

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP22167
RECEIVED

State of South Carolina	Francis Arthur Oxner
	MAY 27 2016
	SC Court of Appeals

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

5/18/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **May 18, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

James G. Bogle Jr. PO Box 11549 Columbia, SC 29211

Aimee Jendrzewski Zmroczek A.J.Z. Law Firm, LLC PO Box 11961 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1:

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE MATTER OF THE)
AND TREATMENT OF)

FRANCES ARTHUR OXNER,)
RESPONDENT.)

FILED

MAY 18 A 11:12

CARE - CARINGG
CLERK OF COURT
LEXINGTON, SC

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-32-02607

**ORDER FOR EVALUATION
PURSUANT TO THE SEXUALLY
VIOLENT PREDATOR ACT**

RECEIVED
MAY 27 2016
SC Court of Appeals

This matter comes before me on petition of the State of South Carolina for an order requiring the Respondent, Frances Arthur Oxner, to submit to an examination and to be detained in appropriate secure facility pending a trial pursuant the Sexually Violent Predator Act (S. C. Code Ann. Sections 44-48-10 *et seq.*, hereafter, the Act).

A hearing was held on April 21, 2016; the state was represented by Senior Assistant Attorney General James G. Bogle, Jr., and the Respondent by Aimee Zmroczek, Esquire. The Respondent was present.

This hearing was conducted under S. C. Code Ann. Section 44-48-100(B) of the Act. That Section provides that since Respondent has been charged with sexually violent offenses, and has been found incompetent to stand trial and is about to be released, and his commitment is sought by the State, this Court first shall hear evidence and determine whether Respondent committed the acts with which he is charged.

That Section goes on to state that the hearing on this issue must comply with all the procedures specified in S.C. Code Ann. Section 44-48-100; the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply.

That Section further provides that after hearing evidence on this issue, the Court must make specific findings on whether Respondent committed the acts with which he is charged; the extent to which Respondent's incompetence or developmental disability affected the outcome of the hearing, including its effect on Respondent's ability to consult with and assist counsel and to testify on his own behalf; the extent to which the evidence could be reconstructed without the assistance of Respondent; and the strength of the prosecution's case.

The Statute further provides that if, after the conclusion of the hearing on this issue, this court finds beyond a reasonable doubt that Respondent committed the acts with which he is charged, this Court must enter a final order, appealable by Respondent, on that issue, and may proceed to consider whether Respondent should be committed pursuant to the Act.

Ms. Zmroczek moved to dismiss these proceedings based upon the fact that her client remained incompetent to stand trial, and could not assist her in his defense. That motion was denied. The Court observed that under the Act, at Section 44-48-30 (6)(c) "convicted of a sexually violent offense" means a person has been charged but determined to be incompetent to stand trial for a sexually violent offense. Second, the case law has made it abundantly clear that proceedings under the Sexually Violent Predator Act are civil in nature, not punitive, and seek the treatment of an individual for a mental abnormality or personality disorder that would make him likely to commit acts of sexual violence if not confined in a secure facility for long term control, care and treatment. Third, the Court observed that statutes similar to Section 44-48-100(B) have been found constitutional in other jurisdictions. *See Detention of Greenwood*, 122 P.3d 747 (Wash. App, 2005). The court there noted that a conviction was not required for an individual to qualify as a sexually violent predator; a person need only have been *charged* with a crime of sexual violence. The same is true in South Carolina. Further, in South Carolina, as in Washington, the requirement that the State prove beyond a reasonable doubt that a person not convicted of a sexually violent crime, due to incompetence, in fact committed the act charged, is a safeguard for individuals facing commitment. The initial hearing, like the one before the Court now, is not an end in itself as with a criminal charge, but part of a multi-step process to protect incompetent individuals. The requirement here that the State prove Respondent did in fact commit the acts charged does not constitute a criminal prosecution of a person previously determined to be incompetent. *See also Matter of the Care and Treatment of Sykes*, 316 P.3d 811 (Kan. App. 2013).

The record reflects that Respondent was arrested for several sexually-related crimes in or about 2004, indicted in 2005, and after an evaluation found him incompetent to stand trial, those indictments were *nolle pros'd* by the Eleventh Circuit Solicitor's office. Thereafter, when the present action was commenced under the Act, in order for Respondent to have pending charges, he was re-indicted in 2014, and a subsequent competency evaluation was conducted. That 2014 evaluation also found him incompetent to stand trial in the criminal proceeding.

Received into evidence were the following: Court's Exhibit 1, the competency evaluation dated September 8, 2014; Court's Exhibit 2, indictment number 2014-GS-32-6026 charging Respondent with Assault with Intent to Commit Criminal Sexual Conduct; Court's Exhibit 3, indictment number 2014-GS-32-6024 charging Respondent with Criminal Sexual Conduct with a Minor in the First Degree; State's Exhibit's 1-8, plastic folders, each holding two photographs of the exterior and interior of Respondent's residence, the scene of the alleged crimes, taken by the Lexington County Sheriff's Office pursuant to a search warrant in 2004; and Defense Exhibit 1, an e-mail from then-Detective Eric Russell to Shannon Yerace, about the Oxner case.

Testimony on behalf of the State was received from Cindi D. Floyd, Cody Floyd and Lt. Eric Russell of the Lexington County Sheriff's Department. Due to the nature of this proceeding and the condition of Respondent, after the conclusion of testimony the Court conducted an *ex parte* inquiry with Respondent and his counsel.

