

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No: 2014-000449

In The Matter of the Care and Treatment of
Michael Lawyer, Appellant

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	CASE NO. 08-CP-14-183
	)	
IN THE MATTER OF THE CARE	)	
AND TREATMENT OF	)	ORDER OF COMMITMENT
MICHAEL T. LAWYER,	)	
RESPONDENT.	)	

The trial of this case was held in the County of Clarendon in the Court of Common Pleas. A jury of citizens from Clarendon County heard this case pursuant to a request for a jury trial filed by the State. The State was represented by R. Westmoreland Clarkson, Assistant Attorney General. The Respondent was represented by Charles T. Brooks, III. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Section(s) 44-48-90 and 44-48-100:

The State has proven beyond a reasonable doubt that Respondent Michael T. Lawyer is a sexually violent predator as that term is defined in South Carolina Code Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

- (a) Respondent Michael T. Lawyer is committed to the South Carolina Department of Mental Health for his long term control, care and treatment; and
- (b) Respondent is to be detained in the Clarendon County Detention Center and transported, as soon as possible, by the Sheriff of Clarendon County to a secure facility of the South Carolina Department of Mental Health.

AND IT IS SO ORDERED.


The Honorable F. Ferrell Cothran, Jr.,
Judge for the Third Judicial Circuit

April 6, 2009
Manning, South Carolina

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OF ORIGINAL FILED IN THIS OFFICE
DATE 4/6/09
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CLERK OF COURT
CLARENDON COUNTY, SC

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CLARENDON COUNTY, SC
CLERK OF COURT
Beverly S. Roberts

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON) CASE NO. 2008-CP-14-183

IN RE: CARE AND TREATMENT OF
MICHAEL LAWYER,

TRANSCRIPT OF RECORD

January 22, 2014
Manning, South Carolina

B E F O R E:

THE HONORABLE W. JEFFREY YOUNG, Judge

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

NICOLE T. WETHERTON, Esquire
Attorney for the State of South Carolina

CHARLES T. BROOKS, III, Esquire
Attorney for Michael Lawyer

KRYSTAL J. SMITH
Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 JANUARY 22, 2014

2 (WHEREAS this matter was scheduled for an SVP probable
3 cause review hearing, the defendant appeared along with
4 his counsel of record. The State of South Carolina
5 appeared through counsel of record. The hearing began at
6 9:38 a.m.)

7 THE COURT: Does anybody have any pleadings for me on
8 this matter?

9 MS. WETHERTON: Your Honor, may it please the Court.
10 Nicole Wetherton for the Attorney General's Office. We have a
11 report.

12 THE COURT: I don't have anything.

13 MS. WETHERTON: Okay.

14 THE COURT: I need something.

15 MS. WETHERTON: I understand.

16 THE COURT: At least reference as to what we ---

17 MS. WETHERTON: Okay. If I can approach?

18 THE COURT: You may.

19 MS. WETHERTON: This is the report from Dr. Kimberly
20 Harrison through the Department of Mental Health.

21 (Whereupon, there is a pause in the proceedings.)

22 THE COURT: All right. Mr. Brooks or Nicole?

23 MS. WETHERTON: Yes. Thank you, Your Honor. We are here
24 today pursuant to South Carolina Code 44-48-110 for an annual
25 review of Mr. Lawyer's status as a sexually violent predator

1 in the treatment program. Mr. Lawyer has petitioned for an
2 order finding that there's probable cause to believe that his
3 mental abnormality and personality disorder has so changed
4 that he is safe to be at large and no longer likely to commit
5 acts of sexual violence and for an order requiring a trial on
6 this issue pursuant to South Carolina Code 44-48-110.

7 The Court has been previously provided by the Department
8 of Mental Health with the annual review examination hearing
9 notice and Mr. Lawyer's notice of right to the report drafted
10 by the Department of Mental Health. In addition, the State
11 would also note that an order was issued in this case where
12 Mr. Lawyer was approved by us for an independent evaluation
13 and he was also evaluated by Dr. Tom Martin, who is here today
14 to testify.

15 Pursuant to the case In the Matter of the Care and
16 Treatment of Billy Ray Tucker -- and that citation is 578
17 S.E.2d 719 -- it is Mr. Lawyer's burden to prove that probable
18 cause does exist. Therefore, based on the holding in Tucker,
19 the fact that an independent evaluation occurred, and Mr.
20 Lawyer's request to exercise his right to a hearing, Mr.
21 Lawyer will now put forward any evidence that he has at this
22 time.

23 THE COURT: All right. Mr. Brooks, are you ready to
24 proceed?

25 MR. BROOKS: Yes, sir. We would go ahead and call Dr.

DR. THOMAS MARTIN - DIRECT EXAMINATION BY MR. BROOKS

1 Thomas Martin to the stand.

2 THE COURT: Dr. Martin, come forward and be sworn.

3 THE CLERK: Why don't you step right here? Raise your
4 right hand, please, sir, and put your left hand on the Bible.
5 Do you solemnly swear that the testimony you are about to give
6 to be the truth and nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Watch your step for me.

9 MR. BROOKS: Judge, to make it easy for you, I just spoke
10 with Ms. Wetherton and we are willing to stipulate that Dr.
11 Martin, as well as Dr. Harrison, are both experts in this
12 field.

13 THE COURT: All right. Very well. Thank you, sir.

14 DR. THOMAS MARTIN, being first duly
15 sworn, testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q: Dr. Martin?

19 A: Yes, sir.

20 Q: How are you today?

21 A: I'm fine, sir. Thank you.

22 Q: Now, you've -- you've had a chance to evaluate my client,
23 Michael Lawyer, who is sitting in the back?

24 A: Yes, sir.

25 Q: And matter of fact, you have evaluated him twice?

DR. THOMAS MARTIN - DIRECT EXAMINATION BY MR. BROOKS

1 A: Yes, sir.

2 Q: Pre-commitment, as well as post-commitment?

3 A: That's correct.

4 Q: Can you tell us what your evaluation was pre-commitment,
5 which was about five or six years ago?

6 A: Yes, sir. It was November 13th, 2008. I was contacted by
7 your office to do an evaluation of Mr. Lawyer, a pre-
8 commitment assessment, and I reviewed his records and any
9 treatment that he may or may not have, as well as his insight
10 into sex offender-related issues, the reasons for his
11 offenses, how he was dealing with them, and his likelihood to
12 re-offend. I found him at that time to be a poor candidate,
13 therefore, a high risk to re-offend if released and so I
14 recommended to your office that he actually go into the
15 program.

16 Q: Okay. And that was how many years ago?

17 A: That was November 13th, 2008, and he was committed on
18 April of 2009.

19 Q: Okay. Now, since that time you have done a post-
20 commitment evaluation of him; is that correct?

21 A: Yes, sir.

22 Q: And when did you do that evaluation?

23 A: That was June 11th, 2013.

24 Q: Okay. And it was after the State had done their
25 evaluation; is that correct?

DR. THOMAS MARTIN - DIRECT EXAMINATION BY MR. BROOKS

1 A: That's correct.

2 Q: And we had a motion before the Court to get approval to
3 get funds for you to do the evaluation after that; is that
4 correct?

5 A: That's correct.

6 Q: Okay. And you did the evaluation; is that correct?

7 A: That's correct.

8 Q: And can you tell us the results of your evaluation?

9 A: Certainly. In that evaluation, I reviewed again his
10 basic two sexual offenses, as well as some of his other
11 previous criminal history. I covered with him his ability to
12 self-disclose his participation in those two offenses, his
13 ability to take responsibility, empathy for victims, and so
14 forth. The part that substance use at the time played in his
15 offenses, he was abusing alcohol and crack cocaine. And also
16 his take on his assault cycle, what components actually
17 allowed him to commit those offenses against two individuals,
18 and also what type of participation he had in the sexually
19 violent predator treatment program up to that date.

20 I also reviewed the traditional discovery that was shared
21 by the Attorney General's Office with you, as well as his
22 notes of treatment that are found in his Department of Mental
23 Health chart. And I met with Mr. Lawyer for about three hours
24 on June 11th of last year. I covered all these materials with
25 him and I came to some conclusions about what his current

DR. THOMAS MARTIN - DIRECT EXAMINATION BY MR. BROOKS

1 diagnosis is and his ability to regulate his own sexual and
2 general behavior and his likelihood to re-offend.

3 Q: And you said you came up with a current diagnosis and
4 what would that be?

5 A: Yes. He does suffer from a paraphilia not otherwise
6 specified, which is consistent with what the Department of
7 Mental Health has described him. Essentially, a paraphilia is
8 an umbrella term for sexual perversion disorders. He doesn't
9 have a specific one so we call it not otherwise specified. I
10 also believe that he has a substance abuse -- a history of
11 substance abuse, which would include alcohol and cocaine.

12 Q: And did -- and that contributed to this; is that correct?

13 A: Yes. I believe it was mitigating.

14 Q: Okay.

15 A: It did not cause, nor would he state that it causes or
16 caused his sexual offenses, but it did cloud his judgment and
17 allow him to do things that he knows better about doing. I
18 did not find that Mr. Lawyer suffered from a personality
19 disorder. He's been diagnosed with an antisocial personality
20 disorder. He's been in the program for five years. He seems
21 to get along well with others in the program. He has minimal,
22 if any, infractions. He's on green level. He's progressing
23 well.

24 Q: Let me -- let me stop you right there. You -- you
25 checked his record or his history while he's been there; is

DR. THOMAS MARTIN - DIRECT EXAMINATION BY MR. BROOKS

1 that correct?

2 A: That's correct.

3 Q: Okay.

4 A: For the past five years.

5 Q: Go ahead, Doctor.

6 A: And I just don't have information to support that he's
7 got a psychopathic personality.

8 Q: Okay. So would that lead you to believe that he is now a
9 low risk to re-offend?

10 A: Yes, sir.

11 Q: Okay. So in other words, he has changed while in the
12 program?

13 A: Well, clearly from my first assessment of his case to the
14 current assessment of his case, he has changed. I never
15 believed that he had a personality disorder. That's something
16 that would be very difficult to hide for five years, but I
17 don't understand about the -- no diagnosis for a substance
18 abuse. He did go through a drug and alcohol treatment program
19 within the Department of -- or within the Department of Mental
20 Health and completed that and that would be an important
21 relapse prevention intervention to continue in maintenance
22 rehab meetings to make sure that, you know, he didn't relapse
23 on substances which contributed to his criminal behavior in
24 the past. Most of his old history -- of his legal history and
25 non-sexual were fueled by substance abuse.

DR. THOMAS MARTIN - DIRECT EXAMINATION BY MR. BROOKS

1 Q: Okay. All right. And now, Doctor, you had an
2 opportunity to review the report offered by the State; is that
3 correct?

4 A: Yes, sir.

5 Q: And you reviewed that prior to you doing your evaluation
6 -- your post-commitment evaluation of Mr. Lawyer; is that
7 correct?

8 A: That's correct.

9 Q: Okay. And basically to sum it up, you feel like and you
10 are of an opinion that Mr. Lawyer is -- is now low risk and
11 safe to be released; is that correct?

12 A: Yes. He still carries the diagnosis of paraphilia not
13 otherwise specified because that's a chronic lifetime
14 diagnosis. We do not in my field know of a cure for a
15 paraphilia, but not unlike substance dependence or abuse, one
16 can carry the diagnosis chronically but also regulate their
17 behavior and put steps in place so that they do not re-abuse
18 substances; they do not re-offend people. That's where I
19 believe Mr. -- where Mr. Lawyer is. Plus he has an outpatient
20 plan and release plan to include places to live, school,
21 therapy, and career ideas that he wants to again get back on
22 track and pursue and he has a support network of family here
23 in Manning who are also willing to help him with that.

