

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable William H. Seals, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JOHN HENRY DORSEY,

APPELLANT

ORIGINAL

RECEIVED

MAR 15 2017

SC Court of Appeals

APPELLATE CASE NO. 2016-000816

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (April 4-5, 2016)	1
JURY VOIR DIRE	4
JURY SELECTION	19
MOTION IN LIMINE BY MR. MORROW	23
OBJECTION BY MR. FALK	23
RULING BY THE COURT	24
ISSUE REGARDING HEARSAY STATEMENTS BY MR. FALK	24
RESPONSE BY MR. MORROW	25
RESPONSE BY MR. FALK	26
RESPONSE BY MR. MORROW	27
RULING BY THE COURT	28
OPENING STATEMENT BY THE COURT	29
OPENING STATEMENT BY MR. MORROW	31
OPENING STATEMENT BY MR. FALK	35
TESTIMONY	
AMY SWAN	39
MOTION FOR A DIRECTED VERDICT BY MR. FALK	100
RESPONSE BY MR. MORROW	101
RULING BY THE COURT	101
ISSUE REGARDING CHARGE BY MR. FALK	102

RESPONSE BY MR. MORROW	102
RULING BY THE COURT	103
RESPONSE BY MR. FALK.....	103
RESPONSE BY THE COURT	104
RESPONSE BY MR. MORROW	104
RESPONSE BY MR. FALK.....	104
RESPONSE BY MR. MORROW	104
RESPONSE BY THE COURT	104
TESTIMONY	
JOHN HENRY DORSEY	105
DEFENSE RESTS.....	116
RENEWED MOTION FOR A DIRECT VERDICT	116
RULING BY THE COURT	116
RENEWAL OF OBJECTION TO CHARGE BY MR. FALK	116
RESPONSE BY THE COURT	117
CLOSING STATEMENT BY MR. MORROW	117
CLOSING STATEMENT BY MR. FALK	121
REPLY CLOSING STATEMENT BY MR. MORROW	128
JURY CHARGE.....	129
RESPONSE BY MR. FALK.....	137
RESPONSE BY THE COURT	138
JURY QUESTION	140
RESPONSE BY THE COURT	141
JURY QUESTION	141

RESPONSE BY THE COURT	142
JURY QUESTION	143
RESPONSE BY THE COURT	143
JURY QUESTION	143
RESPONSE BY THE COURT	143
VERDICT	144
JURY POLLING	145
STATEMENT BY THE COURT	147
DEFENDANT'S EXHIBIT NO. 1 (Ethics Committee Letter)	150
CERTIFICATE OF COUNSEL	153

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2015-CP-22-0563

IN THE MATTER OF THE)
 CARE AND TREATMENT OF)
 JOHN H. DORSEY) Transcript of Record
 Appellate Case No.) April 4-5, 2016
 2016-00816)
)

B E F O R E:

Honorable William H. Seals
 Georgetown County Courthouse
 Georgetown, South Carolina

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

Christopher Andrew Morrow, Esquire
Attorney for Plaintiff

James Kristian Falk, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

INDEX

1	<u>I N D E X</u>	
2	<u>April 4, 2016</u>	<u>Pg.</u>
3	Voir Dire	4
4	Jury Selection	19
5	Motions	23
6	By the Court	28
7	Opening Statement	
8	By Morrow	31
9	By Falk	35
10	Amy C. Swan	
11	Direct by Morrow	39
12	Voir Dire by Falk	42
13	Direct by Morrow	43
14	Cross by Falk	67
15	Redirect by Morrow	98
16	Recross by Falk	98
17	Motions	100
18	<u>April 5, 2016</u>	
19	Motions	101
20	John Henry Dorsey	
21	Direct by Falk	105
22	Cross by Morrow	114
23	Motions	116
24	By the Court	116
25		

In the Matter of John H. Dorsey - 2015-CP-22-563

3

INDEX

I N D E X

	<u>Pg.</u>
Closing Statements	
By Morrow	117
By Falk	121
By Morrow	128
Charge to Jury	129
Question from Jury	140
Verdict of Jury	144
Polling of Jury	145
By the Court	147
Certificate of Court Reporter	149

E X H I B I T S

<u>No.</u>		<u>ID</u>	<u>EV</u>
S1	Williamsburg County Action 89-GS-45-24		48
S2	Georgetown County Action 01-GS-22-690		50
D1	ATSA Letter to Swan 02-27-15	93	100
C1	Jury Questionnaires	18	
C2	Note from Jury	142	
C3	Note from Jury	143	
C4	Note from Jury	143	

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

4

1 (April 4, 2016)

2 (REPORTER'S NOTE: Jury Venire enters courtroom. 12:22 P.M.)

3 VOIR DIRE:

4 THE COURT: All right. Members of the jury panel, up
5 till this point in time, I have determined that you are
6 qualified to serve as jurors this week. I now need to ask
7 another series of questions and make sure that you're
8 qualified to serve on the only case that we have for the week.
9 In that regard, I need for you to remember that you are under
10 oath and at any point in time if a question applies to you, I
11 need for you to please stand and respond. The first case that
12 we're gonna try this week -- well, the only case that we're
13 gonna try this week is in the matter of the care and treatment
14 of John H. Dorsey. In this case, the State of South Carolina,
15 must prove beyond a reasonable doubt that John Dorsey is a
16 sexually violent predator pursuant to the Sexually Violent
17 Predator Act of South Carolina. Now, in this regard, does any
18 member of the jury panel know anything about this case? Have
19 you heard anything about this case, have you read anything
20 about this case, have you talked to anybody about this case?
21 If you have any knowledge at all, please stand.

22 All right. No one stood.

23 Does any member of the jury panel know anything about the
24 sexual offenses that John Dorsey was convicted of in the past?
25 If so, please stand.

In the Matter of John H. Dorsey - 2015-CP-22-563

5

VOIR DIRE

1 All right. No one stood.

2 Would Mr. John H. Dorsey please stand and face the jury
3 panel. Just face it right out there. All right. You may
4 have a seat.

5 Is any member of the jury panel related by blood or
6 marriage or has a close personal or social relationship with
7 Mr. John Dorsey? If so, please stand.

8 All right. How about Mr. Morrow, would you please stand
9 and introduce yourself and who you represent?

10 MR. MORROW: My name is Cam Morrow and I work for the
11 Attorney General's office for the State of South Carolina.

12 THE COURT: All right. You may have a seat. Is any
13 member of the jury panel related by blood or marriage or has a
14 close personal or social relationship with Mr. Morrow or has
15 been represented by him at any point in time? If so, please
16 stand.

17 All right. No one stood.

18 Mr. Falk, if you would, stand and introduce yourself and
19 any members of your firm.

20 MR. FALK: Hi, I'm James Falk. I have a solo practice in
21 Charleston and I'm appointed to represent Mr. Dorsey.

22 THE COURT: Thank you. You may have seat.

23 Is any member of the jury panel related by blood or
24 marriage or has a close personal or social relationship with
25 Mr. Falk or has been represented by him at any point in time?

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

6

1 If so, please stand.

2 All right. No one stood.

3 The witnesses on behalf of the State of South Carolina
4 will be a Dr. Amy C. Swan. In that regard, is any member of
5 the jury panel related by blood or marriage or has a close
6 personal or social relationship with Dr. Swan? If so, please
7 stand.

8 JUROR 213: Your Honor, getting back to one of your
9 previous questions, the H in Mr. Dorsey's name, is that Harold
10 Dorsey?

11 THE COURT: Mr. Falk, what's his ---

12 MR. FALK: It's Henry.

13 THE COURT: All right. If you would, come on up here if
14 you want to respond to anything.

15 THE COURT: Give me your name and your jury number to
16 start with.

17 JUROR 213: 213.

18 THE COURT: 213.

19 JUROR 213: Willie A. Moore.

20 THE COURT: All right.

21 THE COURT: Thank you.

22 JUROR 213: Thank you very much.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of but out of hearing of the Jury. Juror 213
25 returns to Jury Venire.)

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

7

1 THE COURT: Has any member of the jury panel or any of
2 your close personal friends or relatives ever been the victim
3 of a sexual assault? If so, please stand.

