

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM LANCASTER COUNTY

R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

IN THE MATTER OF THE CARE AND TREATMENT OF

KENNETH CAMPBELL,

APPELLANT

APPELLATE CASE NO. 2014-001931

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF LANCASTER
2012-CP-29-1549

State of South Carolina

vs.

Kenneth Campbell

Lancaster, South Carolina

September 8, 2014

Before the Honorable R. Knox McMahon

APPEARANCES

For the State: Nichole Wetherton

For the Defendant: Charles Brooks

Reported by: Michael C. Watkins

Official Court Reporter

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VOIR DIRE

1 THE COURT: Ladies and gentlemen, if y'all would please
2 give me your complete and undivided attention, you are still
3 under oath. I would ask you to please make any responses
4 you have to make to the questions I'm going to ask be full,
5 complete and accurate. The first case for trial this week
6 is 2012-CP-29-1549, State of South Carolina, County of
7 Lexington (sic) in the matter of the care and treatment of
8 Kenneth Campbell, and the other party being the State of
9 South Carolina. This is an action brought by the State
10 alleging that Mr. Campbell is a sexually violent predator
11 and is in need of care and treatment. It is a civil case.
12 The State is the party that has the burden of proof.
13 Although it is a civil case the burden of proof in this case
14 is proof beyond a reasonable doubt. Madam Attorney General,
15 if you would please stand and introduce yourself to the jury
16 panel.

17 MS. WETHERTON: Yes. My name is Nichole Wetherton and
18 I'm an assistant attorney general at the South Carolina
19 Office of the Attorney General.

20 THE COURT: Thank you. Thank you very much, Ms.
21 Wetherton. Mr. Brooks represents the defendant. If you
22 would introduce yourself, Mr. Brooks, and your client.

23 MR. BROOKS: Again, my name is Charles Brooks. I'm a
24 practicing attorney here in South Carolina. Primarily I
25 practice down in Sumter and Columbia, today I'm here in

VOIR DIRE

1 Lancaster County. And this is my client, Kenneth Campbell.

2 THE COURT: Would you stand for me please, Mr.

3 Campbell? Thank you very much. I have certain questions to

4 ask you ladies and gentlemen concerning this. Does any of

5 member of the jury panel have any personal or business

6 professional relationship with any of the attorneys in the

7 case, either Assistant Attorney General Wetherton or

8 Mr. Brooks? If so, please stand. Is any member of the jury

9 panel related by blood or marriage, close personal friends,

10 have any business, social, professional relationship with

11 Mr. Kenneth Campbell who previously stood before you? If

12 so, please stand. Does any member of the jury panel have

13 any knowledge about any alleged sexual offenses committed by

14 Mr. Campbell for which he was convicted of? If so, please

15 stand. Would the fact that Mr. Campbell has been convicted

16 of a sexual offense and has completed his criminal sentence

17 related to that conviction in any way prevent you from being

18 a fair and impartial juror in the trial of this case for

19 both Mr. Campbell and the State? If so, please stand. Has

20 any member of the jury panel or any member of your immediate

21 family or close personal friend or relative ever been a

22 victim of a sexual assault? If so, please stand. Yes,

23 ma'am, your number and name, please?

24 THE JUROR: Marlene Dallow, 45.

25 THE COURT: And would you just step over here for me,

VOIR DIRE

1 please?

2 (Individual voir dire.)

3 THE COURT: All right. Good afternoon. Was it you
4 or --

5 THE JUROR: Personal.

6 THE COURT: Personal.

7 THE JUROR: Yeah. In 1967 it was not a crime, I was
8 attacked by my husband who I was divorcing and broke into my
9 apartment and attacked and raped me.

10 THE COURT: Given those facts, could you still be a
11 fair and impartial juror in the trial of this case for both
12 Mr. Campbell and the State?

13 THE JUROR: Absolutely.

14 THE COURT: Okay. Thank you, you may be seated. Any
15 others?

16 (Back to group voir dire.)

17 THE COURT: Does any member of the jury panel have any
18 training or experience in the fields of psychiatry,
19 psychology or the law? If so, please stand.

20 THE JUROR: Sylvia Melendez, 105.

21 THE COURT: And your training or experience?

22 THE JUROR: Civil and criminal law, paralegal, and a
23 psychology degree.

24 THE COURT: Given that fact, could you still be a fair
25 and impartial juror in the trial of this case for the State

VOIR DIRE

1 and Mr. Campbell?

2 THE JUROR: Yes, Your Honor.

3 THE COURT: Thank you. Any others? Has any member of
4 the jury panel or any member of your immediate family ever
5 been charged with or convicted of a sexual offense? If so,
6 please stand.

7 THE JUROR: So you said sex offender? Like I lived in
8 Charleston --

9 THE COURT: Tell me your number and name?

10 THE JUROR: Jermaine Duncan.

11 THE COURT: Step up here for me, please.

12 THE CLERK: Juror 51.

13 (Individual voir dire.)

14 THE COURT: And tell me your question again?

15 THE JUROR: Sex offender. I haven't been charged but
16 somebody in my immediate family.

17 THE COURT: Somebody in your immediate family?

18 THE JUROR: Not me, my uncle.

19 THE COURT: And he's been convicted?

20 THE JUROR: Yeah, been convicted already, charged and
21 did time already.

22 THE COURT: All right. Given that fact with your uncle
23 having been convicted -- charged and convicted of a sexual
24 offense, could you still be a fair and impartial juror in
25 the trial of this case for both the State and Mr. Campbell?

VOIR DIRE

1 THE JUROR: Yes, sir.

2 THE COURT: Thank you. Any others?

3 (Group voir dire.)

4 THE COURT: Ladies and gentlemen of the jury, I will
5 call a short list of potential witnesses in the trial of
6 this case. The question is is any member of the jury panel
7 related by blood or marriage, close personal friends, have
8 any business, social, personal relationship with any of
9 these individuals whose names I called? If any of them are
10 in the courtroom I would ask them to please stand when their
11 names are called. I would advise the jury panel that the
12 witnesses do not have to be here for this proceeding so
13 names may be called and no one stands. Dr. Ana Gomez.
14 Dr. Thomas V. Martin. Any other proposed witnesses from the
15 State?

16 MS. WETHERTON: Not from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. BROOKS: Dr. Marie Gale.

19 THE COURT: Dr. Marie Gale?

20 MR. BROOKS: Correct.

21 THE COURT: And is this Dr. Gale to my front left?

22 Thank you, Dr. Gale.

23 MR. BROOKS: We have an Everett Auten.

24 THE COURT: Everett Auten. All right. And again, is
25 any member of the jury panel related by blood or marriage,

VOIR DIRE

1 close personal friends, social, personal, business
2 relationship, professional relationship with any of these
3 individuals whose names I just called and/or who stood
4 before you? If so, please stand. Does any member of the
5 jury panel participate in a prison ministry, prison outreach
6 program or any other program involving contact with
7 incarcerated persons? If so, please stand. Yes, sir, your
8 number and name, please?

9 THE JUROR: 133, Alfred Stepp.

10 THE COURT: And what program?

11 THE JUROR: Celebrate recovery.

12 THE COURT: Celebrate recovery. And that provides
13 services, helps with individuals that are incarcerated for
14 drug treatment and such?

15 THE JUROR: Correct.

16 THE COURT: How long have you been involved in that,
17 sir?

18 THE JUROR: Almost ten years.

19 THE COURT: Given that fact -- by the way, thank you
20 for your service. But given that fact, could you still be a
21 fair and impartial juror in the trial of this case for both
22 the State and the defense?

23 THE JUROR: No doubt.

24 THE COURT: Thank you, thank you very much. You may
25 stay with us. Any others? Has any member of the jury panel

VOIR DIRE

1 or any member of your immediate family or close personal
2 friends or relatives ever been subject to civil commitment
3 proceedings or been voluntarily or involuntarily civilly
4 committed? If so, please stand. And finally, ladies and
5 gentlemen, you know generally what the case is about. You
6 have been introduced to the attorneys, you have been
7 introduced to Mr. Campbell, I have questioned you concerning
8 your qualifications to serve as jurors in this particular
9 case, but you know yourselves best. Is there any member of
10 the jury panel, do you have any reason whatsoever why you
11 feel like you could not be a fair and impartial juror in the
12 trial of this case for both Mr. Campbell and the State? If
13 so, please stand. All right. Yes, ma'am, your number and
14 name, please?

15 THE JUROR: Leora Price.

16 THE CLERK: 120.

17 (Individual voir dire.)

18 THE COURT: Yes, ma'am.

19 THE JUROR: Good afternoon. I had a court case where I
20 put a restraining order on a fiancée that assaulted me and
21 also just because I literally had to deal with entrapment,
22 so --

23 THE COURT: And tell me the timeframe.

24 THE JUROR: That timeframe was probably two years ago.

25 THE COURT: In Lancaster?

VOIR DIRE

1 THE JUROR: No, in Charlotte, North Carolina.

2 THE COURT: Given that fact do you feel like you could
3 be a fair and impartial juror in the trial of this case for
4 both the State and the defense?

5 THE JUROR: I believe I could. I believe I could,
6 but it still is was a bad situation.

7 THE COURT: Sure. Well, of course, if you are selected
8 as a member of the jury panel you would be one of the judges
9 of the facts of the case, that's what the jury does, and
10 make your decision based on the evidence and the testimony
11 you will hear from the witnesses testifying under oath and
12 the law as I tell you the law is. So could you do that
13 uninfluenced by what may have happened to you two years ago
14 just on what you hear in the courtroom?

15 THE JUROR: I think I could sir, yes.

16 THE COURT: And when you say you believe you could,
17 have you been on jury duty before?

18 THE JUROR: No, sir. I think everything is okay, I
19 just wanted to let you know.

20 THE COURT: I think everything is okay, too, it's just
21 that when you say you believe so it's because you have never
22 done it before.

23 THE JUROR: Yes, sir.

24 (Conference with lawyers.)

25 THE COURT: Any others?

VOIR DIRE

1 THE JUROR: Juror number 43.

2 THE COURT: Step around here for me, please, sir.

3 (Individual voir dire.)

4 THE COURT: Good afternoon. Tell me your name.

5 THE JUROR: Glenn Cureton.

6 THE COURT: Tell me your situation.

7 (Conversation inaudible.)

8 THE COURT: You don't think you could be fair?

9 THE JUROR: No.

10 THE COURT: Thank you, thank you for letting us know

11 that. I'm going to set number 43 aside for the trial of

12 this case. Any others? Last call.

13 (Group voir dire.)

14 THE COURT: All right. Will one alternate be

15 sufficient, Madam Attorney General?

16 MS. WETHERTON: Yes, Your Honor.

17 THE COURT: Mr. Brooks?

18 MR. BROOKS: Yes, sir.

19 THE COURT: And the strikes, Mr. Brooks? Madam

20 Attorney General?

21 MS. WETHERTON: The State strikes -- oh, you mean --

22 THE COURT: No, no, I'm saying how many strikes.

23 MS. WETHERTON: Oh, four.

24 THE COURT: Four and four.

25 MR. BROOKS: Correct.

VOIR DIRE

1 THE COURT: And then one and one on the alternate.

2 MS. WETHERTON: Yes, Your Honor.

3 THE COURT: Is that correct, Mr. Brooks?

4 MR. BROOKS: Yes, sir.

5 THE COURT: Thank you very much. The record is our
6 friend.

7 (A break was taken.)

8 THE CLERK: Plaintiff strikes first.

9 MS. WETHERTON: State strikes eight.

10 THE CLERK: State strikes number eight. Defendant?

11 MR. BROOKS: Number 19.

12 THE CLERK: Defense strikes 19.

13 MS. WETHERTON: State strikes 11.

14 THE JUROR: State strikes 11.

15 MR. BROOKS: Defense strikes number seven.

16 THE CLERK: Defense strikes seven.

17 MS. WETHERTON: State strikes 20.

18 THE CLERK: State strikes 20.

19 MR. BROOKS: 16.

20 THE CLERK: Defense strikes 16.

21 MS. WETHERTON: State strikes 17.

22 THE CLERK: State strikes 17.

23 MR. BROOKS: 21.

24 THE CLERK: Defense strikes 21. Alternate?

25 MS. WETHERTON: State strikes 23.

VOIR DIRE

1 THE CLERK: State strikes 23.

2 MR. BROOKS: 22.

3 THE CLERK: Defense strikes 22. Let's go make sure we
4 are all on the same page. State strikes eight, 11, 17, 20
5 and alternate 23.

6 MS. WETHERTON: That's correct.

7 THE CLERK: Defense strikes seven, 16, 19, 21, and
8 alternate 22.

9 MR. BROOKS: That is correct.

10 THE CLERK: Thank you. Ladies and gentlemen, when I
11 call your name if you will follow the bailiff to the jury
12 room. Juror 132, James Starnes. Juror 122, Jerry Reeves.
13 Juror six, Jeffrey Baker. Juror 14, Cynthia Blanchette.
14 Juror 107, Shirley Mixon. Juror 78, Ann Hurley. Juror 15,
15 Larry Bradley. Juror 29, Maurice Cauthen. Juror 133,
16 Alfred Stepp. Juror 21, Tammy Buchanon. Juror 15,
17 Elizabeth Adams. Juror 70, William Harris, IV. And
18 alternate Edye Bender, juror number 9.

19 THE COURT: Any motions regarding the jury selection
20 process from the State?

21 MS. WETHERTON: None from the state, Your Honor.

22 THE COURT: From the defense?

23 MR. BROOKS: None, Your Honor.

24 THE COURT: All right. Thank you very much.

25 (The remaining panel was excused.)

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1 THE COURT: Yes, ma'am?

2 MS. WETHERTON: Thank you, Your Honor? May it please
3 the Court? We just -- I just have two very quick things
4 that I wanted to put on the record. First, I had forwarded
5 to Mr. Brooks and to you a motion in limine requesting that
6 the treatment that Mr. Campbell would receive if he was
7 committed into the program, whether or not that treatment
8 would be effective or what type of a treatment he would
9 receive would be excluded in the motion in limine. I spoke
10 to Mr. Brooks prior to court, he's agreed to that motion and
11 just as long as he's fine with that we can move.

12 MR. BROOKS: We don't have any problem with that,
13 Judge. The whole issue is about whether he should go. Our
14 position is that he shouldn't, we understand the State's
15 position.

16 THE COURT: All right. So you consent to what the
17 attorney general's -- consent to the attorney general's
18 motion in limine?

19 MR. BROOKS: On that issue, that's correct.

20 MS. WETHERTON: And then the second thing, I was going
21 to do a motion to sequester the proposed witnesses that Mr.
22 Brooks has sent to me, however it's my understanding it's
23 only going to be one witness at this point besides Dr. Gale.
24 I'm not going to do that motion for sequestration. However,
25 something occurred this morning I wanted to put on the

PRETRIAL MOTIONS

1 record in my presence. One of the family members of Mr.
2 Campbell approached someone who was sitting on a bench
3 outside the courtroom and asked them if they were a juror.
4 I would just ask that the family be reminded that they
5 cannot speak to any jurors during this process. We don't
6 want an issue, of course, with jury tampering.

7 MR. BROOKS: She told me about that. I did talk to
8 some friends and family members and they assure me they
9 would not do that.

10 THE COURT: And who is that person?

11 MR. BROOKS: Well, this is the one witness that we
12 have. But other family members, they are still outside and
13 I told them about what she had brought to my attention that
14 you can't really talk to any prospective juror. Of course
15 we've now narrowed it down to 13, so obviously that
16 situation has changed significantly. But -- are the rest of
17 them outside? They're still outside. So, I don't know, can
18 we ask them to come in? If they did they probably didn't
19 know they were jurors. But I'm going to ask them to come in
20 because I think they're just obviously here in support of
21 that --

22 MS. WETHERTON: And Judge, the person that Mr. Auten
23 approached was not a juror, he actually was on a pending
24 case, he was dressed in lay clothing, so there's not an
25 issue right now with jury tampering. However, I would like

PRETRIAL MOTIONS

1 to kind of stop it so it wouldn't happen.

2 (Break in proceedings.)

3 MR. BROOKS: While we're waiting for them, Judge. You
4 know, I've been thinking about this, and even though these
5 cases are jury trial cases, we think that we would want to
6 put on the record that this case should be excluded from
7 being a jury trial matter. And the reason is, I've done a
8 number of these cases and jurors are just predisposed to
9 finding things against the person on trial in these type
10 cases and we would just ask Your Honor to -- we think that
11 the statute and the act itself in giving the State the right
12 to have a jury trial even when the defense would be
13 relegated to leaving it in the hands of the jurors, we just
14 think that that's totally unfair because of the situation
15 with the jurors and the type of sensitive matter that is
16 discussed in these cases.

17 THE COURT: So you want to waive a jury trial and have
18 me try it?

19 MR. BROOKS: Yes, sir.

20 MS. WETHERTON: Your Honor, under 44-48 subsection 90,
21 the State has or the respondent has a right to exercise the
22 right to a jury trial. Over two years ago that was done and
23 filed, Mr. Brooks received that over two years ago. We have
24 the right under the statute. In addition, the consent order
25 for a date certain jury trial, he expressly consented to a

PRETRIAL MOTIONS

1 jury trial so at this point we're exercising our right to as
2 pursuant to the law and he expressly consented to it.

3 THE COURT: Thank you, thank you very much. I would
4 allow the State to proceed with a jury trial but I think you
5 are protected on the record.

6 MR. BROOKS: That's what I wanted, Judge.

7 THE COURT: Thank you, Mr. Brooks. Just go ahead.

8 Mr. Brooks, do you have something else?

9 MR. BROOKS: I think all of the family is here, you
10 wanted to talk to them.

11 THE COURT: I was just going to make the statement, of
12 course, the jury assembled today before they came in and I
13 would advise y'all as I advised the attorneys when you're
14 coming and going from the courthouse, do not even say hello
15 to the jurors, even innocent conversation can be easily
16 misconstrued and that would be a violation of the Court's
17 rule. I understand from this gentleman -- what was your
18 name, sir?

19 THE WITNESS: Everett Auten.

20 THE COURT: From Mr. Auten that no one spoke to any
21 juror is my understanding, is that correct? If anyone did
22 please stand. No one stands. So as I understand from the
23 attorney general the individual was a party.

24 MS. WETHERTON: It was a party on a prior case, however
25 it was asked if he was, in fact, a juror, so --

PRETRIAL MOTIONS

1 THE COURT: All right. So please keep that in mind. I
2 don't look at that lightly and I have the power to hold a
3 person in contempt of court summarily without a jury trial
4 and sentence them up to six months and fine them up to
5 \$1,500. As I say, I don't like particularly using that
6 power, the best thing to do with power is don't use it
7 unless you have to in my opinion. But please keep that in
8 mind as far as the jurors are concerned. All right.
9 Anything further?

10 MS. WETHERTON: Not from the State, Your Honor.

11 MR. BROOKS: That's it, Judge.

12 (Back in the courtroom.)

13 THE COURT: Mr. Clerk, would you swear our jury,
14 please?

15 (At the time the jury was sworn.)

16 THE COURT: Ladies and gentlemen of the jury panel, I'm
17 going to -- before the case begins I'm going to tell you how
18 we will proceed in this case. The first thing that will
19 occur is that the attorney general to my front left will
20 make an opening statement to you, which will be followed by
21 a similar statement by Mr. Brooks, the attorney for Mr.
22 Campbell. The opening statements, ladies and gentlemen of
23 the jury, are not arguments, those arguments will come at
24 the conclusion of the case. The purposes of the opening
25 statements is for each party to outline his or her claim and

PRETRIAL MOTIONS

1 how they're going to present their case to you. Following
2 the opening statements each side will present its evidence
3 with the plaintiff, again the State, going first, the State
4 being the party that bares the burden of proof beyond a
5 reasonable doubt. You, the jury, will determine the facts
6 of the case and therefore determine whether the respondent
7 is or is not a sexually violent predator. A sexually
8 violent predator, which is a term defined by our statutes in
9 South Carolina, is a person who has been convicted of a
10 sexually violent offense and suffers from a mental
11 abnormality or personality disorder which makes the person
12 likely to engage in acts of sexual violence if not confined
13 in a secure facility for long term control, care and
14 treatment. Ladies and gentlemen, evidence may take many
15 forms, it may be testimony of the parties, it may be
16 documents or the like. You should pay close attention to
17 all of the evidence which is presented by each party because
18 you, the jury, are the sole finders of the facts in this
19 case and no one else, including myself, will be permitted to
20 weigh the evidence and render a verdict based on the
21 evidence. After all of the evidence has been presented the
22 attorneys will make the closing arguments to you. Unlike
23 the opening statements the final remarks will be true
24 arguments, that is each side will emphasize certain portions
25 of the evidence and try to persuade you to agree with their

PRETRIAL MOTIONS

1 version of the facts. Keep in mind that the opening
2 statements as well as the closing arguments of the attorneys
3 do not represent evidence in the case. The questioning by
4 the attorneys do not represent evidence in the case. It's
5 the method we use to extract the testimony from the
6 witnesses that are sworn under oath to testify truthfully
7 before you. After all of the arguments are finished I will
8 explain to you the law which applies to this case, you will
9 then retire to your jury room to consider the facts. You
10 will determine the facts of the case, apply the facts to the
11 standard of the law as I tell you the law is, and once you
12 have done so you will render a verdict of either he is a
13 sexually violent predator or he is not a sexually violent
14 predator. Again, ladies and gentlemen, during the course of
15 the trial the State has the burden of proving its claim,
16 that burden must be met beyond a reasonable doubt. Just a
17 few comments before the case begins, just a few more.
18 First, as I mentioned earlier, although I am the only person
19 who can tell you what the law is, you are the only people
20 that can determine what the facts are. I do not have the
21 right to indicate how I may feel about the evidence
22 presented and throughout this trial my intention will be to
23 act impartially towards each of the parties. Second -- and
24 these are very fine trial lawyers, however from time to time
25 an attorney may object to some bit of testimony or evidence

PRETRIAL MOTIONS

1 which the other side is seeking to present. As in any other
2 type of structured activity there are certain rules that
3 both sides must obey in presenting the evidence. These
4 rules have a definite purpose, they ensure that the
5 information you receive is the most trustworthy and reliable
6 evidence available. An objection is the procedure that is
7 used by an attorney to call a possible violation of the
8 rules to my attention as the judge of this court, and for
9 that reason you should not hold an attorney's objection
10 against her or him or his client, nor should you include
11 from my ruling on the objections that I favor one side or
12 the other. I would further ask that you pay close attention
13 to all of the evidence, pay close attention to the
14 attorneys, to the witnesses and to the Court, for it is up
15 to you, the jury, to determine the facts in this case and as
16 a result you will have to evaluate the credibility, the
17 believability of each witness who testifies in this matter.
18 You are participating in a time tested system and it is
19 extremely important for each of you to listen very carefully
20 to all of the evidence presented. So after the closing
21 arguments, after the instruction on the law you will then be
22 in that position to render a true and just verdict based on
23 the facts as you find them and confine it to the law as I
24 tell you. Just a couple of administrative matters, ladies
25 and gentlemen. If a document or something of that like is

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1 offered into evidence and I allow it into evidence, many
2 times it is passed among the members of the jury while
3 you're out here in the jury box, that will not be the only
4 opportunity you will get to see that item. When an item is
5 offered into evidence and I allow it into evidence, you will
6 also have it with you in your jury room at the time of your
7 deliberations. From time to time you may see me on my
8 computer. I don't email, I don't pete, I don't repeat, I
9 don't tweet, I don't do any of that. As I say, these are
10 very good trial lawyers and I may look up in the distance
11 and see a legal issue or a potential legal issue so I will
12 do some light research, he's here for the heavy lifting as
13 far as research is concerned but I will tell you that.
14 Also, ladies and gentlemen, breaks, that's really what I'm
15 in charge of is breaks. This is not a judicial marathon.
16 The parties will be allowed to present their case fully and
17 completely. If at anytime any of you need a break just
18 raise your hand, y'all will take y'all's break, we will take
19 ours. Probably if you need a break and you get to moving
20 around too much in your seat and all you're probably not the
21 only one in the courtroom that needs a break. So please
22 remember that, at any time we'll take a break at y'all's
23 convenience. With that being said, anything from the
24 State -- do you object to anything that I have told the
25 jury?