24 Q: And these are the things that you find out as a part of
25 your evaluation in talking with him?

DR. THOMAS MARTIN - DIRECT EXAMINATION BY MR. BROOKS

1 A: Yes, sir.

2 Q: Post- commitment?

3 A: And looking at his chart, yes.

4 Q: Okay. Now, Doctor, as a part of you being an expert, you
5 also have a -- a counseling program. I think that's for lack
6 of better words. Can you explain that to us?

7 A: Certainly. I run three outpatient treatment groups.
8 I've been practicing in South Carolina for about 14 years and
9 about a third of my practice is designated to assessing and
10 treating people who have committed inappropriate sexual
11 behaviors. I have three outpatient groups that meet regularly
12 that he would be a good candidate for. He would be one of my
13 typical guys. I've got a few other folks in the groups who
14 have completed the sexually violent predator treatment
15 program. The program has evolved over the years, but when I
16 used to be the chief psychiatrist there, it was important that
17 they have outpatient follow-up once being released from long-
18 term incarceration, which would apply to Mr. Lawyer, as well
19 as having committed the sexual offenses that he committed back
20 in the middle 90's and the middle 2000's.

21 Q: And in comparison to the candidates you have in your
22 program now and have had in the past in your outpatient
23 program, does Mr. Lawyer kind of fit that profile?

24 A: Yes. He looks like the average person I would see.

25 Q: Okay. And if he is released, you would be willing to

DR. THOMAS MARTIN - DIRECT EXAMINATION BY MR. BROOKS

1 accept him in your outpatient program?

2 A: If he would like to come see me. I have people come from
3 Manning, Walterboro, Myrtle Beach. People come from all over
4 the state to my treatment.

5 Q: Okay. And just for the Court's reference, your office is
6 in Columbia?

7 A: That's correct.

8 Q: Okay. All right. Doctor, is there anything else you
9 need to share with the Court about your evaluations of Mr.
10 Lawyer pre-commitment versus post-commitment?

11 A: I believe that his understanding of his offenses are more
12 intact. They're more realistic. I believe he's being more
13 honest with himself. That's reflected in his record as well.

14 Q: And that's what -- and that's what the treatment is
15 supposed to do; right?

16 A: Absolutely.

17 Q: Okay.

18 A: Yeah. In fact, if some of them won't acknowledge at
19 least some aspects of their offense, usually the evaluation is
20 close to over because I don't know exactly what I'm
21 evaluating. But he's more empathic. He was experimenting
22 with sexual preferences and so forth back in the years that he
23 committed the offenses, fueled by poor judgment with substance
24 abuse. He has learned a lot more about interpersonal and pro-
25 social relationships. He knows relapse prevention for not

DR. THOMAS MARTIN - DIRECT EXAMINATION BY MR. BROOKS

1 only offensive sexual offenses behavior but as well as
2 substance use behavior, and also that he has a network outside
3 that can help him as he transitions back into a community.

4 I do recommend to everyone who leaves the treatment
5 program that they attend some maintenance offender therapy to
6 help them re-integrate into the community. Sometimes that
7 includes their support network coming to an occasional session
8 with their family member, who would be in this case Mr.
9 Lawyer. There is no way I can say he needs absolutely no
10 treatment. I recommend that because he's been locked up for a
11 long time now. It's been nine years or so since his last
12 offense, but still he's been in prison and then treatment
13 confinement for quite a while.

14 Q: Okay. So now basically, Dr. Martin, he is now -- in your
15 opinion, his level has now been reduced to where it's
16 manageable for him on the outside; is that correct?

17 A: That's my opinion, yes.

18 Q: Okay. All right. Doctor, I think that's it. You answer
19 any questions of ---

20 A: Yes, sir.

21 Q: --- Madam Attorney General.

22 THE COURT: Ms. Wetherton.

23 MS. WETHERTON: Thank you.

24 CROSS EXAMINATION

25 BY MS. WETHERTON:

DR. THOMAS MARTIN - CROSS EXAMINATION BY MS. WETHERTON

1 Q: Hi, Dr. Martin.

2 A: Hi.

3 Q: I have just a few questions. For the record, did you
4 look at the same types of records as Dr. Harrison did in this
5 case?

6 A: I believe I did. I know I specifically asked for ex --
7 for extra group notes, but I believe she had access to the
8 chart like I did.

9 Q: Okay. And -- and one of the things that you relied upon
10 again in making your decision was Dr. Harrison's report?

11 A: I think I would have come to the same opinion on his
12 condition, but I did look for certain red flags that she was
13 concerned about in her report.

14 Q: But you did -- prior to making your decision, you
15 reviewed Dr. Harrison's report?

16 A: Oh, yes.

17 Q: Okay.

18 A: Absolutely.

19 Q: All right. And did you issue a report in this case?

20 A: No, I did not.

21 Q: Okay. And for the record, you both agree on his
22 diagnosis of paraphilia?

23 A: That's correct.

24 Q: Okay. And would you agree that this condition is
25 chronic?

DR. THOMAS MARTIN - CROSS EXAMINATION BY MS. WETHERTON

1 A: Yes.

2 Q: Okay. And to make sure, is it your opinion that you
3 still feel that he needs additional sex offender treatment?

4 A: Yes.

5 Q: Okay. And that treatment that he would take, it would
6 help prevent him from re-offending?

7 A: Absolutely.

8 Q: Okay. And you think that it can be done in an outpatient
9 basis?

10 A: Yes.

11 Q: Okay. Hypothetically, if he went into your office, is
12 there a cost involved?

13 A: Yes.

14 Q: Okay. And what is that cost?

15 A: \$65 twice a month.

16 Q: Okay. Do you know if he has any of those means to pay
17 for it?

18 A: I believe he has family support and plus because he has
19 funds -- family support that is going to help him re-enter
20 school in order to get a CDL ---

21 Q: Okay.

22 A: --- permit. So it would be enough for an average of \$130
23 a month to come see me or someone like me.

24 Q: Okay. And your office is -- do you only have offices in
25 Columbia?

DR. THOMAS MARTIN - CROSS EXAMINATION BY MS. WETHERTON

1 A: For these groups, that's only in Columbia. Yes, ma'am.

2 Q: And that's about an hour and a half away from here?

3 A: That's correct.

4 Q: Okay. Do you know if he has -- oh, how often do these
5 groups meet?

6 A: Every two weeks.

7 Q: Every two weeks? Okay. Do you know -- have you talked
8 to him about any means of transportation as to how he would
9 get to and from these sessions?

10 A: He believes that either his immediate family or his
11 extended family would be able to help him with transportation
12 in the beginning until he gets his license.

13 Q: Okay. What continued areas do you think that he needs
14 sex offender treatment on?

15 A: Well, there's a couple. One is there is going to be a
16 transition from being in prison to the -- essentially the
17 community, which is I believe true for anyone who has been
18 incarcerated or in confinement for a long period of time.
19 With that is to make sure that he still understands what his
20 relapse prevention tools are because, no fault of the program,
21 there's no way they can actually check that by giving them a
22 weekend furlough to go home and see how well things work,
23 which is more common in let's say a substance abuse rehab
24 program.

25 So essentially, he'll have to land on his feet and what I

DR. THOMAS MARTIN - CROSS EXAMINATION BY MS. WETHERTON

1 would want to reiterate with each individual who leaves is
2 whether or not that they can still recognize the cognitive
3 distortions that allowed him to misperceive others' desires or
4 interests or even consentuality [verbatim] with sexual
5 behavior. That's where he had a lot of problems early on and
6 he has recently completed a cognitive distortions course at
7 the predator program.

8 But I want to make sure that's re-instilled, as well as
9 knowing relapse prevention tools of where to stay at or avoid
10 or identify triggers, high-risk situations, and so forth that
11 would put him in a bad place. One of our group rules is you
12 have to be better than good so if there's some stress or you
13 stumble, you're still in the good zone and that's what we try
14 to support with folks. We don't take anyone who I consider to
15 be a moderate or high risk to re-offend because they would
16 need to have a little bit more attention than an every two-
17 week group. But I believe he's reached the point where he's
18 got that knowledge and motivation to be able to continue
19 looking and applying those same skills I just mentioned in the
20 outpatient setting and so that's what we would focus on.

21 Q: Okay. Now, if Mr. Lawyer is released, is he going to be
22 on probation?

23 A: No, I don't think so.

24 Q: Okay. Will there be anything that would require him to
25 go and get sex offender treatment in these areas?

DR. THOMAS MARTIN - CROSS EXAMINATION BY MS. WETHERTON

1 A: No. My understanding of the statute would not provide
2 anything like that.

3 Q: Okay. Therefore, you -- you can't say to a reasonable
4 degree of medical certainty he is safe to be at large if he
5 does not attend?

6 A: No. I would really not like to go there. I would still
7 recommend that he attend some treatment to maintain that low
8 risk to re-offend, but you're right. That would have to be
9 his decision.

10 Q: Okay. And if he does not receive this treatment you
11 testified that he needs, isn't it true that it would make him
12 more likely to re-offend?

13 A: I would not know that. There would not be information
14 for me to say that, but I would not be comfortable with him
15 coming to my program let's say sporadically. But I can't make
16 the opinion therefore he would be a high risk to re-offend
17 because if he didn't come to see me, I wouldn't be able to
18 make that assessment.

19 Q: Okay.

20 A: I will tell you that there are two offenses in the
21 forensic world that I work in that are unlikely just base
22 rate-wise to re-occur and that is sex offending and murder.
23 Other offenses like armed robbery, shoplifting, and those type
24 of things are more likely to re-offend, but these are lower
25 chances of re-offending, but I would still recommend that he

DR. THOMAS MARTIN - CROSS EXAMINATION BY MS. WETHERTON

1 come to treatment even if there is a low base rate for re-
2 offending.

3 Q: Okay. Well, just to be clear, for example, you talked
4 about his cognitive distortions?

5 A: Yes, ma'am.

6 Q: And if he did not receive treatment on understanding or
7 additional treatment on his cognitive distortions, could he
8 then be more at risk for re-offending?

9 A: If he didn't maintain -- if I understand you correctly,
10 if he didn't have that additional support of maintenance of,
11 okay, that's a good example of a cognitive distortion, I would
12 say that yes, that he would become more likely.

13 Q: Okay. And since he wouldn't be confined, an outpatient
14 program doesn't protect against any potential victims?

15 A: No, but what I usually do in my programs is if there's a
16 supportive family network, for example, they have contact with
17 me and I think most everyone knows who knows me knows that if
18 I ever get suspicious of anything, I start calling authorities
19 to make sure and I actually -- I have to admit this happens
20 very rarely. But no, he will not be as, you know, sequestered
21 from the community as if he were confined. I just don't
22 believe he needs to be confined anymore.

23 Q: Okay. And you would agree like one of the things that
24 you considered is to look at his individual progress in the
25 treatment?

DR. THOMAS MARTIN - CROSS EXAMINATION BY MS. WETHERTON

1 A: Yes, ma'am.

2 Q: Okay. Did you see in Dr. Harrison's report where it was
3 noted that in group treatment his self-disclosure is still
4 considered minimal?

5 A: Yes. In fact, I focused on that with him when I saw him
6 and I can't share that same opinion. With me, he had no
7 difficulty expressing his self-disclosure of his offenses,
8 what he was going through, and so forth, and how he actually
9 -- to quote him, how I raped him, unquote.

10 Q: Okay. But you would agree with me that is noted in the
11 treatment records?

12 A: Definitely that's what Dr. Harrison saw, too, yes.

13 Q: Okay. And did you see within the past year he's been
14 seen as being defensive in group settings?

15 A: I saw that, too. Yes, ma'am.

16 Q: Okay. And did you see where they also noted he's been
17 defensive to receiving feedback?

18 A: At times, yes.

19 Q: Okay.

20 MR. WETHERTON: And I think that's all the questions I
21 have at this time.

22 DIRECT EXAMINATION BY THE COURT

23 THE COURT: Doctor, I have a couple questions.

24 THE WITNESS: Yes, sir.

25 THE COURT: Just a moment. You had stated that he has

DR. THOMAS MARTIN - DIRECT EXAMINATION BY THE COURT

1 done well with his substance abuse; is that correct?