4 You can come on up here if you would like.

5 JUROR 115: 115.

6 THE COURT: And your name is?

7 JUROR 115: James Goodwin.

8 (REPORTER'S NOTE: A bench conference was held off the record
9 in the presence of but out of hearing of the Jury Venire.
10 Juror 115 struck for cause.)

11 BAILIFF: 301.

12 THE COURT: And your name?

13 JUROR 301: Cathy Taylor.

14 (REPORTER'S NOTE: A bench conference was held off the record
15 in the presence of but out of hearing of the Jury Venire.)

16 THE COURT: 301 is excused.

17 BAILIFF: Juror Number 84.

18 (REPORTER'S NOTE: A bench conference was held off the record
19 in the presence of but out of hearing of the Jury. Juror 84
20 struck for cause.)

21 THE COURT: Would Beufort McGirt please come forward,
22 Juror Number 199?

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of but out of hearing of the Jury. Juror
25 Number 199 returns to Jury Venire.)

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

8

1 THE COURT: Has any member of the jury panel or any of
2 your close personal friends or relatives been charged with or
3 convicted of a sexual offense? If so, please stand.

4 You can come up if you would like.

5 Give me your name and your number.

6 JUROR 44: 44, Christopher Cerevini.

7 (REPORTER'S NOTE: A bench conference was held off the record
8 in the presence of but out of hearing of the Jury Venire.
9 Juror 44 struck for cause.)

10 BAILIFF: Juror 292.

11 THE COURT: Come up. Give me your name and your number.

12 JUROR 292: Melissa Staats.

13 (REPORTER'S NOTE: A bench conference was held off the record
14 in the presence of but out of hearing of the Jury. Juror 292
15 struck for cause.)

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

19 No one stood.

20 Has any member of the jury panel been involved in a
21 prison -- I'm sorry. Come up, please.

22 BAILIFF: 279.

23 THE COURT: And your Juror Number again?

24 JUROR 279: 279.

25 (REPORTER'S NOTE: A bench conference was held off the record

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

9

1 in the presence of but out of hearing of the Jury. Juror 279
2 struck by the Court.)

3 BAILIFF: 256.

4 (REPORTER'S NOTE: A bench conference was held off the record
5 in the presence of but out of hearing of the Jury. Juror 256
6 returns to Jury Venire.)

7 THE COURT: Has any member or the jury panel or any of
8 your close personal friends or relatives ever been subject to
9 civil commitment proceedings or been voluntarily or
10 involuntarily civilly committed? If so, please stand.

11 No one stood.

12 At this point in time, out of an abundance of caution,
13 just in case you did not feel comfortable responding to a
14 question out there in front of everybody, I'm gonna have the
15 bailiffs pass out a questionnaire to you. It has four simple
16 questions on it. I need for you to answer yes or no to each
17 question and pass it back to the Bailiff if you would and sign
18 and date it and put your jury number on it.

19 (REPORTER'S NOTE: Questionnaires passed out to Jury Venire.)

20 THE COURT: All right. If you would, bring those to me.
21 And the Jury if you would, just step into the hall but do not
22 leave the hall.

23 All right. If you'll go ahead and carry them out.

24 (REPORTER'S NOTE: Jury Venire exits courtroom. 12:45 P.M.)

25 (REPORTER'S NOTE: A sidebar conference was held on the

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

10

1 record.)

2 THE COURT: I'm gonna hand y'all the forms. If you just ,
3 want to look through them and let me know if we need to
4 question any of those.

5 (REPORTER'S NOTE: Both counsel review questionnaires.)

6 THE COURT: Have y'all had a chance to look at all of
7 them? Mr. Morrow?

8 MR. MORROW: Yes, sir.

9 THE COURT: Mr. Falk?

10 MR. FALK: Some of those may've already been excused,
11 like Mr. Goodwin.

12 THE COURT: All right. Let's take a look at each one.

13 How about Lindi Brooks, Number 29. Has she been excused?
14 All right. We'll question her.

15 Cleo Priest, Number 240.

16 MR. FALK: 25?

17 MR. MORROW: 29.

18 THE COURT: Has she been excused or not?

19 MR. MORROW: No, she has not.

20 THE COURT: How about 240?

21 LAW CLERK: 240 has not.

22 THE COURT: All right. How about 292?

23 LAW CLERK: She's excused already.

24 THE COURT: She's already excused. Is that correct, from
25 the State?

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

11

1 MR. MORROW: Yes.
2 THE COURT: Correct from the Defense?
3 MR. FALK: Yes.
4 THE COURT: We can put her in the no stack.
5 All right. Juror Number 190. Not excused?
6 LAW CLERK: Not excused.
7 THE COURT: Okay. 234, excused or not?
8 LAW CLERK: No.
9 THE COURT: All right. 279? 279 is already excused.
10 MR. MORROW: Yeah, she was excused.
11 THE COURT: All right. So, we're gonna put that in the
12 no stack.
13 If either of y'all object, let me know.
14 And then who is James Goodwin. What's his juror number?
15 MR. FALK: No, he was the first one up here.
16 MR. MORROW: He's excused.
17 THE COURT: He's excused. All right. We're gonna put
18 him in the no stack.
19 All right. Number 180?
20 LAW CLERK: Not excused.
21 THE COURT: Number 84?
22 LAW CLERK: Excused.
23 THE COURT: Is that correct? Y'all object if ---
24 MR. FALK: 84 is excused?
25 LAW CLERK: Yes, 84 is excused.

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

12

1 THE COURT: All right. That goes in the no stack.

2 MR. FALK: 84 and 31?

3 LAW CLERK: Yes, I'm sorry.

4 THE COURT: 93? Not excused. Is that fourth question
5 that everybody can answer yes to.

6 All right. Let's bring them in one at a time and y'all
7 can stay right here.

8 Bring in Juror 93, Clint Elliott.

9 You can come on up, Mr. Elliott. We've taken a look at
10 your questionnaire and you answered no, no, no and then yes
11 about strong beliefs about sexual abuse. Taking that into
12 account, if you were selected to serve on the jury in this
13 case, could you be fair and impartial to both the State and
14 the Defense?

15 JUROR 93: Yes, Your Honor.

16 THE COURT: Now, it's not the sexual assault crime, it's
17 a civil action -- and y'all lawyers correct me if I'm wrong --
18 he's already been to jail and his jail is about to be over
19 with and before they can release him, we have to have a jury
20 determine whether or not he might reoffend or not. That's all
21 it is. He's not going to jail. It's not a criminal trial; it
22 is a civil trial. And he has done his time. Your job would
23 be to access whether or not it's safe to let him out or not.

24 JUROR 93: I don't think so. My best friend in college
25 got raped by a football player at Baylor. Ever since then, I

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

13

1 have no use for sexual predators.

2 THE COURT: All right. We'll excuse Juror Number 93.

3 You got that, Ms. White?

4 CLERK: Yes, sir.

5 THE COURT: All right. You can go.

6 Juror Number 180, Robert -- what's his last name --

7 Larobardiere.

8 All right. You can come on up. All right. In reference
9 to question number three, have you or anyone in your immediate
10 family ever been a victim of a criminal sexual conduct or
11 sexual abuse whether reported or unreported and you put yes.

12 JUROR 180: Yes, sir. It was actually unreported, yes,
13 sir. My finance when she was younger was sexually molested by
14 her stepfather and then my mother -- mother-in-law when she
15 was younger as well.

16 THE COURT: All right. Well, taking all that into
17 account, if you were selected to serve on the jury in this
18 case, could you be fair and impartial to both sides?

19 JUROR 180: Yes, impartial, Your Honor.

20 THE COURT: Thank you. If you'd just wait in the hall.

21 MR. FALK: May I make a record?

22 THE COURT: Go ahead.

23 MR. FALK: We'd move to strike him for cause. Here is
24 somebody that his fiancé, obviously somebody he's gonna marry
25 was abused as a child. This case involves a child abuse

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

14

1 victims and therefore we -- I think those emotions run too
2 deep to have him be really and totally fair.

3 THE COURT: Any objections from the State? I kind of
4 agree, you know, his fiancé was molested by her stepmother and
5 his mother-in-law was the victim of a rape as well.

6 LAW CLERK: If everybody that is in that stack is
7 excused, we'll have twelve excused and that will leave us with
8 twenty-eight.