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1 MS. WETHERTON: No, Your Honor.

2 THE COURT: From the defense?

3 MR. BROOKS: No, sir.

4 THE COURT: All right. Madam Attorney General, you may
5 address the jury.

6 MS. WETHERTON: Thank you, Your Honor. May it please
7 the Court, Judge McMahon? Mr. Brooks? Mr. Campbell?
8 Ladies and gentlemen of the jury, good afternoon. My name
9 is Nichole Wetherton and I'm an assistant attorney general
10 and I'm one of the two attorneys in the state that handles
11 these types of cases. So let's just get right into it. Why
12 are we here? Well, it's our position that that man sitting
13 over there at that table, Mr. Kenneth Reed Campbell, is a
14 sexually violent predator. Now, why do we think that? What
15 is a sexually violent predator? I imagine all of us -- and
16 the Judge explained to you what that is, but I think all of
17 us in our mind probably have a preconceived notion of what a
18 sexually violent predator is. But what does that mean in
19 the State of South Carolina? Well, about 18 years ago our
20 representatives in Columbia passed a law with two thoughts
21 in mind, if there are individuals that suffer from what is
22 referred to as a mental abnormality or a personality
23 disorder that makes them likely to commit acts of sexual
24 violence then these individuals need treatment in a secured
25 setting during this process because they are extremely

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1 dangerous individuals. It is our position that Mr. Campbell
2 is one of those individuals that our representatives in
3 Columbia had in mind when they passed that act, the Sexually
4 Violent Predator Act. So what in this case do I have to
5 prove? I will go ahead and I will quote to you the statute
6 and then I'll break it down and explain how I'm going to
7 actually prove my case. I have to first prove first that he
8 was convicted of what's referred to as a qualifying sexually
9 violent offense under the law. And two, he suffers from a
10 mental abnormality or personality disorder that makes him
11 likely to reoffend if not confined in a secured facility for
12 long term control, care and treatment. That's sounds like a
13 lot, so let's break that down. First I have to prove that
14 he's been convicted of a sexually violent offense. Mr.
15 Campbell has been convicted of a sexually violent offense.
16 In fact, he's been convicted of two sexually violent
17 offenses. He was convicted first of lewd act upon a minor
18 in York County, and then he was also convicted here in
19 Lancaster County of criminal sexual conduct with a minor.
20 And again, I'm going to have certified convictions that I'm
21 going to admit into evidence and you guys may take that back
22 with you into the jury room, and I don't think the defense
23 is really going to contest that. You're going to hear about
24 each of these offenses and its victims, and you're going to
25 hear how Mr. Campbell molested two little girls, ages seven

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1 and nine, and how until this day he denies all of these
2 offenses despite the fact that he pled guilty and insists
3 these accusations made by these little girls were false.
4 Now, the Sexually Violent Predator Act also requires the
5 person to suffer from a mental abnormality or personality
6 disorder that makes them likely to commit future acts of
7 sexual violence if not confined for a long term -- confined
8 for long term control, care and treatment. In this case
9 Mr. Campbell has been diagnosed as a pedophile. Mr.
10 Campbell has been diagnosed as a pedophile by both the
11 doctor that's going to testify for the State and also the
12 doctor that's going to testify for him during trial. And
13 again, I don't think the defense is really going to contest
14 that we have the required mental abnormality. Now, you're
15 going to also hear testimony from which you can decide
16 whether Mr. Campbell lacks control over his pedophilia and
17 whether he is likely to commit acts of future sexual
18 violence. You're going to hear testimony today, she's
19 seated over here on this first row, from a board certified
20 forensic psychiatrist affiliated with the Medical University
21 of South Carolina, Dr. Ana Gomez who is going to tell you
22 she spent close to seven months reviewing Mr. Campbell's
23 case, which included reviewing multiple files, conducting
24 several tests on Mr. Campbell, interviewing Mr. Campbell at
25 length, and taking a closer look at Mr. Campbell and his

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1 plans to avoid re-offense. And after her thorough
2 evaluation she believes Mr. Campbell is likely to sexually
3 assault another child. You're going to also hear that
4 Mr. Campbell has significant risk factors for reoffending,
5 such that he never has had sex offender treatment, and has
6 written release plans that he told both doctors, including
7 moving into an environment where children will be present
8 and where they spend the night, similar to the same pattern
9 where he offended in the past, which this increases his risk
10 to reoffend. Now, you're also going to hear testimony from
11 a psychologist who evaluated Mr. Campbell in this case, Dr.
12 Marie Gale. When a petition is filed pursuant to the
13 Sexually Violent Predator Act she's the one that's appointed
14 by the courts to evaluate the individual and she evaluated
15 Mr. Campbell. She is also one of the other individuals that
16 diagnosed Mr. Campbell as a pedophile, however she opines he
17 is not likely to reoffend. Now, when she does not recommend
18 commitment under the law, our office has the option of
19 requesting a second opinion when we have issues with the
20 report. I can tell you honestly, we don't do that in every
21 case, but we did that here. And so the question that will
22 be presented to you is after comparing these two experts
23 that will testify during the trial and assessing their
24 credibility and thoroughness of their evaluation, whether
25 Mr. Campbell's pedophilia makes him likely to commit acts of

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1 future sexual violence. In other words, is Mr. Campbell
2 without ever taking any sex offender treatment going to be
3 safe out in the Lancaster community and not molest another
4 child. Now, these cases despite the fact that they are
5 civil in nature the Judge has explained to you, I am
6 required to prove my case beyond a reasonable doubt similar
7 to that of a criminal case. And I have to leave you -- as
8 he will explain, I have to leave you firmly convinced. And
9 I want you to know in this case I embrace that burden and I
10 believe that I will prove to all of you that Mr. Campbell
11 beyond a reasonable doubt is a sexually violent predator.
12 Now, these cases -- and I'm sure you've already realized by
13 their very nature, they're going to contain some very
14 disturbing evidence, and this case I promise you will be no
15 different in that regard. But I'm going to ask you to do
16 one thing, listen to the evidence, and not just the State's
17 evidence, but listen to all of the evidence. And as you sit
18 here and you listen to the evidence I submit the verdict
19 that you will render in this case will be very clear, that
20 Mr. Campbell is a sexually violent predator who must be
21 committed to the department of mental health to get that
22 treatment he so desperately needs and to protect the
23 children of Lancaster County and the State of South Carolina
24 from him.

25 THE COURT: Thank you very much, Madam Attorney

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1 General. Mr. Brooks?

2 MR. BROOKS: Ladies and gentlemen, I don't have a pad
3 and going through all of the statutes like Ms. Wetherton
4 just did, basically I believe in just keeping it simple.
5 Here is a man who don't have anything to hide. He's been to
6 prison, he's done his time, he's ready to go on about his
7 business. The burden is on the State to prove not did he do
8 it, but whether he is likely to do it again, that's the real
9 elephant in the room. And when you really break it down to
10 more, that is the 800-pound gorilla in the room is are you
11 afraid of him. Fear. Now, the burden is on the State in
12 these type cases, and as she indicated to you, it's kind of
13 like a criminal case. They've got to prove beyond a
14 reasonable doubt that he's likely to do this again. Why is
15 that important? What does that mean to people? What does
16 that mean to people out in the community. What is that?
17 Well, I kind of look at reasonable doubt kind of a -- to
18 explain it to folks, and I've got a good way of hoping
19 people can understand it. And I know we've got a few ladies
20 on the jury, but it's football season, just had the
21 Gamecocks and Clemson play. Well, I say football -- well,
22 think about it in terms of football. We've got end zone to
23 end zone and the 50-yard line, the State's burden is they've
24 got to get the ball all of the way in the other team's end
25 zone. It ain't good enough just to get the ball across the

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1 50-yard line or get the ball into field goal range. That is
2 an enormous burden, huge burden, and we would expect and we
3 know that you're going to hold the State to that very very
4 high standard. And as Ms. Wetherton indicated on behalf of
5 the attorney general's office of South Carolina, we've got
6 doctors, very capable people who've got two different
7 opinions. Bearing in mind now, it's the State with the
8 burden, not Kenneth sitting over here. Okay? And we have
9 no doubt that once you hear the evidence and listen to the
10 witnesses and listen to them, and not only listen, watch
11 them and pay very close attention to their demeanor, that
12 you may hear some things that might not sound very nice and
13 that's the 800-pound gorilla in the room, and it's a certain
14 amount of fear they want to hopefully get you to the point
15 where you help them get the ball into the end zone. But we
16 think that once you listen to everything and listen to it in
17 an open mind that you'll find out that they don't even get
18 the ball close to their goal. Because the burden is on
19 them, not us, and you should not be afraid, and you should
20 have an open mind as the Judge has instructed you. And we
21 have no doubt that after you listen to all of this you will
22 side with Kenneth that it's time for him to go home. Thank
23 you.

24 THE COURT: Thank you, Mr. Brooks. Ladies and
25 gentlemen of the jury, I think now would be a good time to

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1 take our luncheon recess. I would remind you during this
2 recess and throughout the trial of this case you are not to
3 discuss this case with others, that includes your fellow
4 jurors, lunch mates, family, friends or anyone else. If
5 anyone should approach you and try to talk with you about
6 the case do not allow them to do so and then report that to
7 me. Do not read or listen to any news reports about the
8 case should there be any. You may not use your computer,
9 cellular phone or any other electronic device with
10 communication capabilities while in attendance at trial or
11 during deliberations. You, of course, may use those devices
12 during your lunch breaks and your evening breaks, but you
13 may not use them to obtain or disclose information which is
14 prohibited. Information which is prohibited includes but is
15 not limited to the following: Information about a party, a
16 witness, an attorney or a court officer, news accounts of
17 the case should there be any, past or present, information
18 collected through juror research on any topics raised or
19 testimony offered by any witness, or information collected
20 through juror research on any other topic the juror might
21 think would be helpful in deciding the case. You decide the
22 case based on the evidence and the testimony presented
23 before you in this courtroom from the witnesses testifying
24 under your oath and any documents or the like that may be
25 presented to you and the law as I tell you the law is. With

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1 that being said we will take our luncheon recess and let's
2 say be back at 2:30. If you would please be back promptly
3 at 2:30, you may now go with the bailiff, he'll show you the
4 way out and show you how to get back in. Thank you very
5 much, I hope y'all have a pleasant lunch.

6 (The jury left the courtroom.)

7 THE COURT: Anything from the State before we take our
8 recess?

9 MS. WETHERTON: Nothing from the State, Your Honor.

10 THE COURT: Defense?

11 MR. BROOKS: No, sir.

12 (A lunch recess was taken.)

13 THE COURT: Anything from the State before we bring in
14 our jury?

15 MS. WETHERTON: No, sir.

16 THE COURT: Anything from the defense?

17 MR. BROOKS: No, sir.

18 THE COURT: All right. Bring us our jury.

19 (The jury returned to the courtroom.)

20 THE COURT: Welcome back, ladies and gentlemen of the
21 jury. During your absence we had an election. I have -- we
22 elected juror number 133, he has volunteered to be
23 foreperson of the jury, appreciate that very much. You
24 would be the jury spokesperson here in the courtroom and
25 also preside over the deliberations. If you would also

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1 always maintain that seat for me and then our alternate
2 would always maintain the seat you're in, I need to keep up
3 with 13 folks. You can sit wherever you would like in the
4 jury box, the other 11. However I have found that -- I've
5 studied this over the years that many jurors are very
6 territorial, they like to sit in the same seat each and
7 every time, they want the same view of the witness box and
8 the courtroom, that's fine with me, if you like you can
9 certainly do that. But anywhere in the box is fine with me
10 except those two seats. Thank you very much. Madam
11 Attorney General, you may call your first witness.

12 MS. WETHERTON: Thank you, Your Honor. The State would
13 call Dr. Ana Gomez to the stand.

14 The witness, ANA GOMEZ, was first duly sworn
15 and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. WETHERTON:

18 Q. Dr. Gomez, if you could please state your name and
19 spell your last name.

20 A. My last name is spelled Gomez, G-o-m-e-z.

21 Q. And what is your occupation?

22 A. I am an instructor in the Department of Psychiatry at
23 the Medical University of South Carolina, and I also help
24 direct the program there that trains psychiatrists on how to
25 work as an expert witness.

ANA GOMEZ

1 Q. What degrees do you possess?

2 A. I have a Bachelors Degree in Psychology from Southern
3 Adventist University. And I have a medical Degree from Loma
4 Linda University.

5 Q. Had you had any additional specialized training or
6 experience within the field of psychiatry beyond your
7 medical degree?

8 A. I do. After I obtained my medical degree I went to the
9 University of Louisville in Kentucky and I did two years of
10 psychiatry residency. And then I did my last two years of
11 psychiatry residency at Loma Linda University.

12 Q. So do you have a medical license?

13 A. Yes.

14 Q. And what states are you licensed in?

15 A. I'm licensed in South Carolina and in California.

16 Q. Do you have any memberships in any organizations?

17 A. I do.

18 Q. And what are they?

19 A. I'm a member of the America Psychiatric Association and
20 the South Carolina Psychiatric Association. I'm also a
21 member of the professional organization for forensic
22 psychiatrists, and I am a professional supporter of the
23 National Alliance for the Mentally Ill.

24 Q. Can you explain to the jury, what is the study of
25 psychiatry?

ANA GOMEZ

1 A. Psychiatry is the study of illnesses that affect the
2 mind.

3 Q. No, do you have any specialized training within the
4 field of psychiatry?

5 A. Yes.

6 Q. And what is that?

7 A. I did a fellowship in forensic psychiatry, and that was
8 at the Medical University of South Carolina in Charleston.

9 Q. Now, what is the study of forensic psychiatry?

10 A. Forensic psychiatry is the study of mental illness as
11 it relates to or intersects with matters that have to do
12 with the law.

13 Q. Are you board certified in forensic psychiatry?

14 A. I am.

15 Q. What is the process you went through to become board
16 certified?

17 A. So to be board certified first you have to do your
18 general residency in psychiatry and pass a general board
19 exam, and then you have to do the fellowship and then pass
20 that board exam for the forensic part.

21 Q. How long have you been board certified in forensic
22 psychiatry?

23 A. Since October of 2013.

24 Q. How much of your practice is dedicated to forensic
25 psychiatry?

ANA GOMEZ

1 A. 80 percent.

2 Q. Dr. Gomez, does your work as a forensic psychiatrist
3 allow you to conduct psychiatric evaluations on individuals?

4 A. Yes.

5 Q. Approximately how many individuals have you evaluated?

6 A. Approximately 100.

7 Q. Now, what types of evaluations have you conducted?

8 A. So I would categorize these in two groups, one group
9 being criminal type of evaluations and one group being
10 civil. Under the criminal group I've evaluated people for
11 competency to stand trial, for insanity and for mitigation.
12 Under the civil heading I have done conservator and
13 guardianship evaluations, I've done fitness for duty
14 evaluations and psychosexual evaluations including sexually
15 violent predator cases.

16 Q. How are all of these evaluations similar?

17 A. These evaluations are similar because you're looking at
18 providing an opinion on a legal matter that's relevant to
19 the Court, but there's a mental illness component that has
20 to be present. And so that general sphere of mental illness
21 and matters of the law is a similar sort of big picture
22 among all these types of evaluations.

23 Q. Have you ever been hired by defense counsel to conduct
24 evaluations?

25 A. Yes.

ANA GOMEZ

1 Q. How many times?

2 A. Probably about ten times.

3 Q. Now, can you briefly describe your background in
4 relation to sexually violent predator cases?

5 A. I became acquainted with this type of case two years
6 ago and I've been trained at the Sexual Behaviors Clinic and
7 Lab at the Medical University of South Carolina where
8 faculty from there have presented nationally and
9 internationally. I have worked closely with the founder and
10 director of that clinic who is an expert in sexual behaviors
11 including behaviors that involve disorders of sexual
12 interest, and that's a person who is provided inventory at
13 my training.

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

18 A. I have.

19 Q. About how many times?

20 A. Approximately 12 times.

21 Q. Now, how many times have you been qualified as an
22 expert in sexually violent predator cases?

23 A. Two times.

24 MS. WETHERTON: At this time, Your Honor, I would move
25 for Dr. Gomez to be recognized as an expert in the field of

ANA GOMEZ

1 both psychiatry and forensic psychiatry.

2 THE COURT: All right. Any voir dire in that regard,
3 Mr. Brooks?

4 MR. BROOKS: Beg the Court's indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 (Break in proceedings.)

7 MR. BROOKS: No, sir.

8 THE COURT: All right. Thank you, thank you very much.
9 Mr. Foreman, ladies and gentlemen of the jury, normally a
10 person cannot give opinion testimony. Normally when a
11 person testifies they must testify as to what they either
12 saw, heard or sensed by smell or something of that nature.
13 However there is an exception when someone is qualified
14 because of education, experience or history in some
15 particular art, profession, science or craft. They are
16 permitted to give their opinions in certain areas and the
17 basis of their opinions if the Court qualifies them that
18 way. This witness, Dr. Ana Gomez, will be qualified in the
19 areas of psychiatry and forensic psychiatry, to give opinion
20 testimony in those areas. That does not mean that you must
21 accept the opinions, but it is evidence for you, the jury,
22 to use in any way you deem fit. Thank you very much. Madam
23 Attorney General, you may continue.

24 MS. WETHERTON: Thank you, Your Honor.

25 BY MS. WETHERTON:

ANA GOMEZ

1 Q. Now Dr. Gomez, how did you become involved in this
2 case?

3 A. The attorney general's office sometimes hires MUSC, and
4 in this case I happened to be the evaluator assigned the
5 case.

6 Q. Do you know if the attorney general's office asks MUSC
7 to look at every single case as denied by court experts?

8 A. They don't.

9 Q. Were you paid to conduct your evaluation in this case?

10 A. I'm paid a salary.

11 Q. Would you have been paid any differently if you did not
12 recommend commitment?

13 A. No.

14 Q. Okay. Doctor, what type of evaluation did you conduct
15 in this case?

16 A. This evaluation is a psychosexual evaluation, or also
17 called a sexual behaviors evaluation.

18 Q. Can you describe for the jury your protocol in
19 conducting an evaluation in these types of cases?

20 A. The protocol that I use is established by the Sexual
21 Behaviors Clinic and Lab at the Medical University of South
22 Carolina. And it's based on what experts in the field and
23 also professional organizations recommend, such as the
24 Association for the Treatment of Sexual Abusers. And the
25 method that they recommend is a three-pronged approach. So

ANA GOMEZ

1 one prong is information, this includes legal documents,
2 records, interviewing the person and contacting any
3 collateral as is relevant for this specific situation. The
4 second prong is testing or questionnaires as another tool
5 for information gathering. And then the third prong that's
6 recommended is physiology, measuring a person's arousal
7 response when they're presented certain stimuli.

8 Q. I think you may have answered this, but you did not
9 specifically create that protocol.

10 A. I did not create the protocol. The protocol is set in
11 place by the Sexual Behaviors Clinic and Lab at MUSC.

12 Q. Is this protocol accepted by experts such as yourself
13 in the field?

14 A. Yes.

15 Q. Now, is there more than one person that assists in
16 conducting this evaluation?

17 A. Yes.

18 Q. Is it common for experts such as yourself to rely on
19 test results conducted by other individuals?

20 A. Yes, it is.

21 Q. And once these interviews and tests have been
22 performed, what do you do next?

23 A. I put the information together and generate a report.

24 Q. And as part of your evaluation, did you meet with Mr.
25 Campbell?

ANA GOMEZ

1 A. Yes.

2 Q. Is the man you met with here in the courtroom today?

3 A. He is.

4 Q. Can you point him out for the Court today?

5 A. He is sitting next to Mr. Brooks.

6 MS. WETHERTON: Your Honor, may the record reflect that
7 Dr. Gomez identified Mr. Campbell?

8 THE COURT: It will so reflect.

9 MS. WETHERTON: Thank you, Your Honor.

10 Q. How long was Mr. Campbell interviewed?

11 A. Mr. Campbell was interviewed for about four hours and
12 45 minutes.

13 Q. Was the purpose of the evaluation explained to him?

14 A. Yes, it was.

15 Q. Did he consent to the evaluation?

16 A. He did.

17 Q. Was there a form or anything that he had signed?

18 A. Yes. I have his signed forms here.

19 Q. Now Dr. Gomez, in addition to meeting with and
20 interviewing Mr. Campbell, what information did you receive
21 to aid you in conducting this evaluation?

22 A. I received records from the department of corrections,
23 also legal records from York and Lancaster Counties. There
24 is also arrest records and there's also communication from a
25 family member.

ANA GOMEZ

1 Q. How did you obtain that information?

2 A. I was given this information from the attorney
3 general's office.

4 Q. Is this the type of information that is typically
5 reasonably relied upon by experts such as yourself in the
6 field?

7 A. Yes.

8 Q. Now, did you consider and rely on the information you
9 listed to the jury a moment ago and upon your interview with
10 Mr. Campbell in rendering an opinion in this matter?

11 A. Yes.

12 Q. Can you explain to the jury how an individual's past
13 sexual offense behavior relates to their future sexual
14 offense behavior?

15 A. Past sexual offense behavior can relate to future
16 sexual behavior, that behavior is related to a mental
17 illness and whether or not that mental illness has been
18 treated.

19 Q. Now, Dr. Gomez, based on your interview with Mr.
20 Campbell and your review of the file, at the time of your
21 interview with him had he been convicted of a sexual violent
22 offense?

23 A. Yes.

24 Q. And what were they?

25 A. He had two convictions, one from York County and one

ANA GOMEZ

1 from Lancaster County. The York County one was lewd act on
2 a child; and the Lancaster County was criminal sexual
3 conduct with a minor in the first degree.

4 MS. WETHERTON: Your Honor, if I could approach the
5 witness?

6 THE COURT: Yes, ma'am, certainly.

7 Q. Now, Dr. Gomez, I'm going to show you these documents.
8 Have you seen these documents before?

9 A. Yes.

10 Q. And what are they?

11 A. This is the sentencing sheet for the lewd act on a
12 child, and there's an indictment behind it and the
13 affidavit.

14 Q. Is there anything on these documents that indicates
15 their authenticity?

16 A. There is the seal.

17 Q. Where is the seal from, can you tell?

18 A. York County Clerk of Court.

19 Q. Did you review these documents as part of your
20 evaluation?

21 A. I did.

22 Q. Are these the types of documents that are commonly
23 relied upon by experts such as yourself in the field?

24 A. They are.

25 Q. Why is it necessary to review the details of the

ANA GOMEZ

1 underlying facts of these offenses?

2 A. That's relevant because part of the questioning I have
3 to answer is is there a mental health diagnosis. And so
4 looking at the details can give you information about that,
5 and related to that is the risk of the behavior occurring
6 again.

7 Q. Doctor, would you please describe for the jury the
8 details underlying these specific facts?

9 A. Okay. For the York County?

10 Q. Yes.

11 A. So in 2001 there were allegations that involved a seven
12 year old girl, Mr. Campbell was 36 years old at the time.
13 And the records said that he touched the girl's vagina. So
14 she told the police that he went to where she was sleeping,
15 took off his shorts and asked her if she would touch his
16 thing, and that he tried to kiss her. And also that he
17 asked her if she would get on top of him and hunch him is
18 the word she used and he offered her money to do that. And
19 she also said that he rubbed her vagina for a long time.
20 Now, at that time he said that these incidents did not occur
21 and that's what he told us as well.

