2, 2006.

2. I have personal knowledge of the information contained in this affidavit.

3. I have been requested to assess the potential cost implications to DDSN resulting from the Order issued in the case of *State of South Carolina v. Rocky A. Linkhorn*.

4. In looking at the past three fiscal years, State Fiscal Year 2010-2011 through State Fiscal Year 2012-2013, DDSN has conducted 428 evaluations of criminal defendants to determine whether they are fit to stand trial or an average of 143 per year. Of that number, 148 persons were found to be unfit to stand trial due in part to an intellectual disability or related disability which averages 49 per year. Of that number, only five were initially placed in GeoCare, which is a private correctional facility that provides care in a secure, highly restrictive, locked setting. This averages slightly less than two GeoCare placements per year.

5. A placement in GeoCare currently costs DDSN an average of \$350.00 per day or approximately \$127,750.00 per year for each client placed in that facility. The costs for placement in GeoCare must be paid solely with state funds. Medicaid provides no reimbursement for any placements in GeoCare. Virtually all

other DDSN placements generate Medicaid revenue which covers approximately 70% of the placement cost. GeoCare is the only secure facility that DDSN has access to.

6. If DDSN had been required to place into GeoCare all of the 49 persons found to be unfit to stand trial due in part to an intellectual disability or related disability annually over the past three fiscal years, I have calculated to a reasonable degree of certainty that DDSN would have incurred approximately \$5.9 million on an annual basis in additional costs. This calculation takes into account and deducts the costs of using residential facilities as an alternative to GeoCare that DDSN would have reasonably been expected to incur in the absence of the *Linkhorn* Order. This additional cost could increase incrementally for as many years as the *Linkhorn* Order remained in effect (e.g., 1st year - \$5.9 million, 2nd year - \$11.8 million, 3rd year - \$17.7 million). DDSN does not have sufficient funding in its budget to accommodate this cost increase. Services to hundreds of vulnerable individuals currently served by DDSN would have to be discontinued to accommodate this cost increase.

7. Currently DDSN has approximately 8,000 persons on its waiting lists for services. The sum of \$5.9 million in additional state funding necessary to place every individual judicially admitted to DDSN based upon a finding of being unfit to stand trial for just one year is the approximate funding that would be needed to

serve 1,479 persons currently on the waiting lists taking into account that most of those potential clients on the waiting list would be Medicaid eligible and therefore DDSN receives approximately 70% reimbursement from Medicaid for a majority of those clients.

8. I have also looked at the number of clients currently served by DDSN who have been judicially admitted. DDSN currently has 159 clients who have been judicially admitted based upon a court finding them unfit to stand trial. Of that number, only 7 are currently placed at GeoCare, 80 are placed in other DDSN funded residential settings, 32 are receiving in-home services in addition to service coordination and 40 are receiving service coordination only. If the *Linkhorn* Order is made applicable to all current judicially admitted clients, the maximum additional state dollar cost that DDSN would annually bear is approximately \$17 million. DDSN also does not have sufficient funding to accommodate this additional cost. To place all current judicially admitted individuals in GeoCare would require DDSN to discontinue services to thousands of vulnerable individuals. IF DDSN received new funding in this amount, it could be used to serve approximately 5,100 potential clients currently on waiting lists awaiting DDSN services.

9. DDSN does not currently operate a forensics unit or secured lock-up facility that can house criminal defendants as required by the *Linkhorn* Order.

DDSN has never been provided the initial funding or recurring appropriations by the South Carolina General Assembly to build or operate a forensics unit or secured lock-up facility.

FURTHER, AFFIANT SAYETH NOT.