9 THE COURT: Number 180, we're gonna excuse Number 180.
10 Let's call Juror Number 234.

11 Just want to check with you. One number four you said
12 yes, but I'll be fair.

13 JUROR 180: Yes.

14 THE COURT: I just want to double check. Taking that
15 into account, if you were selected to serve on a jury in this
16 case, could you be fair and impartial to the State and the
17 Defense?

18 JUROR 180: Yes.

19 THE COURT: Thank you very much. I appreciate your
20 answering. If you'd just wait in the hall.

21 JUROR 180: Okay.

22 MR. FALK: No objection.

23 THE COURT: Number 190.

24 We're just being double sure and checking with everybody
25 on this kind of stuff.

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

15

1 JUROR 190: Okay.

2 THE COURT: On number four, you answered absolutely and I
3 understand that but taking that into account, if you were
4 selected to serve on the jury in this case, could you hear the
5 facts from the witnesses and be fair and impartial to both
6 sides?

7 JUROR 190: I think so.

8 THE COURT: Is that a yes?

9 JUROR 190: Uh-huh (affirmative response).

10 THE COURT: Is that a yes? You have to say yes. She
11 can't take uh-huh down.

12 JUROR 190: Yes.

13 THE COURT: All right. Would you be fair and impartial
14 to both sides?

15 JUROR 190: Yes.

16 THE COURT: Thank you very much. If you'll just wait in
17 the hall.

18 JUROR 190: Okay.

19 MR. FALK: I'm gonna object.

20 THE COURT: I'm gonna overrule that objection.

21 MR. FALK: I know that but I need to make a record.

22 THE COURT: Go ahead and make a record.

23 MR. FALK: I just wanted to say that she certainly
24 hesitated when she gave her answers and she wrote, absolutely,
25 in big block letters and so that seemed to be a stronger

1 response.

2 THE COURT: She didn't write it in big block letters, she
3 just wrote absolutely. I understood absolutely ---

4 MR. FALK: I'm sorry. That's how I remembered it. Okay,
5 she did not write in big block letters.

6 THE COURT: She just listened to my question and talked
7 before she answered. She said she could be fair, so we're
8 gonna keep her.

9 All right. Cleo Priest, Number 240.

10 Ms. Priest, you stated that somebody in your immediate
11 family has been a victim of a criminal sexual assault. Who
12 was that?

13 JUROR 240: It was one of my niece -- well, one of the
14 close relatives, you said, but ---

15 THE COURT: When was that?

16 JUROR 240: That was in Georgetown.

17 THE COURT: When?

18 JUROR 240: I can't exactly say what date it was.

19 THE COURT: Years and years ago?

20 JUROR 240: Yes, yes.

21 THE COURT: All right, then. All right. And you said you
22 also have strong feelings about sexual abuse?

23 JUROR 240: Yes.

24 THE COURT: Taking those two answers into account, if you
25 were selected to serve on the jury in this case, could you be

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

17

1 fair and impartial to the State and the Defense? Just hear
2 the facts and listen to the witnesses examine the evidence.

3 JUROR 240: It's so hard to even listen, you know?

4 THE COURT: What's that?

5 JUROR 240: It would be so hard to even listen.

6 THE COURT: Why is that?

7 JUROR 240: Well, I wasn't raped but I was molested when
8 I was a child.

9 THE COURT: I tell you what, I'll excuse you.

10 JUROR 240: Okay. Thank you.

11 THE COURT: If you'll just wait in the hallway.

12 JUROR 240: I can leave, okay.

13 THE COURT: 240 is excused.

14 Lindi Brooks, 29.

15 THE COURT: All right, Mr. Brooks. We've just looked at
16 your questionnaire and you answered yes to number four.

17 JUROR 29: Yes, sir.

18 THE COURT: Taking that into account, if you were
19 selected to serve on the jury in this case, could you be fair
20 and impartial to both sides?

21 JUROR 29: I do not believe I could, sir.

22 THE COURT: And why is that?

23 JUROR 29: I believe that a sexual abuse or a sexual
24 offense is one of the worst that any person could actually be
25 inflicted on that individual.

In the Matter of John H. Dorsey - 2015-CP-22-563
VOIR DIRE

18

1 THE COURT: Of course, this is not a criminal trial.

2 This is not a criminal trial.

3 JUROR 29: Right. I understand that but still ---

4 THE COURT: All right. You think it would affect your
5 ability to be fair and impartial?

6 JUROR 29: Yes, sir, I do.

7 THE COURT: All right. I'll excuse you.

8 Number 29 is excused.

9 If you'll go ahead and bring the jury panel back in.

10 COURT REPORTER: Judge, do you want to mark these as a
11 Court's Exhibit?

12 THE COURT: Yes.

13 COURT'S EXHIBIT NUMBER ONE

14 MARKED FOR IDENTIFICATION

15 (REPORTER'S NOTE: Jury Venire enters courtroom.)

16 THE COURT: Anything further from the State?

17 MR. MORROW: Nothing from the State, Your Honor.

18 THE COURT: Anything further from the Defense?

19 MR. FALK: Nothing from the Defense, Your Honor.

20 THE COURT: All right. Ms. Clerk, if you'll pass them
21 out a jury sheet.

22 All right. Do the lawyers need a few minutes?

23 MR. MORROW: Yes, Your Honor.

24 THE COURT: All right. If you'll just let me know when
25 you're ready.

In the Matter of John H. Dorsey - 2015-CP-22-563
JURY SELECTION

19

1 (REPORTER'S NOTE: Brief recess while counsel review Strike
2 Sheet.)

3 MR. MORROW: Ready, Your Honor.

4 THE COURT: Mr. Falk, you ready?

5 MR. FALK: I'm ready, Your Honor.

6 THE COURT: Ms. Clerk, if you'd give us a jury of twelve
7 and two alternates.

8 JURY SELECTION:

9 CLERK: All right. Starting with the numbers on the
10 left, Plaintiff? The first twenty.

11 MR. MORROW: 8.

12 THE COURT: Defendant?

13 MR. FALK: I'm sorry. What did you say?

14 MR. MORROW: 8.

15 MR. FALK: We're on Number One?

16 THE COURT: Strike from the first twenty.

17 MR. FALK: Oh, I'm sorry. Okay. I'm sorry.

18 149.

19 THE COURT: Use the numbers on the left.

20 MR. FALK: Number 2.

21 CLERK: Okay. Right now we're in the first twenty.

22 All right. Plaintiff?

23 MR. MORROW: Number 9.

24 CLERK: Defendant?

25 MR. FALK: 101 -- Number 5.

In the Matter of John H. Dorsey - 2015-CP-22-563
JURY SELECTION

20

1 CLERK: Plaintiff?

2 MR. MORROW: 4.

3 CLERK: Defendant?

4 MR. FALK: 16.

5 CLERK: Plaintiff?

6 MR. MORROW: 10.

7 CLERK: Defendant?

8 MR. FALK: 19.

9 CLERK: Okay. For the first alternate, we're gonna use
10 the next three numbers to the left.

11 Plaintiff?

12 MR. MORROW: 302 -- I'm sorry -- 23.

13 CLERK: Defendant?

14 MR. FALK: 22.

15 CLERK: All right. For the next alternate, use the next
16 three numbers to the left.

17 Plaintiff?

18 MR. MORROW: 25.

19 CLERK: Defendant?

20 MR. MORROW: 27.

21 CLERK: Let's go back. You got to stay within the --
22 that ---

23 MR. FALK: Oh, I'm sorry.

24 26.

25 CLERK: Okay. Let's let us confirm what we've done here

In the Matter of John H. Dorsey - 2015-CP-22-563
JURY SELECTION

21

1 thus far. For the Plaintiff, you struck Numbers 4, 8, 9, 10,
2 21 and 25; is that correct?