22 Q. Was the girl, was she spending the night in a house
23 where he was?

24 A. Yes.

25 Q. What sentence did he receive following this conviction?

ANA GOMEZ

1 A. He received 12 years, which was run concurrent to the
2 previous conviction.

3 MS. WETHERTON: Your Honor, at this time I would like
4 to admit the sentencing sheets that I gave Dr. Gomez as
5 State's Exhibit 1.

6 THE COURT: May I see it, Doctor? Any objection,
7 Mr. Brooks?

8 MR. BROOKS: No, sir.

9 THE COURT: All right. State's Exhibit 1 is in
10 evidence without objection.

11 (The sentencing sheets were received as State's
12 1.)

13 MS. WETHERTON: Your Honor, if I can approach the
14 witness again?

15 THE COURT: Yes, ma'am.

16 Q. I'm going to show you another set of documents. Have
17 you seen these before?

18 A. Yes, I have.

19 Q. And what are they?

20 A. This is the sentencing sheet for the criminal sexual
21 conduct with a minor first degree charge.

22 Q. Is there anything on these documents that indicates
23 their authenticity?

24 A. There is also the seal from the clerk of common pleas
25 and general sessions court.

ANA GOMEZ

1 Q. And what county is that?

2 A. This is from Lancaster County.

3 Q. Did you review these documents as part of your
4 evaluation?

5 A. I did.

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

8 A. Yes, they are.

9 Q. Would you please describe for the jury the details of
10 relating to these specific facts?

11 A. So these events were from 1999. The victim in this set
12 of circumstances was a nine year old girl, Mr. Campbell was
13 34 years old at the time. And according to records he
14 touched her vagina with his fingers and did oral sex on her.
15 According to the girl he went to where she was sleeping and
16 asked her if he could squirt her with some white stuff, and
17 he masturbated in front of her and ejaculated on her stomach
18 and her thigh. She was evaluated by a Dr. Newman who
19 confirmed the presence of semen on her stomach and her
20 thigh. At that time Mr. Campbell said that he -- that the
21 events had not happened, that if she had any kind of sperm
22 on her it must have come off her mom's underwear because he
23 kind of let stuff flying around and she wasn't always clean.
24 When we talked to him he said that the child had made up the
25 story which is something that she tends to do when she

ANA GOMEZ

1 doesn't get her way. He said if there is any semen on her
2 that him and his wife had had intercourse that morning and
3 that the child had sat on the bed shortly afterwards. And
4 then when the court appointed examiner talked to him he told
5 her that he did masturbate in front of the girl and that it
6 got on her leg and that he was high at the time, and he
7 didn't believe the acts occurred but because he was high he
8 couldn't remember.

9 Q. What sentence did he receive following his conviction?

10 A. He was sentenced to 20 years, it was suspended to 12
11 years and three years of probation.

12 Q. Did you review the police reports in relation to this
13 case?

14 A. Yes, I did.

15 Q. Did Mr. Campbell try to get his son to lie for him?

16 A. There was -- the police reports indicated that for the
17 2001 charges and the 1999 charges -- for the 2001 that Mr.
18 Campbell urged his son to stand up for him and he would buy
19 him a vehicle if he did that. And for the 1999 charges the
20 police report says that Mr. Campbell told his son what to
21 say.

22 Q. And at the time that he committed the offense, do you
23 have an indication that he was gainfully employed at the
24 time?

25 A. It was my understanding that he was.

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1 MS. WETHERTON: Your Honor, at this time I would like
2 to admit the documents that I provided to Dr. Gomez as
3 State's Exhibit 2.

4 THE COURT: Mr. Brooks?

5 MR. BROOKS: No objection.

6 (The documents were received as State's 2.)

7 MS. WETHERTON: Thank you, Your Honor.

8 Q. In reviewing the legal documents in this case, did you
9 see that Mr. Campbell may have been charged with a sexually
10 violent offense but not convicted?

11 A. Yes.

12 Q. Did you consider it?

13 A. I did.

14 Q. Why is it relevant?

15 A. Once again you want to gather information, so whether
16 the person was convicted or not doesn't mean you don't look
17 at it. You gather the information, see if it helps you
18 understand in terms of diagnosis. And once again, related
19 to the diagnosis is the risk of the offense occurring again.

20 Q. Now, can you describe the details of the underlying
21 facts?

22 MR. BROOKS: Judge, I would object to this one.

23 THE COURT: Well, she's qualified as an expert. If it
24 goes into part of the basis of her opinions under 702 it
25 will be admissible. Is it part of the basis for her

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1 opinions, Madam Attorney General?

2 MS. WETHERTON: Yes, Your Honor.

3 Q. And was this part of the basis of your opinion?

4 A. Yes.

5 Q. And can you please just keep your voice up?

6 A. Okay. I'm sorry.

7 Q. That's okay. Now, can you describe the details of the
8 underlying facts?

9 A. Okay. This charge was from 1993, the actual charge was
10 lewd act on a child. And this involved his four year old
11 nephew and Mr. Campbell was 29 years old at the time. The
12 allegations were that he went to where the boy was watching
13 TV, Mr. Campbell was not wearing any underwear and he picked
14 the boy up by his feet and had the boy touch Mr. Campbell's
15 penis with his mouth. And then the boy told the mom that
16 Mr. Campbell had laid on top of him with no underwear on and
17 tried to get the boy to take his shorts off, or his pants
18 off. According to the information that I received from the
19 attorney general's office the child later took back his
20 story. During our evaluation Mr. Campbell said that this
21 charge was dropped.

22 Q. Was Mr. Campbell convicted of any non-sexual offenses
23 that you found relevant to your opinion?

24 A. Yes.

25 Q. What were they?

ANA GOMEZ

1 A. He had past convictions of sexual assault -- no, excuse
2 me, simple assault and criminal domestic violence.

3 Q. Now, why are these non-sexual convictions significant
4 to your opinion?

5 A. These are significant because they are considerations
6 for scoring one of the instruments that we use. And also
7 because you're looking at the pattern of behavior, you're
8 still gathering information so this could point you also to
9 a diagnostic finding.

10 Q. Now, did you rely solely on his past criminal history
11 in making your ultimate decision?

12 A. No.

13 Q. Is it professionally acceptable to do so?

14 A. No.

15 Q. Now, what was Mr. Campbell's version of events that led
16 to these convictions? Did he take accountability during the
17 interview?

18 A. No. The common thread was either the events didn't
19 happen or the child made up the story, although he did tell
20 the court appointed examiner that he had masturbated on the
21 girl and that some of it had gotten on her leg.

22 Q. Did anything he said -- the fact that he denied these
23 offenses, did you find that significant to your opinion?

24 A. It was a consideration to keep in mind.

25 Q. Did he say anything to you about his sexual interests?

ANA GOMEZ

1 A. Yes. That's something that we routinely ask in these
2 types of evaluations. He said -- we asked him how
3 frequently he liked to have sexual activity, he said he
4 wouldn't mind having it every night. But shortly after that
5 he said sex was no longer for him, that he really didn't
6 need to engage in those kinds of activities, he wasn't
7 really interested. We also asked about sexual fantasies,
8 once again, just a standard part of our protocol, and he
9 reported that he had had one sexual fantasy or thought since
10 2003, which would be considered pretty atypical of a
11 situation.

12 Q. Can you explain very briefly why you find that to be
13 atypical?

14 A. Sexual fantasies are fairly common among married, among
15 unmarried men, women. And so having one sexual fantasy in
16 since '03 is just within the norm of what we would expect
17 for an average typical person, and we're talking about
18 anybody. Whether you're clergy you can still have sexual
19 thoughts, it doesn't mean you're acting on them. There's no
20 sexual thought police.

21 Q. Now, were there any assessments you performed on Mr.
22 Campbell or that were performed on Mr. Campbell as part of
23 the evaluation?

24 A. Yes.

25 Q. And what assessments were performed on Mr. Campbell?

ANA GOMEZ

1 A. Mr. Campbell underwent seven assessments. The Conners
2 Continuous Performance Test, the Substance Abuse Subtle
3 Screen Inventory, the Personality Assessment Inventory, the
4 Abel Assessment for Sexual Interests, the Penile
5 Plethysmograph, the Hare Psychology Checklist Screening
6 Version, and Static 99r.

7 Q. Why were these assessments performed?

8 A. Okay. So if you remember earlier I said that we
9 followed this three prong approach to our assessments. And
10 so these assessments are hitting that second and that third
11 prong where you're giving people questionnaires, you're
12 gathering more information about them, and you're also doing
13 some testing to measure their physiology, their response to
14 stimuli.

15 Q. And were these assessments part of the basis of your
16 opinion?

17 A. Yes.

18 Q. All right. Let's start with the Static 99r. Can you
19 explain what that assessment is and how it works for the
20 jury?

21 A. Sure. So this is an assessment that measures the risk
22 for sexually reoffending. And it has moderately
23 predictability, it's used a lot. It's used a lot in this
24 population, it's used a lot in other countries, it's been
25 really well researched. And what it does is takes a number

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1 of risk factors and sort of you plug them in and you get a
2 score. Now, the way to look at this is is the person at a
3 certain risk category or group. It can't tell you for that
4 specific individual what their risk for reoffending is, the
5 best it can do is put them in a group. So you might think
6 about risk factors for having a heart attack or heart
7 disease. You might go to your general doctor and they talk
8 to you about diet, they'll talk to you about smoking,
9 they'll ask you about exercise, they'll ask you about if you
10 have a family history of heart attack or heart disease, so
11 they're doing the same type of thing. They're trying to
12 figure out what your risk category or group is because they
13 can't tell you yes, you as an individual are going to have a
14 heart attack or not, but they can say based on these risk
15 factors you fall in this group. So it's the same thing with
16 this instrument.

17 Q. So is it important for experts such as yourself to
18 conduct this assessment?

19 A. Yes.

20 Q. Should you ever use this assessment as a stand-alone
21 tool?

22 A. No.

23 Q. And why is that?

24 A. Well, there's really no assessment that should be used
25 as a stand-alone tool, it's only one tool, it's one data

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1 point. So you want to gather as many data points as you
2 can, otherwise you can just give them the one instrument and
3 score it out, don't talk to the person, don't look at
4 anything and just go by that.

5 Q. Are you familiar with the people that made or created
6 the Static 99r?

7 A. I believe it's out of Canada but I'm not sure.

8 Q. Do they believe that the Static 99r should be used as a
9 stand-alone tool?

10 A. They do not believe that it should be used as a
11 stand-alone tool.

12 Q. So what did you learn from this assessment?

13 A. So from this assessment his score based on the risk
14 factors that this instrument counts for is a three, and that
15 is in the low to moderate risk category or risk group.

16 Q. How did you determine that he had a score of three?

17 A. Okay. This was based on his age, his prior non-sexual
18 violence convictions, his prior sex offenses and that takes
19 into account both charges and convictions, it's one item.
20 Having an unrelated victim and having a male victim.

21 Q. So what does this score of three actually mean?

22 A. So for this group who score a three, if you look at
23 them five years out they have a rate of reoffending of 15.8.
24 You take the same group and look at them ten years out they
25 have a reoffending rate of 24.3.

ANA GOMEZ

1 Q. Did you review Dr. Gale's report, the court appointed
2 examiner before coming to court?

3 A. Yes.

4 Q. What score did she give Mr. Campbell?

5 A. She gave him a two.

6 Q. Concerning Mr. Campbell's score in the low to moderate
7 range, do you feel that instrument accurately stated Mr.
8 Campbell's risk to reoffend?

9 A. So the instrument is accurate insofar as it takes these
10 risk factors and puts them in a category or group. Now,
11 there are other risk factors that the instrument doesn't
12 account for such as does the person have mental illness
13 related to their sexual interest? Have they acted on that?
14 Have they received treatment? Do they have ways of managing
15 coping? Do they have tools? The instrument doesn't account
16 for those things.

17 Q. Was the information you learned from the Static 99 part
18 of the basis of your opinion?

19 A. Yes.

20 Q. Let's move to another test, it's called the Sassi 3?

21 A. Yes.

22 Q. Explain what that assessment is and how it works for
23 the jury.

24 A. So this test was mainly designed to understand whether
25 the person has a substance use problem or not, so they're

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1 just answering questions about substance abuse.

2 Q. Why is it important for experts such as yourself to
3 conduct this assessment?

4 A. Substance use can be related to sexual offending.

5 Q. And what did you learn from this assessment?

6 A. Well, in terms of substance use I wasn't able to learn
7 much. And the reason for that was because the assessment
8 indicated that Mr. Campbell responded randomly and so the
9 results were potentially meaningless and the instrument
10 wasn't further analyzed because there was significant
11 concern about the accuracy of what was found.

12 Q. Now, was the information you learned from the Sassi 3
13 part of the basis of your opinion?

14 A. It was considered.

15 Q. Now, what is the next test that, the Personal
16 Assessment Inventory, or PAI?

17 A. Personality Assessment Inventory. This is a test where
18 you're once again gathering information. And this is
19 typically looking at whether the person has any kind of
20 personality disorder or depression, anxiety, psychosis. And
21 the other thing about this test is that it has markers so to
22 speak, where it takes into account whether the person is
23 trying to make themselves look better or look worse than
24 what they actually are.

25 Q. So what did you learn from this assessment?

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1 A. This assessment flagged that Mr. Campbell may not have
2 been forthright. And also the results indicated significant
3 defensiveness including portraying himself as exceptionally
4 free of faults that most people would normally admit to like
5 maybe being impatient sometimes. And I had also noted a
6 strong motivation to display a very positive image.
7 Normally we get a lot of other information from this
8 assessment such as somebody's motivation for treatment and
9 things of that nature, but because the results were likely
10 an invalid assessment of him there was no further analysis
11 done on this instrument as well.

12 Q. Was the information you learned from this PAI part of
13 the basis of your opinion?

14 A. Yes.

15 Q. Now, next what is the Conner's Continuous Performance
16 Test 2?

17 A. This is a test to measure impulsivity and inattention.

18 Q. Can you explain what the assessment is and how it works
19 to the jury?

20 A. So basically you are just sitting at a computer and you
21 hit a button based on the instructions that you're given.

22 Q. Why is it important for experts such as yourself to
23 conduct this assessment?

24 A. We do this one first because if there's a serious issue
25 with attention, sometimes we've had it happen where the

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1 person is so impaired that they really can't go on into the
2 rest of our assessments, and also impulsivity has been
3 linked -- or can be linked to sexually reoffending.

4 Q. So what did you learn from this assessment?

5 A. This assessment, it was kind of like right down the
6 middle of the road. There's a 50 percent chance that he had
7 impulsivity and attention, and a 50 percent chance that he
8 didn't, so it was just right down the middle.

9 Q. Was the information that you learned from the Conners
10 Test part of the basis of your opinion?

11 A. It was taken into consideration.

12 Q. Now next, what is the Abel Assessment?

13 A. The Abel Assessment is designed to measure sexual
14 interests, and it collects information about abusive and
15 sexual problem behaviors.

16 Q. Can you explain what this assessment is and how it
17 works for the jury?

18 A. So basically, like I said, you're looking at -- it asks
19 people about different behaviors and asks them to rate them
20 as to what they think. And then there's other portions of
21 the test that collect information about someone's sexual
22 interest.

23 Q. Now, why is it important for experts such as yourself
24 to conduct this assessment?

25 A. Well, because this assessment is specifically focused

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1 on sexual interest it's relevant particularly for this type
2 of evaluation.

3 Q. What did you learn from that assessment?

4 A. There were four things. So there is this list of 21
5 sexual behaviors and the person is asked have you ever
6 engaged in these behaviors. So one of them had to do with
7 involvement with pornography. During the assessment he
8 indicated no involvement with that. And when he was
9 interviewed he told us that he was -- for a period of like
10 two years he was watching adult movies with his spouse for
11 like once a week. So there is inconsistency with the report
12 and the instrument during the interview. The second thing I
13 wanted to touch on is something called a cognitive
14 distortion score. Cognitive distortion is a thinking error,
15 and this score is on the scale of low, problematic and high,
16 and it's gathered from items on the assessments that are
17 used to describe justifications of people who are sexually
18 involved with children use. So on that low problematic high
19 scale his score was a high, and the higher the score the
20 greater the use of such a distortion in their thinking
21 there. And there is -- the third thing is social
22 desirability score. And this is once again trying to make
23 yourself look better, not admitting to things that the
24 average person probably would struggle with, being
25 impatient, et cetera. The same scale and his score was high

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1 on this. The last part I want to mention is the visual
2 reaction portion of the test. This portion collects sexual
3 interest data beyond the awareness of the individual. So
4 his measures beyond his awareness indicated that he has
5 sexual interest in adult females, in female children age six
6 to 13, male children age six to 13, and female children age
7 five or younger.

8 Q. When you talk about a thinking error in relation to
9 cognitive distortions, can you explain that a little more?
10 What exactly is a thinking error?

11 A. So I'll give you an example, just a generic example,
12 not necessarily relevant to Mr. Campbell. Some people who
13 are sexually involved with children will say they came on to
14 me, the child was provocatively dressed or they talked to me
15 in this way or they instigated the encounter. That would be
16 a thinking error, cognitive distortion.

17 Q. Was the information you learned from the Abel
18 Assessment part of the basis of your opinion?

19 A. Yes.

20 Q. Now, next move to the -- and I always say this wrong,
21 the penile plethysmograph?

22 A. Penile Plethysmograph, we also call it PPG. We'll just
23 call it that maybe.

24 Q. Okay. Can you explain how that is and how it works for
25 the jury?

ANA GOMEZ

1 A. Okay. So this is getting at that third prong,
2 measuring physiology, measuring whether the person becomes
3 aroused to what kind of stimuli. So they have a gauge on
4 their penis that will measure arousal, they have also
5 something that measures breathing and stuff on the skin and
6 also a pad to measure movement in the seat.

7 Q. Why is it important for experts such as yourself to
8 conduct this assessment?

9 A. So like I said, getting at that third prong of
10 physiology and seeing if the person responds to sexual
11 stimuli.

12 Q. So what happened?

13 A. So these results are invalid, so that means he didn't
14 respond to anything, even adults. So it couldn't be further
15 analyzed.

16 Q. What did you learn, if anything, from this assessment?

17 A. What came up were potential concerns of trying to throw
18 the test. For example, the person is given scenarios, they
19 have to rate how arousing or not they find the scenarios.
20 And some of these scenarios are things that are neutral like
21 a chair or a building or things that only do with sexual
22 arousal, and the way that the things were rated was odd. It
23 wasn't clear if he hadn't understood the rating scale or if
24 he wasn't paying attention to it or wasn't listening to the
25 scenarios. Because of this sort of cloud of we don't know

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1 what's going on here we couldn't really ascertain from this
2 instrument whether he found any of the stimuli he was
3 presented at arousing. The other thing that was noted, so
4 when you listen to the scenario you're asked to provide a
5 description on what you just heard. And so usually we
6 provided only a really short description and that can be a
7 potential indicator of trying to not listen so that you
8 don't get any kind of physical response. There is also
9 multiple episodes of irregular breathing and body movements
10 which potentially meaning trying to throw the test. Mr.
11 Campbell does have a hernia that he told us about and he
12 told us that maybe that was part of the reason. This exam
13 is done in a chair that's meant for long term procedures
14 like dialysis which takes lots of hours, and when we
15 interview people they're not in that chair, they're in a
16 standard chair and there was really no concerns voiced from
17 sitting in that chair. So that sort of was a head-scratcher
18 as well.

19 Q. Was the information you gathered as a result of
20 attempting this test part of the basis of your opinion?

21 A. It was taken into consideration.

22 Q. Okay. The next -- what is the Hare Test?

23 A. So the Hare Psychopathy Checklist, we use a screening
24 version. And this test gets inferred -- you look at
25 inferred personality traits to see whether the person has

ANA GOMEZ

1 psychopathy or characteristics commonly associated with
2 psychopathy. Psychopathy is a clinical construct that's
3 related to offending both sexual or non-sexual.

4 Q. Can you explain what that assessment is and then how it
5 works for the jury?

6 A. So the assessment is built into our interview guide.
7 And so you rate the assessment and if they don't meet a
8 certain cutoff then you don't move on to the full screening
9 version, which is what happened here.

10 Q. So what did you learn from the assessment?

11 A. What I learned was that Mr. Campbell does not have
12 traits commonly found on people who have psychopathy.

13 Q. Was the information you learned from the Hare Test part
14 of the basis of your opinion?

15 A. Yes.

16 Q. So Doctor, what are risk factors?

17 A. Risk factors are traits that are associated with a
18 certain outcome. Let me give you an example, going back to
19 that heart disease/heart attack. You have let's say four
20 risk factors that might put you in a certain group for
21 having a heart attack, if you have less that might put you
22 in a different group.

23 Q. Does Mr. Campbell have any risk factors?

24 A. Yes, he does.

25 Q. And what are they?

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1 A. Okay. So the risk factors as accounted for by the
2 static instrument are having prior non-sexual violence
3 convictions, the prior sex offenses, which includes the
4 charges and convictions, that's all one item. Having an
5 unrelated victim and having a male victim. Mr. Campbell
6 also has a risk factor of having a disorder of sexual
7 interests, which is a pedophilic disorder, having acted on
8 it and not having received treatment.

9 Q. Are these risk factors significant in regards to your
10 opinion?

11 A. Yes.

12 Q. And why are they significant?

13 A. They are significant because they can be related to
14 reoffending.

15 Q. I think you brought this up, but did Mr. Campbell ever
16 complete any sex offender treatment while housed at the
17 department of corrections?

18 A. No, he did not.

19 Q. Did that factor into your decision at all?

20 A. Yes.

21 Q. Why does that factor into your decision?

22 A. Well, because when you're looking at someone who has an
23 illness, how are you going to manage that illness? So let's
24 say somebody is an alcoholic, how are they going to manage
25 their alcoholism? What tools do they have in place to

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1 prevent themselves from going and getting that drink again?
2 So it's the same kind of idea. So the facts that there's no
3 treatment so I'm starting to wonder now what's in place.
4 What are the tools in the toolbox so that this doesn't
5 happen again.

6 Q. What did he say about taking sex offender treatment?

7 A. So we asked him about what he would do to not sexually
8 offend and he said he was no longer interested in sex, that
9 he didn't need it. He also talked about being a Christian,
10 and I wasn't really -- didn't quite understand the
11 connection of his Christian beliefs, how that would help
12 him. And then he told the court appointed evaluator that he
13 would walk away.

14 Q. Is there any data out there indicating that just
15 religion in itself can cure someone of pedophilia?

16 A. Not that I'm aware of.

17 Q. Was there any other information upon which you relied
18 upon in rendering your opinion regarding Mr. Campbell?

19 A. I reviewed the court appointed evaluator's report as
20 well.

21 Q. Okay. Now, based on your examination of Mr. Campbell,
22 the review of his records, the assessment you conducted and
23 all of these factors we've been discussing, did you render
24 an opinion as to whether Mr. Campbell has a personality
25 disorder?

ANA GOMEZ

1 A. Yes, I did.

2 Q. And what is that?

3 A. I believe that Mr. Campbell has a pedophilic disorder,
4 a non-exclusive type, sexually attracted to both.

5 Q. Is pedophilia considered a relevant mental abnormality
6 amongst experts such as yourself who conduct mental health
7 evaluations on sexually violent predators?

8 A. Yes, it is.

9 Q. What are the characteristics of pedophilia?

10 A. So the characteristics are recurrent intense sexually
11 arousing fantasies, urges or behaviors involving children
12 before they've gone through puberty, having acted on those
13 urges and having it go on for six months or more.