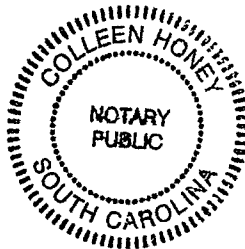


DAVID A. GOODELL

SWORN TO BEFORE ME THIS 10TH
DAY OF DECEMBER 2013



NOTARY PUBLIC FOR (SEAL)
SOUTH CAROLINA



COMMISSION EXPIRES. 9-25-17

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
J. Michael Baxley, Circuit Court Judge

Indictment Nos. 2011-GS-32-0242
2011-GS-32-0243
2011-GS-32-0244

EX PARTE:

South Carolina Department of Disabilities
and Special Needs, ... Appellant.

IN RE:

State of South Carolina, ... Respondent,

v.

Rocky A. Linkhorn, ... Respondent.

AFFIDAVIT OF STEVE VON HOLLEN

PERSONALLY APPEARED BEFORE ME, STEVE VON HOLLEN, who
being duly sworn, deposes and says:

RECEIVED
DEC 17 2013

SC Court of Appeals

1. I am the Director for Clinical Services for the South Carolina Department of Disabilities and Special Needs ("DDSN"). I have held that position since 2008.

2. I have personal knowledge of the information contained in this affidavit.

3. As the Director of Clinical Services, I am charged with the task of developing the Plan of Services that is submitted to Probate Court for an individual who is found not competent to stand trial and is being judicially committed to DDSN. In preparing the Plan of Services, I work closely with the individual's assigned local service coordinator to assess the needs of the individual and develop a plan that is presented in Probate Court.

4. DDSN is mandated under federal law and specifically the *Olmstead* decision of the United States Supreme Court to serve the clients of DDSN in the least restrictive, most community integrated setting as appropriate. Because of that mandate, I always start with trying to serve the individual at home if possible. Some of the factors that I look at include the nature of the crime, the criminal history of the individual, risk that the individual poses to society, level of functioning of the individual (i.e., skills, abilities and deficits), the support and supervision the individual can/will receive at home, and the types of community supports available.

5. Some individuals may have the supervision and structure that they need at home and require minimal supports in order to be productive members of society. At minimum, the individual will receive active, on-going service coordination, which is a service designed to monitor the individual's situation and coordinate needed services as they arise. Other support services that are possible in an effort to serve the individual in the least restrictive, most community integrated setting include day services (where an individual attends a program, usually operated by a DDSN contracted private provider, that provides meaningful structure and supervision during the day), Rehabilitative Behavioral Health Services (where a qualified contracted staff works with the individual at home and in the community with the goal of building pro-social skills and eliminating negative behaviors as well as providing direct supervision of the individual), and Waiver based services which may include Behavior Support Services (developing a behavioral management plan to address inappropriate behaviors and build acceptable behaviors), counseling services, and respite services designed to give the family a break by providing supervision for the individual.

6. For individuals accused of committing a sexual offense, a Specialized Sexual Risk Assessment is generally completed by a qualified contracted provider of risk assessments. This assessment is designed to assess the individual's general sexual knowledge as well as identify possible patterns of inappropriate sexual

behavior to assess and gauge the risk to re-offend sexually. The assessment will specify the level of care the individual needs (i.e., home versus placement), as well as specific services (i.e., Behavior Support, counseling, and other in home services).

7. If the individual is assessed to be too great a risk to remain home, or is otherwise in need of placement, DDSN has several types of placements with varying degrees of restrictiveness. These residential settings are below in order from least restrictive to most restrictive:

(1) Supervised Living program (SLP)

This model is for individuals who need intermittent supervision and supports. They can handle most daily activities independently but may need periodic advice, support and supervision. This service is typically offered in an apartment setting that has staff available on-site or in a location from which they may get to the site within fifteen minutes of being called, 24 hours daily.

(2) Community Training Home I (CTH I)

The individual lives in the private home of a licensed caregiver. In this model, personalized care, supervision and individualized training are provided, in accordance with a service plan, to a maximum of two people living in a support provider's home where they essentially become one of the family. Support providers are qualified and trained private citizens.