3 MR. MORROW: 23 and 25.

4 CLERK: You didn't strike 21?

5 MR. MORROW: No, I struck 23.

6 CLERK: Okay. All right. 23, all right. And 25; is
7 that correct?

8 MR. MORROW: That is correct.

9 CLERK: Okay. For the Defense, you struck Numbers 2, 5,
10 16, 19, 22 and 26; is that correct?

11 MR. FALK: Yes.

12 CLERK: Okay. When I call your names, bring your
13 belongings and come and take a seat in the jury box. Okay?

14 Juror Number 308, Crisler Timmons; Juror Number 263, Rory
15 Scott; Juror Number 305, William Thomas; Juror Number 236,
16 Richard Poston; Juror Number 213, Willie Moore; Juror Number
17 287, Rodney Smith; Juror Number 227, Patricia Payne; Juror
18 Number 199, Beufort McGirt; Juror Number 9, Val Jean Anderson;
19 Juror Number 299, Lindsay Swinton; Juror Number 163, John
20 Jones; Juror Number 6, Betty Altman; and for our first
21 alternate Juror Number 304, Amy Thomas; and for our second
22 alternate Juror Number 223, Erin O'Neal-Morie.

23 THE COURT: Any objections to the Jury or the process by
24 which they were drawn? What says the State?

25 MR. MORROW: None from the State, Your Honor.

In the Matter of John H. Dorsey - 2015-CP-22-563
JURY SELECTION

22

1 THE COURT: Defense?

2 MR. FALK: No objection.

3 THE COURT: Thank you very much.

4 Ms. Clerk, do we need the rest of the jury panel for the
5 week or is this it?

6 The rest of the jury panel is excused for the week.

7 Thank you for being here and have a good week.

8 If the Jury would remain seated.

9 (REPORTER'S NOTE: Remaining Jury Venire exits courtroom. 1:14
10 P.M.)

11 THE COURT: All right. Members of the Jury, I'm gonna
12 excuse you until 2:30 this afternoon. If you would be back at
13 2:30, we'll start the case at that time. Now, I do want to
14 instruct you on the fact that you are not to conduct any
15 independent investigation into this case at all. Don't get on
16 the internet and Google the Respondent's name. Don't look
17 anything up. Don't talk to anybody about this case. You just
18 go, you enjoy your lunch and you come back to the courthouse
19 and be ready to go at 2:30. Thank you very much and you are
20 excused. Everybody else remain seated.

21 (REPORTER'S NOTE: Jury exits courtroom. 1:15 P.M.)

22 THE COURT: Anything we need to take up before the trial
23 begins this afternoon?

24 MR. FALK: I believe the State has made a motion in
25 limine and then there's two items I'd also like to discuss in

In the Matter of John H. Dorsey - 2015-CP-22-563
MOTIONS

23

1 limine.

2 THE COURT: Okay. You want to do that now or you want to
3 do it at -- let's go ahead and do it now.

4 All right. Let me hear your motions.

5 MOTIONS:

6 MR. MORROW: Yes, Your Honor. The State's motion in
7 limine simply asks that reference to the details or future
8 treatment that Mr. Dorsey may receive at the South Carolina
9 Department of Mental Health Sexually Violent Predator Program
10 be excluded because they're not relevant to these proceedings.
11 The only thing that's relevant to these proceedings is whether
12 or not Mr. Dorsey is a sexually violent predator and whether
13 he's been convicted of a sexually violent offense and whether
14 he has the diagnosis of a mental abnormality that makes it
15 likely to reoffend. And even if it was relevant, Dr. Swan is
16 not involved in the treatment program, the State's expert, at
17 the South Carolina Department of Mental Health and would be
18 unable to provide those kind of answers.

19 THE COURT: All right. Any objections?

20 MR. FALK: Yes, I object, Your Honor. I do think there
21 is a point that I'm allowed to discuss the treatment because
22 it's the -- the State just doesn't have to prove a mental
23 illness but that -- or that he's likely to offend, it's the
24 last phrase, unless confined to a secure facility. And I
25 think because that is an element of that, I think I have some

1 right to discuss why a secure facility would be necessary and
2 then therefore, that's gonna lead into, you know, what they
3 are going to -- the level of security that they're gonna need.
4 In effect, he's gonna be in a prison. I think there's a level
5 of that that I need to ---

6 THE COURT: And how could you elicit that from Dr. Swan?
7 She doesn't know anything about it and is not gonna testify
8 about it.

9 MR. FALK: Dr. Swan may testify about other programs and
10 that's where I would ask the questions.

11 THE COURT: How about if she goes into future treatment
12 and all that kind of stuff, then you bring it up at that time
13 and we'll deal with it at that time. If she doesn't open the
14 door, I don't think it's relevant.

15 MR. FALK: Thank you, Your Honor.

16 THE COURT: All right. Anything else?

17 MR. MORROW: That was the only matter other than our
18 memorandum of law which we previously provided.

19 THE COURT: All right.

20 MR. FALK: I have some concerns about some of the hearsay
21 statements that are gonna come in through Dr. Swan's
22 testimony.

23 THE COURT: Okay.

24 MR. FALK: And especially it's gonna be the statements of
25 the child. I can appreciate that there was a point, again,

In the Matter of John H. Dorsey - 2015-CP-22-563
MOTIONS

25

1 that some of the details probably are relevant but to the
2 extent that we don't know if these other details -- you know,
3 how much of these details are accurate, I think -- that's why
4 I have a concern. These are children who have made statements
5 either to their mothers or to police officers and it doesn't
6 look as though these child's statements were ever -- went
7 through kind of a vetting process under the statute. 17-23-
8 175, my client pled guilty on both these cases, granted he did
9 admit to committing these crimes. I'm not sure he necessarily
10 admitted to some of the details that Dr. Swan may want to
11 bring forth in her testimony.

12 THE COURT: How does the State respond to that?

13 MR. MORROW: Your Honor, the State would respond that the
14 details of Mr. Dorsey's underlying offenses are relevant to
15 this case and that they are, as far as hearsay goes, they are
16 being offered not for the truth of the matter asserted, they
17 are being offered for the basis of Dr. Swan's expert opinion
18 in this matter. She needs to be able to explain her diagnosis
19 and how she came to that diagnosis. She also needs to be able
20 to explain why he would be a risk to reoffend and those --
21 those details go directly to that. And also I would cite the
22 *Corley* case and the *Ettel* case if you'll give me one moment,
23 I'll cite those. In the *Corley* case, the Court dealt with --
24 which is in *The matter of the Care and Treatment of Corley*,
25 353 S.C. 202 and that's South Carolina 2003. The Defendant's

1 assault and battery of a high and aggravated nature and
2 criminal sexual conduct convictions were relative to the issue
3 of whether the Defendant was likely to engage in acts of
4 sexual violence again and the details of those underlying
5 offenses were allowed in. And also in the *Ettel*, which is 377
6 S.C. 558, 660 S.E.2d 285, the defendant's prior sexual
7 offenses which did not result in conviction and his prior
8 conviction was relevant and admissible of the proceeding -- in
9 this proceeding because the expert relied on the -- it was
10 part of the basis for her opinion.

11 THE COURT: All right. Any response to that?

12 MR. FALK: Your Honor, again, I appreciate that there are
13 details that a necessary. My suggestion is is that the
14 affidavit, the arrest warrant, the affidavits supporting the
15 arrest warrant -- and this is as it would relate to the Palmer
16 child -- that states that on or about 5/31/99 in the County of
17 Georgetown, the Defendant did willfully and knowingly use
18 aggravated force to sexually assault the twelve-year-old son
19 on Brenda Palmer by grabbing and holding the victim as he
20 pulled down the victim's pants and underwear. The Defendant
21 inserted and penetrated the victim's anal area with his penis.
22 That's a lot of details and I don't think you need to go
23 further than that.

24 THE COURT: It seems to me that's what this whole case
25 was about. The doctor is coming in and she has to testify and

In the Matter of John H. Dorsey - 2015-CP-22-563
MOTIONS

27

1 give an opinion without all of these details. She's probably
2 gonna have a hard time giving an opinion as to whether or not
3 he's likely to reoffend or not.

4 MR. FALK: Your Honor, my point ---

5 THE COURT: Unless y'all want to agree to redact certain
6 portions of it. If you want to do that, I'm okay with that.

7 MR. FALK: Your Honor, my point was that -- I can accept
8 that that is necessary for Dr. Swan but if she starts talking
9 more about some force that she thought that somebody told her
10 was used, if she sort of elaborates further than that, I think
11 that that is a concern because again we don't -- there has
12 been no vetting process of whether or not that testimony was
13 true.