14 Q. Is pedophilia considered curable?

15 A. Generally, no. There is a small amount of debate in
16 the research about that, but the generally accepted answer
17 is it can be managed but there's no cure.

18 Q. Why do you think Mr. Campbell has pedophilia?

19 A. This is based on the records that I've reviewed of the
20 convictions, the allegations, our interview with him, his
21 performance on the assessments and also his interview with
22 the court appointed evaluator.

23 Q. So based on your review of the files in this case, did
24 anyone else diagnose Mr. Campbell of being a pedophile?

25 A. Yes.

ANA GOMEZ

1 Q. And who was that?

2 A. The court appointed evaluator did as well.

3 Q. Do you have any opinion as to whether his pedophilia
4 causes him serious difficulty in controlling his behavior?

5 A. Yes.

6 Q. And what is that?

7 A. I believe that this disorder causes him serious
8 difficulty in controlling his behavior.

9 Q. Do you have an opinion as to whether Mr. Campbell has
10 the propensity to commit future sexually violent offenses?

11 A. Yes, I believe he does.

12 Q. Did you find evidence that Mr. Campbell has difficulty
13 in controlling his sexual behavior?

14 A. Yes.

15 Q. And what is that?

16 A. Well, he's had -- if you look at the convictions
17 there's charges from 1999, and then there's charges from
18 2001 indicating ongoing behavior, ongoing difficulty
19 controlling your behavior.

20 Q. Can you explain to the jury what emotional or
21 volitional capacity is?

22 A. That is getting at somebody's ability to refrain,
23 somebody's ability to control their behavior, control how
24 they act.

25 Q. Do you have an opinion whether Mr. Campbell's

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1 pedophilia makes him likely to engage in acts of sexual
2 violence if he's not confined in a secured facility for long
3 term control, care and treatment?

4 A. Yes.

5 Q. What is that?

6 A. I believe that this diagnosis makes him likely to
7 engage in acts of sexual violence if not confined in a
8 facility.

9 Q. Do you have an opinion as to whether Mr. Campbell meets
10 the legal criteria to be found to be a sexually violent
11 predator at this time?

12 A. Yes.

13 Q. And what is that?

14 A. Mr. Campbell has been convicted of a sexual violent
15 offense, he has a mental abnormality or personality disorder
16 that makes him likely to engage in acts of sexual violence
17 if not confined to the facility.

18 Q. Now, are all of these opinions based upon a reasonable
19 degree of medical certainty?

20 A. Yes.

21 Q. I would like then now to come back to Dr. Gale's
22 evaluation, the court appointed evaluator's evaluation of
23 Mr. Campbell. And we already said this but for
24 clarification, she was one of the individuals that had
25 diagnosed him with pedophilia; is that correct?

ANA GOMEZ

1 A. Yes, that's correct.

2 Q. And what was your ultimate opinion in this matter
3 concerning whether she believed Mr. Campbell to be a sexual
4 violent predator?

5 A. Her opinion was that he was not qualified as a sexual
6 violent predator.

7 Q. And it's apparent with your testimony that you
8 disagreed with her in this matter. What led you to a
9 different conclusion?

10 A. Well, we agree that he has the disorder of sexual
11 interest in children before they've gone through puberty, so
12 we agree on that. I have listed the things that I have
13 considered from the records, the legal records, interviewing
14 him, how he did on the assessments, I'm not sure if she
15 considered these factors or not. There's also the Static 99
16 which puts him in the low to moderate risk group, that's one
17 assessment and one tool. And I didn't use only one data
18 point, I used as many as I could really to come up with this
19 opinion. So it's not really a good idea to kind of put all
20 of your eggs in one basket because there's things that
21 aren't accounted for, all of the instruments don't account
22 for the same thing.

23 Q. If Mr. Campbell was not committed into the program,
24 would Mr. Campbell be on probation or community supervision?

25 A. Yes, he has probation.

ANA GOMEZ

1 Q. How much probation is left on his sentence?

2 A. I believe he has year and a half left.

3 Q. Will he have to take sex offender treatment on
4 probation?

5 A. It's my understanding that that might be ordered as
6 part of it.

7 Q. Do you think that would be sufficient for him?

8 A. I don't think that would be sufficient.

9 Q. Can you explain why?

10 A. Well, part of it is -- there's multiple reasons. But
11 I'll say that the fact that he's never been treated, usually
12 probation treatment is not as intense, you don't have to be
13 that interested in it. And also he's reoffended, my
14 understanding is that he's going to be around children if he
15 were released and so I'm not sure if there was anything in
16 place that would help him during that transition time. Also
17 by making the Sexually Violent Predator Act the lawmakers
18 have made it clear that the protections probation offers are
19 not sufficient for sexually violent predators.

20 Q. What are his plans to avoid reoffending?

21 A. So this is the no interest in sex anymore, no longer
22 needing to have it, and he told the court appointed
23 evaluator that he would walk away.

24 Q. As an expert, do you think that's a realistic plan?

25 A. No.

ANA GOMEZ

1 Q. Why is that?

2 A. It goes back to thinking about an alcoholic with a
3 drink, so saying "I'm just not going to do that," if it were
4 just that easy people would just not do it. It's not that
5 easy. We're talking about a sexual drive, this is how
6 people are programmed. So what if threats -- let's say
7 everybody here is interested in adults only, what if
8 suddenly that was illegal? "Oh well, I'm just not going to
9 be involved with adults anymore because it's illegal."
10 That's not going to work because that's not what your sexual
11 interest is, so it's the same kind of idea.

12 Q. Where does Mr. Campbell plan on living if he is
13 released?

14 A. My understanding is that he is going to live with his
15 sister.

16 Q. Do you know if there will be any children around?

17 A. My understanding is that there will be grandchildren
18 and great grandchildren around.

19 Q. And based on your evaluation, who would be at risk if
20 Mr. Campbell was released?

21 A. Children.

22 MS. WETHERTON: Your Honor, at this time I would offer
23 her for cross examination.

24 THE COURT: Thank you, thank you very much. Mr.
25 Brooks?

ANA GOMEZ

1 CROSS EXAMINATION

2 BY MR. BROOKS:

3 Q. Dr. Gomez.

4 A. Yes, sir.

5 Q. Now, over the last 45 or so minutes we've heard a lot
6 of stuff, a lot of scientific language. But now let's say
7 this, none of this is a crystal ball to say with a hundred
8 percent certainty that Kenneth will engage in any type of
9 those acts in the future; is that correct?

10 A. Yes, that's correct.

11 Q. So basically what we've got here is a little bit of
12 trying to predict the future as it relates to him, right?

13 A. Yes. It's a risk assessment, so yes.

14 Q. Okay. And there is a chance that he is telling the
15 truth when says, "Hey, I'm not going to do this anymore,"
16 right?

17 A. Sure. I mean, I think he believes it.

18 Q. And did you talk to any of his family about his reentry
19 plans into society?

20 A. This evaluation was done in conjunction with one of our
21 trainees and he is the one who made the phone call.

22 Q. So your trainee made the phone call, not you.

23 A. That's correct.

24 Q. Okay. So you didn't talk to anybody else, right?

25 A. I did not.

ANA GOMEZ

1 Q. So your trainee found out that he is going to have --
2 he's got a job waiting for him; is that correct?

3 A. That's my understanding.

4 Q. And isn't whether or not a person has something to do
5 to economically sustain them, isn't that a factor in a
6 recidivism rate in a person?

7 A. That's something to consider.

8 Q. Okay. And basically you're telling us you considered
9 all of that in your report too; is that correct?

10 A. Yes.

11 Q. And when you talked with Mr. Campbell, did he say he
12 was living with his sister?

13 A. I would have to look. I would have to look at the
14 notes. What I do have is that that's what his sister said.

15 Q. Okay. But now what his sister said, that would come
16 from that trainee and not necessarily from you talking with
17 him.

18 A. Correct.

19 Q. Now, you rendered an opinion that Mr. Campbell should
20 go to the sexual violent predator program; is that correct?

21 A. Yes.

22 Q. And that is a confined program; isn't that correct?

23 A. It's in-patient.

24 Q. But I understand other than in-patient, he along with
25 other individuals are confined; isn't that correct?

ANA GOMEZ

1 A. Yes.

2 Q. They can't go and leave when they want to leave.

3 A. Right. You don't go home and then come back the next
4 day, it's not like that style.

5 Q. Okay. And you have visited the place; isn't that
6 correct?

7 A. No, I haven't.

8 MS. WETHERTON: Objection, Your Honor. Can we
9 approach?

10 THE COURT: Yes, ma'am.

11 (A bench conference was held.)

12 THE COURT: Thank you, Madam Attorney General, thank
13 you, Mr. Brooks. You may ask your next question.

14 BY MR. BROOKS:

15 Q. Some of the things that you considered in your
16 assessment were things that may have been charges that
17 actually got dropped; is that correct?

18 A. Yes.

19 Q. Or things that he might not have been charged with; is
20 that correct? It may have been a mere allegation.

21 A. No, he was charged. Are you talking about the 1993
22 offense?

23 Q. Correct.

24 A. My understanding is he was charged.

25 Q. But it got subsequently dismissed.

ANA GOMEZ

1 A. That's my understanding.

2 Q. Okay. And you found that through your researching his
3 criminal history; is that correct?

4 A. Yes.

5 Q. He told you that it got dismissed, and, in fact, it had
6 gotten dismissed; is that correct?

7 A. That's my understanding. I don't think we ever got
8 final clarification on that.

9 Q. Okay. But as a part of your assessment it would have
10 been you guys' role to get to the situation -- if he told
11 you it was dismissed it would have been your objective to
12 research it to find out whether or not it had, in fact, been
13 dismissed.

14 A. Yes. We did that and there was nothing further found.

15 Q. In your report you talk about an incident, an interview
16 statement as of July 6, 1999. That would have been on page
17 11 near the top of your report.

18 A. Okay.

19 Q. And you subsequently talk about the child and these
20 allegations and that the child later recanted her story in
21 regards to that; is that correct?

22 A. No. That is regarding allegations when this child was
23 four or five years old. Those are the allegations that she
24 later took back, not the ones from when she was nine.

25 Q. Okay. That's not how your -- that's not the way your

ANA GOMEZ

1 report reads; is that correct?

2 A. No, it is how the report reads.

3 Q. Are you sure? It basically says the child later
4 recanted her story.

5 A. Right. But it says that right after the sentence that
6 there were further allegations Mr. Campbell had fondled the
7 child when she was four or five years old, next sentence,
8 "The child later recanted her story."

9 Q. Well now, that sentence does not specify what idea you
10 were talking about, does it?

11 A. In my mind it's pretty clear.

12 Q. In your mind; is that correct?

13 A. Yes, and probably the average reader.

14 Q. And probably the average reader?

15 A. Yeah.

16 Q. But that's your opinion; isn't that correct?

17 A. Yeah, it's my opinion.

18 Q. Okay. And I can look at that and I can construe that
19 as this child recanted her story and meaning the paragraph
20 above it; isn't that correct? That would be reasonable,
21 wouldn't it?

22 A. It really wouldn't make sense. Because then I go on to
23 talk about his version of the story when he talked to us,
24 his version of the story when he talked to a court appointed
25 examiner, so I don't think it really makes sense to assume

ANA GOMEZ

1 that, especially since I have --

2 Q. Well Doctor, in the next paragraph you put down that

3 Mr. Campbell reported that the victim made up her story.

4 That would be consistent with the previous sentence that the

5 child recanted her story; isn't that correct? And this is

6 in your report.

7 A. Right. But it's during this evaluation talking about

8 when she was nine years old.

9 Q. Okay. Let me ask you this, Doctor: When you have --

10 you stated earlier on direct examination that you testified

11 I believe you said about 12 of these, or you've done 12

12 evaluations?

13 A. I haven't done 12 evaluations, I've been in court as an

14 expert witnesses about 12 times.

15 Q. Okay. And how many of these sexual violent predator

16 evaluations have you done?

17 A. Four.

18 Q. Okay. And how many of those opinions have you rendered

19 a person not to be -- fall into the criteria of a sexual

20 violent predator?

21 A. None.

22 Q. So for all four evaluations you've done you said that

23 all of them fit the criteria of a sexual violent predator.

24 A. So far.

25 Q. So far. Okay. And I believe you answered the question

ANA GOMEZ

1 earlier, you were paid by the State to be here; is that
2 correct?

3 A. I'm paid by my employer, MUSC.

4 Q. Paid by your employer MUSC?

5 A. Uh-huh.

6 Q. Are you aware who pays your employer for you to be
7 here?

8 A. Working at a university is kind of a complicating
9 funding stream and I don't pretend to understand it all.

10 THE COURT: I can answer that for you. How about the
11 taxpayers?

12 Q. The State of South Carolina, would that be a reasonable
13 assertion?

14 A. Partly but not entirely.

15 Q. Partly but not entirely. Okay. Dr. Gomez, a great
16 deal -- some of your report does make reference to Dr.
17 Gale's report; is that correct? That is the court appointed
18 evaluator.

19 A. Yes, sir.

20 Q. And in putting together your report, did you have any
21 direct contact with Dr. Gale?

22 A. No.

23 MR. BROOKS: No other questions.

24 THE COURT: Redirect?

25 MS. WETHERTON: No redirect, Your Honor.

ANA GOMEZ

1 THE COURT: Thank you, thank you very much. Thank you
2 for being with us today. Any objection to the doctor being
3 excused?

4 MS. WETHERTON: Your Honor, I am just going to ask if
5 she stays until the end of the day.

6 THE COURT: Sure. So there is an objection? Do you
7 mind staying with us?

8 THE WITNESS: No, that's fine.

9 THE COURT: You may call your next witness, Madam
10 Attorney General.

11 MS. WETHERTON: Your Honor, at this time the State
12 would rest.

13 THE COURT: Thank you, thank you very much. Perhaps
14 now would be a good time to take our afternoon recess.
15 Remember, during this recess do not discuss this case with
16 any of your fellow jurors. You may now go with the bailiff.
17 We'll take about 15 minutes.

18 (The jury left the courtroom.)

19 THE COURT: Do you have any motions, Mr. Brooks?

20 MR. BROOKS: Absolutely, Judge. I think that -- Judge,
21 let's just get right down to it. I think that the State
22 just lacks sufficient evidence and that the respondent
23 should be granted a directed verdict in this case and he
24 should be free to go. We've got one report, I would
25 characterize it as hit and miss in regards to my client and

1 we just think that the State needs to have a bit more in
2 order for them to have that scintilla of evidence in order
3 to get over a directed verdict and we would respectfully ask
4 the Court to dismiss the case.

5 THE COURT: Thank you, thank you very much, Mr. Brooks.
6 Madam Attorney General?

7 MS. WETHERTON: Thank you, Your Honor. For a standard
8 on a directed verdict I just have to produce evidence that
9 would sustain my burden of proof. I had to show first that
10 he had been convicted of a qualifying sexual violent
11 offense, I have admitted evidence that he has been convicted
12 of two. A relevant mental abnormality. The doctor has said
13 and explained the reasons why he has pedophilia. And also
14 that he has certain risk factors as a result of assessments,
15 as a result of the interview that he would be likely to
16 sexually reoffend. Whether or not the jury believes that
17 that's a question for the fact finder and therefore I
18 believe I have sustained my burden.

19 THE COURT: Anything in response to that, Mr. Brooks?

20 MR. BROOKS: Judge, I think it's clear we should be
21 granted our motion.

22 THE COURT: Thank you, Mr. Brooks. I would
23 respectfully deny the motion for a directed verdict. I
24 think the State has presented sufficient evidence and
25 substantial circumstantial evidence based on his history of

1 risk factors in the doctor's testimony and the standard I
2 must apply at this stage so I would respectfully deny the
3 motion for direct verdict. Anything further before we take
4 our recess, Mr. Brooks?

5 MR. BROOKS: That's it, Judge.

6 THE COURT: How many witnesses do you have?

7 MR. BROOKS: Three.

8 THE COURT: All right. And anything from the State
9 before we take our recess?

10 MS. WETHERTON: Not at this time, Your Honor.

11 (A recess was taken.)

12 THE COURT: Anything from the defense before we bring
13 in our jury, Mr. Brooks?

14 MR. BROOKS: No, sir.

15 THE COURT: State?

16 MS. WETHERTON: No, Your Honor.

17 (The jury returned to the courtroom.)

18 THE COURT: Same seats? All right. Welcome back,
19 ladies and gentlemen of the jury. I hope you had a pleasant
20 break. You have heard all of the evidence and all of the
21 testimony you are going to hear in the trial of the case by
22 the State in its case in chief. The defense now may present
23 evidence and testimony if the defendant so chooses to do so.
24 We will turn our attention to Mr. Brooks, I would please ask
25 you to continue to give the parties your complete and

MARIE GALE

1 undivided attention. Mr. Brooks, you may call your first
2 witness.

3 MR. BROOKS: We call Dr. Marie Gale.

4 The witness, MARIE GALE, was first duly sworn
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q. Dr. Gale, how are you today?

9 A. Good. How are you?

10 Q. All right. Now, Doctor, I'm just going to ask you a
11 little bit of background to make the jury a little bit more
12 familiar with who you are. Tell us about your educational
13 background.

14 A. I have a Bachelors Degree in Psychology, a Masters
15 Degree in Clinical Psychology, a Doctorate in Clinical
16 Psychology, and I'm licensed to practice in South Carolina
17 and Georgia.

18 Q. Okay. And how long have you been doing this job?

19 A. I have worked for the South Carolina Department of
20 Mental Health for it will be five years in November. I have
21 been training in psychology since about 1995, I've worked
22 with sex offenders since about 2000.

23 Q. And you have -- how many evaluations as a part of
24 sexual violent predator stuff have you done?

25 A. I have done more than 160 evaluations pursuant to the

MARIE GALE

1 Sexually Violent Predator Act.

2 Q. Okay. And you've done precommitment and
3 post-commitment as well; is that correct?

4 A. That's correct.

5 Q. And post commitment is about whether, you know, they're
6 in there and whether they're safe to be let out; is that
7 correct?

8 A. That's correct.

9 Q. And the precommitment is an indication of kind of like
10 we're doing here is whether or not they should go into the
11 program?

12 A. Yes.

13 MR. BROOKS: Your Honor, I would submit Dr. Gale as an
14 expert in the field of Forensic Psychiatry.

15 MS. WETHERTON: Your Honor, I would submit that she's
16 an expert in Forensic Psychology.

17 MR. BROOKS: Forensic Psychology, I stand corrected.

18 THE COURT: Just a moment. All right. Thank you.
19 Again, Mr. Foreman and ladies and gentlemen of the jury,
20 normally a person cannot give opinion testimony. Normally
21 when a person testified they must testify as to what they
22 saw, heard or sensed by smell or something of that nature.
23 However, there is that exception when someone is qualified
24 because of their education, experience and training in some
25 particular art, science, profession or craft they are

MARIE GALE

1 permitted to give their opinions and the basis of their
2 opinion in certain areas if the Court qualifies them that
3 way. This witness, Dr. Marie Gale, will be qualified to
4 give opinions in the area of Forensic Psychology. That does
5 not mean that you must accept the opinions or the basis of
6 the opinion, but it is evidence for you, the jury, to use in
7 any way you deem fit. Thank you, Mr. Brooks, you may
8 continue.

9 BY MR. BROOKS:

10 Q. Dr. Gale, now you have done a lot of these cases that
11 we just talked about earlier; is that correct?

12 A. I would consider it to be a lot, yes.

13 Q. And sometimes you render opinions on behalf of the
14 State and the sometimes you render opinions on behalf of the
15 defendant; is that right?

16 A. That's correct.

17 Q. As a matter of fact, about three weeks ago we were down
18 in Charleston and you rendered an opinion saying my client
19 should stay, right?

20 A. That's correct.

21 Q. But in this situation you've had the opportunity to
22 evaluate Kenneth Campbell; is that correct?

23 A. That's correct.

24 Q. And you were the court -- we've heard the term court
25 ordered evaluator term thrown around, you were that person;

MARIE GALE

1 is that correct?

2 A. Yes, that's me.

3 Q. And can you tell us -- take the jury through your
4 evaluation process of Mr. Campbell?

5 A. When I receive an appointment by the Court to do one of
6 these evaluations I receive a packet of information from the
7 attorney general's office and from the multidisciplinary
8 team from the attorney general's office. That information
9 consists of a petition that's filed, court orders, criminal
10 history, the person's national criminal history report,
11 records from the department of corrections, any other
12 records that might exist if the person has been to the
13 department of mental health or things of that nature. I
14 review that information and then I sit down and do an
15 interview with the person. And then I take all of that
16 information and any other information that might become -- I
17 might talk to people like family members or probation
18 officers -- potential probation officers, people of that
19 nature. And then I'll sit down and write a report and
20 submit that to the attorney general's office.

21 Q. And you had the opportunity to do that in this case as
22 it relates to Mr Campbell; is that correct?

23 A. That's correct.

24 Q. And now when you did this report -- and you've heard
25 Dr. Gomez testify about the criminal history of Mr.

MARIE GALE

1 Campbell, is that pretty much consistent with the same
2 criminal history you found?

3 A. Yes.

4 Q. And you also took the time to meet with Kenneth
5 Campbell which is consistent with her; is that correct?

6 A. Yes. I did an interview with Mr. Campbell.

7 Q. Did you also talk to family members about Mr. Campbell?

8 A. Yes, I spoke to his sister.

9 Q. Is it pretty much fair to say everything she had as far
10 what she reviewed; facts, criminal history, legal history,
11 sexual history, you went through the entire -- you got all
12 of that same information?

13 A. I would imagine that we both received the same packet
14 of information from the attorney general's office, and so
15 the majority of the information would be the same unless,
16 you know, we sought records that another -- that the other
17 evaluator didn't receive, although I don't believe that's
18 the case.

19 Q. Okay. What did you diagnose Mr. Campbell as?

20 A. I diagnosed him with pedophilic disorder. Let me be
21 specific -- sexually attracted to females not exclusive
22 type.

23 Q. Okay. And in addition to that in your report you come
24 up with a risk assessment; is that correct?

25 A. That's correct.

MARIE GALE

1 Q. Can you tell us about that?

2 A. Yes. As a routine part on these evaluations I
3 conducted a risk assessment. I used the Static 99r, which
4 is an actuarial instrument.

5 Q. Let me ask you, for these folks here, what is that?

6 A. An actuarial instrument is -- you can think of it as
7 something like insurance companies use to determine what
8 your insurance premium would be. For example, a 19 year old
9 male driving a sports car would probably pay more in
10 insurance premiums than a 50 year old female just based on
11 what the base rates are for accident proneness, so it's
12 similar to that sort of scheme. It takes things that have
13 been associated to be related to sexual reoffending and you
14 answer those items. There's ten questions, the scores range
15 from negative three to 12. You see if the person has that
16 factor and you come up with a total risk score and then that
17 risk score can be compared to -- what level of group they're
18 in. Are they in a low risk group, low moderate, which is
19 what Mr. Campbell was in, are they in a moderate high or a
20 higher risk group. You can also take that score and look at
21 an actuary table, which means that you look at the person's
22 score and you go across and it will tell you what the
23 percentages of individuals with that score, what their --
24 what rate they reoffended within five years and within ten
25 years. So you're looking at a large sample of sex offenders

MARIE GALE

1 and they say an individual with the score of two, such a
2 percentage reoffended within five years and such a
3 percentage reoffended within ten years. You can also take
4 that score and determine how the person fares, like what
5 that score is in the rank of scores. So if I gave -- I
6 scored Mr. Campbell as a two on this instrument, and that is
7 actually the average score on this instrument for sex
8 offenders in the sample. You can also look at how much
9 lower or how much higher they are than the average sex
10 offender. So there's a bunch of different information that
11 comes from this one test.