2 THE WITNESS: Yes, sir.

3 THE COURT: Is one of the reasons that he's done well
4 with his substance abuse is because he is basically
5 incarcerated?

6 THE WITNESS: I would like to ---

7 THE COURT: I mean once he's out in the world, the
8 cocaine and the alcohol are going to be available again.
9 Right now, it's maybe available more than we would certainly
10 have a want, but it certainly is not easy to get; is that
11 correct?

12 THE WITNESS: That is correct. Yes, sir. And again,
13 just like it is with assessing general as well as sexual
14 regulatory behaviors, the program is not equipped to really
15 hands-on see how well they do by letting someone out for a
16 short period of time. It's just not equipped to do that. On
17 the unit, I agree with you, sir, that he could get -- when I
18 used to work on the unit, people were making buck and all
19 sorts of interesting chemicals and so forth and, yes, it is
20 available. He has never been accused of doing or partaking in
21 that, but I do agree that it is more difficult to get it there
22 and that's part of the reason why my recommendation also
23 includes maintenance like AA/NA meetings once he's released to
24 help that support from being a drug-addicted relapse.

25 THE COURT: All right. Thank you.

DR. THOMAS MARTIN - REDIRECT EXAMINATION BY MR. BROOKS

1 THE WITNESS: Yes, sir.

2 THE COURT: Any follow-up questions based on my
3 questions?

4 MR. BROOKS: I do, Judge.

5 REDIRECT EXAMINATION

6 BY MR. BROOKS:

7 Q: Dr. Martin, Ms. Wetherton asked you about him being
8 released, his not being on any type of probation. To your
9 knowledge, all of the individuals who are in the program and
10 who leave, they always have to register as sex offenders;
11 isn't that correct?

12 A: I believe that's a hundred percent correct.

13 Q: Okay. And as a part of registering as a sex offender,
14 they have to go to the local law enforcement agency that -- in
15 the place where they live and register with those law
16 enforcement entities; is that correct?

17 A: Quarterly or semi-annually, yes, sir.

18 Q: Failure to do so is actually a criminal offense?

19 A: Yes.

20 Q: And they're also on the Attorney General's internet
21 website for sex offenders in South Carolina; isn't that
22 correct?

23 A: I believe they are, yes.

24 Q: And they now have to wear the GPS ankle monitor; isn't
25 that correct?

DR. THOMAS MARTIN - REDIRECT EXAMINATION BY MR. BROOKS

1 A: I don't know what the situation would be with Mr. Lawyer,
2 but I would say most of my -- my outpatients who have actually
3 had touch crimes have been either on lifetime GPS or lifetime
4 supervised release.

5 Q: Okay.

6 A: That seems to be a new trend.

7 Q: Okay. So as such, there is some mechanisms to watch over
8 him in addition to going to your outpatient program?

9 A: Yes. I am not the only person who would be trying to
10 help Mr. Lawyer reintegrate into the community. There is
11 other agencies as well that could be involved.

12 Q: And those agencies, some of -- like I said, some of those
13 requirements are mandatory for him. Otherwise, he commits
14 criminal offenses; is that correct?

15 A: That's correct.

16 Q: Okay.

17 MR. BROOKS: No other questions.

18 THE COURT: Yes, sir.

19 RE CROSS EXAMINATION

20 BY MS. WETHERTON:

21 Q: Dr. Martin, what's the web address for the Attorney
22 General's sex offender -- sex offender registry website?

23 A: I don't know exactly. It would be on my favorites. I
24 suppose on my computer, but I usually go to the state
25 registry.

DR. THOMAS MARTIN - RECROSS EXAMINATION BY MS. WETHERTON

- 1 Q: Isn't it a possibility that that actually doesn't exist?
- 2 A: Well, I don't use that one so I just have heard about it
- 3 like perhaps Mr. Brooks had heard about it. That's ---
- 4 Q: So are you saying there is an actual Attorney General's
- 5 sex offender -- sex offender website?
- 6 A: Oh, no. I don't think there's an Attorney General's sex
- 7 offender website, no.
- 8 Q: Okay. And are you familiar with what they have to do
- 9 with the registration requirements, what exactly they have to
- 10 provide?
- 11 A: Yes. A -- like address, sometimes workplace. They also
- 12 -- if it's a touch crime, they have to report quarterly. If
- 13 it's a non-touch crime, it's usually semi-annually at their
- 14 local sheriff's office.
- 15 Q: So they just provide addresses?
- 16 A: I know at least that.
- 17 Q: But there's no counseling?
- 18 A: Oh, no, absolutely not.
- 19 Q: No.
- 20 A: No.
- 21 Q: They just provide addresses of where they're going to be?
- 22 A: That's right.
- 23 Q: Locally.
- 24 A: It's just registration, just purely registration,
- 25 demographic registration.

DR. THOMAS MARTIN - RECROSS EXAMINATION BY MS. WETHERTON

1 Q: Okay. And are you familiar -- will he be on GPS
2 monitoring?

3 A: That I don't know.

4 Q: Okay. Do you know at what point somebody has to be on
5 GPS monitoring?

6 A: No. They usually come to me with the GPS monitoring on
7 and what I testified earlier is what I know when they come to
8 me on it.

9 Q: Okay.

10 MS. WETHERTON: All right. Nothing further.

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

12 THE WITNESS: Yes, sir.

13 MR. BROOKS: Your Honor, that's our evidence that we
14 present to establish probable cause.

15 THE COURT: All right. Does the State want to put up
16 anything?

17 MS. WETHERTON: Yes, Your Honor. The State would like to
18 call Dr. Kimberly Harrison to the stand.

19 THE COURT: All right. Dr. Harrison, come forward,
20 please.

21 THE CLERK: Raise your right hand, place your left hand
22 on the Bible, and repeat your name, please.

23 THE WITNESS: Kimberly Harrison.

24 THE CLERK: Do you solemnly swear the testimony you're
25 about to give to be the truth and nothing but the truth, so

DR. KIMBERLY HARRISON - DIRECT EXAMINATION BY MS. WETHERTON

1 help you God?

2 THE WITNESS: Yes, I do.

3 DR. KIMBERLY HARRISON, being
4 first duly sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MS. WETHERTON:

7 Q: Could you state and spell your name for the record,
8 please?

9 A: Kimberly Harrison, H-A-R-R-I-S-O-N.

10 Q: Okay. And did you evaluate Mr. Lawyer in connection with
11 these proceedings?

12 A: Yes, I did.

13 Q: Okay. And for the record, when was he committed to the
14 program?

15 A: He was committed on April 6th, 2009.

16 Q: Okay. Doctor, before we discuss your report and the
17 opinions you came to, when Mr. Lawyer was committed back to
18 the sexually violent predator treatment program in 2009, what
19 was his mental abnormality and/or personality disorder?

20 A: At the time of his commitment, he was diagnosed with
21 paraphilia not otherwise specified. He was also diagnosed
22 with alcohol abuse and he was diagnosed with antisocial
23 personality disorder.

24 Q: Now, did you do the pre-commitment evaluation in this
25 case?

1 A: I did not, no.

2 Q: Okay. So another doctor had diagnosed him with those; is
3 that correct?

4 A: That's correct.

5 Q: Okay. Did you find that he had the same mental
6 abnormalities and/or personality disorder when you reviewed
7 him for this most recent annual review?

8 A: Yes, I did. I don't believe I listed the diagnosis of
9 alcohol abuse, but I did assign diagnoses of paraphilia not
10 otherwise specified, as well as antisocial personality
11 disorder.

12 Q: All right. Why did you diagnose him with antisocial
13 personality disorder?

14 A: Personality disorders are based on a person's lifelong
15 pattern of behaviors, thoughts, feelings, interactions with
16 others, and based on Mr. Lawyer's history, he has a long
17 pattern of committing illegal acts, not just the sexual
18 offenses that brought him into this program, but starting in
19 adolescence, so an early onset. He performed acts including
20 malicious injury to personal property, grand larceny,
21 resisting arrest, disorderly conduct, carrying a concealed
22 weapon. Now, he also committed offenses while he was on
23 probation, which is concerning that while he was under some
24 form of supervision he continued to offend as well.

25 And then in addition to committing those illegal acts, he

1 also demonstrated other characteristics that are consistent
2 with antisocial personality disorder, including impulsivity,
3 disregard for the safety of other people, irresponsibility,
4 lack of remorse. So in addition to those sexual or those
5 criminal acts, he also was arrested for driving while
6 intoxicated, failing to pay child support. So just sort of a
7 wide range of illegal activities and activities that show sort
8 of a disregard for rules and for other people.

9 Q: Okay.

10 A: And although he has been -- his behavior has been good in
11 the program, but he still has this long historical pattern of
12 this type of behavior, and so these diagnoses are based on the
13 long pattern. So just having a few years of relatively good
14 behavior wouldn't be enough to override that diagnosis.

15 Q: Is it safe to say when he's outside of an institutional
16 environment that his actions have been different?

17 A: That seems to be the pattern, yes, that when he's
18 incarcerated, he had very minor disciplinary infractions while
19 in prison. He's had relatively minor infractions in the SVP
20 program, but it's when he's out in the community that he
21 commits these illegal acts.

22 Q: Has he had any recent behavioral infractions?

23 A: At the time that I conducted my interview with him during
24 the review period, he did not have any behavioral infractions.
25 I reviewed his chart recently. He did have a minor infraction

DR. KIMBERLY HARRISON - DIRECT EXAMINATION BY MS. WETHERTON

1 in October where he was cited for covering the window in his
2 room, which is against the rules. They have to keep their
3 window open and he had covered that and so he was given a
4 verbal warning for that.

5 Q: Okay. Now, paraphilia, is that condition curable?

6 A: It's generally not considered to be curable.

7 Q: Okay. Is antisocial personality disorder -- is that
8 considered curable?

9 A: Generally not.

10 Q: Are either of these conditions -- can they be treated?

11 A: It's believed by a majority of the mental health
12 community that they can be treated and managed.

13 Q: Okay. Can disorders of this type be difficult to manage?

14 A: Yes, they can be.

15 Q: Can these types of disorders sometimes take a long time
16 to properly manage?

17 A: Yes, they can.

18 Q: Okay. Can the existence of both these disorders in a
19 single person make them difficult to treat?

20 A: Yes. What we know about sex offenders is people that
21 have both a paraphilia or some form of sexual deviance as well
22 as a history of antisocial behavior are those that are most
23 likely to re-offend in the future. So that makes them more
24 likely than a person who just has the sexual deviance or just
25 has the antisocial orientation, but having both of those,

DR. KIMBERLY HARRISON - DIRECT EXAMINATION BY MS. WETHERTON

1 those are sort of the two big factors that make a person more
2 likely to re-offend.

3 Q: Okay. Now, when you evaluated Mr. Lawyer, what did the
4 evaluation consist of?

5 A: My evaluation consisted of an interview with him. I also
6 reviewed all of his treatment records, progress notes during
7 the review period. I -- I re-reviewed all of the legal
8 records, the previous evaluations that had been conducted on
9 him, and I spoke with the psychologist who supervises his
10 treatment.

11 Q: Okay. Did you also interview him as part of the
12 evaluation?

13 A: Yes, I did.

14 Q: Okay. Did you explain to him the purpose of the
15 evaluation?

16 A: Yes, I did.

17 Q: Okay. And how was his demeanor during the interview?

18 A: He was fine. He was cooperative. He answered my
19 questions. He was pleasant.

20 Q: Okay. Also, did you perform what's referred to as an
21 actuarial assessment of Mr. Lawyer?

22 A: Yes. I did complete the Static 99-R, which is an
23 actuarial risk assessment that we do on all of these
24 evaluations. So everyone that I evaluate pursuant to the
25 Sexually Violent Predator Act I conduct a Static 99-R and what

DR. KIMBERLY HARRISON - DIRECT EXAMINATION BY MS. WETHERTON

1 it is is basically just a checklist of factors that research
2 has shown to be predictive in evaluating who is more likely to
3 commit acts of sexual violence in the future.