14 THE COURT: Well, I'm sure at the guilty plea there was
15 some sort of an explanation of all that but -- either way, how
16 do you respond to that?

17 MR. MORROW: Your Honor, I just think that the details of
18 the underlying offense are part of the basis of Dr. Swan's
19 opinion, they're not -- again, as far as hearsay goes, they're
20 not being offered for the truth of the matter asserted,
21 they're being offered for a basis of her opinion.

22 THE COURT: All right. What's your second motion? I'll
23 think about that one.

24 MR. FALK: That's it, Your Honor.

25 THE COURT: That's it?

In the Matter of John H. Dorsey - 2015-CP-22-563
BY THE COURT

28

1 All right. Let me see the affidavit that you're talking
2 about, the documents that you're talking about.

3 MR. FALK: This is probably ---

4 THE COURT: Okay. So, you're talking about the incident
5 report itself?

6 MR. FALK: The incident report might go beyond what's
7 been said in the affidavit.

8 THE COURT: Why don't we take a look at it and I'll let
9 you know before we start this afternoon.

10 MR. MORROW: Thank you, Your Honor. There also --
11 there's an issue with previously undisclosed victim that he
12 was never charged for. I just want to be clear. We've got
13 cases we go into that.

14 THE COURT: All right. We'll see you back maybe 2:25 or
15 2:20. We have a 2:00 minor settlement so that's why we're
16 starting a little bit later.

17 (RECESS - 1:24 P.M.)

18 *****OFF THE RECORD*****

19 (On the Record - 2:38 P.M.)

20 (REPORTER'S NOTE: The following takes place outside the
21 presence of the Jury.)

22 BY THE COURT:

23 THE COURT: All right. We have to deal with your motion.
24 In that regard, I believe I'm gonna deny that motion and I'm
25 gonna quote a case which is *Dawkins v. Fields*, 480 S.E.2d 433,

In the Matter of John H. Dorsey - 2015-CP-22-563
BY THE COURT

29

1 2003. An expert witness may state an opinion based on the
2 facts and not within his firsthand knowledge and may base his
3 opinion on the information whether or not admissible made
4 available to him before the hearing if the information is of
5 the type reasonably relied upon in the field.

6 I would say if a doctor examining somebody, under this
7 scenario, that's the exact kind of information that she's
8 relying on to make her opinion. Therefore, I think it would
9 be admissible based on that as well as some other things.

10 Do you need this back?

11 Anything else we need to take up before?

12 MR. MORROW: Nothing from the State, Your Honor.

13 THE COURT: Anything from the Respondent?

14 MR. FALK: No, sir.

15 THE COURT: All right. If you will go ahead and bring
16 out the Jury.

17 (REPORTER'S NOTE: Jury enters courtroom. 2:40 P.M.)

18 THE COURT: And Mr. McGirt, I'm gonna have you sit in
19 the front row, first seat.

20 (REPORTER'S NOTE: Juror Number 199 seated as foreperson.)

21 THE COURT: All right. Ms. Clerk, if you'll go ahead and
22 swear the Jury.

23 (REPORTER'S NOTE: Jury is duly sworn.)

24 THE COURT: You may have a seat. Thank you.

25 All right. Members of the Jury, before we begin this

In the Matter of John H. Dorsey - 2015-CP-22-563
BY THE COURT

30

1 case, I'm gonna go over a few things with you just to give you
2 a little bit of working knowledge to sit on while this trial
3 progresses. The first thing I want to tell you is that the
4 State of South Carolina has the burden of proof in this case.
5 They have to prove their case beyond a reasonable doubt.
6 Furthermore, you may ask yourselves, what is your role as
7 jurors and what is my role as jurors and what is my role as a
8 judge. In that regard, you are the judge of the facts; I am
9 the just of the law. What does that mean? That simply means
10 that you, the Jury, determine what the facts of this case are,
11 not me, not my clerk, not the court reporter, nobody in the
12 audience, just you. Well, you ask yourselves, how do we do
13 that? You do that by looking at the evidence. The evidence
14 is made up of two things, it's made up of witnesses that come
15 over here, they sit in that seat, they're sworn in and they
16 testify. And it could be made up of any exhibits admitted
17 into the record as evidence. That can be reports, that can
18 be photographs or what have you. That is where you determine
19 what the facts of this case are. I, in turn, and the Judge of
20 the law. At the end of this case, I will instruct you on the
21 law applicable to this case in great detail. In that regard,
22 I want you to understand that you have to accept the law as I
23 state it to you. If you have any preconceived ideas as to
24 what you think the law is or what the law ought to be, and it
25 does not agree with what I tell you the law is, you have to

In the Matter of John H. Dorsey - 2015-CP-22-563
OPENING STATEMENT BY MORROW

31

1 abandon those preconceptions and accept the law as I give it
2 to you. And then, only when I tell you to begin your
3 deliberations where you'll make your decisions as to the
4 facts, you'll combine that to the law that I give to you and
5 make a decision therefrom. Furthermore, at no point in time
6 during this trial, if we take a break and you have to go into
7/ the jury room or if we don't finish today and you go home
8 tonight, anytime you're outside of the courtroom and anytime
9 you're in this courtroom, do not discuss the case at all.
10 It's not fair, it's not proper to discuss the case until
11 you've heard from the State and everything they have to say,
12 everything the Defense may have to say and from me. So, you
13 ask yourselves, what could we talk about? You can talk about
14 yourself, talk about the weather, talk about the politics,
15 sports, whatever you want to talk about but not this case
16 until it's over and complete. All right?

17 At this point in time, I want you to sit back, I want you
18 to relax. And we'll hear from the State in what we call the
19 opening argument.

20 And Mr. McGirt, you are the foreman of the Jury.

21 MR. MORROW: Thank you, Your Honor.

22 OPENING STATEMENT BY MORROW:

23 MR. MORROW: Good afternoon, ladies and gentlemen. My
24 name is Cam Morrow and I work for the Attorney General's
25 office of the State of South Carolina. And you might be

1 wondering why am I here today handling this case. Why isn't
2 someone more local handling this case? Why isn't the
3 Solicitor's office, for example, handling this case? There's
4 a simple answer to that question and it's that this is a civil
5 case, first off, which means that even though it's a sexually
6 violent predator act, it's a civil case, and the Attorney
7 General's office has been assigned to handle these cases
8 throughout the entire State of South Carolina. So, that's why
9 I'm here.

10 The case today has been brought under the South Carolina
11 Sexually Violent Predator Act. We're here today because the
12 State is seeking a civil commitment of John Henry Dorsey as a
13 sexually violent predator. Now, you might ask yourself, what
14 is a sexually violent predator? About sixteen years ago, the
15 South Carolina General Assembly passed the Sexually Violent
16 Predator Act and they had two thoughts in mind when they
17 passed that act. First, that there are certain individuals in
18 our state that suffer from mental abnormalities or personality
19 disorders that make them likely to commit acts of sexual
20 violence and that these individuals need treatment in a secure
21 setting to protect the public during the treatment process
22 because they are extremely dangerous individuals.

23 Now, the State contends that Mr. Dorsey is one of these
24 individuals that the General Assembly had in mind when they
25 passed the Sexually Violent Predator Act. To prove that Mr.

In the Matter of John H. Dorsey - 2015-CP-22-563
OPENING STATEMENT BY MORROW

33

1 Dorsey is a sexually violent predator, the State must prove
2 two basic elements to you. I have to prove, the State has to
3 prove, that John Henry Dorsey has been convicted of at least
4 one sexually violent offense. Now, Mr. Dorsey has been
5 convicted of a sexually violent offense and I don't think the
6 Defense is going contest that point. You'll hear about his
7 sexually offending history and what happened to his victims.

8 And the second point that I have to prove to you is that
9 John Henry Dorsey suffers from a mental abnormality or
10 personality disorder that makes him likely to commit acts of
11 sexual violence if not confined to a secure facility for long-
12 term control care and treatment.