(3) Community Training Home II (CTH II)

This model offers the opportunity to live in a homelike environment in the community under the 24 hour supervision of qualified and trained staff. Care, supervision and skills training are provided according to individualized needs as reflected in the service plan. No more than four people live in each residence.

(4) Community Residential Care Facility (CRCF)

This model, like the Community Training Home II model, offers the opportunity to live in the community in a homelike environment under the supervision of qualified, trained caregivers. Care, supervision and skills training are provided according to identified needs as reflected in the service plan.

(5) Regional Center

DDSN directly operates four Regional Centers. These are institutions where individuals with the most significant disabilities receive more intense structure and supervision than is generally afforded in a community based placement. These facilities are considered highly restrictive and are not community integrated. While the structure and supervision is more intense, licensing standards and regulations prevent the locking of doors.

(6) Psychiatric Residential Treatment Facility (PRTF)

A PRTF is a private contracted facility for individuals who are under 21 years of age and are in need of a highly structured, intensive inpatient

program. These facilities are locked and serve individuals with co-occurring disorders (i.e., Intellectual Disability and psychiatric needs). DDSN typically places juveniles in need of inpatient sex offender treatment in PRTFs. PRTFs are also utilized for those under 21 who are in need of psychiatric stabilization, prior to stepping down to a lower level of care.

(7) GeoCare

GeoCare is a private correctional facility that provides medical, mental health and behavioral treatment in a secure, highly restrictive locked setting. GeoCare is reserved for individuals who otherwise present a significant risk of harm to self or others if not placed in such a secure facility. This facility is considered the most restrictive and least community integrated of any of the placement options.

8. I have attached to this affidavit as Exhibits A through E a copy of several Plans of Services that have been submitted to Probate Courts in the past two years. These Plans of Service have been redacted to remove personal identifiers. These Plans of Service illustrate the process that DDSN goes through in placing various individual who have been found unfit to stand trial and who have been judicially committed to DDSN. These Plans of Service further illustrate that the majority of individuals found unfit to stand trial do not require the most

restrictive placement in GeoCare or a lock-up facility and may be appropriately served in less restrictive placements.

9. I have personally found based upon my own knowledge and experience that the majority of individuals who have been found unfit to stand trial and who have been judicially committed to DDSN do not require the most restrictive placement in GeoCare. It is further my opinion that placement of most such individuals in GeoCare or a similar lock-up facility would violate those individuals' rights under federal law and specifically the *Olmstead* decision.

10. Rocky Linkhorn is, in my professional judgment, such an example. From my review of Mr. Linkhorn, I would have most likely recommended placement for him in a Community Training Home II rather than in GeoCare. As a result of the *Linkhorn* Order, DDSN is required to place Mr. Linkhorn in GeoCare. To my knowledge, no assessment was made by Judge Michael Baxley or the Probate Court to determine if GeoCare is the appropriate and least restrictive setting for Mr. Linkhorn.

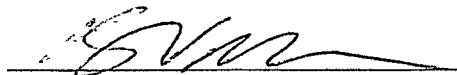
11. An individual who was found not competent to stand trial and is being judicially committed to DDSN is not locked into his original placement. Typically, during the course of an individual's commitment, an individual may be moved to a less restrictive or more restrictive setting as warranted. The *Linkhorn* Order does not allow for DDSN or the Probate Court to take into consideration an

individual's actual needs and adjustment to a particular setting. Instead, the *Linkhorn* Order requires that all individuals found unfit to stand trial must be placed in a secured facility.

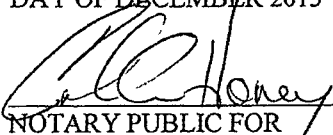
12. I have looked at the current placement within DDSN of the 159 persons who have been found unfit to stand trial and have been judicially committed to DDSN. Of those 159 judicial commitments, 87 are still in DDSN placements as follows:

GeoCare	7	
Regional Center	1	
Community ICF/ID	2	
PRTF	3	
CRCF	3	
CTH II	56	
SLP	15	
CTH I	0	1

FURTHER, AFFIANT SAYETH NOT.