At some point after the conclusion of the State's testimony, Respondent began making unsolicited comments and outbursts. Upon request of Ms. Zmroczek he was removed from the

courtroom, based upon a concern that he could make some comment or outburst in open Court that could eventually affect the criminal case against him.

After consideration of the testimony, the Exhibits, and the *ex parte* meeting, the Court makes the following findings of fact:

1. Respondent is currently charged with crimes that are classified as sexually violent under the Sexually Violent Predator Act.
2. Respondent has been determined to be incompetent to stand trial in his criminal case.
3. These proceedings have complied with the requirements of Section 44-48-100(B). The rules of evidence were observed, and Respondent's constitutional rights have been preserved, with the exception that he was previously found not competent to stand trial in a criminal proceeding, a condition which continues.
4. The Court finds beyond a reasonable doubt that, under indictment number 2014-GS-32-6026, Respondent did in Lexington County on or about August 1, 1979 – June 1, 1980 assault Cindi Floyd with intent to commit criminal sexual conduct with a minor in the first degree, that the victim, Cindi Floyd, who was less than eleven years of age at that time, by grabbing her, removing her clothing, and attempting to commit a sexual battery by penetrating her, in violation of S.C. Code Ann. Sections 16-3-656 and 16-3-655(1), subsequently codified as Section 16-3-655(A)(1).
5. Assault with Intent to Commit Criminal Sexual Conduct with a Minor in the First Degree is classified as a sexually violent crime at Section 44-48-30(2)(i).
6. The Court finds beyond a reasonable doubt that, under indictment number 2014-GS-32-6024, Respondent did commit the crime of Criminal Sexual Conduct with a Minor in the First Degree, in Lexington County on or about the summer of 2004, by committing a sexual battery upon a minor who was less than eleven years of age, specifically fellatio or oral sex with Cody Floyd, in violation of S.C. Code Ann. Section 16-3-655 (A)(1), previously codified as Section 16-3-655(1).
7. Criminal Sexual Conduct with a Minor in the First Degree is classified as a sexually violent crime in Section 44-48-30(2)(d).
8. A review of the State's Petition, and Department of Mental Health records attached thereto, showed certain goals of Respondent's behavioral treatment team that appeared to have concluded by September 9, 2011 or as early as May 24, 2011. There then appears a notation "refer to SVP." It would appear that Respondent had progressed as far as possible in the treatment he was

receiving at his current location, and the issue of sex offender treatment needed to be addressed as provided by the Sexually Violent Predator Act.

9. As to the extent to which Respondent's incompetence or developmental disability affected the outcome of the hearing, including its effect on his ability to consult with and assist counsel and to testify on his own behalf, the Court finds that Respondent's ability to perform these functions with his attorney was essentially non-existent.
10. As to the extent to which the evidence could be reconstructed without the assistance of Respondent, the Court finds that his attorney conducted cross-examination of each of the State's witnesses with precision and in an expert and effective manner.
11. As to the strength of the prosecution's case, the Court has witnessed and judged the appearance and credibility of Cindi Floyd and Cody Floyd. With regard to Cindi Floyd, it was abundantly clear that the events about which she testified live on in her today as they did in 1979-1980; essentially the Court heard from a seven-year-old girl, who later as a mother learned her own child had suffered at the hand of Respondent. With regard to Cody Floyd, the Court found him extremely credible, able to recall details, and able to describe the scene of the crime, the building where it occurred, and its exterior and interior contents. It was clear to the Court that the details of these crimes were seared into the witnesses' minds. They were both articulate and compelling, and their testimony was corroborated by State's Exhibits 1-8, the photographs. It was clear that the passage of time had not affected their memories of these crimes. The Court further finds that Lt. Russell's memory of this matter was credible and believable, and was clearly that of a law enforcement officer for which this case held a special place.

Having determined that Respondent committed the acts with which he is charged, the Court finds that probable cause exists to find that the Respondent is a sexually violent predator as defined by S. C. Code Ann. Section 44-48-30,

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED:

- (a) That Respondent committed the acts for which he was charged, Assault with Intent to Commit Criminal Sexual Conduct with a Minor in the First Degree and Criminal Sexual Conduct with a Minor in the First Degree.
- (b) That Respondent remains incompetent to stand trial in a criminal proceeding.
- (c) That probable cause exists to have Respondent evaluated under the Act to determine whether or not he suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and

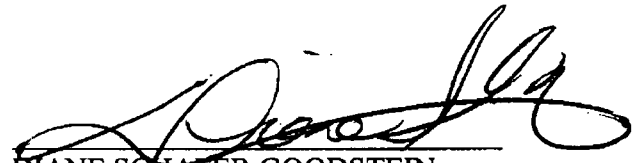
treatment.

The ordered examination shall be conducted by the S.C. Department of Mental Health, and Respondent shall be transported to an appropriate examining facility for such an evaluation as soon as possible. The examination shall be requested by the Office of the Attorney General of South Carolina. The Respondent is to arrive at the examining facility at the time established by confirmed appointment with the staff of the examining facility. The Respondent continues under jurisdiction of this Court.

The qualified expert appointed by the Court at this Probable Cause hearing is Amy C. Swan, Psy.D., to examine the Respondent.

Within five days of the receipt of the written report of the examination by the Office of the Attorney General of South Carolina, said office shall make a copy of such examination available to the Respondent's attorney.

AND IT IS SO ORDERED.



DIANE SCHAFER GOODSTEIN
Presiding Judge for the Eleventh Judicial
Circuit Court of Common Pleas

4-29, 2016
Lexington, South Carolina

FILED
2016 MAY 18 AM 11:14
BETH ANN SANGG
CLERK OF COURT
LEXINGTON, SC