4 Q: Okay. And what did it determine?

5 A: Based on this measure, his score -- he obtained a score
6 of a 4, which places him in the -- what the authors of the
7 Static 99 refer to as a moderate high risk category. People
8 who have that same score of sex offenders who have that same
9 score, about twenty percent of them sexually re-offend within
10 five years and about thirty percent of them re-offend sexually
11 within ten years.

12 Q: Okay. Now, did you review his treatment records?

13 A: Yes, I did.

14 Q: Okay. As indicated in your report, what is your opinion
15 of Mr. Lawyer's progress in treatment?

16 A: I believe his progress has improved since his previous
17 annual review evaluation. Previously, his participation and
18 his attendance in groups were sporadic. During this review
19 period, it appears that he has attended all of his groups. He
20 participates. He offers feedback to other residents. He's
21 generally appropriate in group. He has presented some
22 treatment assignments.

23 However, the main -- the main factor with Mr. Lawyer
24 appears to be he still lacks a thorough understanding of his
25 -- of his own sexual offense history, his own offense cycle,

1 why he committed these offenses. He still seems to struggle
2 with his own sexual orientation, his own sexual preferences,
3 and he seems reluctant to talk about that, both with me and in
4 his treatment groups.

5 When I spoke with the psychologist who supervises his
6 treatment just the other day in preparation for this hearing,
7 his treatment teams believe that he still tends to minimize
8 his -- his sexual attraction to the victims and that he still
9 lacks a thorough understanding of his sexual offense cycle.

10 Q: Okay. And so we're clear, did you find that he still has
11 treatment areas that he needs to still work on?

12 A: Yes. His treatment team has continued to identify areas
13 where he needs continued work and those -- those same areas
14 were evident in my interview with him.

15 Q: Okay. And you also stated in your report that Mr. Lawyer
16 has failed to understand risk factors. Can you explain what
17 that means?

18 A: Sure. A risk factor is just something that makes a
19 person more likely to commit a sex offense in the future. So
20 you think about like risk factors for heart disease are those
21 things that make a person more likely to have a heart attack
22 in the future. And with sex offending, it's important in
23 treatment for an individual to identify either those
24 situations or those events or moods or thoughts. It can be
25 anything that might make a person more likely to commit a sex

1 offense in the future.

2 So for Mr. Lawyer, he's able to identify some, such as
3 not being around teenage boys. That would be a risk factor
4 for him. His drug and alcohol abuse would be a risk factor
5 for him because those things played a part in his previous
6 offenses. And he did -- he did identify some other sort of
7 more complex risk factors such as what he told me was how he
8 deals with rejection and abandonment, feelings of loneliness.
9 Those things could be risk factors for him.

10 But he still seems to have some difficulty really linking
11 up those risk factors to how they played a part in his past
12 offending, and I think his treatment team would like to see
13 him get more -- more of an understanding of the linkages
14 between his risk factors and his sex offending.

15 Q: Okay. And you also said in the report he needs to
16 continue to work on his emotional regulation. What is
17 emotional regulation?

18 A: Basically, emotional regulation is just being able to
19 manage your emotions, cope with the expression of your
20 emotions, being able to express your emotions in an
21 appropriate manner, and he has -- he has improved in that
22 quite a bit during his stay in the SVP program. But the --
23 his treatment providers have noticed that he tends to engage
24 in behaviors such as attention-seeking when someone new is in
25 the group and -- let's see what else they said. Being

1 somewhat resistant to feedback from other people, so just
2 being perhaps a little bit more open to assessing his own
3 behavior and changing it if -- if it's appropriate.

4 Q: So why specifically is emotional regulation important for
5 sex offender treatment?

6 A: Emotional regulation -- and it varies from individual to
7 individual.

8 (Whereupon, a cell phone rings.)

9 A: Some people commit sexual ---

10 THE COURT: Please take the cell phone. Mr. Hill, that's
11 someone's cell phone. Please take it.

12 A: So some individuals, their sexual offense history is
13 marked by committing offenses in response to anger. For some
14 individuals, they commit acts of sexual violence because
15 they're depressed or because they're lonely. So learning how
16 those emotions are linked up with our sexual offending is
17 important so that they can change their behaviors, change the
18 way that they think about their emotions and their expressions
19 of those emotions, and then hopefully prevent that from
20 leading to a sex offense in the future.

21 Q: Okay. So in your opinion to a reasonable degree of
22 psychological certainty, do you believe Mr. Lawyer's mental
23 abnormality of personality disorder has so changed that he is
24 safe to be at large and no longer likely to commit acts of
25 sexual violence?

DR. KIMBERLY HARRISON - DIRECT EXAMINATION BY MS. WETHERTON

1 A: It's my opinion that at this time there's insufficient
2 evidence to support that he has so changed.

3 Q: Okay. And what is your title?

4 A: Oh, my job title?

5 Q: Yes.

6 A: Chief Psychologist with the Department of Mental Health.

7 Q: Typically, mental health professionals and the Department
8 of Mental Health, do they have the title of typically Chief
9 before their psychiatrists or psychologists?

10 A: Yes.

11 Q: Is there more than one chief psychiatrist or chief
12 psychologist at the Department of Mental Health?

13 A: Yes, yes.

14 Q: Okay. And as a chief psychologist for the Department of
15 Mental Health, is your opinion also the opinion of the
16 Department of Mental Health?

17 A: I'm authorized by DMH to conduct these evaluations and to
18 issue my opinion to the Court.

19 Q: Okay. Thank you, Dr. Harrison. If you will, please
20 answer any questions the judge or Mr. Brooks may have for you?

21 THE COURT: Mr. Brooks?

22 A: Thank you.

23 CROSS EXAMINATION

24 BY MR. BROOKS:

25 Q: Dr. Harrison?

DR. KIMBERLY HARRISON - CROSS EXAMINATION BY MR. BROOKS

- 1 A: Good morning.
- 2 Q: How are you doing today?
- 3 A: I'm good. Thank you.
- 4 Q: It's been a while; hasn't it?
- 5 A: It's been a little while.
- 6 Q: All right. Now, Doctor, I'm going to go back over a
- 7 couple questions that Ms. Wetherton asked you. Mr. Lawyer has
- 8 had no behavioral infractions; did I understand that you say
- 9 that?
- 10 A: He had that minor one back in October.
- 11 Q: Covering the window?
- 12 A: Covering the window.
- 13 Q: Okay.
- 14 A: Yeah.
- 15 Q: Absent that, in the five-year period he's had nothing
- 16 else?
- 17 A: I'm not sure about in the whole five-year period because
- 18 my report just focused on this current review period.
- 19 Q: From August 2011 -- August 5th, 2011, to April 10th, 2013;
- 20 is that correct?
- 21 A: Correct.
- 22 Q: Okay. So in the span of almost two years, he's had no
- 23 infractions during your review period?
- 24 A: That's correct.
- 25 Q: And you don't have any evidence of any infractions since

DR. KIMBERLY HARRISON - CROSS EXAMINATION BY MR. BROOKS

1 then up to today; do you?

2 A: Just the one that I mentioned, covering the window.

3 Q: Just the covering the window?

4 A: Right.

5 Q: Okay. So basically from August 5th to January 2014, we've
6 got one infraction of covering a window?

7 A: Right.

8 Q: Okay. Now, being in the program, the program is designed
9 to give them treatment; is that correct?

10 A: Care, control, and treatment, yes.

11 Q: Okay. In order to deal with whatever problems that they
12 have that makes them likely to re-offend; is that correct?

13 A: Ideally, yes.

14 Q: Okay. Now, you said earlier that Mr. Lawyer's pattern
15 has been when incarcerated or confined, everything is great.
16 Then he gets out and re-offends and everything is not great,
17 and he goes back in confined and everything is great. Is that
18 the pattern that I heard you mention when Ms. Wetherton asked
19 you the question?

20 A: Basically, yeah. When he's out in the community, he
21 tends to get arrested. He tends to violate rules, abuse
22 alcohol and drugs, and when he gets incarcerated or otherwise
23 confined, he really doesn't engage in much behavior that --
24 for which he's sanctioned or given disciplinary infractions.

25 Q: Okay. Now, all of those other confinements were not with

DR. KIMBERLY HARRISON - CROSS EXAMINATION BY MR. BROOKS

1 the sexually violent predator program; isn't that correct?

2 A: That's correct. He was in prison.

3 Q: Okay.

4 A: Yes.

5 Q: And in prison, he did not get the treatment that a person

6 gets in the sexually violent predator program; is that

7 correct?

8 A: That's correct. According to our records, he did not

9 have any sex offender treatment during his incarceration.

10 Q: Okay. So now, as a result of having all this treatment

11 and he's been there five years, of which more than two and a

12 half we acknowledge he's only had one incident of covering a

13 window, you don't know exactly if he is going to follow that

14 same pattern; isn't that correct?

15 A: Well, that's correct.

16 Q: Okay.

17 A: I don't know that. I mean nobody can predict ---

18 Q: Okay.

19 A: --- what a person is going to do.

20 Q: And all of those -- the one common denominator in all of

21 those instances of that pattern you described is he did not

22 have any treatment?

23 A: Correct.

24 Q: Now he's had the treatment?

25 A: Correct.

DR. KIMBERLY HARRISON - CROSS EXAMINATION BY MR. BROOKS

1 Q: And you already said that of the people that fit his
2 profile or fit -- yeah, fit his profile as an adult male based
3 on the Static 99 score; is that correct? I think you call
4 that the Static 99 where he had a 4; is that correct?

5 A: That's correct.

6 Q: Okay. And would it be fair to say that that's the
7 profile of Mr. Lawyer?

8 A: I wouldn't say it's a profile. It's just a risk
9 assessment instrument. So it only includes really ten
10 factors.

11 Q: Okay. And basically, he falls into that risk assessment
12 in your opinion; is that correct?

13 A: Well, he falls into the category that's described as
14 moderately high risk to re-offend.

15 Q: Okay. And of the people in -- that fell into that
16 category, you testified that twenty percent re-offend in five
17 years and thirty percent re-offend in ten years?

18 A: That's correct.

19 Q: Okay. And those individuals -- because you said there
20 was twenty percent that re-offend in five years, is that fair
21 to say that eighty percent did not re-offend in five years?
22 Is that correct?

23 A: That's correct. Or were not detected for re-offending.

24 Q: Okay. And thirty percent did not -- re-offended in ten
25 years. That means seventy percent did not re-offend?

DR. KIMBERLY HARRISON - CROSS EXAMINATION BY MR. BROOKS

1 A: Correct.

2 Q: Okay. So wouldn't it be fair to say that Mr. Lawyer, who
3 had a history of being bad when he was out and being good when
4 he was confined but had no treatment, and now that he's had
5 this extensive treatment in the sexually violent predator
6 program -- you would agree with me that it is extensive; isn't
7 that correct?

8 A: I'm not sure I would use the word extensive.

9 Q: How would you categorize it?

10 A: They generally go to group once or twice a week.

11 Q: Okay. And in group is where they go through this
12 counseling that's a part of their treatment; right?

13 A: Correct.

14 Q: Okay. And basically, isn't it fair to say that this
15 sexually violent predator program treatment that he has had
16 would break that pattern?