12 Q. Okay. All right. And you alluded to this earlier as
13 you were talking about the Static 99 and risk assessment
14 that you put Mr. Campbell in a I believe you said low to
15 moderate category. I might have gotten it wrong, but I just
16 wanted to --

17 A. No, you're correct. He has a score of two and I
18 believe from listening to Mr. Dr. Gomez's testimony, our
19 scores differ because I did not give him a point for a male
20 victim. He was not convicted of that offense so we don't
21 know it for fact so I didn't give him a point for that so he
22 has a score of two. And that is in the low moderate risk
23 category.

24 Q. As a matter of fact, in that particular allegation that
25 charge was actually dropped and dismissed by the prosecutor

MARIE GALE

1 in that case; is that correct?

2 A. That's my understanding.

3 Q. Okay. And that would explain why you did not for lack
4 of a better word put a point there.

5 A. Correct. I give points on that risk assessment -- when
6 it has to be affirmed fact I look at convictions or stuff
7 that the person has admitted to doing either to an
8 investigator, to another evaluator or to myself. So if he
9 had told me that he offended that male child even though he
10 wasn't convicted of it I would have gave him a point. But
11 he denied that, the Court didn't proceed -- the court
12 proceedings didn't convict him, the charge was dropped so I
13 don't have proof that he did, in fact, have a male victim so
14 I didn't give him a point for that.

15 Q. And as a matter of fact, in your review of the file,
16 the documents pertaining to the file as it relates to that
17 allegation, he was pretty consistent in denying that that
18 allegation actually occurred; isn't that correct? He denied
19 it to you, he denied it to law enforcement and it was
20 subsequently dismissed.

21 A. Yes.

22 Q. Okay. Now -- and the reason you came up with the two
23 is because of the convictions he has; is that correct?

24 A. That was the reason in part, but there was some other.
25 Would you like me --

MARIE GALE

1 Q. Yes, ma'am, please.

2 A. He gets a negative 1.4 for his age, because the
3 research shows that as people age they tend to be less
4 sexually active and their recidivism rate --

5 Q. And let me ask you this, Doctor: When you say the
6 negative, that would be a good thing for a respondent to
7 have a low score or towards a negative, and the higher would
8 be not so good, is that correct, or bad?

9 A. Yes. The most positive points they get the higher
10 their score will be, the higher their estimated rate of
11 reoffending will be.

12 Q. Yes, ma'am. Go ahead, I'm sorry to cut you off.

13 A. So he gets a negative one for his age because he is in
14 the age category where sex offending and sexual arousal is
15 decreasing. He gets zero for having lived with a romantic
16 partner for more than two years, that's been related to sex
17 offending or it is actually a protective factor when you've
18 lived with a romantic partner for two years, it shows that
19 you can establish relationships. He does not get a point
20 for index non-sexual violence. That means at the time of
21 his last sexual conviction he was also convicted of a
22 sexually -- or a non-sexual violent offense and he was not.
23 He was given a point for prior non-sexual violence because
24 he had a prior simple assault, gave him a point for that.
25 He got one point for prior sex offenses. So you look at the

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1 number of charges and the number of convictions. He had two
2 prior charges, one prior conviction, that corresponds to one
3 point. You can get three points on that, you can get a
4 zero, one, two or three on that item. On the next one he
5 gets a zero for prior sentencing dates. He gets a zero for
6 any convictions for a non-contact sex offense, so things
7 like peeping tom or indecent exposure, that's been related
8 to increased reoffending. So he does not have that sort of
9 history, he gets zero for that. He gets a one for an
10 unrelated victim. He gets a zero for a stranger victim.
11 And he gets a zero for any male victim. So that all adds up
12 to a two.

13 Q. And that puts him into the low to moderate category; is
14 that correct?

15 A. Yes. A score of two or three is in the low moderate
16 category.

17 Q. Just coincidentally, Dr. Gomez had him in a three as
18 well; is that correct?

19 A. That's correct.

20 Q. And that would still be considered in the low to
21 moderate category as well.

22 A. That's correct.

23 Q. Okay. Now, if a person engages in such offenses, goes
24 to prison and does his or her time, is it possible for them
25 to change as a result of getting older, decrease sexual

MARIE GALE

1 level, and possibly not be in the category of reoffending
2 again, or be in a high risk to reoffend?

3 A. Yes, definitely. Not every sex offender who goes to
4 prison -- is convicted of a sex offense goes to prison and
5 is released is high risk.

6 Q. As a matter of fact, the records would show that while
7 Mr. Campbell was in prison he didn't get any type of prison
8 referrals or any type of problems in prison; isn't that
9 correct?

10 A. Yes, that's correct.

11 Q. Is that important too?

12 A. It's a consideration. He didn't have any sexually
13 related offenses in prison and he didn't have any behavioral
14 problems in prison. It shows that to some degree he can
15 control his behavior on a day to day basis. But his
16 offenses were related to children so it wouldn't
17 necessarily compute that we would expect him to have sex
18 offenses in prison.

19 Q. And you've heard stuff before about "Hey, I found
20 religion and I'm not going to do this" before. That's not
21 the first time you've heard that before, right?

22 A. I hear that quite frequently.

23 Q. And sometimes you probably render an opinion that
24 that's not necessarily genuine; isn't that correct?

25 A. I don't know that I would necessarily use that in my

MARIE GALE

1 opinion as far as making a conclusion about it.

2 Q. And let me ask you this, and maybe this -- is that
3 something you factor in in doing a report? If somebody says
4 you know, "I found the Lord, I'm not going to do this
5 anymore," is that something you factor in? Because you've
6 heard it before.

7 A. To me I give it very little consideration. I consider
8 it as part of what they say has helped them change from the
9 person who committed the sex offense but I give it little
10 weight.

11 Q. Okay. But, I mean, you've heard that talk before and
12 you've rendered an opinion that a person may be a problem or
13 may be a high risk; isn't that true?

14 A. Absolutely.

15 Q. But in this situation he says that to you and he is
16 a -- in the low to moderate risk; isn't that correct?

17 A. That's correct.

18 Q. Now, you did talk to his sister.

19 A. Yes.

20 Q. And you had the same information or got the same
21 information from the sister about the allegation of kids
22 being around; is that correct? Did you get that information
23 from the sister?

24 A. She said that she had a grandson who visits sometimes
25 and that his -- well, he told me that his son has children

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1 he might be around.

2 Q. But he doesn't say anything about these children living
3 with the sister; is that correct?

4 A. Correct.

5 Q. If it was a situation of kids living with them, then
6 would that be of some concern in regards to Mr. Campbell?

7 A. It might, it would depend on the circumstances.

8 Q. But it would be very important to know if they're
9 living there versus just visiting when families is around;
10 isn't that correct?

11 A. Yes.

12 Q. Now, to make it clear, you actually talked to his
13 sister; is that correct?

14 A. That's correct.

15 Q. It wasn't somebody else in your office talked to the
16 sister.

17 A. No. I conduct my evaluations completely independently,
18 I don't have an assistant or anybody who helps.

19 Q. So in the gathering of that information it's you and
20 you alone. If there's a phone call to be made to somebody
21 Dr. Gale makes that phone call, not a secretary.

22 A. That's correct.

23 Q. Now, Doctor, this offense, or the convictions that Mr.
24 Campbell has, if he is released he will be on probation, is
25 that correct, for a certain period of time?

MARIE GALE

1 A. Yes.

2 Q. In addition he also has to register as a sex offender;
3 isn't that's correct?

4 A. That's correct.

5 Q. And in registering as a sex offender to what we know he
6 would have to report to the sheriff's office in the county
7 in which he resides periodically; isn't that correct?

8 A. That's correct.

9 Q. And his face is on the Internet; isn't that correct?

10 A. That's correct.

11 Q. So there are safeguards out there if he should be
12 released; isn't that correct?

13 A. Yes, sir.

14 Q. For the public at large; is that correct?

15 A. Yes.

16 Q. So it's not a situation of Mr. Campbell being released
17 and there's no checks and balances out there for him; isn't
18 that correct?

19 A. He has probation.

20 Q. And as a part of probation he's got to report, isn't
21 that's correct, from what you know of it? He's got to
22 report to an officer, you've got to go to some counseling.
23 You've got to do those things; isn't that correct?

24 A. Yes, sir.

25 Q. Even after an individual finishes that term on

MARIE GALE

1 probation he's still going to have to register in the county
2 which he resides; isn't that correct?

3 A. Yes. It's my understanding he would be subject to
4 lifetime registration?

5 Q. Okay. All right. And in some instances having an
6 ankle monitor; isn't that correct?

7 A. Yes. That could be part of his probation, he could be
8 subject to GPS monitoring.

9 Q. But we don't know that because he hasn't been released
10 yet; is that correct?

11 A. That's correct. I tried to call somebody, or I
12 actually spoke to somebody at the Lancaster County Probation
13 Department and they said that he was actually listed under
14 York County under their jurisdiction for probation. So I
15 was given a name of somebody to call there and I called
16 there and I was then told to call another office in Rock
17 Hill and I left a message for that person. But it was
18 confirmed that he is under probation but I did not get the
19 specifics of what the conditions will be.

20 Q. Okay. And after gathering up all of that stuff like
21 his probation situation and his criminal history, evaluating
22 him, talking to his sister, reading all of the reports, did
23 you have an opinion in regards to Mr. Campbell and whether
24 or not he is a high risk or low risk to reoffend?

25 A. Yes, I have an opinion.

MARIE GALE

1 Q. Ad what is that opinion?

2 A. Well, my opinion is that he is of a little low moderate
3 risk and that he is not high risk.

4 Q. And what is your opinion in regards to risk to reoffend
5 with a degree of medical certainty?

6 A. Psychological certainty?

7 Q. Psychological certainty, I'm sorry, Doctor. That's why
8 you've got the credentials and I don't. Go ahead.

9 A. Well, my opinion is that he does not meet the criteria.
10 Part of the criteria as a sexually violent predator is that
11 somebody has to be likely to reoffend, it's my opinion that
12 he's not likely, and that he's not part of the extremely
13 dangerous group of sex offenders that this law was meant
14 for. There are a number of sex offenders in the state who
15 are not in this program. I think there's about 12,000 sex
16 offenders in this state who are on the sex offender
17 registry, so there are a number of sex offenders who don't
18 qualify under this act and we can't detain everybody. And
19 the majority of people who are convicted of a sex offense
20 meet criteria for a mental abnormality. And so I don't
21 think if it has not been treated then that means that their
22 risk is such that they need to be in the SVP program. It
23 should be a very narrowly applied commitment.

24 Q. And as such, do you have within a reasonable degree of
25 psychological certainty that there is insufficient evidence

MARIE GALE

1 that his abnormality makes him likely to engage in acts of
2 sexual violence?

3 A. Yes.

4 Q. And that opinion is?

5 A. That there is insufficient evidence to believe there is
6 no abnormality that makes him likely to reengage in sexual
7 violence that I could find.

8 Q. And Doctor, your opinion doesn't mean that all of the
9 sudden that Kenneth Campbell is a saint, now does it?

10 A. No, I wouldn't call him a saint.

11 Q. That just means that he's somebody in your opinion that
12 does not need to have this long term treatment, is that
13 correct, confined treatment?

14 A. That's correct.

15 Q. He may be eligible for outpatient treatment; is that
16 correct?

17 A. That's correct.

18 Q. Such as things that they would have to do as a part of
19 being on probation.

20 A. Correct.

21 MR. BROOKS: All right, Doctor, no other questions.

22 Answer any questions of Ms. Wetherton.

23 THE COURT: Thank you, Mr. Brooks.

24 MS. WETHERTON: Thank you, Your Honor.

25 CROSS EXAMINATION

MARIE GALE

1 BY MS. WETHERTON:

2 Q. Dr. Gale. All right. So I agree that you are an
3 expert in forensic psychology. Are you board certified?

4 A. No, I am not.

5 Q. And just so we're clear, you diagnosed him as a
6 pedophile similar to Dr. Gomez.

7 A. That's correct.

8 Q. Would you agree it's a chronic condition?

9 A. Yes.

10 Q. Are you familiar with the association for the treatment
11 of sexual abusers?

12 A. Yes, I am.

13 Q. Are you a member?

14 A. No.

15 Q. Are you aware that there's a protocol created by them
16 for evaluating a male sex offender?

17 A. I am aware of their recommendations and some of their
18 guidelines, but I do not agree that there's a protocol.

19 Q. Okay. Were you here during Dr. Gomez's testimony?

20 A. Yes.

21 Q. Did you hear her testify that there was, in fact, a
22 protocol offered?

23 A. Yes.

24 Q. So you don't use that protocol?

25 A. I don't agree that there is a protocol.

MARIE GALE

1 Q. So what protocol do you use?

2 A. I do an interview. I use the Static 99. I look at a
3 list of dynamic risk factors that have been found through
4 metanalysis to be related to sexual recidivism and then I
5 carefully render my opinions.

6 Q. Now, what national organization recognizes that
7 protocol?

8 A. I don't know of any national organization that
9 recognizes this protocol.

10 Q. Did you create that protocol?

11 A. My protocol?

12 Q. Uh-huh.

13 A. Yes. This protocol has been recommended through books,
14 through research methods, through other, I guess,
15 professionals that I confer with. There are recommendations
16 in books that there's no -- I guess there's no body that is
17 over sexually violence predator evaluations. There is a
18 body that is over sexually violent predator civil commitment
19 programs, but there's no sexually violent predator
20 evaluation association.

21 Q. Okay. So is this protocol you use in a book somewhere?

22 A. Yes.

23 Q. What book is that?

24 A. It's in the evaluation for sexually violent predators.

25 Q. And so you don't follow this protocol that Dr. Gomez

MARIE GALE

1 used. Did you do any actuarial test or testing on his
2 cognitive functioning?

3 A. No.

4 Q. So you didn't conduct the college performance test?

5 A. That's not a measure of cognitive functioning per se,
6 that is a measure to diagnose attention deficit disorder.

7 Q. So is your response no?

8 A. No.

9 Q. So you didn't follow the protocol that Dr. Gomez used.
10 You didn't run any tests to see if he had any issues with
11 substance abuse.

12 A. That's correct.

13 Q. So you didn't conduct the Sassi.

14 A. That's correct.

15 Q. But you did perform a ten question assessment to
16 determine his risk to reoffend.

17 A. Yes.

18 Q. And that was the Static 99?

19 A. Static 99r, yes.

20 Q. And you give him a two?

21 A. Yes.

22 Q. What is the average score of a sex offender?

23 A. Two.

24 Q. Did you conduct any other tests to determine his risk
25 to reoffend?

MARIE GALE

1 A. I don't perform any other tests. There aren't good
2 tests to determine the risks in sexually violent predator
3 case. I did look at a list of risk factors that have been
4 found in a large metanalysis.

5 Q. Did you use the Abel Assessment for Sexual Interest?

6 A. No.

7 Q. Okay. Is there training that's involved in order to
8 properly assess the Abel Assessment? Do you have to attend
9 training?

10 A. I'm unsure about that. We don't use the Abel
11 Assessment at the department of mental health?

12 Q. So the answer to my question is you've never had any
13 training for the Abel Assessment.

14 A. I've not had any formal training, I've done extensive
15 reading about it.

16 Q. Did you use the PPG?

17 A. No.

18 Q. Doesn't the department of mental health have a PPG at
19 their facility?

20 A. Yes, we do.

21 Q. And you all through the department of mental health
22 have also sent people to Dr. Burke.

23 A. That's correct.

24 Q. You would agree with me that Dr. Burke is affiliated
25 with Dr. Gomez's practice at MUSC.

MARIE GALE

1 A. I'm not sure if he is or not.

2 Q. And isn't it true that experts in your field find that
3 a PPG is valuable for use in a thorough evaluation of
4 someone's sexual interest?

5 A. I think it's absolutely in dispute whether the PPG
6 should be used in sexually violent predator precommitment
7 evaluations.

8 Q. But you would agree with me that other experts would
9 find it as a valuable tool.

10 A. You could find an expert to say that it is. I think
11 you just had one that said it is so I guess I would have to
12 agree with that.

13 Q. And you have conducted annual review evaluations?

14 A. That's correct.

15 Q. And you have cited in prior annual reviews PPG results.

16 A. I have summarized PPG results but I've never used the
17 PPG.

18 Q. So you've summarized results. Did you ever provide a
19 disclaimer to the Court that you didn't find it reliable?

20 A. In what context?

21 Q. Well, in a report you cite PPG results, correct, doing
22 an annual review?

23 A. In annual reviews I have summarized PPG results that
24 were provided in previous evaluations. I have never asked
25 for a PPG to be conducted for an evaluation that I was

MARIE GALE

1 conducting.

2 Q. I understand. But also in your sources of information
3 you state that you have relied on PPG results during an
4 annual review evaluation in your reports.

5 A. It would be included in a source of information. I
6 don't know that it would state specifically that I relied on
7 it.

8 Q. But you would state -- there is sources of information
9 and you in your reports, correct, you provide a list of
10 things that you looked at, correct?

11 A. Yes.

12 Q. And one of them would be PPG results.

13 A. At times I have looked at a PPG result from a prior
14 evaluation that would be listed in the source of information
15 if it was something that I looked at.

16 Q. And if that's something that you looked at that was
17 during a precommitment evaluation, correct?

18 A. I have never used a PPG in a precommitment evaluation.

19 Q. I'm not saying you ordered it, I'm saying that you used
20 it as a source of information before in your annual reviews.

21 A. Are we talking annual reviews or precommitment?
22 Because I'm confused about --

23 Q. I'm asking if you've ever used the results of a PPG as
24 a source of information in any of your reports.

25 A. Yes.

MARIE GALE

1 Q. Thank you. And since you didn't follow that protocol
2 that Dr. Gomez used, you didn't run an assessment on a
3 psychopathy, did you?

4 A. No, I didn't.

5 Q. So you didn't administer the Hare Test.

6 A. No.

7 Q. And you also didn't do the PAI, did you?

8 A. That's correct.

9 Q. But you have conducted -- in precommitment evaluations
10 you have used PAI in the past.

11 A. I have never used the PAI in a precommitment
12 evaluation.

13 Q. During Jeffrey Alan Chapman's?

14 A. No. I have never used a PAI. I have never used a PAI.

15 Q. You've never ordered a PAI?

16 A. That's correct.

17 Q. Okay. And you have also contacted Marie Carswell
18 according to your testimony?

19 A. Yes.

20 Q. If you turn to page eight of your report Mr. Campbell
21 indicated to you that he plans to live with his sister,
22 Marie Carswell; is that correct?

23 A. Yes.

24 Q. And you've also indicated she has weekend visits with
25 her grandson that's ages five or six every other weekend; is

MARIE GALE

1 that correct?

2 A. Yes.

3 Q. And you also explained that his son has young children
4 that will visit; is that correct?

5 A. That's correct.

6 Q. And he said that his son has no problem with him being
7 around these children; is that correct?

8 A. That's what he told me, yes.

9 Q. And he indicated that his son wants him to spend time
10 with his grandchildren; is that correct?

11 A. That's correct.

12 Q. And he also said that his son related to him that the
13 children would jump him when he came home.

14 A. Yes, that's what he told me.

15 Q. And also you cited in your report that he's not had any
16 sex offender treatment.

17 A. That's correct.

18 Q. And based on your interview it appears when asked
19 directly he does not take any accountability as to his
20 sexual offending?

21 A. He does not take responsibility for his sex offenses, I
22 would agree.

23 Q. And then according to page eight of your report, the
24 first full paragraph, "He then further stated that he had
25 gotten the devil off of me," is that correct?

MARIE GALE

1 A. Yes.

2 Q. And then when you asked to further clarify the
3 statement he said that he meant messing around with all of
4 those kids.

5 A. He said messing around with all them kids.

6 Q. Okay. And also based on your evaluation didn't you
7 conclude that he does have meaningful risk factors?

8 A. Yes.

9 Q. And one is a disfunctional coping style?

10 A. Yes.

11 Q. And another one he had resistance to rules and
12 supervision.

13 A. Yes.

14 Q. Okay. And also didn't he tell you that he never went
15 to sex offender treatment because he was never required to?

16 A. He said he wasn't in the court ordered treatment so he
17 didn't go.

18 Q. But he will be on probation, right?

19 A. Yes.

20 Q. But you also state in this report that in the past he
21 has shown a resistance to rules and supervision.

22 A. Yes. He has shown a resistance for rules of
23 supervision because he offended while on bond or probation.

24 Q. And then he will be registered as a sex offender you
25 said on direct?

MARIE GALE

1 A. Yes.

2 Q. As far as registering as a sex offender alone, what
3 mental health treatment do they provide?

4 A. The registry does not provide any mental health
5 treatment..

6 Q. It's just a requirement for him to provide his address;
7 is that correct?

8 A. Yes, it's a notification.

9 Q. And for him to get sex offender treatment that would
10 have to be ordered by the probation agent, correct?

11 A. That's correct.

12 Q. Now, you also talked to him about his release plans, is
13 that correct, what he would do if he gets out?

14 A. Yes.

15 Q. And according to you he stated that to avoid
16 reoffending that he would just walk away and get it off his
17 mind?

18 A. He said he would walk away, yes.

19 Q. But he's also admitted to you previously to being
20 preoccupied with sex in the past.

21 A. All of this information is in different parts of the
22 report, so I just want to be clear. He said long ago he was
23 preoccupied with sex.

24 Q. Okay. And he also said he would depend on religion; is
25 that correct?

MARIE GALE

1 A. I think that was part of it, yes.

2 Q. Is there any data out there that shows that religion in
3 itself would help cure someone's pedophilia or --

4 A. I don't know that religion could cure pedophilia. It
5 can help people with a lot of problems that they have but I
6 would not call it a cure for pedophilia, no.

7 Q. Do you consider what he stated to you as a realistic
8 relapse prevention plan essentially since he has never had
9 sex offender treatment?

10 A. I don't think it's an ideal relapse prevention plan.
11 But he did say that he would walk away, he would not be
12 around children in that way.

13 Q. And based on the information in law enforcement reports
14 in the past he sexually offended children that were staying
15 at his home?

16 A. That's correct.

17 Q. Could the fact that he now has access to children
18 similar to before, could that put him at risk to reoffend?

19 A. Yes.

20 MS. WETHERTON: Thank you. Nothing further.

21 THE COURT: Redirect, Mr. Brooks?

22 MR. BROOKS: Yes, sir, Judge.

23 REDIRECT EXAMINATION

24 BY MR. BROOKS:

25 Q. The PPG, Dr. Gale, is that the thing where you are

MARIE GALE

1 watching videos, is that what that is?

2 A. A PPG is you put a gauge around the person's penis, and
3 then you actually have them listen to audio recordings,
4 typically it's audio recordings, at least the one that the
5 department of mental health uses is audio recordings. And
6 then there are some pictures after the audio recordings but
7 they're not nude or anything of that nature.

8 Q. Okay. Isn't there some questions about the reliability
9 of that?

10 A. Yes. There's a lot of questions about the reliability.

11 Q. And what kind of questions?

12 A. Well, people use different -- or people do the test in
13 different ways. So if I give somebody an IQ test I was
14 trained extensively in giving IQ tests and there are a very
15 explicit list of instructions on how to do that. I know
16 that if I give an IQ test or if one of my colleagues give an
17 IQ test we do it in a very standardized way, we both do it
18 the same so we can compare results. The PPG lacks that
19 standardization so you're not sure if somebody else gave the
20 PPG if they're giving it the same way that you are so you
21 don't know if you can compare results. There's -- when
22 you're looking at people who have pedophilia, sexual
23 attraction to prepubescent children, if you give them a PPG
24 sometimes the results will not be what you would expect
25 because they're not showing them nude pictures. When I

MARIE GALE

1 reviewed the PPG data or stimulus set that we use there are
2 no African-American children, it's all white children.