STEVE VON HOLLEN

SWORN TO BEFORE ME THIS 10TH
DAY OF DECEMBER 2013

 (SEAL)
NOTARY PUBLIC FOR
SOUTH CAROLINA

COMMISSION EXPIRES: 9-25-17

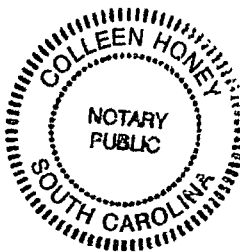


Exhibit A

PLAN OF SERVICES REPORT

Consumer: xxxx

Agencies Involved: South Carolina Department of Disabilities and Special Needs

 Berkeley County Disabilities and Special Needs Board

 Berkeley County Probate Court

Court Date: April 9, 2012

Background information:

The following plan has been devised for the purpose of determining a course of action following the judicial commitment hearing for Mr. xxxx.

Mr. xxxx was charged with the crime of Criminal Sexual Conduct with a Minor – First Degree, 2 counts. The Department of Disabilities and Special Needs (DDSN) received the Order For Competency To Stand Trial Evaluation on August 21, 2009. The order was initially directed to the Department of Mental Health (DMH) However upon examination by DMH there were no indications of a mental illness, yet there were indications of a possible Intellectual Disability (formerly termed Mental Retardation). As dictated in State Statute, DMH deferred on an opinion of Competency and deferred the case to DDSN. He was evaluated by examiners from DDSN on January 20, 2010 and report was mailed to the Court of General Sessions on February 2, 2010. The examiners opined that Mr. xxxx was not competent to stand trial. On December 7, 2011 DDSN received the Order For Diagnostic Evaluation from the Berkeley County Probate Court. On February 22, 2012 the Diagnostic Report was submitted to The Probate Court of Berkeley County. The Diagnostic Report confirmed that Mr. xxxx does meet the criteria for a diagnosis of an Intellectual Disability and is in need of DDSN services.

Prior to receiving the Order for Competency, Mr. xxxx had never been previously referred to DDSN as there are no prior referrals or contacts on record. Prior to his arrest, it is reported that Mr. xxxx was living with his cousin, Ms. xxxx in St. Stephen, SC as records indicate that he and his siblings were removed from the home of his mother by DSS due to neglect. File information indicates that he was initially living with an Aunt, but had to leave her home after the allegations of criminal sexual misconduct (the alleged victims were residing with this Aunt)

In regards to his offense, incident reports indicate that Mr. xxxx repeatedly sexually abused younger cousins in the family. Forensic interviews in the record indicate that this abuse reportedly occurred over a period of time and there were multiple victims. Due to the nature of his charges, a Specialized Sexual Aggression Risk Assessment was completed on March 17, 2012 by Ms. Kim Adkins, LPC. Ms. Adkins is an approved contracted provider of sexual risk assessments for DDSN. This assessment is designed to assess the consumer's general sexual knowledge as well as identify possible patterns of inappropriate sexual behavior to assess and gauge the risk to re-offend sexually. The results of that evaluation are attached to this report. As noted in her report, Ms. Adkins assessed Mr. xxxx to be a high risk to re-offend based on the results of her evaluation. She recommends 24-hour supervision and specialized treatment for low functioning sex offenders. She further notes that Mr. xxxx's family does not appear to be able to provide adequately for his supervision needs at this time.