17 A: We don't have any evidence of that.

18 Q: And you don't -- and you don't have any evidence that
19 he'll re-offend; is that correct?

20 A: Well, we can -- we know based on research what his risk
21 factors are and where he falls relative to other sex offenders
22 who are ---

23 Q: And that's at twenty percent?

24 A: More or less likely to re-offend.

25 Q: Five years, thirty percent, ten years?

DR. KIMBERLY HARRISON - CROSS EXAMINATION BY MR. BROOKS

- 1 A: Five years, twenty percent. Ten years, thirty percent.
- 2 Yes.
- 3 Q: Eighty percent not re-offending in five years. Seventy
- 4 percent in ten years?
- 5 A: Correct.
- 6 Q: Okay. So now, is it fair to say that Mr. Lawyer as a
- 7 result of all of his treatment, he could fall into that eighty
- 8 percent in five years and seventy percent in ten years?
- 9 A: Sure.
- 10 Q: Okay. You indicated that during your evaluation of him,
- 11 he was very pleasant and cooperative; is that correct?
- 12 A: Yes, he was.
- 13 Q: Okay. And he has improved quite a bit as it relates to
- 14 emotional regulation; is that correct?
- 15 A: Yes, he has.
- 16 Q: One of his mitigating factors was the substance abuse; is
- 17 that correct?
- 18 A: Well, I would say that that was one of his risk factors.
- 19 Q: Okay.
- 20 A: Yes.
- 21 Q: Is it fair to say that if that's minimized, then his risk
- 22 assessment would be minimized as well?
- 23 A: That would be considered a dynamic risk factor. So I
- 24 would say that if that's eliminated from his life that that
- 25 would possibly lower his risk, yes.

DR. KIMBERLY HARRISON - CROSS EXAMINATION BY MR. BROOKS

1 Q: Okay. And in order to be able to minimize that or
2 perhaps even eliminate that, he would need to go to some --
3 you would think he would need to go to some type of drug
4 treatment or drug counseling and outpatient, things of that
5 sort; right?

6 A: If that treatment has been shown to be effective or if
7 there have been any kind of studies showing that the treatment
8 is effective.

9 Q: Okay. And we don't know yet with Mr. Lawyer because he
10 has not been out since getting all this treatment with the SVP
11 program; is that right?

12 A: That's correct.

13 Q: Okay.

14 MR. BROOKS: No other questions, Judge.

15 THE COURT: Any redirect?

16 MS. WETHERTON: I just have a couple of questions.

17 REDIRECT EXAMINATION

18 BY MS. WETHERTON:

19 Q: Dr. Harrison, his treatment, it's more than just one hour
20 of group. Is it more than one hour of group?

21 A: Well, he goes to group and then they're given assignments
22 that they're to work on outside of group.

23 Q: Is he observed on the unit?

24 A: Yes.

25 Q: Is he -- is his behavior observed, how he interacts with

- 1 people?
- 2 A: Yes, it is.
- 3 Q: Okay. And he receives additional assignments?
- 4 A: Yes. That he's supposed to work on outside of group and
5 then present them in his group.
- 6 Q: And do they also work on other areas not specifically sex
7 offender treatment but areas for personal improvement?
- 8 A: Yes. They have started offering other types of groups,
9 alcohol and drug treatment groups, different sort of anger
10 management groups. There's a dialectical behavior therapy
11 group. So different things they've started incorporating into
12 the treatment program as well.
- 13 Q: Now, would -- for example in Mr. Lawyer's situation, him
14 attending the alcohol and drug treatment, would that lower his
15 -- help lower his risk to re-offend?
- 16 A: I can't say if it would or not because I don't know that
17 any research has been conducted that the particular treatment
18 that they're using in the program is effective. So I don't
19 know.
- 20 Q: Did he when he spoke to him or in any type of records
21 indicate that alcohol and drug use occurred while he was
22 offending sexually?
- 23 A: Yes. That does seem to play a part in his previous
24 offenses.
- 25 Q: Okay. And according to the Static 99 for example, his

1 statistics with the twenty percent and the thirty percent,
2 those are actually one-third of the people that have a 4
3 actually committed a sex offense against someone within five
4 years?

5 A: Twenty percent in five years.

6 Q: And then ---

7 A: Thirty.

8 Q: --- one-third within ten years; is that correct?

9 A: Correct.

10 Q: Okay. And why do you consider someone's past behavior
11 when you look at all of this?

12 A: Well, when someone establishes a pattern of behavior over
13 the course of their life and especially starting in
14 adolescence or younger, that's generally a fairly good
15 predictor of their future behavior. We tend to keep doing
16 what we've always done and in order to break those patterns,
17 it often takes years of intensive effort to change those
18 patterns. And if someone is -- especially if someone is
19 returning back into the same environment in which they
20 committed the previous acts, that also would make them more
21 likely to go back into those old patterns of behavior.

22 Q: And it is your opinion at this time that his mental
23 abnormality and personality disorder has not so changed that
24 he's safe to be at large and no longer likely to commit acts
25 of sexual violence; is that correct?

DR. KIMBERLY HARRISON - DIRECT EXAMINATION THE COURT

1 A: That is correct.

2 Q: Okay.

3 MS. WETHERTON: Nothing further.

4 DIRECT EXAMINATION BY THE COURT

5 THE COURT: Doctor, what would you perceive he would need
6 to do in order to reach a diagnosis or a recommendation that
7 he be released from the program?

8 THE WITNESS: Because he does have this long pattern for
9 many years so starting around age fifteen until he was into
10 his 30's, for him it's going to be consistency, continuing
11 with his treatment, continuing not to show behavior problems,
12 and just continuing down the path he's started down. But for
13 him, a lot of it is just going to be time and consistency and
14 showing that he can maintain good behavior that doesn't
15 violate the rights of other people for an extended period of
16 time.

17 THE COURT: All right. Any questions related to my
18 follow-up?

19 RECROSS EXAMINATION

20 BY MR. BROOKS:

21 Q: Now, there's no way he can show that within the confines
22 of the program. He would have to be let out at some point in
23 order to exemplify that; isn't that correct?

24 A: Well, that -- I mean that's up to the Court if they let
25 him out, yeah.

DR. KIMBERLY HARRISON - DIRECT EXAMINATION THE COURT

1 Q: I understand. Okay.

2 DIRECT EXAMINATION BY THE COURT

3 THE COURT: But there's no intermediate way of checking
4 that. If the Court releases him, he's released. Whether or
5 not he goes to the other doctor's treatment or goes to alcohol
6 or drug treatment or anything like that, he's out; is that
7 correct?

8 THE WITNESS: That's correct. My -- my understanding of
9 the statute is that there's -- there's no -- like in other
10 states, they have step-down programs or partial release
11 programs where you can still sort of keep an eye on the person
12 and bring them back quickly if something happened.

13 THE COURT: So the only way ---

14 THE WITNESS: South Carolina ---

15 THE COURT: --- this Court would be able to bring him
16 back into the justice system would be if he re-offends?

17 THE WITNESS: That's correct.

18 THE COURT: Any other questions based on that question?

19 MR. BROOKS: No, sir.

20 MS. WETHERTON: I have no other questions, Your Honor.

21 THE COURT: Thank you. You may step down.

22 THE WITNESS: Thank you.

23 MS. WETHERTON: Your Honor, we have no other witnesses.

24 We just have a brief argument and then that would be it.

25 THE COURT: All right. You may make your arguments and

1 I'll take the matter under advisement. Yes, sir?

2 MR. BROOKS: Judge, it's our understanding that this is
3 simply a probable cause hearing to determine if my client
4 would be allowed another jury trial and basically, Judge, it's
5 our position that we have -- by virtue of the testimony of Dr.
6 Martin, a clearly established expert in his field, we have
7 established probable cause in order for Mr. Lawyer to be
8 granted another jury trial.

9 THE COURT: Thank you. Yes, ma'am?

10 MS. WETHERTON: Your Honor, we believe that we have a
11 case that might provide some guidance for the Court and it's
12 In the Matter and Care and Treatment of Tucker, and I have the
13 case here if you'd like a copy.

14 THE COURT: Yes, ma'am.

15 MS. WETHERTON: It's 578 S.E.2d 719 is the citation, but
16 very quickly, in the Tucker case Dr. Martin was the defense
17 expert that testified and he testified that since appellant
18 took responsibility for his sexual offending and was capable
19 and motivated towards sex offender treatment that appellant
20 should continue his treatment in an outpatient setting, which
21 is similar to what happened here. However, it was the
22 Department of Mental Health's position that although appellant
23 had progressed in treatment, similar to what happened here,
24 appellant had additional treatment goals that he had to meet
25 before being eligible for release.

1 Probable cause was denied on that situation and the
2 Supreme Court upheld that denial of probable cause stating
3 while evidence exists that appellant could be released to an
4 outpatient setting, appellant must still show his condition,
5 which is the statutory standard, has so changed that he's safe
6 to be at large and if released unlikely to commit acts of
7 sexual violence.

8 Similar to Tucker, Mr. Lawyer has progressed in
9 treatment, which is a good thing, which is what we want to
10 see, but that's not the standard. His mental abnormality has
11 to so change that he's safe to be at large. There's no --
12 like we were saying, there's no step-down treatment. It's in
13 or out and we can't force him to go to outpatient treatment
14 and even Dr. Martin has testified that he still needs
15 additional treatment and, you know -- and he still has
16 additional goals before the Department of Mental Health can
17 consider him eligible for release.

18 Whether he can continue or could go to outpatient
19 treatment is not relevant for these proceedings because he's
20 failed to prove that his mental abnormality and personality
21 disorder have so changed that he's safe to be at large and if
22 released not likely to commit acts of sexual violence. So if
23 I could approach ---

24 THE COURT: Yes, ma'am.

25 MS. WETHERTON: --- I can give you a copy of the case.

1 THE COURT: Thank you. Thank you.

2 MS. WETHERTON: Thank you.

3 THE COURT: Mr. Brooks, any follow-up?

4 MR. BROOKS: Judge, if you're going to follow that
5 standard, nobody gets out ever because as Dr. Martin
6 testified, you know, it is now manageable. The issue is is he
7 a high risk to re-offend. He was five or six years ago; he's
8 not now. He's gone through the treatment. He's gone through
9 all the steps. Dr. Martin has testified. Clearly, Judge,
10 we've met our burden on these issues that my client is
11 entitled to his day in court.

12 THE COURT: All right. Thank you. I'll take the matter
13 under advisement and I'll inform the attorneys when I make my
14 ruling. Thank you.

15 MS. WETHERTON: Thank you, Your Honor.

16 (Whereupon, the proceedings end at 10:37 a.m.)

17

18 --- END REQUESTED TRANSCRIPT ---

19

20

21

22

23

24

25

1	STATE OF SOUTH CAROLINA	)	
2		)	CERTIFICATE
3	COUNTY OF FLORENCE	)	

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Clarendon County, South Carolina, on the 22nd day of January, 2014.

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

Krystal J. Smith
Court Reporter

19 Florence, South Carolina
20 May 12, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	CASE NO. 2008-CP-14-183
	)	
IN THE MATTER OF THE CARE	)	ORDER DENYING TRIAL AFTER ANNUAL
AND TREATMENT OF	)	REVIEW HEARING PURSUANT TO THE
MICHAEL LAWYER,	)	SEXUALLY VIOLENT PREDATOR ACT
RESPONDENT.	)	
	)	

This matter comes before the Court on annual review of Michael Lawyer's status as a Sexually Violent Predator pursuant to South Carolina Code Section 44-48-110. A hearing was held pursuant to Section 44-48-110 on January 22, 2014. Mr. Lawyer was represented by his appointed attorney Charles Brooks, Esquire. The State was represented by Assistant Attorney General Nicole T. Wetherton.

Mr. Lawyer was committed to the Sexually Violent Predator Treatment Program on or about April 6, 2009. The Court received a letter from the Department of Mental Health dated May 3, 2013, indicating Mr. Lawyer was exercising his right to a hearing. The Department also sent an Annual Review Packet to the Court, including an Annual Review Treatment Summary dated April 17, 2013.