13 Now, you're gonna hear today from Dr. Amy Swan, who is
14 going to be the State's expert in this case, court appointed
15 expert in this case, that she diagnosis Mr. Dorsey with
16 unspecified paraphilic disorder. And you're gonna hear about
17 what that is and you're gonna hear her talk about the basis of
18 her opinion. You're gonna hear testimony from which you can
19 decide whether Mr. Dorsey lacks control over his mental
20 abnormality and whether he is likely commit acts of future
21 sexual violence. You'll hear how Dr. Swan spent a significant
22 amount of time reviewing Mr. Dorsey's case, which is included
23 reviewing files, conducting an actuarial assessment of Mr.
24 Dorsey, meeting with Mr. Dorsey, and taking a closer look at
25 Mr. Dorsey's plans to avoid re-offense.

1 You're gonna hear Dr. Swan testify as to the basis of her
2 opinion and how she arrived at her diagnosis. You will also
3 hear why she believes that Mr. Dorsey's mental abnormality or
4 personality disorder gives him difficulty in controlling his
5 deviant sexual urges, making him likely to commit another
6 crime of sexual violence if not confined to a secure facility
7 for treatment at the Department of Mental Health.

8 So, the question that's gonna be asked of you is, after
9 listening to the witnesses presented to you whether the State
10 has proven that John Henry Dorsey is a sexually violent
11 predator. There's no question whether Mr. Dorsey has been
12 convicted of a sexually violent offense and I'll prove that to
13 you today. The only question is whether he suffers from a
14 mental abnormality or a personality disorder that makes him
15 likely to commit future acts of sexual violence. And you're
16 gonna hear Dr. Swan's opinion and testimony regarding that
17 today.

18 The question you need to ask yourself is, is Mr. Dorsey
19 safe to be out in the community on his own and not commit
20 another crime of sexual violence ever again.

21 Now, the burden of proof in this case is on the State and
22 the State welcomes that burden and the Judge will instruct
23 that this is a civil case and not a criminal case. But, under
24 the sexual violent predator act, the State is required to
25 prove its case beyond a reasonable doubt. Now, keep in mind

In the Matter of John H. Dorsey - 2015-CP-22-563
OPENING STATEMENT BY FALK

35

1 that is not any doubt, it's not any conceivable doubt but it's
2 a reasonable doubt. Later the Judge will tell you that that
3 means that proof beyond a reasonable doubt is proof that
4 leaves you firmly convinced.

5 In these cases, by their very nature are gonna have
6 disturbing facts and this case is not any different in the
7 regard. But, I ask you to do one thing throughout this case
8 and that's to listen to the evidence. Obviously, the State's
9 evidence but also off the public defendant. As you listen to
10 the evidence, the burden you should render will become clear.
11 That John Henry Dorsey is a sexually violent predator and
12 should be committed to the Department of Mental Health for
13 treatment so he can get the treatment that he so desperately
14 needs.

15 THE COURT: All right. Thank you.

16 Mr. Falk?

17 OPENING STATEMENT BY FALK:

18 MR. FALK: Good afternoon, I'm Chip Falk, the South
19 Carolina Commission for Indigent Defense retained me so I that
20 I could represent Mr. Dorsey in this case. Obviously, he
21 doesn't have his own funds, he's just spent seventeen years in
22 prison, and certainly he doesn't have money to hire a lawyer.

23 One thing I want you to remember from what you just heard
24 from Mr. Morrow, if not confined to a secure facility for
25 long-term care and treatment that is what I believe is going

In the Matter of John H. Dorsey - 2015-CP-22-563
OPENING STATEMENT BY FALK

36

1 to be the issue here this afternoon for you all to consider.
2 Whether or not the only way that Mr. Dorsey can maybe deal
3 with his demons, if he still needs to deal with his demons but
4 the only way that treatment can be provided is if he is
5 confined to a long-term -- to a secure facility for long-term
6 care and treatment.

7 Mr. Dorsey has spent his last seventeen years pretty much
8 dressed like he is right now, in a jumpsuit. He's been in
9 prison for seventeen years. He committed some horrible
10 offenses, there is no doubt you'll -- it's an inescapable
11 conclusion that he did something bad seventeen years ago and
12 he's paid the price. He spent seventeen years with an
13 opportunity to reflect on what he's done. And I think the
14 thing that we need to look at today is whether or not a man
15 could be in a prison for seventeen years, wrestle his own
16 demons and be able to make a commitment not to reoffend, to be
17 able to see the errors of his ways of the past and whether or
18 not he can make a commitment to his god, to himself that he's
19 going to avoid those kind of situations that could've gotten
20 him in trouble, that he's a new man.

21 Now, human history has examples of people who have gone
22 from being sinners to having some type of revelation, seen the
23 light and then leading a godly life going forward. Mr.
24 Dorsey, I believe is one of those men. It's always easy to
25 talk about people who certainly have this, you know, anybody

In the Matter of John H. Dorsey - 2015-CP-22-563
OPENING STATEMENT BY FALK

37

1 on death row or something like that might make a conversion to
2 that he's seen God and that he's redeemed himself. But you're
3 gonna hear from Mr. Dorsey, you're gonna have an opportunity
4 to hear from Mr. Dorsey, possibly peer into his soul and you
5 decide whether or not you think he is a violent person, that
6 he's a risk, and the only way we can treat Mr. Dorsey is to
7 put him into a long-term care facility. These statutes, the
8 sexual violent predator statute that's what we're here today
9 -- this, as you know, is a civil proceeding, they are designed
10 and as the Supreme Court has said that the sexually violent
11 predator statutes are only designed to deal with the worst
12 sexually violent criminals. It's not to deal with your
13 average -- excuse me -- it's not deal with just anybody who
14 has committed a sexual offense but we're supposed to be
15 looking at the worst of the worst who are gonna being treated
16 through the sexually violent predator program where they're
17 gonna be put into a secure facility. Criminal justice system
18 has adequate remedies in order to take care of people who have
19 committed crime. So, I want you to think about there's a
20 difference between committing a crime and a motivation to
21 commit a crime just because it's a crime of opportunity versus,
22 an action that is flowing only because you have a mental
23 disease or defect. I'm gonna use a really simple example, the
24 point I'm trying to make here, I'm not trying to, you know,
25 this is -- it's very simplistic example but this is the

1 distinction that we're talking about here today. So, if you
2 go down to the Kangaroo store down there and you steal a
3 chocolate bar and you walk outside the Kangaroo. You can draw
4 two conclusions from what's going on. You may just really
5 like chocolate and just didn't want to pay for it or you have
6 a mental disease that I think everybody is familiar with or at
7 least heard of kleptomania, how somehow you're compelled to go
8 in and steal things. That's what I'm talking about today.
9 Was the conduct that Mr. Dorsey did seventeen years ago, was
10 that criminal conduct or is that something that he has paid
11 the price for or is it conduct that is a result of mental
12 illness?

13 I'm hopeful that you'll have an opportunity to have an
14 open mind, listen to my client on the stand. And I believe
15 that if you've had an open mind and listen to my client that
16 you will find that he is not a sexually violent predator.
17 Thank you.

18 THE COURT: Thank you. If you'll call the first witness.

19 MR. MORROW: Yes, Your Honor. The State calls Dr. Amy
20 Swan.

21 AMY C. SWAN, HAVING BEEN DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 CLERK: Please sit down and state your full name for the
24 record.

25 MS. SWAN: It's Amy C. Swan. That's S-W-A-N.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

39

1 DIRECT EXAMINATION OF AMY C. SWAN BY MR. MORROW:

2 Q: Dr. Swan, what is your occupation?

3 A: I am a forensic psychologist.

4 Q: Can you briefly tell the Jury, what is the study of
5 psychology?

6 A: Psychology is the study of the mind and behavior.

7 Q: And what is forensic psychology?

8 A: Forensic psychology is the application of psychology for
9 legal cases.

10 Q: And Dr. Swan, do you possess any advance degrees?

11 A: I do. I have a doctorate in clinical psychology.

12 Q: What states are you licensed in?

13 A: I'm licensed in Florida, Missouri and South Carolina.

14 Q: Dr. Swan, do you have any memberships in any professional
15 organizations?

16 A: I do. I was appointed to the Board of Psychology by the
17 governor of Florida, that's the part of the government that
18 regulates the practice of psychology. I served on that board
19 for ten years and then I have an additional five years as the
20 chairman of the probable cause committee evaluating all the
21 complaints about psychologists who were doing things that they
22 weren't supposed to do, and I'm also a member of the American
23 Psychological Association. The Association for the Treatment
24 of Sexual Abusers is the largest international organization
25 devoted to the study of sex offenders. I'm a member of that

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

40

1 organization as well as the Florida Chapter. I'm a member of
2 the International Association of Forensic Nurses and the
3 Association of State and Provincial Psychology Boards.