Plan of Service:

Due to his being assessed a high risk to reoffend and need for supervision at this time, inpatient sex offender treatment is recommended. DDSN has initiated a referral to Palmetto Pines in Summerville, SC. Palmetto Pines has a comprehensive Sex Offender Treatment program that is tailored to meet the needs of individuals with intellectual disabilities who are in need of inpatient sex offender treatment in a secure setting. Mr. xxxx has been accepted for admission to this program. There, in addition to sex offender treatment, he will receive educational services, as well as general adjustment therapy and life skills training to prepare him for discharge back into the community once inpatient treatment is completed. DDSN will monitor his treatment at Palmetto Pines to include developing an after care plan for his re-entry into the community. Depending on his progress in treatment and the family structure (i.e., will need supervision and structure as prescribed in the after-care plan), this discharge plan may include longer term residential services from DDSN in a structured 24 hour supervised community placement.

Respectfully Submitted by:

Steve Von Hollen, M.S.
Director, Clinical Services
SCDDSN

Exhibit B

PLAN OF SERVICES REPORT

Consumer xxxxx

Agencies Involved: South Carolina Department of Disabilities and Special Needs

 Family Court, Eleventh Judicial Circuit

 Richland/Lexington Disabilities and Special Needs Board

Court Date: October 17, 2012

Background Information:

The following plan has been devised for the purpose of determining a course of action following the judicial commitment hearing for Mr. xxxx.

Mr. xxxx was charged with the crimes of Criminal Sexual Conduct with a Minor – 1st Degree and Assault and Battery – 2nd Degree. The Department of Disabilities and Special Needs (DDSN) received the Order For Competency To Stand Trial Evaluation on March 15, 2012. He was initially seen by examiners with the Department of Mental Health (DMH), however due to evidence of a possible Intellectual Disability (formerly termed Mental Retardation) in addition to his mental health issues; he was evaluated by examiners from DDSN and DMH, as required by state statute, on April 18, 2012. The report was mailed to the Family Court on May 17, 2012. The examiners opined that Mr. xxxx was not competent to stand trial and indicated the presence of a Mental Illness (Attention Deficit/Hyperactivity Disorder) and an Intellectual Disability. On July 18, 2012 DDSN received the Order For Diagnostic Evaluation from the Family Court. On July 20, 2012 the Diagnostic Report was submitted to the Family Court. The Diagnostic report confirmed that Mr. xxxx does meet the criteria for a diagnosis of an Intellectual Disability and is in need of DDSN services.

Records indicate that Mr. xxxx was first referred for DDSN services in 2000 and he received Babynet services. He aged out of Babynet in 2001. DDSN has no record of receiving any subsequent referrals until receiving the Order for Competency to Stand Trial in 2012. He was deemed an eligible DDSN consumer under the category of Intellectual Disability on July 17, 2012. In regards to his mental health history, it is noted that he is currently prescribed psycho-stimulant medication to address his diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD), however there are no records of him ever being a client with DMH.

Mr. xxxx is currently living at home with his mother, adoptive father and younger brother. He attends Irmo High School, where he is reportedly doing well with no behavioral problems noted. A review of his school records indicates that outside of the current charges, which occurred in 2011 at Irmo Middle School, Mr. xxxx does not have a significant disciplinary record in the school system and has done well in the school setting. Documentation indicates that a manifestation hearing was held at Irmo Middle School on October 13, 2011 subsequent to the current charges. It was determined that the infraction was related to his Intellectual Disability and he was therefore not suspended or expelled from school. A Behavioral Intervention Plan was put in place by the school to minimize the risk of future inappropriate sexual behavior and he is also reportedly currently receiving school-based counseling. The family reports no behavioral problems or issues at home.

Due to the nature of his charges, a Specialized Sexual Aggression Risk Assessment was completed on 10/14/12 by Ms. Kim Adkins, LPC. Ms. Adkins is an approved contracted provider of sexual risk assessments for DDSN. This assessment is designed to assess Mr. xxxx's general sexual knowledge as well as identify possible patterns of inappropriate sexual behavior to assess and gauge his risk to re-offend sexually. The results of that assessment indicate that Mr. xxxx is deemed NOT to be at risk to reoffend sexually, and with counseling, which he is currently receiving through the school, and proper supervision he would not present a risk to the community.