The purpose of an annual review hearing held pursuant to South Carolina Code Section 44-48-110 is for the court to determine whether probable cause exists to believe that "the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence." S.C. Code Ann. Section 44-48-110 (Supp. 2008). At the hearing, the committed person bears the burden of showing that probable cause exists to believe his mental condition has so changed that he is safe to be released. *In re Care and Treatment of Tucker*, 353 S.C. 466, 578 S.E.2d 719 (2003). In the context of Sexually Violent Predator cases, a party establishes probable cause when he presents evidence that "would lead a reasonable person to believe and conscientiously entertain" the proposition set forth at the hearing. See *In re the Care and Treatment of Brown*, 372 S.C. 611, 643 S.E.2d 118 (Ct. App. 2007) (establishing this standard for hearings held pursuant to South Carolina Code Section 44-48-80).

At the hearing, Petitioner offered testimony from Thomas V. Martin, MD, and the State presented testimony of Kimberly Harrison, Ph.D., Chief Psychologist at the Department of Mental Health. Both Dr. Martin and Dr. Harrison testified that Mr. Smith suffers from Paraphilia, Not Otherwise Specified, has progressed in treatment, and requires continued treatment. However, Dr. Martin testified that Mr. Lawyer is now able to receive this treatment in an outpatient setting, and Dr. Harrison believes that Mr. Lawyer needs continued confinement to get the treatment he needs.

In the *Tucker* case, Appellant appealed the Circuit Court's finding of no probable cause from his annual review hearing. In that case, Dr. Martin testified that since Appellant took responsibility for his sexual offending and was "capable and motivated towards continuing sex offender treatment,

that [Appellant] should continue his treatment in an outpatient setting.” However, it was the Department of Mental Health’s position that although Appellant had progressed in treatment, Appellant had additional treatment goals that had to be met before he could be eligible for release. The Supreme Court upheld the denial of probable cause stating while evidence exists that Appellant could be released to an outpatient setting, Appellant must still show his condition has so changed he is safe to be at large, and if released, unlikely to commit sexually violent acts. Therefore, since Appellant failed to meet this burden, denial was proper.

Similar to *Tucker*, Mr. Lawyer has progressed in treatment and has additional treatment goals that need to be met before the Department of Mental Health will consider him eligible for release. Whether Mr. Lawyer could continue his treatment in an outpatient setting is not relevant, because he has failed to prove that his mental abnormality or personality disorder has so changed that he is safe to be at large and, if released, is not likely to commit acts of sexual violence.

Based on the testimony offered at the hearing, the report provided to the Court, and the arguments of counsel, the Court hereby finds and concludes that, at this time, Mr. Lawyer’s mental abnormality or personality disorder has not so changed that he is safe to be at large, and, if released, not likely to commit acts of sexual violence. Therefore, Mr. Lawyer has failed to meet his burden, and the Court does not find probable cause in this matter.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that Michael Lawyer shall continue to be confined in a secure facility of the Department of Mental Health for long term control, care and treatment pursuant to the Sexually Violent Predator Act, Code of Laws of South Carolina, 1976, as amended, Sections 44-48-10 et seq.

IT IS FURTHER ORDERED that Mr. Smith continues under the jurisdiction of this Court.

AND IT IS SO ORDERED.

26 Feb, 2014
Sumter, South Carolina


The Honorable W. Jeffrey Young,
Chief Administrative Judge for the
Third Judicial Circuit Court of Common Pleas

**SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
SEXUALLY VIOLENT PREDATOR PROGRAM**

**ANNUAL REVIEW REPORT
Pursuant to §44-48-110**

Name: Lawyer, Michael Terrance
SCDMH #: 10180459
SCDC #: 26473
Date of Birth: 7/6/70 (age 43)
Date of Commitment: 4/6/09
Date of Admission: 4/9/09
County: Clarendon
Review Period: February 2013 to May 2014
Date of Report: 6/16/14
Evaluator: Rozanna Tross, Psy.D.

IDENTIFYING INFORMATION AND REASON FOR REFERRAL

Mr. Michael Terrance Lawyer is a 43-year-old male who is committed to the Sexually Violent Predator program (SVPP) of the South Carolina Department of Mental Health (SCDMH). He was found to be a "Sexually Violent Predator" by Jury in Clarendon County on 4/6/09. Mr. Lawyer was admitted to the SVPP on 4/9/09.

Mr. Lawyer has two convictions for sexual offenses against minor males, both of whom were known to him prior to the offense.

- On 11/25/98 (age 28) a 14-year-old male acquaintance reported to his mother that Mr. Lawyer followed him into the bathroom while at his apartment and attempted to force him into giving Mr. Lawyer oral sex. When the victim refused, Mr. Lawyer pulled the victim's pants down, bent him over, and penetrated him anally with his penis. In February 2000 Mr. Lawyer pled guilty to Criminal Sexual Conduct with a Minor in the Second Degree. He was sentenced to a suspended sentence of 10-years with three years probation.

In October of 2002 Mr. Lawyer was reviewed by the Multidisciplinary Team (MDT) to determine if he met criteria for confinement as a Sexually Violent Predator. The MDT did not refer him for further consideration and he was released to probation approximately four months later.

- On 12/5/05 (age 35) a 14-year-old male acquaintance reported to his mother that Mr. Lawyer had touched him on his private parts and buttocks, that he had taken out his penis, made the victim take out his penis, touched him [the victim] on his penis and made the victim touch his penis. Mr. Lawyer was charged with Criminal Sexual Conduct with a Minor. In October 2006 he pled guilty to Lewd Act on a Minor and was sentenced to five years incarceration.

This evaluation is being completed pursuant to South Carolina Code §44-48-110, which provides for individuals committed as SVPs to have a current annual examination attesting to their mental abnormality. This evaluation is provided to assist the Court in determining whether there is probable cause to believe Mr. Lawyer's:

Mental abnormality or personality disorder has so changed that [he] is safe to be at large and if released, [he] is not likely to commit acts of sexual violence.

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

NOTIFICATION

The nature and purpose of the evaluation were explained to Mr. Lawyer at the beginning of the interview. He was advised he did not have to participate in an interview for the evaluation but the report would still be written and submitted to the court. Mr. Lawyer was advised that in addition to an interview with him, a review of available records and discussions with relevant collateral informants would be had and any or all information gleaned from these sources could be used in the report submitted to the court and/or become part of courtroom testimony as well as his record, viewable by members of his treatment team and those affiliated with his legal case. Mr. Lawyer was advised any statements he made in the context of this evaluation were not confidential and could also be made part of the report and/or become part of courtroom testimony and record. Mr. Lawyer demonstrated an adequate understanding of the purpose of the evaluation, the limits of confidentiality, and was able to repeat back an understanding in his own words. Mr. Lawyer agreed to proceed with the evaluation.

SOURCES OF INFORMATION

Information for this report was gathered from the following sources:

- Clinical Interview with Mr. Lawyer.
- Consultation with Treatment Staff.
- Review of current treatment records to include:
 - Prior Annual Review report by Kimberly S. Harrison, Ph.D., dated 4/17/13.
 - Group Notes.
 - Progress Notes/Interdisciplinary Progress Notes.
 - Quarterly Progress Reports dated 2/29/13, 5/29/13, 8/29/13, 2/29/14, & 5/29/14.
 - Master Treatment Plan dated 11/29/13.
- Original Commitment Documents to include:
 - State of South Carolina County of Clarendon Order of Commitment dated 4/6/09.
 - Forensic Psychological Evaluation by Daniel J. Neller, Psy.D., dated 8/13/08.
 - State of South Carolina County of Clarendon Petition Pursuant to the Sexually Violent Predator Act dated 3/28/08.
 - South Carolina Department of Corrections incarceration and treatment records to include disciplinary records.

- South Carolina Criminal History records to include arrest warrants, victim statements, indictments, and sentencing records.

RELEVANT HISTORY

Brief Personal History

Records reflected Mr. Lawyer is the oldest of five children raised by his mother and maternal grandmother. He reportedly left his home at the age of 16 but returned six months later. At the age of 19 his mother bought a trailer for him and he lived there for 18 months until the bank foreclosed on the home. Records indicated he subsequently lived with various family members in New Jersey, New York, Florida, and North Carolina. Records did not reflect a history of abuse or neglect. Records indicated Mr. Lawyer has never been married but has two children with a girlfriend. He reportedly lived with her at different times, the longest of which was two years.

Academically, records reflected Mr. Lawyer voluntarily left school in the ninth grade after being suspended and accumulating enough absences to warrant repeating the grade. Once he entered the eighth grade, Mr. Lawyer's academic performance reportedly declined and he experienced behavioral problems leading to numerous suspensions. Records reflected Mr. Lawyer eventually obtained his GED. With regard to work, records reflected Mr. Lawyer has a history of carpentry as well as experience at a truck wash, restaurant, clothing factory, and furniture store. He was reportedly fired on two occasions.

Records reflected a history of regular alcohol use/abuse to include multiple alcohol related arrests (e.g., driving while intoxicated) and attending alcoholics anonymous meetings.

Medical and Mental Health History

Records do not reflect a history of mental health symptoms or treatment and do not note any significant or chronic medical history.

Legal History

In addition to his sexual offenses Mr. Lawyer has two arrests and three charges as an adolescent: Burglary, and Forgery and Petty Larceny. The first was diverted and he received community supervision and probation for the latter. As an adult, records reflected Mr. Lawyer has been arrested approximately 20 times for Malicious Injury to Personal Property, Grand Larceny, Resisting Arrest, Disorderly Conduct, Driving Under Suspension, and Carrying Concealed Weapon. Additionally, he has two arrests for failing to pay child support and committed multiple offenses while on probation.

Original Commitment Findings

The State's evaluator, Daniel J. Neller, Psy.D., opined Mr. Lawyer met the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* criteria for Paraphilia Not Otherwise Specified (NOS) and Antisocial Personality Disorder (APD). Dr. Neller also diagnosed Mr. Lawyer with Alcohol Abuse. With regard to Paraphilia NOS, Dr. Neller stated, "Mr. Lawyer has a history of engaging in nonconsensual sexual activity with two male adolescents. These acts occurred seven years apart. The commission of sexual behaviors involving non-consenting persons, occurring over a period of at least six months, is consistent with a paraphilia."

With regard to APD, Dr. Neller reported,

Mr. Lawyer's history of committing illegal acts is not restricted to sexual offenses. Beginning in adolescence, he has repeatedly performed other acts that are grounds for arrest...He continued to commit general offenses while incarcerated and while on probation. Consistent with impulsivity, he prematurely terminated formal education despite sufficient ability and frequently changed residences. Consistent with a reckless disregard for the safety of others, he repeatedly drove while intoxicated. Consistent with irresponsibility, he was arrested twice for failing to pay child support. Consistent with a lack of remorse, he currently denies having committed sexual offenses, and he minimizes the impact of his first sex offense.

Dr. Neller opined Mr. Lawyer exhibited difficulty controlling his sexual behavior by his repeated sexual offenses, one of which occurred while under the auspices of the criminal justice system and the other occurring within one year of completing community supervision. Dr. Neller further indicated Mr. Lawyer committed his offenses when he could be easily detected and against males, where he reported feeling such acts were "disgusting." Dr. Neller also opined Mr. Lawyer's risk to sexually recidivate was "relatively high" and that the combination of his paraphilia and personality disorder was associated with "increased risk of sexual recidivism."

TREATMENT PROGRESS

Prior Annual Review Report Conclusions

Mr. Lawyer's prior annual review report, written by Kimberly S. Harrison, Ph.D., dated 4/17/13, concluded that although Mr. Lawyer appeared to be an active treatment participant, completed assignments, and discussed his risk factors for future sexual offending along with strategies to cope with those risk factors, "he tends to provide minimal self-disclosure and appears to have continued difficulty understanding his [own] sexual offenses and his sexual preferences."