4 Q: Dr. Swan, have you ever testified in court as an expert
5 witness?

6 A: I've testified in excess of a thousand times as an expert
7 witness in courts in Florida, Georgia, Iowa, Missouri, South
8 Carolina and also in federal cases.

9 Q: Dr. Swan, have you ever been qualified as an expert in
10 sexually violent predator cases?

11 A: Yes, I have. I've been qualified 213 times.

12 Q: And how many of those times have you been qualified in
13 South Carolina?

14 A: Twenty-two times in South Carolina.

15 Q: Dr. Swan, do you have any experience working directly with
16 sex offenders?

17 A: I do. I've worked with sex offenders for twenty-seven
18 years.

19 Q: And can you briefly talk about your relevant experience
20 that you have in evaluating sex offenders?

21 A: Yes. I began working with sex offenders in 1989 and for
22 two years I worked setting up a program for sex offenders and
23 providing treatment in that program. That was between 1989
24 and 1991. Between 1993 and 1995, I worked at a community
25 mental health center doing evaluation and treatment of victims

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

41

1 of sexual assault and the perpetrators. Between 1996 and 1997
2 I worked with incarcerated adolescent sexual offenders for a
3 year. Between 1997 and 1999, I worked in court psychology
4 evaluating child victims and adult perpetrators of sexual
5 abuse. In 1999, I was the first psychologist hired to provide
6 treatment at the Florida civil commitment where we housed
7 individuals under the Florida law such as this one and I was
8 -- I provided treatment there. And in 2000, I went into
9 private practice and contracted with different states to do
10 these types of evaluations, and I do all sorts of psychosexual
11 evaluations as well as sexually violent predator cases.

12 Q: Dr. Swan, how many evaluations have you conducted on
13 sexually violent predators?

14 A: Specifically on sexually violent predators, I've done 762.

15 Q: Do you have any additional specialized training or
16 experience within the field of psychology beyond your
17 doctorate degree?

18 A: I do. It's pretty hard to get training in working with
19 sex offenders in a college program because they're just not
20 that many of them that offer it. And so we typically get our
21 training in the form of conferences and seminars. And I've
22 received 895 hours of training in sex offender since I got my
23 doctorate degree in 1997. About 287 of those hours are held
24 specifically in the area of assessing the risk that a sex
25 offender would commit another sexual crime.

In the Matter of John H. Dorsey - (2015-CP-22-563
AMY C. SWAN - VOIR DIRE BY FALK

42

1 Q: Dr. Swan, have you ever testified before on the behalf of
2 the people being considered for commitment to a sexually
3 violent predator program?

4 A: I have. If I find that the individual I'm evaluating does
5 not meet commitment criteria as a sexually violent predator
6 then I would testify on behalf of that individual.

7 MR. MORROW: As this time, Your Honor, I would move that
8 Dr. Swan be recognized as an expert in forensic psychology and
9 the treatment IEP evaluation -- excuse me -- of sex offenders.

10 THE COURT: Any objections?

11 MR. FALK: Just a few questions, Your Honor?

12 THE COURT: Sure.

13 VOIR DIRE EXAMINATION OF AMY C. SWAN BY MR. FALK:

14 Q: Dr. Swan, since 2000, that's the year that you said you
15 went into private practice?

16 A: That's correct.

17 Q: Did you only testify in Florida or did you testify in
18 other states?

19 A: I began testifying primarily in Florida. I think I was
20 licensed about 2011 in Missouri and in -- well, I guess it was
21 2011 in South Carolina and approximately the same time in
22 Missouri. So, for the first eleven years or so I testified
23 mainly in Florida.

24 Q: Okay. When was the last time you testified on behalf of
25 the Defendant in one of these cases?

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

43

1 A: In South Carolina or ---

2 Q: Anywhere.

3 A: Okay. Well, in South Carolina, it was last week, and in
4 Florida it was approximately two weeks ago.

5 Q: What was the name of the Defendant in South Carolina?

6 A: William Deans (spelled phonetically).

7 Q: No further questions.

8 THE COURT: All right. Your motion is granted.

9 CONTINUATION OF DIRECT EXAMINATION OF AMY C. SWAN BY MR.

10 MORROW:

11 Q: And Dr. Swan, how did you become involved in this case?

12 A: In this case, I was retained by the Department of Mental
13 Health to conduct an evaluation of Mr. Dorsey.

14 Q: And were you paid to conduct this evaluation

15 A: Yes, I was.

16 Q: And would you've been paid any differently if you did not
17 recommend commitment?

18 A: No, I receive a flat fee for the case so no matter what my
19 opinion is, I still get paid the same amount.

20 Q: What type of evaluation did you conduct in this case?

21 A: I conducted an evaluation to determine if Mr. Dorsey met
22 criteria as a sexually violent predator according to the South
23 Carolina statutes.

24 Q: And Dr. Swan, what are the criteria to be considered a
25 sexually violent predator?

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

44

1 A: The individual must have been convicted of a sexual crime
2 listed in the statutes as a sexually violent offense in the
3 State of South Carolina and he must have a mental abnormality
4 or a personality disorder that makes him likely to engage in
5 future acts of sexual violence if not confined in a secure
6 facility for long-term care, control and treatment.

7 Q: Dr. Swan, talk to me about your evaluation process. What
8 do you do?

9 A: I'm contacted to see if I'm going to do an evaluation. If
10 I say that I am, I receive a package of all the information
11 that the Department of Mental Health has about this particular
12 individual. And once I receive the information, I review it,
13 I schedule an appointment to see the individual. It's
14 typically at the Forensic Evaluation Center in Columbia, South
15 Carolina. And I conduct an interview on the individual that
16 starts at the day he was born and goes all the way up until
17 the day he's sitting in front of me, and this would include
18 his early life, his background with his family, his
19 educational history, his occupational history, his academic
20 history, his relationship history, medical history, and sexual
21 history. And after I get all that information, then I
22 simulate it make a make a decision about whether he meets
23 criteria under the criteria listed in the statute and then I
24 write a report.

25 Q: Is that the procedures that you used in this case?

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

45

1 A: Yes, it is.

2 Q: And Dr. Swan, did you find that Mr. Dorsey met criteria
3 for commitment as a sexually violent predator?

4 A: Yes, I did.

5 Q: And Dr. Swan, during your evaluation, did you receive
6 documentation to aid you in conducting your evaluation?

7 A: I did. I received a whole bunch of documents and
8 information about Mr. Dorsey.

9 Q: From whom did you receive this documentation?

10 A: The Attorney General's office as well as the Department of
11 Mental Health.

12 Q: And what type of documentation did you review, receive and
13 review?

14 A: I received arrest warrants, court documents, judgment and
15 sentencing information, indictments, police records, records
16 from SCDC or the South Carolina Department of Corrections,
17 records from the South Carolina Department of Law Enforcement
18 and statements of victims.

19 Q: And Dr. Swan, is that the type of documentation that is
20 typically and reasonably relied upon by other experts in your
21 field?

22 A: Yes, it is.

23 Q: And from the documentation that you received, could you
24 tell if Mr. Dorsey had been convicted of a sexually violent
25 offense?

1 A: Yes, he had.

2 Q: And what was that offense?

3 A: He was convicted of three sexually violent offenses. One
4 was criminal sexual conduct with a minor in the second degree
5 in 1989, and he had two counts of lewd act on a minor under an
6 age of sixteen.

7 Q: Dr. Swan, let's talk about that 1989 offense you
8 mentioned, the criminal sexual conduct with a minor in the
9 second degree. Who was the victim of that offense?