Plan of Service:

It is recommended that Mr. xxxx remain at home with his parents. All indications are that the family genuinely cares for his best interest and are able to provide the supervision that he needs at home and in the community. He is currently receiving active service coordination through the Richland/Lexington DSN Board and it is recommended that this continue. He is receiving sexual-based counseling through the school and it is recommended that this continue. Given that the charges occurred while he was at school, the school is currently addressing this through his Individualized Education Plan (IEP), which includes a Behavioral Intervention Plan addressing the behavior.

Respectfully Submitted by:

Steve Von Hollen, M.S.
Director, Clinical Services, SCDDSN

Exhibit C

PLAN OF SERVICES REPORT

Consumer. xxxxxxxx

Agencies Involved. South Carolina Department of Disabilities and Special Needs
Anderson County Disabilities and Special Needs Board
Anderson County Probate Court

Court Date. June 13, 2013

Background information:

The following plan has been devised for the purpose of determining a course of action following the judicial commitment hearing for Mr. xxxx.

Mr. xxxx was charged with the crime of Lewd Act and Criminal Sexual Conduct (2 counts). The Department of Disabilities and Special Needs (DDSN) received the Order For Competency To Stand Trial Evaluation on November 26, 2012 after the South Carolina Department of Mental Health (DMH) evaluated him first and found evidence of both a possible mental illness as well as a possible Intellectual Disability (formerly termed Mental Retardation). As prescribed by statute, he was evaluated by examiners from DDSN and DMH on January 23, 2013 and the report was mailed to the Court of General Sessions on February 15, 2013. The examiners opined that Mr. xxxx was not competent to stand trial. On March 13, 2013, DDSN received the Order For Diagnostic Evaluation from the Anderson County Probate Court. On March 25, 2013, the Diagnostic Report was submitted to The Probate Court of Anderson County. The Diagnostic report confirmed that Mr. xxxx does meet the criteria for a diagnosis of an Intellectual Disability and is in need of DDSN services.

Prior to receiving the Order for Competency, Mr. xxxx has no prior contact with DDSN as there are no prior referrals or contacts on record. Prior to his arrest, he was reportedly living with his parents and a brother. Records indicate that he has a 3 year old child, but his involvement with this child is unclear.

His RAP sheet indicates one prior charge for Shoplifting in 2009. In regards to his current charges, Mr. xxxx is accused of sexually molesting an 11 year daughter of a family friend (lewd act charge) and he is also accused of sexually assaulting a four year old girl on at least two occasions (2 counts of Criminal Sexual Conduct). Due to the nature of his charges, a Specialized Sexual Aggression Risk Assessment was completed on March by Ms. Kim Adkins, LPC. Ms. Adkins is an approved contracted provider of sexual risk assessments for DDSN. This assessment is designed to assess the consumer's general sexual knowledge as well as identify possible patterns of inappropriate sexual behavior to assess and gauge the risk to re-offend sexually. While the written report is not yet available, Ms. Adkins opined that Mr. xxxx is a high risk to reoffend and in need of 24 hour supervision. It is noted that during the course of the evaluation that Mr. xxxx may have disclosed new victims. It is difficult to ascertain if these are actually new victims or his referring to the victims for which he is currently charged. Ms. Adkins made a report to DSS following the evaluation.

Plan of Service:

Given the nature of his crime, the fact that he is deemed to be a high risk to reoffend sexually and need for close supervision, it is recommended that Mr. xxxx receive residential services from DDSN. While DDSN is federally mandated to serve in the least restrictive setting, all indications at this time are that Mr. xxxx is too great a risk to be returned to the community unsupervised. This placement would be in the form of a Community Training Home II (CTH II). A CTH II is a community based four bed group home where he would reside and receive on-going 24 hour supervision. He will also be afforded the opportunity to participate in a supervised work/day program to provide meaningful structure to his day, as well as on-going counseling and behavior support to work on his behavioral and criminal issues. The search for an appropriate CTH II to serve him has been initiated. He will also continue to receive active service coordination in the county in which he is placed to monitor his on-going needs.