3 There's just not a -- there's a good chance that somebody
4 could fake that. There's just problems like that.

5 Q. And Dr. Gale, basically to sum it up is you really
6 can't rely on that; isn't that correct?

7 A. I don't believe that you can rely on it.

8 Q. And for a lot of the reasons that you just told the
9 jury.

10 A. There's a lot of variability in the results depending
11 on a lot of factors; IQ, the clarity of the picture, the
12 brightness of the pictures, things like that. So there's a
13 lot of outliers or potential for problems with the stimulus
14 sex.

15 Q. And just to be clear, I mean, you routinely do these
16 evaluations all of the time, don't you?

17 A. This is my full-time job.

18 Q. Okay. And that's what the department of mental health,
19 the agency designed to deal with this; isn't that correct?

20 A. The department of mental health was, I guess -- in the
21 law it says that somebody from the department of mental
22 health will do the court appointed evaluation, and then the
23 department of mental health also has jurisdiction, or they
24 run the sexually violent predator treatment program. So if
25 he goes to the program he will be committed to the

MARIE GALE

1 department of mental health.

2 Q. And that's for anybody that goes there, right?

3 A. That's correct.

4 Q. Okay. And you're rendering precommitment evaluations
5 as well as the post-commitment evaluations; isn't that
6 correct?

7 A. My job these days is all precommitment evaluations.

8 Q. Okay. And as such, you know, it depends on the person.
9 Sometimes you're evaluating them as a person that probably
10 needs to go in the program, and here we are and you've had
11 situations like this where your evaluation is that the
12 person doesn't need to go in the program; isn't that
13 correct?

14 A. That's correct.

15 Q. So, you know, you call it like you see it, right, Doc?

16 A. Yes, I would like to think so.

17 Q. All right. And again, the way you see in Kenneth
18 Campbell's situation is that he doesn't need to go into the
19 program; is that correct?

20 A. That is correct.

21 MR. BROOKS: Okay. Nothing further.

22 THE COURT: Recross?

23 RECROSS EXAMINATION

24 BY MS. WETHERTON:

25 Q. Mr. Brooks said that you do a lot of these

MARIE GALE

1 precommitment evaluations; is that correct?

2 A. That's correct.

3 Q. Have you ever gotten any of these ever wrong?

4 A. I don't know.

5 Q. Do you remember the case of Michael Thomas?

6 A. No.

7 Q. Okay.

8 MS. WETHERTON: Your Honor, permission to approach?

9 THE COURT: Yes, ma'am.

10 A. This was conducted, or completed, I guess, in August of
11 2012, so I don't know that I can remember the case
12 specifically.

13 Q. Well, that's fine. Can you turn to the last page?

14 A. Yes.

15 Q. Did you sign that report?

16 A. Yes.

17 Q. Okay. And what is the last sentence of the report?

18 A. "As such it is my opinion that Michael Thomas does not
19 meet criteria to be considered a sexually violent predator
20 as defined by the SVP Act."

21 Q. Okay.

22 MS. WETHERTON: Permission to approach, Your Honor?

23 THE COURT: Yes, ma'am.

24 Q. I'll let you see that, please. And for the record what
25 was the date of the report that you authored?

MARIE GALE

1 A. August 9th of 2012.

2 Q. Okay. And what is the date of that warrant?

3 A. March 15, 2014.

4 Q. Okay.

5 MR. BROOKS: Your Honor.

6 THE COURT: Yes, sir.

7 MR. BROOKS: Unless counsel has a conviction I would
8 object to the relevancy.

9 MS. WETHERTON: This goes to the reliability of her
10 reports. He very quickly reoffended after she authored that
11 report.

12 THE COURT: I would overrule the objection under State
13 versus Cheeseboro.

14 MS. WETHERTON: Thank you, Your Honor.

15 Q. And who is that warrant for?

16 A. Michael Darnell Thomas.

17 Q. Okay. And according to the allegations, isn't it
18 argued that the defendant had raped the individual, that's
19 why they got the warrant for him?

20 A. Yes.

21 Q. And doesn't the warrant also indicate that his DNA was
22 a direct hit on CODIS, it was a match?

23 A. It says the defendant was identified by his DNA through
24 CODIS, so yes.

25 Q. And I have also given you a news article; is that

MARIE GALE

1 correct?

2 MR. BROOKS: Your Honor.

3 THE COURT: Yes, sir.

4 MR. BROOKS: I object to a news article. We
5 specifically are talking about a warrant, obviously we
6 can't --

7 THE COURT: I would sustain that, I think it would be
8 hearsay.

9 Q. Okay. But what is the offense he has been charged with
10 that's on the warrant?

11 A. Criminal sexual conduct in the first degree.

12 Q. And again, the warrant was dated less than two years
13 since you issued that report.

14 A. Yes.

15 Q. Okay. And based on your evaluation you felt that he
16 did not meet the criteria as a sexually violent predator.

17 A. Yes, apparently.

18 Q. And based on the information you have another woman has
19 been raped; is that correct?

20 A. Excuse me?

21 Q. And based on the information you have another woman has
22 now been raped; is that correct?

23 MR. BROOKS: Objection, Your Honor. Calls for facts --
24 calls for a conclusion.

25 MS. WETHERTON: It's based on the information that's in

MARIE GALE

1 front of her.

2 MR. BROOKS: All we've got is a warrant that goes back
3 to the --

4 THE COURT: I sustain the objection.

5 MS. WETHERTON: All right. I have nothing further.

6 THE COURT: Thank you very much, Doctor, you may step
7 down.

8 MR. BROOKS: Judge, I would ask if Dr. Gale could be
9 excused or if she wants to hang around, it is up to her.

10 THE COURT: Well, I don't know if we're going to have
11 any reply or sir reply. If she doesn't object she may stay
12 with us. You may call your next witness.

13 MR. BROOKS: I would call Kenneth Campbell.

14 The witness, KENNETH CAMPBELL, was first duly
15 sworn and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q. Mr. Campbell.

19 A. Yes, sir.

20 Q. How are you today?

21 A. I'm all right.

22 Q. I know you might be a little nervous.

23 A. Uh-huh.

24 Q. So why don't you take a deep breath. And now -- don't
25 fall back.

KENNETH CAMPBELL

1 A. All right.

2 Q. I know you're a little nervous. Remember now, in
3 response to questions you need to speak up clearly because
4 this gentleman right here is the court reporter, he can't
5 take down a uh-huh's or nuh-uh's so you've got to speak
6 clearly. You understand that, Kenneth?

7 A. Yes, sir.

8 Q. Okay. Now Kenneth, I'm going to cut to the chase. We
9 have got these folks here on this jury, the State has said
10 that you are a risk to do this again. And what do you say
11 about that, Kenneth?

12 A. No, sir. I'm not at a risk to do it again. I'm not
13 planning on or -- I'm wanting to go outside and get my life
14 right, got my job waiting on me and I want to go out there
15 and get my life right with God. I learned a lot while I was
16 in prison.

17 Q. How long did you stay in prison, Kenneth?

18 A. Ten years.

19 Q. You didn't get in any trouble in prison, did you?

20 A. No, sir. I worked every day while I was in prison,
21 seven days a week.

22 Q. Now Kenneth, I'm going to ask you the million dollar
23 question. How can we be sure that you are not going to do
24 this again?

25 A. Well, I want a second chance to prove to everyone.

KENNETH CAMPBELL

1 Q. And what is your plans upon being released?

2 A. Going to work.

3 Q. What kind of work?

4 A. Automotive work in the machine shop with Mr. Everett
5 Auten.

6 Q. Is that the gentleman over there in the blue shirt?

7 A. Yes, sir.

8 Q. And he's seated in the courtroom; is that correct?

9 A. Yes, sir.

10 Q. Now, I know this is a little bit emotional for you.

11 Are you okay?

12 A. Yes, sir.

13 Q. You're sure now. To be safe let's put these tissues
14 right here in front of you. Now Kenneth, just to a give us
15 a little background information. How old are you now,
16 Kenneth?

17 A. 50 years old.

18 Q. And your sister and some family members are seated back
19 here; is that correct?

20 A. Yes, sir.

21 Q. And they've been seated here the whole time we're
22 trying this case.

23 A. Yes, sir.

24 Q. One of them is your son; is that correct?

25 A. Yes, sir.

KENNETH CAMPBELL

1 Q. And one of them is your sister.

2 A. Yes, sir.

3 Q. Is that the same sister you plan to live with?

4 A. Yes, sir.

5 Q. Do you care to explain what happened years ago that put
6 you in the situation that you are in?

7 A. Just made the wrong choice.

8 Q. Did you have an alcohol or drug problem back then?

9 A. I never drank but I always smoked marijuana.

10 Q. Now, obviously the last ten years you haven't done
11 that.

12 A. No, sir, don't intend to.

13 Q. And do you think your addiction to marijuana back there
14 had a role in some of these things?

15 A. Could have.

16 Q. Now Kenneth, are you sorry about these things that you
17 had back then?

18 A. Yes, sir.

19 Q. And you admit to the convictions of these; is that
20 correct?

21 A. Yes.

22 Q. Now, one of them is what they call an Alford plea where
23 you didn't necessarily admit to it. Was that one of the
24 times that you might have been under the influence of
25 marijuana and didn't necessarily remember everything about

KENNETH CAMPBELL

1 it?

2 A. Well, I didn't know what that was. My lawyer just
3 throwed it on me, told me this is what you've got to do and
4 it was over. He didn't explain to me what it was.

5 Q. But that was one of the times that you was probably
6 under the influence of marijuana?

7 A. Well, I hadn't smoked it in a good while back then
8 because I had my son back living with me.

9 Q. And you're sorry about those things back then; is that
10 correct?

11 A. Yes, sir.

12 Q. And do you feel strongly in telling this jury that
13 you're not going to go back to that life sometime?

14 A. No, sir. I'm not going back to that life-style. Like
15 this man right here --

16 THE COURT: No, sir. You can't refer to anybody on the
17 jury.

18 A. Being a chaplain and stuff like that, I understand
19 that.

20 Q. Is there anything else you want to tell this jury that
21 you feel is relevant and important in this situation right
22 here?

23 MS. WETHERTON: Your Honor, I would object. I think
24 that calls for a narrative.

25 THE COURT: I couldn't quite hear the last bit.

KENNETH CAMPBELL

1 MS. WETHERTON: I'm sorry, Your Honor. I object, I
2 think it calls for a narrative.

3 MR. BROOKS: Well, Judge, I think --

4 THE COURT: Ask him a specific question, Mr. Brooks.

5 MR. BROOKS: Well Judge, I think I can ask him is there
6 anything else he wants to tell the jury that we haven't
7 covered.

8 THE COURT: I hear those questions commonly in PCR
9 court obviously but for different reasons. But I think it
10 has to be more focused, more of a focus question than
11 anything else you wanted to say. That gives him the
12 opportunity -- he can make a closing argument if he wants
13 to, Mr. Brooks.

14 MR. BROOKS: I understand, Judge.

15 THE COURT: All right. Thank you, Mr. Brooks.

16 Q. Now, Mr. Campbell, you have heard about -- you told the
17 people that you planned to go live with your sister; is that
18 correct?

19 A. Yes, sir.

20 Q. And there's some children around; is that correct?

21 A. Yes, sir.

22 Q. And your son has children; is that correct?

23 A. Yes, sir.

24 Q. Can you understand people's concern about that?

25 A. Yes, sir.

KENNETH CAMPBELL

1 Q. And what can you tell us to insure that you won't put
2 those children in any danger?

3 A. Well, I ain't planning on bothering anybody. I just
4 want to go out, get my life straight, go to work, be with my
5 sister for a little while until I can get my money saved up
6 and get my own place. All I want to do is be left alone, go
7 to church and change my life and be reborn again. I want
8 the devil to stay off of me.

9 Q. As a matter of fact you do have some physical
10 infirmities now; isn't that correct? Do you have --

11 A. Yes, sir, I've got a hernia.

12 Q. Okay. And you've been trying to get that taken care
13 of; is that correct?

14 A. Yes, sir. If I get released I want to go get that
15 taken care of and I will be good as new. And I can give
16 y'all my word of honor, all of the kids -- you can put a
17 million kids in front of me right now, leave me in a room by
18 myself, I ain't going to bother either one of them. I
19 promise you, I give you my word. I would like to have a
20 second chance to prove to everyone that everybody is going
21 to be okay. There won't be no trouble, no kids won't be
22 harmed. I have got four grandkids. I'm glad to be a
23 grandpa, I want to get home to be with them.

24 MR. BROOKS: All right, Kenneth. I don't have any
25 other questions. Answer any questions of Ms. Wetherton.

KENNETH CAMPBELL

1 THE COURT: Thank you, Mr. Brooks.

2 MS. WETHERTON: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. WETHERTON:

5 Q. So, I just want to make sure that we get your story
6 accurate. So did you do all of this? Did you sexually
7 assault those little girls?

8 A. No, ma'am.

9 Q. So you didn't.

10 A. I didn't.

11 Q. So what are you sorry for?

12 A. Because -- I just don't know how to explain that, but I
13 know I didn't do it. But I'm just sorry that it happened
14 but I didn't do it.

15 Q. You're sorry what happened?

16 A. That they accused me of what they said I did but I
17 didn't do it.

18 Q. And you told the jury that you promised it would never
19 happen again.

20 A. Yes, ma'am.

21 Q. But it never happened the first time, correct?

22 A. Because when I went to court in 2003 I don't understand
23 the law stuff, the lawyer I had told me to say you're sorry
24 and I didn't understand what he was talking about until I
25 went down the road. And I got to thinking that he was

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1 talking to me about my situation and I turned around and
2 told them and they said, "You shouldn't have done that."

3 Q. Do you understand what 13 years in prison means?

4 A. Yes, that's a long time.

5 Q. And you agreed to that, didn't you?

6 A. Ma'am?

7 Q. You agreed to that, didn't you?

8 A. I didn't have no choice. Because like I said, he just
9 throw that affidavit of plea up to me and I didn't know what
10 it was about. He said, "Here, sign this," and I signed it
11 and I was on my way down the road.

12 Q. But you said the day you pled guilty you were in a
13 courtroom, correct?

14 A. Yes, ma'am.

15 Q. And you took an oath to tell the truth?

16 A. No, I didn't take no oath. I just stood up in front of
17 a judge --

18 Q. The courtroom didn't put you under oath, is that what
19 your testimony is today?

20 A. No, ma'am.

21 Q. During your guilty plea.

22 A. They put me right in front of the judge just like I'm
23 in front of this sir right here, and the judge just read
24 everything out and it was over in 15 minutes.

25 Q. So none of this ever happened, correct?

KENNETH CAMPBELL

1 A. No, ma'am.

2 Q. Okay. So the nineties when a four year old boy said
3 you sexually assaulted him, you're saying that was a lie.

4 A. Yes, ma'am.

5 Q. And we go further down the road there's a little girl
6 in York County.

7 A. Uh-huh.

8 Q. And she turns around and says you sexually assaulted
9 her. You're saying that little girl lied, too; is that
10 correct?

11 A. Yes, ma'am, because I didn't.

12 Q. And then there's another little girl over here in
13 Lancaster County saying you sexually assaulted her and she
14 made that up too.

15 A. She's always making stories up, ma'am.

16 Q. All three children made that story up.

17 A. Because my kids are right there with me all of the
18 time. And the other little girl in Rock Hill accused me of
19 doing what she said I did to her, my kids stayed the weekend
20 with me.

21 Q. Do you know in the police reports that your son told
22 the police officers that you asked him to lie for him?

23 A. I did not ask him to lie for me.

24 Q. So your son is lying when he told that to the police?

25 A. I don't think my son is going to lie.

KENNETH CAMPBELL

1 Q. So do you think you need sex offender treatment?

2 A. No, ma'am.

3 Q. And you were offered sex offender treatment in the
4 department of corrections; is that right?

5 A. No. They didn't give us anything like that.

6 Q. They didn't offer it to you?

7 A. No, ma'am.

8 MS. WETHERTON: Permission to approach, Your Honor.

9 THE COURT: Yes, ma'am.

10 Q. I'll show you this document.

11 A. Okay. I see what you're talking about. Yeah, I
12 remember that. That lady asked me about it and I told
13 her -- she said I was not under no court order. She said,
14 "If you want to volunteer sign the waiver." So I signed the
15 waiver and I told her, "This is what I want to do right
16 here," and she said, "Have a nice day," and that was it.

17 Q. You were, in fact, offered sex offender treatment.

18 A. She asked me said, "Do you want to do this?" And I
19 said, "I would love the opportunity," and she said, "You're
20 not under a court order, if you don't want to do this sign
21 the waiver." And I said, "Well ma'am, if I ain't under a
22 court order I will go ahead and sign a waiver."

23 Q. So you were offered sex offender treatment while at the
24 department of corrections.

25 A. Yes, ma'am. But she told me I was not court ordered.

KENNETH CAMPBELL

1 Q. And you agree since it was voluntary you didn't go.

2 A. No, ma'am.

3 Q. Now, is it true that you also told Dr. Gale that you
4 had gotten the devil off your back and that's why things
5 were different?

6 A. Yes.

7 Q. And you were no longer messing with those kids.

8 A. I'm not going to mess with any kids.

9 Q. But you were no longer messing with those kids in the
10 past. You didn't say that?

11 A. The way when I mess with kids there when I'm wrestling
12 with them, cutting up with them, playing hide and go seek.

13 Q. But would that be a devil on your back to just play
14 wrestle with children?

15 A. No, ma'am, we all wrestle.

16 Q. So when you told Dr. Gale that you wanted to get the
17 devil off your back because you were no longer messing with
18 those kids, what did you mean?

19 A. I just didn't want the devil on me no more because
20 nobody don't need him on you.

21 Q. Sure.

22 A. You need God on you.

23 Q. But when you told Dr. Gale that you were going to be no
24 longer messing with those kids, what did you mean?

25 A. What I mean is I wasn't going to touch them because I

KENNETH CAMPBELL

1 didn't want to be accused of anything else period.

2 Q. And you said that you have a family. You mean like
3 family members with you, is that correct, they're going to
4 help you?

5 A. Yes, ma'am.

6 Q. Where were they when this was going on back in 2003?

7 A. My three kids were at home with me.

8 Q. So they were all around when this was going on.

9 A. Yes, ma'am.

10 Q. And you were also gainfully employed when these
11 allegations came up as well.

12 A. Yes, ma'am. I worked at a Everett Auten at his machine
13 shop.

14 MS. WETHERTON: I have nothing further, Your Honor.

15 THE COURT: Redirect, Mr. Brooks?

16 MR. BROOKS: No, sir, Your Honor.

17 THE COURT: Thank you. Thank you very much,

18 Mr. Campbell, you may step down. All right, Mr. Brooks, you
19 may call your next witness.

20 MR. BROOKS: We call Everett Auten.

21 The witness, EVERETT AUTEN, was first duly
22 sworn and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BROOKS:

25 Q. How are you doing, sir?

EVERETT AUTEN

- 1 A. I am good, sir.
- 2 Q. Pronounce your last name for me.
- 3 A. Auten. Auten be here.
- 4 Q. Now, you heard what I told Kenneth about speaking up
5 for the court reporter.
- 6 A. Yes, sir.
- 7 Q. Okay. Now, you know Kenneth?
- 8 A. Yes, sir, about 25 years. He worked for me about half
9 that time.
- 10 Q. Now, you know of him having a job out there waiting for
11 him?
- 12 A. Absolutely, with my machine shop. I'm a silent partner
13 now. It was A and A Auto Machine and it is now McCraw
14 Machine Shop, same machine shop exactly. Tony bought it a
15 few years ago and he worked with us for years with Kenneth
16 and myself, and he purchased it.
- 17 Q. And he has got a place to live?
- 18 A. Absolutely, with Marie, his sister.
- 19 Q. To get back on his feet, right?
- 20 A. Yes, sir, that's been established for a year. And his
21 second choice is his mother in Fort Mill.
- 22 Q. And the plan was once he gets back on his feet to get
23 his own place; is that right?
- 24 A. That's exactly right.
- 25 Q. Once he gets back on the job and starts saving some

EVERETT AUTEN

1 money.

2 A. In fact, when he was incarcerated he was living with
3 his son, in fact, out there at Lake Wylie, yes.

4 Q. And Kenneth is ready to come back home.

5 A. Absolutely, sir. I believe it with all of my heart.

6 Q. Are you ready for him to come back?

7 A. Absolutely.

8 Q. Get to work?

9 A. Absolutely.

10 Q. A silent partner for this machine shop will make more
11 money with Kenneth?

12 A. Absolutely.

13 Q. All right.

14 MR. BROOKS: I don't have anything else.

15 A. Let me say this, sir, he was a model for me.

16 MS. WETHERTON: Objection.

17 THE COURT: Yes, sir, you just can't --

18 MR. BROOKS: You can't really get into all of that. No
19 other questions, Judge.

20 MS. WETHERTON: I have no cross examination.

21 THE COURT: Thank you. Thank very much, Mr. Auten, you
22 may step down.

23 MR. BROOKS: That is the defense's case.

24 THE COURT: All right. Any reply?

25 MS. WETHERTON: No, Your Honor.

EVERETT AUTEN

1 THE COURT: All right. Do you renew your motions?

2 MR. BROOKS: Yes, sir.

3 THE COURT: Would y'all step up here momentarily?

4 (Bench conference was held.)

5 THE COURT: All right. Mr. Foreman, ladies and
6 gentlemen of the jury, you've heard all of the testimony and
7 all of the evidence that's going to be presented by both the
8 State and the defense in this case. Momentarily I'm going
9 to allow you to take a break for about ten minutes and
10 discuss a timing issue. We can press on today. We have
11 closing arguments and instructions on the law by the Court,
12 and then the case will be submitted to you for your
13 deliberations. Tomorrow, however, I'm not available. In
14 other words, I don't rush justice through, I don't want you
15 to think that, but because of another court commitment I am
16 not available tomorrow. So if y'all want to discuss it and
17 y'all want to press on tonight that will be fine. If not,
18 you'll be back here Wednesday morning, and I'm fine either
19 way. I've talked with these attorneys and they're both fine
20 either way. Y'all talk and let us know.

21 (The jury left the courtroom.)

22 THE COURT: The jury wants to press on and they're
23 ready. Anything before we bring them in the from the State?

24 MS. WETHERTON: Nothing from the State, Your Honor.

25 THE COURT: And the defense?

EVERETT AUTEN

1 MR. BROOKS: Nothing from the defense, Your Honor.

2 (The jury returned to the courtroom.)

3 THE COURT: Mr. Foreman, ladies and gentlemen of the
4 jury panel, welcome back. Thank you very much for your work
5 ethic that you've shown the parties and the Court today.
6 We're now at the point of the trial of the closing arguments
7 by the attorneys. The procedure we followed in a trial such
8 as this is the attorney general will close first on behalf
9 of the State, the State being the party baring the burden of
10 proving its case beyond a reasonable doubt. After her
11 closing argument it will followed by closing arguments by
12 Mr. Brooks on behalf of his client, Mr. Campbell. Then the
13 party baring the burden of proof, the State, will come back
14 for a closing and reply, meaning new material that may have
15 been presented by Mr. Brooks in his closing. Again, after
16 the closing arguments I will then instruct you on the law
17 that you are to apply to the facts of this case, and then
18 the case will be submitted to you for your deliberations.
19 If you would please give the parties your complete and
20 undivided attention. And I would advise those in the
21 courtroom, I do not allow any movement in or out of the
22 courtroom while an attorney is addressing the jury. You can
23 certainly leave between the arguments, you can certainly
24 leave after the arguments before I begin charging the jury.
25 But it's the final opportunity the attorneys get to address

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1 the jury so please do not get up and leave or anything of
2 that nature while they are in their closing arguments. With
3 that being said, Madam Attorney General.