Current Treatment Progress

A review of his current treatment records reflected some progress in this area, although more work is noted as being needed. For example, Mr. Lawyer's recent Master Treatment Plan (MTP) dated 11/29/13 indicated that he "needs attention" on his goal of Understanding his Risk factors due to his "difficulty acknowledging his attraction to teenage boys." The MTP noted, "He continues to have difficulty exploring his emotional vulnerability in acknowledging this and openly discussing his interests in teenage boys. He maintains that he is most[ly] attracted to women and identifies himself as heterosexual. This needs further exploration by Mr. Lawyer for him to be able to identify risk factors, coping strategies and maintenance to avoid re-offending." His most recent Quarterly Progress Report (QPR) dated, 5/29/14 noted Mr. Lawyer "continues to have difficulty exploring his emotional vulnerability in addressing his interests in teenage boys beyond his attraction to them. He has had difficulty exploring his attraction, arousal, interests and emotional states related to this attraction and around his offending against his victims." It was also noted Mr. Lawyer, "tends to want to go straight to coping strategies" and that this appears "to be avoidance rather than being open and transparent about his deviant interests." His QPR did note he "does well in supporting others when they demonstrate emotional vulnerability and will sometimes relate to having similar difficulties" but struggles with maintaining a consistent openness regarding his own issues.

A review of his treatment work related to this goal reflected Mr. Lawyer has worked on assignments related to his attraction and has presented to his group an "offense disclosure" which detailed his offenses and the events leading up to them. However, the group note (dated 12/4/13) related to this presentation indicated, "Mr. Lawyer primarily focused on his current feelings and emotional responses to his interest as related to his guilt and shame of having a same sex interest in a teenage boy" rather than on the nature/extent of the attraction itself. The note also indicated there were several questions Mr. Lawyer did not answer and "it was apparent [he] was uncomfortable discussing his offense." He reportedly informed the group "I love women but at times I find myself attracted to teenage boys." He was asked to elaborate on this but did not provide additional details related to what triggers his attraction (e.g., situations, thoughts, feelings). A review of Mr. Lawyer's written disclosure reflected he was aware of his attraction to teenage males from an early age and was embarrassed and afraid to make this attraction known. He reported he went to great lengths to hide his attraction by focusing on having sex with women. He stated, "I figure the more women I be [sic] with the less I think about the young boys and no one will be able to accuse, or know about my secretive lifestyle." Mr. Lawyer's written assignment denies any forethought or planning for the offenses and suggests he took advantage of an opportunity to offend by stating, "He reminded me of what I was attracted too" and "when I realized I was alone with him I used that opportunity to see how far I could go with him." However, on an assignment titled "Relate to your Offending and Disclosure" Mr. Lawyer stated, "I believed hanging with people who indulged in the same type of behavior as I did played a very important part to this." He then proceeded to describe some thought processes related to his offending but did not elaborate on what he meant by "people who indulged in the same type of behavior as I did." In another assignment titled "Did Anyone Else Know What You were Doing When This Happen" Mr. Lawyer stated "no" and that "for years I hid my secret attraction from everyone...I abuse drugs and alcohol in hopes of keeping my mind off of everything and my attraction under control." Both of these suggest there may be more planning and/or fantasizing about his offending than what he has currently described. Additionally, they speak to a long term attraction to younger males, further suggesting the likelihood of fantasy and/or masturbatory practices related to them. There are no subsequent disclosure assignments or group notes reflecting additional work related to this treatment goal.

Mr. Lawyer met with the Treatment Team on two occasions during this review period and discussed this treatment goal. During his first meeting on 6/13/13 it was noted he appeared "receptive" and reported he had "begun to come to some realization about [his] sexual orientation acknowledging a sexual attraction to teenage boys." He stated "he is continuing to explore his sexual orientation and is becoming more comfortable considering the possibility that he may be bisexual." The Treatment Team reported, Mr. Lawyer indicated "this increase and openness with himself and others is helping him to more fully explore his offending history and treatment needs."

During his next Treatment Team meeting on 1/23/14, it was noted Mr. Lawyer "appeared tired and somewhat overwhelmed." The note indicated he was asked "what he has been learning in treatment recently, including any realization he has come to since he has started to acknowledge a sexual attraction to adolescent males. However, his explanation of what he has come to understand appeared rather confusing and unclear, at times contradictory." The note further stated, "He appeared somewhat confused when asked about his sexual arousal window and how

it relates to his risk factors.”

Mr. Lawyer’s second goal is to improve his emotional regulation. His most recent MTP stated he “has made progress in accurately identifying emotions and increasing his emotional vocabulary. However, he continues to struggle with identifying and discussing his emotional vulnerability related to the trauma in his life.” This appears “beneficial for Mr. Lawyer to explore those emotions and feelings related his life trauma, losses, and those background factors related to his risk factors and offending behavior. He should continue to explore his emotions, vulnerability and impact of the trauma in his life and seek to identify risk factors beyond “stuffing feelings” and use of substances for coping.” This QPR described his progress as “needs attention” and stated, “He should continue to seek to identify risk factors beyond “stuffing feelings” and use of substances for coping. He should continue to work on the listed objectives and set new goals for identifying and challenging himself for greater self-awareness.”

In addition to working on the above goals, records reflected Mr. Lawyer has been working on challenging his cognitive distortions (e.g., irrational/exaggerated thoughts) and putting his offense cycle together. Group notes reflected he is doing well in both increasing his awareness of his distortions and then replacing them with healthy/realistic thoughts. Additionally, Mr. Lawyer reportedly took a 15-week psycho-educational class on cognitive distortions and was noted to have good participation (e.g., a 4.88 average on a six point scale), show “insight” related to understanding distortions, actively engage in the group discussions, and complete all related assignments. A review of his written work in this area reflected lengthy lists of cognitive distortions matched with replacement thoughts and challenges to the distortions. They appear well thought out and the replacements appear realistic and logical. Mr. Lawyer’s offense cycle work also appears logical and well thought out although it appears more focused on his faulty thought processes and decision-making than on the events leading up to the offenses, to include his sexual arousal/fantasies.

Overall Behavior

Mr. Lawyer’s prior annual review report stated he had not received any documented incidents of behavioral infractions during the review period and that he is “generally described as calm, compliant with unit rules, and interacting appropriately with staff and peers.” Since his arrival in 2009, Mr. Lawyer has only obtained three Behavior Observation Notices (BON’s) dated 6/12/12, 10/7/13, and 4/3/14. Two of these infractions were for having extra items in his possession that were “in excess of property limits.” The third infraction (10/7/13) was for covering a window in his room with a picture, which is a rule violation. Mr. Lawyer received verbal warnings for each infraction. No other behavioral problems are noted.

Mr. Lawyer has been working in the Laundry department since 2009 and is described as “reliable,” someone who “helps others” and as a “positive role model.” He is reported to work well with staff and peers and is reported to be someone who takes initiative. The activities therapy staff also described Mr. Lawyer as someone who works well with others and appropriately interacts with staff and peers. He has not been observed associating with younger looking peers or those who engage in problematic behaviors. He is described as someone who has “good boundaries,” someone who acts his age, and is “socially appropriate.”

INTERVIEW

This writer met with Mr. Lawyer on 6/11/14 for approximately one hour and 40 minutes. He presented as appropriately dressed and adequately groomed. He knew what month and year it was, who he was, and why he was meeting with this writer. His speech was goal-directed and organized and he was easily understood. Mr. Lawyer was engaged throughout the interview and readily answered questions. His attention and concentration were good and he made good eye contact throughout the interview. His short-term memory was adequate and he demonstrated appropriate expressive and receptive language abilities. Mr. Lawyer did not demonstrate any tics, compulsions, or unusual behaviors, and he did not appear to be responding to internal stimuli during the interview. He denied any current suicidal or homicidal ideation and denied difficulty with sleep, appetite, or mood.

Mr. Lawyer accurately described the nature and purpose of the annual review, was able to accurately recall why he was committed to the SVPP and was able to accurately discuss the meaning of the mental abnormalities given him at the time of his commitment. When asked about his Paraphilia NOS diagnosis, Mr. Lawyer stated he did not feel he was aroused to the nonconsensual aspects of his offenses but was aroused to the fact that these were young teenage boys who had "feminine ways," were "athletic," were "slender" in build, and were "quiet." He stated he feels he has been attracted to this age group/look since he was an adolescent and described it as "comforting." He stated he does not feel he is attracted to "every teenager," only those that "are quiet in nature" or "feminine in nature." Mr. Lawyer recalled "when I had these feelings in the past, I was feeling bad about myself, depressed, feeling the world was against me." However, Mr. Lawyer denied masturbation to fantasies involving minor males prior to his offending and indicated he has not had fantasies or masturbated to fantasies about this age group since his second offense. He reported having one "fantasy" on one occasion prior to his first offense where he imagined having oral sex with a minor but denied masturbating to the fantasy or continuing to have thoughts of this nature. He further stated he did not begin to masturbate until the age of 26 and that when he did it was to fantasies involving peer aged females.

When asked about his offenses, Mr. Lawyer described the events consistent with the accounts reported in the official record but maintained these were "opportunities" that presented themselves and did not entail any forethought, planning, or fantasy. On both occasions he indicated he found himself "alone" with the victim and took advantage of the situation. However, other than describing a sense of "curiosity" about engaging in sexual behavior with the victim, he was unable to discuss thoughts/feelings/behaviors surrounding his offending. Later in the interview, Mr. Lawyer indicated he will always need to "manage" his attraction to young males and he would do this by "always being aware" of his thoughts and if he found himself "drifting off into that" he would "focus on the harm that would come to that person" if he acted on his thought. However, Mr. Lawyer was not able to provide an example of a thought he has had where he needed to intervene or "manage."

When asked to discuss his offense cycle, Mr. Lawyer stated, "The way I was living, running around, smoking crack, I had low self-esteem, I quit school...Everyone who was trying to help me I pushed away. It was all about me. I didn't pay attention to the fact that I was hurting others." When asked specifically about what led up to this offense, Mr. Lawyer stated, "We were alone. Opportunity. It was late, everyone was in another room. I guess I saw an opportunity to live out a fantasy." However, he was again unable to describe the role fantasy

played in his offending. When discussing his offenses, Mr. Lawyer referenced thinking the first victim was "gay" on several occasions. When asked to clarify what he meant by this, he stated he thought that because the victim was "gây" and had "been doing stuff with other guys" he may have been "receptive" toward Mr. Lawyer's advances. However, he denied being homosexual and denied being interested in having sex with males. When asked why he chose male victims if he was not interested in sex with males, Mr. Lawyer expressed he was only interested in his victims, not males in general. He further stated he is "very" aroused to adult females and desires to have relationships with females upon release.

When asked about his progress in treatment, Mr. Lawyer indicated he has been working on addressing his sexual attraction to minor males. He acknowledged this has been a difficult area for him to address but "now I am really working on that." He described feeling "embarrassed" and having "shame" around his attractions and feeling the need to previously keep this a secret from his friends and family while in the community. He stated he is more able to discuss this attraction and stated his family/support system are now aware of it. Mr. Lawyer stated he feels he has made progress in treatment and is safe to be released into the community. When asked why he feels this way he stated, "I feel comfortable that I can be released and be safe, not reoffend." He further stated, "I've worked really hard and looked at the harm I've caused others. I've looked at my life....I'm tired of that life. I want to be safe and someone my family can be proud of."