Respectfully Submitted by:

Steve Von Hollen, M.S.
Director, Clinical Services
SCDDSN

Exhibit D

PLAN OF SERVICES REPORT

Consumer: xxxx

Agencies Involved: South Carolina Department of Disabilities and Special Needs

Charleston County Disabilities and Special Needs Board

Charleston County Probate Court

Court Date: August 26, 2013

Background information:

The following plan has been devised for the purpose of determining a course of action following the judicial commitment hearing for Mr. xxxx.

Mr. xxxx was charged with the crime of Disturbing Schools. The Department of Disabilities and Special Needs (DDSN) received the Order For Competency To Stand Trial Evaluation on March 21, 2013. He was evaluated by examiners from DDSN on April 5, 2013. The examiners opined that Mr. xxxx was not competent to stand trial and also opined that he appeared to meet the criteria for a diagnosis of an Intellectual Disability (formerly termed Mental Retardation). The Forensic Evaluation was mailed to the Family Court on April 11, 2013. On July 19, 2013 DDSN received the Order For Diagnostic Evaluation from the Charleston County Probate Court. On July 30, 2013 the Diagnostic Report was mailed the Probate Court of Charleston County. The Diagnostic report confirmed that Mr. xxxx does meet the criteria for a diagnosis of an Intellectual Disability and is in need of DDSN services.

Records indicate that Mr. xxxx was previously referred to DDSN in 2011, subsequent to his being opined not competent to stand trial by examiners from DDSN for charges he received in 2011. It is noted that DDSN never received a Petition for Judicial Admission subsequent to that evaluation, nor is there a record in his file regarding the disposition of those charges. While Mr. xxxx has been eligible for DDSN services since 2011, he has not received active services as

the family did not express an interest in receiving active services and there were no court orders or other legal mandates to receive active services. Records show that numerous attempts, by phone and certified letter, were made by the Charleston County DSN Board to contact the family in 2011 with no response. Charleston County Mental Health Center records indicate that he was court ordered into treatment in 2011 subsequent to his prior charges.

Prior to his arrest, Mr. xxxx was living at home with his grandmother, Ms. xxxx. However, his grandmother is currently medical treatments and He is unable to live with her. He currently resides in the home of his cousin, xxxx. All indications are at this time that he receives adequate supervision in this home. In regards to his current charge of Disturbing Schools, incident reports indicate that Mr. xxxx was arrested at James Island Charter High School after an altercation with another student where Mr. xxxx was reportedly the aggressor. A review of his school records indicates a history of behavioral problems in school to include referrals that resulted in one out of school and one in school suspension last academic year. It is noted that his last reported referral was in October 2012, indicating that his behavior improved during the school year. It is reported that he will be returning to the James Island Charter School this year.

Plan of Service:

It is recommended that Mr. xxxx remain at home at this time and receive Rehabilitative Behavioral Health Services (RBHS) coordinated by DDSN. This service would pair Mr. xxxx with a trained positive male role model with the goal of curtailing inappropriate/criminal behaviors while maximizing positive, pro-social behaviors and skills. This service will also provide Mr. xxxx with some structure and supervision during the day when he is not in school. A referral has been initiated for RBHS services. He will receive active, on-going service coordination through the Charleston County DSN Board to monitor his needs. DDSN is federally mandated with serving in the least restrictive setting. In this case, it appears that these services will meet his needs in the least restrictive setting. It is also recommended that he be assessed for school based counseling services, given his history of behavioral problems in the school setting. He should also be afforded an IEP, given his special education classification as a student with an Intellectual Disability.