4 MS. WETHERTON: Thank you, Your Honor. May it please
5 the Court? Mr. Brooks? Mr. Campbell? Ladies and gentlemen
6 of the jury, on behalf of the Attorney General, Alan Wilson,
7 we will like to thank you for your time and attention to
8 this case. I always say I can't imagine when you guys all
9 get your jury summons in the mail for a civil case you think
10 you're going to have a car accident or a slip and fall in a
11 grocery store and we're here trying to figure out whether
12 someone is a sexually violent predator so I imagine it's not
13 quite what you had in mind. But this is a very important
14 case. This is a very short case but this is very important.
15 This is important to Mr. Campbell, this is very important to
16 our office, and it's ultimately going to be very important
17 to the Lancaster community. And I apologize also for having
18 notes, all I can tell you is doing trial work is nothing
19 like what you see on TV, I won't come up with anything
20 outstanding on my own. I'm very type A so I have some notes
21 that I'm going to refer to in my closing argument because I
22 want to make sure I don't forget anything that I feel is
23 important. So let's talk about what I said in my opening.
24 What did I have to prove? Well, first I had to prove he was
25 convicted of a sexually violent offense. This will go back

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1 with you, this is Exhibits 1 and 2, they will go back with
2 you in the jury room while you deliberate. These are
3 certified convictions of qualifying sexually violent acts.
4 And also the judge, he will also instruct you that both of
5 those crimes are considered sexually violent offenses under
6 the law. Next, I have to prove that he suffered from a
7 mental abnormality or personality disorder. You had
8 testimony from both the State and the expert brought by the
9 defense that he suffers from pedophilia. As stated during
10 the testimony pedophilia is considered a relevant mental
11 abnormality. Therefore, the crux of this case lies upon
12 whether he is likely to reoffend if he does not receive
13 treatment. I stated in my opening it was important to
14 listen to all of the evidence in this case. So let's deal
15 with, as Mr. Brooks put it, the elephant in the room or the
16 400-pound gorilla. You heard two experts, both were
17 qualified as experts but one was brought by the defense and
18 one was brought by the State. Both experts, as I said,
19 diagnosed him as a pedophile and both explained to you what
20 that technically means. Now, you heard the State's expert,
21 Dr. Gomez, say that after her review Mr. Campbell is likely
22 to reoffend, Dr. Gale said that he is not. One of the
23 things that a juror must decide is how to consider and weigh
24 the evidence that has been brought before you. So the first
25 question you have to ask yourself, what was different about

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1 the evaluations? Dr. Gomez looked at the entirety of the
2 case, what he said, whether he had received sex offender
3 treatment and conducted numerous amounts of tests, and you
4 heard what they determined. And it appeared that Dr. Gale
5 based her decisions strictly on the Static 99. Although the
6 Static, as we stated, is a widely accepted tool it should
7 never be used as a stand-alone tool for determining risk of
8 recidivism. The makers of the actuarial assessment even
9 state that. There is no other intensive program that will
10 require him to have sex offender treatment, and we all know
11 that when he could have taken it in prison voluntarily he
12 didn't. So after doing a thorough evaluation, what did Dr.
13 Gomez say? That Mr. Campbell does not have realistic
14 prevention tactics. He does not have insight as to why he
15 offended. He doesn't take any accountability as to his sex
16 offending and he has no sex offender treatment. Based on
17 that information it is even more important that he is
18 required to attend sex offender treatment so he can finally
19 gain an understanding of his pedophilia and he doesn't want
20 to victimize another child. And I also wanted to share with
21 you, Dr. Gomez talked about this during direct examination,
22 there's a case -- and I will read it to you -- it's in the
23 matter of the care and treatment of Anthony Valentine, and
24 the citation is 659 Southeastern Second, 227. Now, he's
25 been ordered to probation and he could have sex offender

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1 treatment if his probation officer orders it. But based on
2 this case the court of appeals has found by creating the
3 Sexually Violent Predator Act our legislature has made it
4 clear that the safeguards probation offers to protect
5 society are inadequate for sexually violent predators, and
6 that was stated by our court of appeals. In addition you
7 also had the benefit of hearing from him, Mr. Campbell.
8 And if you listened to that evidence, what did you hear?
9 It's very obvious he takes no accountability directly for
10 his offenses. However, if you pay close attention he says
11 things that indicate that he might have committed those
12 crimes. You know, it's "I'm not going to do it again."
13 Well, if you never did anything in the first place you never
14 would do something again. But if you ask him directly he
15 says no, and then it's like, "I have to get the devil off my
16 back," he told Dr. Gale that, his own doctor that he
17 brought, "Because I'm not going to mess with those kids
18 anymore." And actually he doesn't even think that he has a
19 problem. So in conclusion at the end of the day the
20 ultimate question you have to ask yourself is despite the
21 fact that another doctor came to the conclusion that
22 Mr. Campbell should not be committed, as a juror and a
23 member of this community, are you really satisfied that a
24 pedophile should be released out into this community when
25 he's never had any sexually offender treatment, doesn't even

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1 think he has a problem, is going to live in a house with a
2 family that I submit to you that enables him and gives him
3 access to children just like he did before? Because you
4 know what, ladies and gentlemen? If he gets out and if
5 Mr. Campbell is wrong -- and he's been wrong before, and in
6 fact, I submit his own expert has been wrong before -- and
7 Dr. Gomez is right, he's going to get out and he's going to
8 hurt another kid. With that said, I believe that I've met
9 my burden of proof and I have left you firmly convinced.
10 And I want to explain -- the Judge is going to instruct you
11 on the law, please pay attention to what my actual burden of
12 proof is. It is leaving you firmly convinced, it is not a
13 touchdown, it is not a slam dunk, it is not a hole in one or
14 some other sports analogy that frankly I don't even follow,
15 it's what the Judge tells you it is. And I believe that I
16 have left you firmly convinced that Mr. Campbell is, in
17 fact, a sexually violent predator.

18 THE COURT: Thank you. Thank you very much, Madam
19 Attorney General. Mr. Brooks?

20 MR. BROOKS: Ladies and gentlemen, Ms. Wetherton made a
21 very eloquent argument on behalf of the attorney general's
22 office, the top attorney in the State of South Carolina. I
23 have the luxury, honor and privilege of representing one
24 man, Kenneth Campbell. And Ms. Wetherton came up and talked
25 to you about the statute, she even cited a case from the

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1 court of appeals. And again, I want to get down to being as
2 simplistic as possible. What this is about, as I talked to
3 you about in the beginning, is we're talking about fear.
4 What the State wants to do is rely on your fear that Mr.
5 Campbell is a boggy man coming to get kids, whether it be
6 your kids and other kids. That's basically what they're
7 relying on. Fear. Fear of the unknown. Fear of something
8 happening that has yet to happen. Fear of a given
9 situation. Fear begets anger and anger causes us to do
10 things that we normally don't do and normally should not do.
11 Here is a man who has gone to prison, done his time, paid
12 his debt to society and it's time to move on. He has had no
13 prison referrals, both doctors say that. No other instances
14 of trouble, both doctors say that. It's time to move on.
15 Now, as I caution you and bring you to look and compare in
16 contrast between Dr. Gomez and Dr. Gale, Dr. Gomez said she
17 has done four of these and all four she says she testified
18 for the State that the person needs to go into the program.
19 Is it any wonder that she would come in and say the same
20 thing? You have got Dr. Gale who I have dealt with on a
21 number of occasions who has told you that she has been an
22 adversary on other occasions and is here today to advocate
23 for my client, so she has been on both sides of the fence.
24 Madam Attorney General would tell that you we brought
25 Dr. Gale here, baring in mind that Dr. Gale was the court

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1 appointed evaluator in Mr. Campbell's situation. She is a
2 person that works for the department of mental health that
3 deals with these situations. And she has come in and she
4 has testified to you that Mr. Campbell is low to moderate
5 risk and gave you a score of two. Now, what does all of
6 that mean in relation to Dr. Gomez? Well, Dr. Gomez says
7 he's a three. That is still in the low to moderate risk
8 category. So both doctors say that Mr. Campbell is low to
9 moderate risk. Yet they want to impress upon you the whole
10 idea to be fearful of something that may or may not happen
11 in the future, to have this crystal ball to say if you let
12 him out he is going to do this, this, that and the other,
13 and do we as a jury have the fear of having that on our
14 conscience? Because we've heard some things that sound very
15 repulsive and very repugnant, that's all they've got.
16 That's it. If you get through your inclination to be
17 fearful and if you look at it as a logically and trained as
18 a juror and follow the law -- let me say that one more
19 time -- if you look at it logically and follow the law, the
20 State has the burden of proving the case beyond a reasonable
21 doubt. Mr. Campbell does not have any obligation or burden
22 to prove anything in any shape or form. Yet we have brought
23 in Dr. Gale who was the first doctor that the court
24 appointed to evaluate him. And you heard her on the stand,
25 she has done countless evaluations, she has done countless

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1 of these cases. Her opinion means something. I emphasize
2 that to you to try to deal with the fear of the unknown. If
3 you take away that fear and you ask yourselves has the State
4 met its burden. I know Ms. Wetherton tried to poke phone at
5 my sports analogy but think about it. Have they gotten the
6 ball in the end zone? Have they taken the ball and gotten
7 it all of the way across the goal line? If you take the
8 fear that they want to use or get you to turn your back to
9 the illegal holding penalties that they may do and get the
10 ball all of the way down there and have irregards to the
11 rules of the sport, that's the fear, because we fear the
12 other team have prevailing in the outcome, that's all
13 they've got. But if you look through that fear of the smoke
14 screen of fear and look at it for what it is, did the State
15 prove their case beyond a reasonable doubt? As this Judge
16 is going to charge you on the law and you have taken an oath
17 that you will follow the law, I'm asking you, Kenneth is
18 asking you to do what you raised your hand in this courtroom
19 earlier today to do and that is to take your oath seriously
20 and follow the law. Follow the law and not be subjects and
21 fall prey to the fear that the State hopes to have you in.
22 You've got one doctor who has done four of these and she
23 says everybody that she has evaluated on these lines need
24 this treatment. It's no wonder that she would say Kenneth
25 needs to go, she would not say anything else. And you've

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1 got another doctor who has done countless of these
2 evaluations, too numerous to call, who has sided with the
3 State on many occasions and now comes in for the respondent,
4 and as I asked her, she calls it like she sees it. If she
5 sees it this way, she calls this way. If she sees it the
6 other way, she calls it the other way. She ain't no friend
7 of Charles Brooks, and as she told you before, she and I did
8 battle about three weeks ago down in Charleston and she was
9 advocating on behalf of the attorney general's office. So
10 that tells you that she has no question about calling it
11 like she sees it. So you've got two evaluators here, two
12 trained personnel. I submit to you that we've got one
13 person who has done a lot more of these than the other, that
14 we need to give credit where credit is due, that we need to
15 have -- credit experience, these are things that we are
16 asking you to look past the whole emotion of fear and follow
17 the law. And I know that's hard, that is the 800-pound
18 gorilla in the room. You've got a guy -- and she told you
19 he ain't no saint and we don't pretend to be a saint. But
20 what he has said is "I'm not doing this again. I have been
21 in prison too long." And it's time for Kenneth to have a
22 chance to be a productive member in this society. He
23 leaves, he's got probation. And what the State wants to do
24 is cite a case and say hey, these judges say probation
25 really ain't the highest safeguard. Well, you know what?

CLOSING ARGUMENTS

1 There ain't no guarantees on this planet except that one day
2 you gone die and I will too. And when you cut down to the
3 nitty gritty, what they want to do is just rely on the smoke
4 screen and cloud of fear. And I submit to you ladies and
5 gentlemen, you should not fall victim to that and have that
6 sway you and cause you to overlook your oath as jurors that
7 you take as hard as it may be to deal with that heart
8 palpitation that you've got, "Oh, I'm afraid, I'm afraid,"
9 but you took an oath to follow the law. That's all we ask,
10 follow the law, and Kenneth will show you he is ready to be
11 back into society. Give him that benefit of the doubt,
12 because it tells you, the Judge tells you to follow the law.
13 Thank you.

14 THE COURT: Thank you, Mr. Brooks. Madam Attorney
15 General?

16 MS. WETHERTON: Well, I have to be honest, Mr. Books is
17 probably one of my favorite attorneys to work with, but I've
18 got to be honest with you, I'm not sure which trial he was
19 watching. This case isn't about fear. This case is about a
20 very serious evaluation, very serious crimes and a very
21 thorough evaluation that was done by Dr. Gomez. It's true,
22 Dr. Gomez was sent four evaluations and she said yes on all
23 four of them. All I can tell you is that we do not send
24 cases to MUSC that are not very, very serious cases. It's
25 completely logical that she said yes on all four of these

CLOSING ARGUMENTS

1 cases. This is not based on fear. This is based on several
2 tests that Dr. Gomez did that she oversaw; interviews,
3 records, several things. This is not based on me trying to
4 create him to be the boggy man, I think Mr. Campbell does
5 that very well on his own based on what he's done. And as
6 far as Dr. Gomez putting him as a low to moderate risk,
7 that's absolutely not true, that is a misstatement. Dr.
8 Gomez puts him in the high risk and that's why she wants to
9 put him in the program. One test put him into the low to
10 moderate risk. And Dr. Gomez was plain that when you look
11 at it as a whole that cannot be the only one tool. However
12 that's the only one test that Dr. Gale did and that's the
13 reason why we sent it to MUSC. You don't have to be a
14 doctor in these cases, you don't, because one of the things
15 as jurors, you can completely use your common sense. So I
16 leave you with this: You have a person who on more than one
17 occasion who has sexually assaulted children. He takes no
18 accountability to what he's done and he hasn't had sex
19 offender treatment and he's refused it when it has been
20 offered. He's going to go live in a house where people are
21 going to allow him to be around children. You heard the
22 testimony. What do you think is going to happen?

23 THE COURT: Thank you. Thank you very much, Ms.
24 Wetherton. Mr. Foreman, ladies and gentlemen of the jury
25 panel, if you would please give me your complete and

JURY CHARGE

1 undivided attention. I am now going to instruct or charge
2 you on the law that applies to this case. The general way I
3 instruct a jury is I give the general law that would cover
4 all cases of this type and then I will cover the specific
5 statute, the sexually violent predator statute and give you
6 some definitions on that, and then finally I will cover the
7 form of the verdict. The petitioner, the State of South
8 Carolina, has brought this case under the Sexually Violent
9 Predator Act of South Carolina. The State seeks the civil
10 commitment of the respondent for long term control, care and
11 treatment in a secure facility. This is not a criminal
12 proceeding seeking incarceration, but rather a proceeding
13 seeking civil commitment. The State of South Carolina
14 alleges, or claims that the respondent, Kenneth Campbell, is
15 a sexually violent predator under our law. The respondent,
16 Mr. Campbell, denies that he is a sexually violent predator
17 and the burden of proof is therefore on the State to prove
18 by evidence sufficient to satisfy you, the jury, beyond a
19 reasonable doubt that the respondent is a sexually violent
20 predator. If the State is unable to meet that burden as to
21 one or more of the elements of this claim, the respondent is
22 entitled to a finding that he is not a sexually violent
23 predator. In most civil cases the petitioner, the party
24 bearing the burden of proof, only has the burden of proving
25 that a fact is more likely true than not true, such as by

JURY CHARGE

1 the greater weight or preponderance of the evidence.
2 However, in this type of civil proceeding the State's burden
3 of proof must be more powerful than that, it must be proof
4 beyond a reasonable doubt. I will give you further
5 instructions about what is proof beyond a reasonable doubt
6 momentarily. Trial jury. As the trial jury under our
7 constitution and laws of South Carolina you are the sole
8 finders of the facts in this case. I may not intimate to
9 you in any way what I may think about the claims or facts in
10 this case. You are also the judges of the credibility or
11 the believability of the witnesses who have testified in
12 this case. In passing upon the credibility you may take
13 into consideration many things against the backdrop of your
14 individual and collective common sense and good judgment,
15 but you can ask questions such as what was the manner, the
16 demeanor, the appearance of the witness who testified? Was
17 he or she straight forward? I guess she. Was she hesitant
18 in answering questions? How did the witness come to know
19 the facts that she testified to or what was her ability to
20 know these facts? Is there some reason a witness would want
21 to give testimony which would help or hurt one side or the
22 other? In other words, was the witness bias or prejudice
23 towards one side or the other in any way or any manner? Was
24 the testimony of a witness strengthened or weakened by other
25 testimony or evidence? You, the jury, may believe as much

JURY CHARGE

1 or as little of each witness' testimony as you think is
2 proper. You may believe the testimony of a single witness
3 against that of the other witness or the just the opposite.
4 You determine the credibility, you determine the
5 believability. The fact that the testimony is not
6 controverted does not mean that you must accept it as true
7 and undisputed, you must gauge the credibility of the
8 witnesses who determine their believability or truth of the
9 facts offered through their testimony. Keep in mind that
10 throughout this process you have but one objective, to seek
11 the truth regardless of the source from which it comes.
12 Direct and circumstantial evidence. There are two types of
13 evidence which are generally presented during a trial,
14 direct evidence and circumstantial evidence. Direct
15 evidence is the testimony of a person who claims to have
16 actual knowledge of a fact such as an eye witness. It is
17 evidence which immediately establishes the main fact to be
18 proved. Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of a fact.
20 It is evidence which immediately establishes collateral
21 facts from which the main fact may be inferred.
22 Circumstantial evidence is based on inference and not on
23 personal knowledge or observation. The law, our law, makes
24 absolutely no distinction between the weight or the value to
25 be given to either direct or circumstantial evidence, nor is

JURY CHARGE

1 there a greater degree of certainty required of
2 circumstantial evidence than of direct evidence. Expert
3 witnesses. And you heard my say this twice during the
4 course of the trial, but you've heard the testimony of a
5 witness or witnesses who claim to have special knowledge,
6 skill, experience, training or education in a particular
7 field and who has given her, plural her, their opinions as
8 an expert as to matters in which she was skilled in
9 determining the weight to be given to such an opinion. You
10 should consider the qualifications and credibility of the
11 expert witnesses and the reasons given for their opinions.
12 You are not bound by such opinions. You give them the
13 weight, if any, you think they deserve which you deem them
14 entitled to. The value and affect of an expert's testimony
15 is a matter to be solely estimated by you, the jury. No
16 opinion of an expert has to be accepted in and of itself,
17 its truthful or reliable, but must be weighed by you to
18 convince your judgment beyond a reasonable doubt and with
19 the same force and affect as any other fact proved in this
20 case before you can rely upon it. You must consider expert
21 testimony in the same manner as you do any other testimony
22 and give it such weight as you believe it to be entitled to
23 when considered along with all of the other evidence in the
24 case. Such testimony is given for the purpose of helping
25 you and not for the purpose of controlling your judgment.

JURY CHARGE

1 The Court is the instructor of the law and the same law and
2 same constitution that makes you the finders of the facts
3 and the evidence as I have discussed with you makes me the
4 as the judge the sole and only instructor in the law. You
5 must accept and apply the law which I now charge you as you
6 found. If you think you already have an idea of what the
7 law is or what the law should be and it does not agree with
8 what I now tell you the law is, you must set aside your idea
9 and follow the law exactly as I tell you it is, because you
10 are sworn on your oath to make your decision and to reach
11 your verdict based on the facts as you find them to be and
12 the law as I tell you the law is. Reasonable doubt. What
13 is a reasonable doubt in the law? A reasonable doubt is the
14 kind of doubt that would cause a reasonable person to
15 hesitate to act. Proof beyond a reasonable doubt is proof
16 that leaves you firmly convinced. Now, there are very few
17 things in this world that we know with absolute certainty
18 and the law does not require proof that overcomes every
19 possibly doubt. What is required is if based upon your
20 consideration of the evidence you are firmly convinced that
21 the respondent is a sexually violent predator, then you must
22 return a verdict for the State. If on the other hand you
23 think there is a real possibility that he is not a sexually
24 violent predator you must give him the benefit of the doubt,
25 of a reasonable doubt and find a verdict for the respondent.

JURY CHARGE

1 Reasonable doubt may arise from the evidence that is in the
2 case or from the lack or absence of evidence in the case.
3 It is up to you, the jury, ladies and gentlemen, to
4 determine whether or not a reasonable doubt exists in this
5 case. That is the general law in a case like this. Now I'm
6 going to cover specifically the statute sexually violent
7 predator. The elements which the State must prove beyond a
8 reasonable doubt are one, that the respondent has been
9 convicted of a sexually violent offense. I charge you that
10 criminal sexual conduct with a minor under 11 and lewd act
11 on a child under 16 are sexually violent offenses in South
12 Carolina. Two, that respondent suffers from a mental
13 abnormality or personality that makes him likely to engage
14 in acts of sexual violence if not confined in a secure
15 facility for long term control, care and treatment.
16 Inherent in these two elements is that the State must prove
17 the requirements that respondent's mental abnormality or
18 personality disorder cause him serious difficulty in
19 controlling his behavior. In other words, the State must
20 prove beyond a reasonable doubt that the individual it seeks
21 to civilly commit suffers from a mental illness which he
22 cannot sufficiently control without the structure and care
23 provided by a mental health facility rendering him otherwise
24 likely to commit a dangerous act of sexual violence. In
25 order for you to better understand these elements of the

JURY CHARGE

1 State's cause of action, I am going to define for you some
2 of the terms that I have just used, they are defined in our
3 statute. Mental abnormality means a mental condition
4 affecting a person's emotional or volitional capacity that
5 predisposes that person to commit sexually violent offenses.
6 This mental abnormality or personality disorder must cause
7 the respondent serious difficulty in controlling his
8 behavior. Number two, the term likely to engage in acts of
9 sexually violence means the person's propensity to commit
10 acts of sexual violence is of such a degree as to pose a
11 menace to the health and safety of others so that he is
12 dangerous to others. Again, I remind you the burden of
13 proof is on the State to prove to your satisfaction beyond a
14 reasonable doubt that the respondent has been convicted of a
15 sexually violent offense as I have instructed you, and also
16 suffers from a mental abnormality or personality disorder
17 that makes the respondent likely to engage in acts of sexual
18 violence if not confined in a secure facility for long term
19 control, care, and treatment. If the State carries its
20 burden of proof and convinces you beyond a reasonable doubt
21 as to each of these two elements of this cause of action the
22 State is entitled to a finding that respondent is a sexually
23 violent predator. If the State does not meet its burden of
24 proof as to one or both of these elements, respondent is
25 entitled to a finding that he is not a sexually violent

JURY CHARGE

1 predator. Ladies and gentlemen, I am now drawing near the
2 end of my charge. I want you to clearly understand that you
3 are not partisans or advocates for the State or for the
4 respondent. You do not serve as jurors to reward your
5 friends or punish your enemies. In this regard you have
6 been selected by both the State and the respondent to be
7 fair and impartial jurors. It is your duty by your joint
8 deliberations to determine again the truth in this case
9 giving to the respondent the benefit of every reasonable
10 doubt on each and every issue, then to the facts which you
11 determine them to be true, you should take those facts,
12 apply them to the law which I have just given you and thus
13 arrive at that verdict which speaks the truth in this case.
14 In fact, the word verdict has a Latin derivative. Thus,
15 when you have accomplished these responsibilities you will
16 have satisfied your oath as jurors and you will have
17 discharged your duty to this Court. Ladies and gentlemen,
18 Mr. Foreman -- and Mr. Foreman, you will have this verdict
19 form in the jury room with you along with the exhibits, I
20 believe it was State's 1 and 2. Now, there are two possible
21 verdicts which you may find in this case, the significance
22 in which I state them has no significance whatsoever, one
23 must be stated first. This verdict form has the caption of
24 the case and it says, "Has the petitioner, the State of
25 South Carolina, proven beyond a reasonable doubt the Kenneth

JURY CHARGE

1 Campbell is a sexually violent predator under the South
2 Carolina Sexually Violent Predator Act? We, the jury,
3 unanimously answer the question as follows," and there's a
4 line and it says yes, Kenneth Campbell is a sexually violent
5 predator, and then there's a line to the left that says no,
6 Kenneth Campbell is not a sexually violent predator. You
7 determine the facts and once you determine the facts, if you
8 find that the State has met its burden of proving this case
9 beyond a reasonable doubt and that is a unanimous verdict of
10 the jury, I would ask you to please check on the line next
11 to that line and circle both your checkmark and all of those
12 words and sign and date it as the presiding juror. If after
13 your determination of the facts in the case you decide that
14 there is a reasonable doubt, that the State has not met its
15 burden of proving its case beyond a reasonable doubt, I
16 would ask you to check to the left of the word, no, Kenneth
17 Campbell is not a sexually violent predator, circle both
18 your checkmark and those words and you will sign as the
19 presiding juror and date it today's date. As I have stated
20 several times, all 12 of you must agree on the verdict, your
21 verdict must be unanimous. Your verdict cannot be based on
22 sympathy, passion, prejudice, emotion or any other
23 consideration not in evidence in this case. Once y'all have
24 agreed on the verdict and you have signed and dated it if
25 you would please, Mr. Foreman, knock on the jury room door,

JURY CHARGE

1 inform the bailiff that you have reached a verdict, at that
2 time we will receive you back into the courtroom. I'm going
3 to ask you, if you have any questions during the course of
4 your deliberations, Mr. Foreman, just write a note for me,
5 I'm not leaving, I will be right here. The law requires
6 that I meet with the attorneys one final time outside of
7 your presence before submitting the case to you in case I
8 have failed to cover something or anything of that nature.
9 If I have not what will happen is -- everybody looks great,
10 what will happen is our alternate will come out, the verdict
11 form will come in, the documents will also come in, you will
12 be informed by the clerk to begin your deliberations. All
13 right. Thank you very much for your attention you have
14 shown the parties and the Court, you may now go with your
15 bailiff.