Mr. Lawyer was asked a series of relapse prevention questions to gauge his understanding and awareness of his thoughts, feelings, and behaviors that contributed to his sexual offending and that could put him at risk for re-offense. Additionally, the questions were aimed at assessing his understanding of important relapse prevention measures. Mr. Lawyer gave good responses to the questions asked and appeared to think through the questions before answering. He showed an understanding of the need to intervene in situations when experiencing negative emotional states (e.g., angry, rejected, unwanted, misunderstood) as well as at times when having thoughts about minors. He was unable to describe specific feelings, situations, or events that could trigger thoughts about minors but was able to discuss effective coping strategies should a thought arise. Mr. Lawyer was proactive in his approach to decision-making by stating he would need to always avoid places where minors congregated, regardless of his emotional state or thought process and would need to regularly communicate with his support system about difficulties he was having so they could assist him in appropriately dealing with his stress/frustrations. Mr. Lawyer was able to articulate how others (e.g., his support members) would recognize if he was heading toward a path of re-offense as well as how he could obtain help if he felt his internal coping mechanisms were not working. Overall, Mr. Lawyer demonstrated insight into his distorted view of minors, sex, and relationships and discussed a realistic relapse prevention plan.

With regard to his release planning, Mr. Lawyer expressed he plans to move back to Manning, South Carolina, and live with his mother until he is able to secure his own residence. He stated he desires to attend Central Carolina Technical College and get a degree in Business Management in the hopes of one day running his own business. He stated he also desires to attend a truck driver training school. Mr. Lawyer stated he wants to "keep busy" while in the community and "hit the ground running." He stated he feels he has a good support system (e.g., mother, uncle, aunt, grandmother) and that they are aware of his offense history, sexual attraction, and treatment work. He also stated he would attend Clarendon Behavioral Health

Services for drug and alcohol treatment and that “if it would help me” he would also attend community based sex offender treatment.

DIAGNOSTIC FORMULATION

Mr. Lawyer has been previously diagnosed with Paraphilia, Not Otherwise Specified (*Other Specified Paraphilic Disorder in the DSM 5*) and Antisocial Personality Disorder. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM 5)* defines Paraphilia as “any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners” (pg. 685). The terms intense and persistent can also be defined by “sexual interest greater than or equal to normophilic sexual interests (interests which conforms to the dictates of custom, religion or law)” (pg. 685). A *paraphilic disorder* is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others” (pg. 686). Mr. Lawyer’s actions have caused personal harm (sexual assault) to two 14-year-old males, on two separate occasions, and he has reported having sexual arousal/interests specific to this age group/gender since his adolescence. His actions have led to personal distress (e.g., legal, personal) and impairment (e.g., an inability to refrain from reoffending despite previous legal sanctions for doing so).

Unspecified Paraphilic Disorder, as it is called in the *DSM 5*, applies to “presentations in which symptoms characteristic of a paraphilic disorder...predominate but do not meet full criteria for any of the disorders in the paraphilic disorders diagnostic class (i.e., Voyeurism, Exhibitionism, Pedophilia)” (pg. 705). Mr. Lawyer’s sexual interest/offending patterns are against pubescent males around the age of 14 (which do not meet criteria for Pedophilia). He has reported a longstanding sexual interest in this age group despite his own aging and has reported personal distress at having this attraction. Mr. Lawyer’s decision to act on his attraction and his reported personal distress over it qualifies him for the diagnosis of Unspecified Paraphilic Disorder.

Personality disorders, as defined by the *DSM 5*, is characterized by an “enduring pattern of inner experience and behaviors that deviates markedly from the expectations of the individual’s culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment” (pg. 645). Additionally, personality disorders manifest themselves in at least two of the following categories: cognition, affectivity, interpersonal relationships, and impulse control (pg. 646). The hallmark of Antisocial Personality Disorder is a “pervasive pattern of disregard for, and violation of, the rights of others” (pg. 659). There are seven criterion listed under the main diagnostic feature for APD, only three of which are needed to meet this classification: Failure to conform to social norms with respect to lawful behaviors; deceitfulness; impulsivity; irritability and aggressiveness; reckless disregard for safety of self or others; consistent irresponsibility; and lack of remorse. The other diagnostic criteria for APD are the individual is at least age 18 years and there is evidence of conduct disorder with onset before age 15 years. Mr. Lawyer meets criteria for this diagnosis as evidenced by his history of having repeatedly performed other acts that are grounds for arrest (beginning in adolescence), his pattern of deception and impulsivity (e.g., lying about his drug/alcohol use and criminal lifestyle), his reckless disregard for the safety of others (e.g., driving while intoxicated), his irresponsibility (e.g., failure to pay child support or to sustain employment), and his lack of remorse for his actions (e.g., indifferent to the women he used for sex, lack of concern for his victims). Additionally, these traits have manifested themselves in his interpersonal relationships and in his

ability to control his impulses. Therefore, Mr. Lawyer qualifies for a diagnosis of Antisocial Personality Disorder.

Mr. Lawyer has also been previously diagnosed with Alcohol Abuse. The *DSM 5* defines the “essential feature of a substance use disorder is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems” (pg. 483). Mr. Lawyer reported a long history of using alcohol and crack cocaine despite significant problems in his life related to his use. He has multiple substance related arrests, was unable to cut down on his own despite attempts to include treatment, used substances in situations where it was physically hazardous, and used despite social and interpersonal problems. Therefore, he meets criteria for Alcohol Use Disorder and Stimulant Use Disorder (Crack Cocaine). Mr. Lawyer has not used alcohol or crack cocaine in over a 12-month period suggesting he is in sustained full remission. Therefore this specifier is added. However, Mr. Lawyer has been in a controlled environment since 2009 where his access to alcohol and other substances is heavily monitored and/or restricted. Therefore, his diagnoses reflect the following: Alcohol Use Disorder, in full sustained remission, in a controlled environment and Stimulant Use Disorder (Crack Cocaine), in full sustained remission, in a controlled environment.

RISK ASSESSMENT

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

Static Risk Factors

The following items have been empirically supported in the literature as contributing to sexual recidivism: having prior sexual offenses, having deviant sexual interests, the presence of a personality disorder to include psychopathy, having a criminal lifestyle, being young at the time of offending, having stranger and/or unrelated victims, and having past failures while on supervision and/or in treatment (Mills, Kroner, & Morgan, 2011; Mitt & Conroy, 2009). Mr. Lawyer has a prior sexual offense, has deviant sexual interests (e.g., 14-year-old males), has a personality disorder (e.g., Antisocial Personality Disorder), has a criminal lifestyle (e.g., Burglary; Forgery and Petty Larceny as an adolescent. As an adult, received 20 different arrests), has unrelated victims, and has past failures at supervision (e.g., criminal activity while on supervision, reoffended sexually shortly after being on supervision).

The Static-99R is an instrument designed to assist in estimating the risk of sexual and violent recidivism for sexual offenders. The recidivism estimates were derived from new charges and reconvictions of groups of individuals; as such, these estimates do not directly correspond to the recidivism risk of an individual offender. Mr. Lawyer’s score of 3 on the Static-99R places him in the Low-Moderate risk category relative to other adult male sex offenders. His score was compared to a reference group identified as “high risk/need” given his status as an SVP. An

average of 15.8% of high-risk sex offenders with this score were charged or convicted of another sexual offense within five years and an average of 24.3% of high-risk sex offenders with this score were charged or convicted of another sexual offense within 10 years.

Dynamic Risk Factors

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

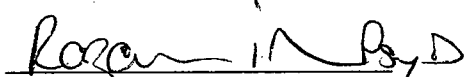
Mr. Lawyer presents with a sexual preference for pubescent children (e.g., 14-year-old males), has offense-supportive attitudes (e.g., children can consent to sexual behavior, their engaging in sex with others makes it okay for him to approach them for sexual behavior), has a lack of emotionally intimate relationships with adults (e.g., lived on and off with girlfriend, multiple indiscriminate sexual encounters with females in exchange for drugs), has some emotional congruence with children (e.g., reported feeling “comfortable” with them), has exhibited lifestyle impulsiveness, callous/lack of concern for others and dysfunctional coping (e.g., using sex and substances to mask emotional turmoil). Many of these factors appear to be historical for Mr. Lawyer and are not as apparent and/or problematic as they have been in previous periods in his life. For example, he is noted to have healthy, appropriate interactions with age-appropriate peers and has been working to cultivate open relationships with his family members suggesting he is addressing his intimacy deficits with interpersonal relationships. Additionally, Mr. Lawyer’s lifestyle impulsiveness and callous/lack of concern for others also do not appear evident during this review period as evidenced by his prosocial interactions with others, his initiative in his work environment, and his willingness to engage with others in the group therapy process. He has not displayed dysfunctional coping during the past review period, and his prior annual review also notes the absence of this dynamic risk factor. What Mr. Lawyer does continue to display is a sexual attraction to minor males and difficulty fully understanding the role this attraction played in his choice to sexually offend. Additionally, he struggles with understanding his attraction (e.g., saying he is attracted to minor males but denying any homosexual interest and reporting a long history of sexual interest in minor males but denying any fantasies related to this attraction) and how to reconcile having this attraction.

Mr. Lawyer is still working on understanding/exploring his sexual deviance and the concomitant attitudes, beliefs, and thoughts related to this which are directly related to his dynamic risk. By his own account, this attraction led to his choice to sexually offend. Therefore, until it is explored/understood, his ability to effectively “manage” his dynamic risk is difficult to ascertain. Further, there are no objective measures (e.g., sexual history polygraph, Penile Plethysmograph) to validate his reports of no prior/subsequent fantasies with minor males and no sexual behaviors (masturbatory or otherwise) related to this attraction. Reliance on self-reports in the assessment of risk for sexual offenders are notoriously problematic, and therefore are not considered a valid

resource without collateral information. Based on the information available at the time of this report, Mr. Lawyer is at a low-moderate risk of sexual re-offense based on static factors alone. He has addressed several dynamic risk factors but is continuing to work on the ones reported to be directly related to his initial choice to offend.

CONCLUSIONS

By all accounts, Mr. Lawyer is making progress in treatment and appears motivated to continue that progress. He reports it has been difficult for him to address his attraction to minor males, an issue he has struggled with since adolescence, but that he is now trying to focus directly on that issue. It is encouraging to see him make this commitment and work with his treatment providers to do so. However, this is a recent development in his progress and one that needs continued work. By his own account, having a longstanding sexual interest in male minors led to his sexual offending on two separate occasions. While he can articulate coping skills and methods of relapse prevention, he needs to explore where this attraction comes from, and how it played a role in his choice to offend. This is especially important given his recent vacillation about his sexual interests (e.g., bisexual, heterosexual) and sometimes reported confusion about the nature of his attraction to minor males. Until Mr. Lawyer is able to do this, his ability to correctly identify warning signs, potential risk factors, and effective relapse prevention measures is limited and therefore directly impacts his likelihood of engaging in future sexual offenses. Therefore, based on the information available at the time of this report it is this writer's opinion Mr. Lawyer's mental abnormalities of Unspecified Paraphilic Disorder and Antisocial Personality Disorder have not so changed and he remains likely to commit acts of sexual violence if released.


Rozanna Tross, Psy.D.
Licensed Psychologist

6/16/14
Date

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Honorable W. Jeffrey Young, Circuit Court Judge

Case No: 2008-CP-14-183

In The Matter of the Care and Treatment of
Michael Lawyer, Appellant

NOTICE OF APPEAL

Michael Lawyer, Appeals his Order Denying Trial After Annual Review Hearing Pursuant to the Sexually Violent Predator Act. The Order was imposed and signed by the Honorable W. Jeffrey Young, on February 26, 2014, which I, Charles T. Brooks, III, received on March 6, 2014.



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March 7, 2013

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Honorable W. Jeffrey Young, Circuit Court Judge

Case No: 2014-000449

In The Matter of the Care and Treatment of
Michael Lawyer, Appellant

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this day of December, 2014, I
served the foregoing **Record on Appeal** in this matter by depositing a true copy of it in the United
States Mail, postage prepaid, on **December 1, 2014,** addressed to the following as indicated
below:

South Carolina Court of Appeals
Attn: Clerk of Court
Post Office Box 11629
Columbia, South Carolina, 29211

Office of Attorney General
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RECEIVED

DEC 01 2014

SC Court of Appeals