Respectfully Submitted by:

Steve Von Hollen, M.S.
Director, Clinical Services
SCDDSN

Exhibit E

PLAN OF SERVICES REPORT

Consumer: xxxx

Agencies Involved: South Carolina Department of Disabilities and Special Needs

 Charleston County Disabilities and Special Needs Board

 Charleston County Probate Court

Court Date: August 26, 2013

Background information:

The following plan has been devised for the purpose of determining a course of action following the judicial commitment hearing for Mr. xxxx.

Mr. xxxx was charged with the crimes of Burglary – 1st Degree, Grand Larceny and Property Crime Enhancement (Shoplifting). The Department of Disabilities and Special Needs (DDSN) received the Order For Competency To Stand Trial Evaluation on March 18, 2013. Upon examination of his file, it was apparent that there was a history of mental illness, in addition to a possible Intellectual Disability (formerly termed Mental Retardation), and as prescribed in state statute, a joint evaluation was scheduled to include examiners from both DDSN and the Department of Mental Health (DMH). He was evaluated by examiners from both agencies on June 13, 2013. The examiners opined that Mr. xxxx was not competent to stand trial and also opined that he appeared to meet the criteria for a diagnosis of an Intellectual Disability as well as the presence of mental illness. The Forensic Evaluation was mailed to the Court of General sessions on June 25, 2013. On July 23, 2013 DDSN received the Order For Diagnostic Evaluation from the Charleston County Probate Court. On August 5, 2013 the Diagnostic Report was mailed to the Probate Court of Charleston County. The Diagnostic report confirmed that Mr. xxxx does meet the criteria for a diagnosis of an Intellectual Disability and is in need of DDSN services.

Prior to the competency evaluation, Mr. xxxx has never been previously referred to DDSN and there are no prior referrals or contacts on record. File information indicates a rather tumultuous childhood to include his being placed in the foster care system at age 13 after being removed from his mother for abuse and neglect and placed in DSS custody. From ages 13 to 21 he was in a variety of foster care homes and group homes with numerous on-going behavioral problems noted. He aged out of the foster care system at age 21 and attempted to return home to live with his mother, however this did not work out. He reports that he "lived on the streets" and prior to his incarceration he was reportedly living from friend to friend with no stable residence.

Mr. xxxx has an extensive history of criminal behavior dating back to 2006 according to his RAP sheet. It is also reported that he had some involvement with DJJ for charges prior to 2006, however that information is not available to this examiner. It appears that he was convicted of at least one crime for which he served time in 2009 and may still currently be in probation, although this is unclear in his record.

Plan of Service:

Given that Mr. xxxx has no permanent residence and is basically homeless, residential services from DDSN are recommended. This would likely be in the form of a Community Training Home II (CTH II). A CTH II is a community based four bed group home that provides 24 hour supervision. In this home he would receive comprehensive services to include services designed to improve his activity of daily living skills (ADL's) and counseling/behavioral services geared towards improving his behavior. He will also be afforded the opportunity to attend a day/work program to provide meaningful structure to his day and develop job skills. He will continue to receive on-going service coordination in the county in which he is placed. The search for an appropriate home to meet his needs is currently underway. The hope is that Mr. xxxx will be able to gain the skills to be able to transition to a less restrictive setting (i.e., supervised apartment setting) in the future. DDSN is federally mandated with serving in the least restrictive setting. However, at this time he appears to need the structure and supervision afforded in a 24 hour supervised placement. Given his history of mental illness as documented in the forensic report and his file, it is also recommended that he receives outpatient services from the Department of Mental Health.

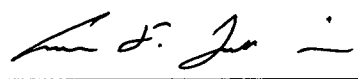
Respectfully Submitted by:

Steve Von Hollen, M.S.
Director, Clinical Services
SCDDSN

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant South Carolina Department of Disabilities and Special Needs certifies that the Record on Appeal complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifiers and sensitive information.

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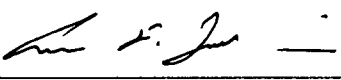
Columbia, South Carolina

October 13, 2014

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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Columbia, South Carolina

October 13, 2014