16 (The jury left the courtroom.)

17 THE COURT: Objections, Mr. Brooks, or additions?

18 MR. BROOKS: No, sir.

19 THE COURT: Madam Attorney General?

20 MS. WETHERTON: No, your Honor.

21 THE COURT: If y'all would check the exhibits and check
22 the verdict form.

23 (The jury began deliberations.)

24 THE COURT: I understand that the jury has a verdict.

25 I would remind those in the courtroom it can be a very

JURY VERDICT

1 emotional time, I have no idea what the verdict is but it
2 can be very emotional. I do not allow a show of emotions in
3 the courtroom, so if you feel like you cannot control your
4 emotions good or bad I would ask you to step out now. And
5 if you prefer to stay I welcome you to stay, I believe in
6 open courtrooms in South Carolina. But please keep that in
7 mind. I consider it contempt of court, the jury has a hard
8 enough job as it is. All right. Bring us our jury please.

9 (The jury returned with a verdict.)

10 THE COURT: Mr. Foreman, have you reached a verdict.

11 THE JUROR: Yes, sir.

12 THE COURT: All right. If you would hand it up to the
13 clerk, please. It appears that the verdict is in proper
14 form and signed today's date. Mr. Clerk, would you publish
15 the verdict?

16 THE CLERK: Case number 2012-CP-29-1549. In the matter
17 and care and treatment of Kenneth Campbell, respondent. We,
18 the jury, unanimously answer the question as follows -- I
19 didn't read the question, I apologize. Has the petitioner,
20 the State of South Carolina, proven beyond a reasonable
21 doubt that Kenneth Campbell is a sexually violent predator
22 under the South Carolina Sexually Violent Predator Act? We,
23 the jury, unanimously answer the question as follows: Yes,
24 Kenneth Campbell is a sexually violent predator. Signed
25 Robby Stepp, dated September 8, 2014.

JURY VERDICT

1 THE COURT: Thank you, Mr. Clerk. Anything further
2 from the jury from the respondent, Mr. Brooks?

3 MR. BROOKS: We would ask to poll the jury.

4 THE COURT: All right. Will you explain that
5 procedure? Would you explain that procedure to them?

6 THE CLERK: Yes. What I'm going to do, I am going to
7 ask you a question about your verdict and then you will
8 respond.

9 THE COURT: It's actually two questions, is this your
10 verdict, yes or no, and is it still your verdict, yes or no.
11 And if you would raise your hand when your name is called so
12 we can identify you, please. Thank you, Mr. Clerk.

13 THE CLERK: Mr. Foreman, Alfred Stepp, is this your
14 verdict and is this still your verdict?

15 THE JUROR: Yes and yes.

16 THE CLERK: James Starnes, is this your verdict and is
17 this still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Jerry Reeves, is this your verdict and is
20 this still your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Jeffrey Baker, is this your verdict and is
23 this still your verdict?

24 THE JUROR: Yes, it is.

25 THE CLERK: Cynthia Blanchette, is this your verdict

JURY VERDICT

1 and is this still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Shirley Mixon, is this your verdict and is
4 this still your verdict?

5 THE JUROR: Yes.

6 THE COURT: Ann Hurley, is this your verdict and is
7 this still your verdict?

8 THE JUROR: Yes, sir.

9 THE CLERK: Larry Bradley, is this your verdict and is
10 this still your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Maurice Cauthen, is this your verdict and
13 is this still your verdict?

14 THE JUROR: Yes, sir.

15 THE CLERK: Tammy Buchanan, is this your verdict and is
16 this still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Elizabeth Adams, is this your verdict and
19 is this still your verdict?

20 THE JUROR: Yes, sir.

21 THE CLERK: William Harris, is this your verdict and is
22 this still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Thank you.

25 THE COURT: All right. All jurors have been polled,

JURY VERDICT

1 Mr. Brooks. Anything further for the jury panel?

2 MR. BROOKS: Nothing more for the jury panel.

3 THE COURT: From the State?

4 MS. WETHERTON: Nothing from the State, Your Honor.

5 THE COURT: Thank you very much, Mr. Foreman and ladies
6 and gentlemen of the jury.

7 (The jury was dismissed.)

8 THE COURT: Motions, Mr. Brooks?

9 MR. BROOKS: Yes, sir, Judge. I want to put on the
10 record a motion to set aside the verdict. Judge, we have
11 outlined things in our motion at the close of the State's
12 case, we would basically reassert those same arguments that
13 we put forth in that motion.

14 THE COURT: Thank you, thank you very much. Madam
15 Attorney General?

16 MS. WETHERTON: A motion to set aside the verdict is a
17 very rare remedy in these types of cases. The entire jury
18 was polled, they all said that that was in fact their
19 verdict. Again, I would stand behind the arguments I made
20 in my closing argument as to why Mr. Campbell is a sexually
21 violent predator.

22 THE COURT: Yes, sir. I would respectfully deny the
23 motion, Mr. Brooks. And I would reaffirm all of my previous
24 trial rulings on both motions and evidentiary issues.

25 MR. BROOKS: Yes sir.

JURY VERDICT

1 MS. WETHERTON: Judge, I do have an order.

2 THE COURT: I understand. Has Mr. Brooks seen it? I
3 have singed the order of commitment. It is ordered that the
4 respondent be committed to the department of mental health
5 for long term control, care and treatment. He is to
6 continue to be detained at the Lexington County Detention --
7 excuse me, the Lancaster County Detention Center and then
8 transported to a secure facility of the South Carolina
9 Department of Mental Health, 4460 Broad River Road,
10 Columbia. The detention center is to transport respondent
11 on such date as it coordinates with the department of mental
12 health. Good luck to you, Mr. Campbell.

13 (End of trial proceedings.)

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158

CAROLINA

York

Jail

STATE

VS.

KENNETH REED CAMPBELL

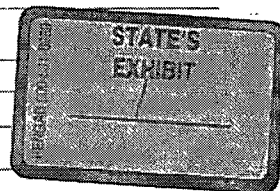
AKA: _____
 Race: W Sex: M Age: 38
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
Rock Hill, SC 29730
 DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2001-GS-46-3033

A/W#: G-390191
 Date of Offense: 01-01-2001
 S.C. Code §: 16-15-140
 CDR Code #: 2468



☐ CASE RESTORED
 SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was
 TO: Lewd Act Upon A Child Under The Age of Sixteen

☐ CONVICTED OF or ☒ PLEADS
No Contest

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
 Solicitor

[Signature]
 Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is given credit for time served pursuant to S.C. Code § 24-23-40 to be calculated and applied by the
 State Department of Corrections:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 - (Assessments 107.5 %) _____ \$ _____

§ 14-1-211(A)(1) (Surcharge) _____ \$ 100.00

§ 14-1-211(A)(2) (Surcharge) _____ \$ _____

§ 56-5-2995 (DUI Assessment) _____ \$ _____

3% to County (if paid in installments) _____ \$ _____

TOTAL _____ \$ 100.00

68:3 PM 22 MAR 2002

Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

PRESIDING JUDGE [Signature]Judge Code: 0101418Sentence Date: 4-24-03

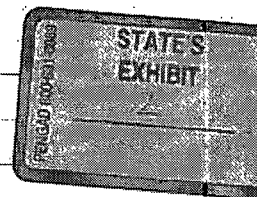
SCCA/217 (3/2003)

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER
STATE VS.
Kevinth Campbell
AKA:
Race: White Sex: Male Age: 38
DOB: [REDACTED] SS#: [REDACTED]
Address:
DL# [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS **159**
INDICTMENT/CASE#:

99 -GS- 29 - 1143
A/W#: D 678393
Date of Offense: 7-2-1999
S.C. Code §: 16-3-655(1)
CDR Code #: 0 13 18 15



☐ CASE RESTORED

SENTENCE
☒ PLEA ☐ TRIAL Alford v. NC

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: CRIMINAL SEXUAL CONDUCT WITH A MINOR UNDER 11 yrs of age - First Degree
in violation of § 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 0 13 18 15
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Thomas A. Hill Solicitor Kevinth Campbell Defendant James M. Martin Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 12 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of
probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 4 days/months jail time. CERTIFIED TO BE A TRUE COPY
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

\$14-1-206 (Assessments 100%) . . . \$

\$14-1-211(A)(1) (Surcharge) . . . \$

\$14-1-211(A)(2) (Surcharge) . . . \$

\$56-5-2995 (DUI Assessment) . . . \$

3% to County (if paid in installments) . . . \$

TOTAL . . . \$ 103.00

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: No offender contact
with victim or his family

PRESIDING JUDGE [Signature]

Judge Code: 1 1418

Sentence Date: 4/7/03

Court Reporter: M. Ke. Watkins

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) FILED
) OFFICE OF CLERK
) OF COURT
IN THE MATTER OF THE CARE) CASE NO. 2012-CP-29-1549
AND TREATMENT OF) PETITION PURSUANT TO THE
KENNETH CAMPBELL,) SEXUALLY VIOLENT PREDATOR ACT
RESPONDENT.)
) CLERK OF COURT
) LANCASTER, SC

COMES NOW, Petitioner, State of South Carolina, by and through the undersigned, and for its cause of action herein alleges and states as follows:

1. This action is filed pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10 *et seq.* (Supp. 2008).
2. The South Carolina Department of Corrections, having determined that Respondent, Kenneth Campbell, had been convicted of at least one Sexually Violent Offense, referred Respondent to the Multi-Disciplinary Team for assessment pursuant to S.C. Code Ann. Section 44-48-40 (Supp. 2008). **Respondent's anticipated release date from custody is on or about June 11, 2013.**
3. The Multidisciplinary Team on **September 20, 2012** determined after assessment that Respondent satisfied the definition of a Sexually Violent Predator as set forth in S.C. Code Ann. Section 44-48-30 (Supp. 2008), and referred Respondent to the Prosecutor's Review Committee for a determination pursuant to S.C. Code Ann. Section 44-48-60 (Supp. 2008) as to whether probable cause exists to believe Respondent is a Sexually Violent Predator. **(PETITIONER'S EXHIBIT A)**. The assessment of the Multidisciplinary Team is based on a review of existing records, which may include, but are not limited to the following: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions/adjudications; documentation, if any, of mental disorder(s); community and institutional adjustment; and risk factors.
4. The Prosecutor's Review Committee on **October 22, 2012** determined that there is probable cause to believe that Respondent is a Sexually Violent Predator as defined by statute. **(PETITIONER'S EXHIBIT B)**. The Prosecutor's Review Committee bases its determination on the records and reports provided by the Multidisciplinary Team including any information provided by the agency that prosecuted the qualifying offense.
5. The Petitioner now alleges that Respondent is a Sexually Violent Predator as defined by S.C. Code Ann. Section 44-48-30(1) (Supp. 2008), to wit:
 - (a) On or about July 2, 1999, Respondent sexually assaulted **Victim 1** (9-

year-old female). The victim was Respondent's niece by marriage. According to law enforcement documentation, the victim had been staying at Respondent's home while attending Bible School during the final week of June. The victim's mother came to pick up the victim; however, after finding out the program did not officially end until Saturday, July 3, the victim's mother and her aunt went out for the evening. The victim's mother set a timer on the living room television and told the victim to go to bed after the television turned off. Respondent remained at home to watch the victim and her brother as well as Respondent's three children. The victim was sleeping on a fold-out couch with her 3-year-old brother. Just before the television went off, Respondent came into the living room and sat down in a chair across from the couch on which the victim was sleeping. When the television went off, Respondent turned it back on. He then began speaking to the victim making several vulgar comments. Respondent stated he wished he could "do it" with his wife. Then he asked the victim if she would let him squirt her with some white stuff. Respondent then pulled out his penis and started to masturbate in front of the victim to the point of ejaculation with the ejaculate landing on the victim's stomach and thigh area. The victim also reported Respondent performed oral sex on her while digitally penetrating her vagina. A physical exam of the victim revealed dried semen on her stomach and thigh area. In a statement to law enforcement following his arrest, Respondent denied any sexual misconduct with the victim, and also stated she likely had semen on her from her mother's panties because she left them laying around the house and the family puts on whatever clothes they can find around the house. According to county Department of Social Services' records, Respondent was previously accused of fondling the victim when she was 4 or 5 years old. The victim later recanted her story and said Respondent was just wiping her after she used the bathroom. Respondent was charged with **Criminal Sexual Conduct with a Minor in the First Degree** in violation of South Carolina Code Section 16-3-655(1). On or about April 7, 2003, Respondent pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), and was sentenced to 20 years suspended on the service of 12 years and 3 years probation. (PETITIONER'S EXHIBIT C).

- (b) Subsequent to the sexually violent offense described in subparagraph 5(a) and while out on bond for that offense, on or about January 1, 2001, Respondent sexually assaulted **Victim 2** (7-year-old female). According to law enforcement documents, the victim's godmother was Respondent's boyfriend. While visiting her godmother for the New Year's holiday, the victim, the victim's godmother, Respondent, and Respondent's son spent New Year's Eve together shooting off fireworks. The victim slept on a love seat while Respondent slept on a big couch and Respondent's son slept on a palette in the kitchen. The

victim's godmother slept in her room. During the night, Respondent woke the victim and asked if she wanted to get in to bed with him. The victim told him no. He then proceeded to move the victim over and lay down on the love seat. He pulled down his shorts and asked if she wanted to touch his thing. She refused. He told her if she did not touch it he would blame it on her. He then tried to kiss her on the mouth. He asked her if she wanted to do it and he wanted her to pull her clothes down, get on top of him, and "hunch him." She refused. He then offered her \$4 for her to get on top of him. He then put his hand inside her panties and rubbed her vagina. Following the incident, Respondent told the victim he would kill her if she told anyone what happened. He also gave her \$3. When questioned by law enforcement, Respondent denied anything happened. Upon questioning by law enforcement, Respondent's son stated he did not know anything had happened between his father and the victim, but Respondent told him to "stand up for him." He also reported Respondent told him what to say to law enforcement concerning the sexually violent offense described in subparagraph 5(a). Respondent was charged with **Committing a Lewd Act Upon a Child under the Age of Sixteen** in violation of South Carolina Code Section 16-15-140 and **Assault with Intent to Commit Criminal Sexual Conduct with a Minor in the First Degree** in violation of South Carolina Code Section 16-3-656. On or about April 24, 2003, Respondent pled no contest to Lewd Act Upon a Child Under the Age of Sixteen and was sentenced to 12 years to run concurrently the sentence he received on April 7, 2003. (PETITIONER'S EXHIBIT D).

- (c) Prior to the events described in subparagraphs 5(a) and 5(b), on or about March 20, 1993, Respondent allegedly sexually assaulted **Victim 3** (4-year-old male). The alleged victim was the Respondent's nephew by marriage. According to law enforcement documentation, Respondent allegedly held the boy upside down while Respondent was naked and told him to put Respondent's penis in his mouth. Respondent also allegedly got on top of the minor and tried to take of the boy's underwear. The boy later recanted his story. (PETITIONER'S EXHIBIT E).
- (d) During Respondent's incarceration at the South Carolina Department of Corrections, Respondent has had no recorded disciplinary infractions. (PETITIONER'S EXHIBIT F).
- (e) Sufficient evidence exists or will exist to determine that Respondent suffers from a mental abnormality or personality disorder which makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, and that Respondent has serious difficulty in controlling his behavior or sexual

desire impulses.

(f) In support of the State's allegations that Respondent has a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, the State, in addition to any other evidence which Petitioner may present to the Court hereafter, submits the following:

i. According to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, published by the American Psychiatric Association, the diagnostic criteria for **Pedophilia** listed in Section 302.2 are:

A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).

B. The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.

C. The person is at least age 16 years and at least 5 years older than the child or children in Criterion A.

A. (PETITIONER'S EXHIBIT G).

ii. According to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, published by the American Psychiatric Association, the diagnostic criteria for **Paraphilia**:

A. Recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving (1) the suffering or humiliation of oneself or one's partner, or non-consenting person, (2) over a period of at least 6 months. (PETITIONER'S EXHIBIT H).

iii. "[P]revious instances of violent behavior are an important indicator of future violent tendencies." *Kansas v. Hendricks*, 521 U.S. 346, 358, 117 S.Ct. 2072, 2080 (1997). Respondent's instances of violent and non-violent behavior are:

- A. Respondent's 2003 conviction for Criminal Sexual Conduct with a Minor in the First Degree as set forth above. **(PETITIONER'S EXHIBIT C, *supra*).**
 - B. Respondent's 2003 conviction for Lewd Act on a Child under 16 and charge of Assault with Intent to Commit Criminal Sexual Conduct with a Minor in the First Degree as set forth above. **(PETITIONER'S EXHIBIT D, *supra*).**
 - C. The 1993 allegations against Respondent. **(PETITIONER'S EXHIBIT E, *supra*).**
- iv. The facts of Respondent's offenses indicate the existence of a mental abnormality in that they involve recurrent sexual urges or behaviors involving an underage child or non-consenting women occurring over a period of at least six months.
- v. **Known risk factors** increasing Respondent's likelihood to re-offend include: 1) Not related to victim; 2) Prior non-sexual convictions; 3) Prior sexual offenses; 4) Force or threat of force used; 5) Multiple acts on a single victim within a single contact event; 6) More than one victim; 7) Victim age 11 or younger; and 8) Offender history of use of weapon or threat of death.
- vi. Upon information and belief, Respondent has not completed sex offender treatment while incarcerated in the South Carolina Department of Corrections. **(PETITIONER'S EXHIBIT I).**
- vii. Attached also is Respondent's NCIC Report. **(PETITIONER'S EXHIBIT J).**

WHEREFORE, Petitioner requests that based on the above information the Court find there is probable cause to believe Respondent is a Sexually Violent Predator and Order:

1. Respondent be taken into custody and confined in a secure facility, if he has not already been so confined;
2. Respondent be notified by the Court of the opportunity to appear in person at a hearing to contest probable cause as to whether he is a Sexually Violent Predator;

3. A hearing to contest probable cause be held within 72 hours after Respondent is taken into custody, if he is not already in custody;
4. Counsel be appointed for Respondent, if necessary;
5. If probable cause is found at that hearing, Respondent remain in custody and be transferred to an appropriate facility for an evaluation as to whether Respondent is a Sexually Violent Predator;
6. The Court approve a qualified expert for such an evaluation, if probable cause is found;
7. If probable cause is found, a trial be held on all issues, and if Respondent is found to be a Sexually Violent Predator, that he be committed to the custody of the South Carolina Department of Mental Health for control, care, and treatment until such time as Respondent's mental abnormality or personality disorder has so changed that Respondent is safe to be at large and has been released pursuant to the requirements of S.C. Code Ann. Section 44-48-10 *et seq.* (Supp. 2008), and
8. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

LLOYD V. FLORES, JR.
Assistant Attorney General

By: 
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lflores@scag.gov

October 29, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-29-1549

IN THE MATTER OF THE CARE)
AND TREATMENT OF)
KENNETH CAMPBELL,)
RESPONDENT.)

VERDICT FORM

Has the Petitioner, the State of South Carolina proven beyond a reasonable doubt that Kenneth Campbell is a sexually violent predator under the South Carolina Sexually Violent Predator Act?

We, the jury, unanimously answer the question as follows:

☒ YES, Kenneth Campbell is a Sexually Violent Predator.

☐ NO, Kenneth Campbell is not a Sexually Violent Predator.

Rabbin Steys
Foreperson

September 8, 2014
Lancaster, South Carolina

2014 SEP -9 AM 9:09
CLERK OF COURT
LANCASTER, SC

9.8.14 *[Signature]*
LANCASTER COUNTY
LANCASTER, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	
	)	
IN THE MATTER OF THE CARE	)	CASE NO. 2012-CP-29-1549
AND TREATMENT OF	)	
KENNETH CAMPBELL,	)	ORDER OF COMMITMENT
RESPONDENT.	)	
_____	)	

[Signature] The trial of this case was held in the County of Lancaster in the Court of Common Pleas the week of September 8, 2014. A jury of citizens from Lancaster County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Nicole T. Wetherton represented the State. Charles T. Brooks, III, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Sections 44-48-90 and 44-48-100:

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

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

(a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent is to continue to be detained at the Lancaster County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health, at 4460 Broad River Road, Columbia, SC 29210. The Detention Center is to transport Respondent on such scheduled date as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.

[Signature]

Presiding Judge
Sixth Judicial Circuit Court of Common Pleas

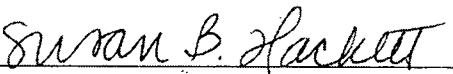
September 8th, 2014
Lancaster, South Carolina

CLERK OF COURT
LANCASTER COUNTY, SC
SEP-9 PM 9:09
60-6 171 6-123111

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 24th, 2015


Susan B. Hackett
Appellate Defender

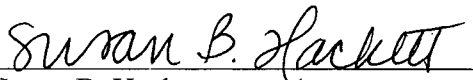
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 24th, 2015



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

RECEIVED
JUL 24 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Lancaster County

R. Knox McMahon, Circuit Court Judge

RECEIVED

JUL 24 2015

IN THE MATTER OF THE CARE AND TREATMENT OF

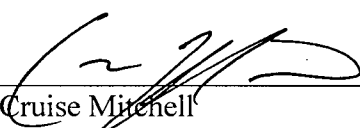
SC Court of Appeals

KENNETH CAMPBELL,

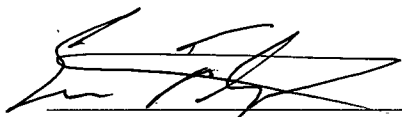
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 24th day of July, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 24th day of July, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.