10 A: The victim of that was an acquaintance of Mr. Dorsey.

11 Q: And how old was she?

12 A: Thirteen.

13 Q: And did Mr. Dorsey know the victim?

14 A: He did. It was a little unclear exactly what the
15 relationship was. When I first -- in my first interview, I
16 asked him and he said the victim in this case was a twelve-
17 year-old boy. When I had a second interview with him, he
18 initially said that or he had previously said that it was the
19 mother's -- that he was the mother's live-in boyfriend.
20 However, on my second interview, he said that he was dating
21 the victim's sister. So, he did know the victim. It's not
22 entirely clear how he knew her because I got different stories
23 about that.

24 Q: And, could you tell from the documentation you received
25 the sex of the victim involved?

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

47

1 A: Yeah, she was a thirteen-year-old female.

2 Q: Okay. What was the nature of the sexual abuse reported by
3 the victim?

4 A: She reported that Mr. Dorsey forced her to have sex
5 against her will.

6 Q: And did you receive documentation concerning this offense?

7 A: Yes, I did.

8 Q: Okay. Dr. Swan, I'd like for you to review what's been
9 pre-marked for identification purposes only as State's Exhibit
10 One.

11 May I approach, Your Honor?

12 THE COURT: Sure.

13 Q: Could you take a moment to review that document?

14 A: Yes.

15 Q: Do you recognize that document?

16 A: I do. This is the arrest affidavit and also the arrest
17 warrant and the sentencing sheet.

18 Q: And ---

19 A: And the indictment.

20 Q: Dr. Swan, is there anything on that document to indicate
21 its authenticity?

22 A: Yes, there is. And I do note that although the records
23 say that the victim was thirteen, the indictment says that she
24 was actually eleven. And there is a court seal on here to
25 authenticate the document.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

48

1 Q: And was that document part of the basis of your opinion?

2 A: Yes, it was.

3 Q: Okay. Dr. Swan -- at this time, Your Honor, I'd like to
4 admit what's been marked as State's Exhibit One into evidence.

5 THE COURT: Any objections?

6 MR. FALK: No, Your Honor.

7 THE COURT: All right. State's Number One into evidence
8 without objection.

9 STATE'S EXHIBIT NUMBER ONE

10 ADMITTED INTO EVIDENCE

11 BY MR. MORROW:

12 Q: Dr. Swan, did that document indicate how Mr. Dorsey came
13 into this conviction?

14 A: Yes, he pled guilty.

15 Q: And what sentence did he receive?

16 A: He received a sentence of thirteen years in SCDC.

17 Q: And you mentioned that you interviewed Mr. Dorsey as part
18 of your evaluation?

19 A: Yes, I did.

20 Q: And what did he say regarding this crime?

21 A: On the first interview, as I mentioned, he said that the
22 crime was -- involved twelve-year-old boy. It turned out
23 later that he had sex with a twelve-year-old boy, it just
24 wasn't this case.

25 On the second interview he said that he went over to pick

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

49

1 up her sister and she was there and that she told him that
2 she'd been wanting to have sex with him so they had sex. He
3 said it was consensual but he could not explain why the victim
4 told her mother and they called the police if it was
5 consensual sex.

6 Q: So, even though that he -- so, what did -- so even though
7 he pled guilty to criminal sexual conduct in the second degree
8 and agreed to a sentence where he went to prison for thirteen
9 years, he maintains that he didn't do anything wrong?

10 A: That's correct. He didn't seem to understand that having
11 sex with someone who is too young to consent was not
12 appropriate.

13 Q: And you also reviewed documents related to Mr. Dorsey's
14 other criminal history, correct?

15 A: Yes, I did.

16 Q: Okay. Again, these documents are the type typically and
17 reasonably relied upon by experts in your field?

18 A: Yes.

19 Q: Okay. In reviewing this history, were there any other
20 convictions that were relevant to your evaluation of Mr.
21 Dorsey?

22 A: Yes. He was convicted of two counts of lewd act on a
23 child under the age of sixteen.

24 Q: And again you received documentation about those?

25 A: Yes, I did.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

50

1 Q: Okay. I'm gonna show you what's been pre-marked for
2 identification purposes only as State's Exhibit Two.

3 Your Honor, may I approach?

4 THE COURT: Sure.

5 BY MR. MORROW:

6 Q: Could you take a moment to review that document?

7 A: Yes, this is the indictment, the sentencing sheet, yes,
8 for both of those counts of lewd act.

9 Q: And is there anything on that document to indicate its
10 authenticity?

11 A: Yes. There is the Court seal saying that it is a
12 certified copy.

13 Q: And again, is this document part of the basis for your
14 opinion?

15 A: Yes, it is.

16 MR. MORROW: At this time, the State would move State's
17 Exhibit Two be moved into evidence.

18 THE COURT: Any objections?

19 MR. FALK: No objection.

20 THE COURT: State's Number Two in evidence without
21 objection.

22 STATE'S EXHIBIT NUMBER TWO

23 ADMITTED INTO EVIDENCE

24 BY MR. MORROW:

25 Q: So, let's talk about these two convictions. What were

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

51

1 they?

2 A: Lewd act on a child under sixteen.

3 Q: And how old were the victims in those cases?

4 A: The victims were two boys, one was twelve and one was
5 fourteen.

6 Q: And did Mr. Dorsey know those victims?

7 A: He did.

8 Q: And how long did the abuse go on?

9 A: The abuse from the one victim, Minor1 (spelled
10 phonetically), it was reported that it occurred three times.
11 With the other victim, Minor2 , it was multiple times.

12 Q: And what was the nature of the sexual abuse reported by
13 the victims in these cases?

14 A: Both of the boys reported that Mr. Dorsey violently
15 grabbed them, held their arms, placed his hands over their
16 mouth to keep them from screaming and forced his penis into
17 their anuses. They just -- Minor1 , in particular, described
18 that it was pain like a knife going in his anus and he
19 indicated that Mr. Dorsey ejaculated as he was doing so. He
20 told them not to tell anyone or he would hurt them and both
21 boys said that they were so scared of him that they did not
22 report this.

23 Q: And Dr. Swan, how did Mr. Dorsey receive these
24 convictions?

25 A: Again, he pled guilty to these.

1 Q: And what sentence did he receive?

2 A: He received fifteen years in SCDC for each count to run
3 concurrently, which means together.

4 Q: What did Mr. Dorsey have to say about these convictions?

5 A: Mr. Dorsey initially denied that he committed any of these
6 acts that the victims reported. However, then he said that
7 Minor1 told his daddy that Mr. Dorsey messed with him and he
8 said that those boys would say anything and their parents fall
9 for it every time. So, and he said, I'm being real with you,
10 I didn't touch that dude. Then he said, I'd been drinking a
11 lot and I'd been drinking at a club, and someone must've put
12 something in my drink and I don't remember. And he denied
13 that it happened multiple times.

14 Q: So, again, in your interview, John Dorsey denied any
15 wrongdoings but the fact that he pled guilty?

16 A: That's correct.

17 Q: Okay. Did you find Mr. Dorsey's account of these events
18 plausible?

19 A: I did not.

20 Q: Why not?

21 A: The victims gave extremely graphic details about the abuse
22 including details that would be difficult to fabricate. When
23 I evaluate victims of sexual abuse, I'm looking to see if this
24 is some statement that was coached, someone told them to say
25 that or if they really experienced it. So, I look to see if

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

53

1 they have details about where it happened, what time of day it
2 happened, when it happened. I also look for the descriptions
3 of the acts, if they give a coherent description of sexual
4 acts, and then I look for sensory details because it's
5 unlikely that someone who fabricating an account will be able
6 to come up with the sensory details. And, for example,
7 Minor1 said that it felt like a knife going in his anus and
8 then he said when he had the first bowel movement after the
9 abuse, it felt like someone has -- was ripping a hammer out of
10 his anus. Now, clearly, those are pretty graphic accounts
11 that someone who had not experienced that would be unlikely to
12 come up with. So, those accounts lead me to believe that it
13 occurred and that Mr. Dorsey's account was not truthful.
14 Q: Did you point out these concerns to Mr. Dorsey during your
15 interview?
16 A:- I did. I pointed out to him that there were three boys
17 who were saying that he raped them, and it was hard to believe
18 that he had not done anything, and he said, I don't remember
19 that. So, in the second interview, he said that he was more
20 aroused to girls than he was boys, and so I asked him, you
21 know, why he was having sex with boys if he was more aroused
22 to girls. And he said that he had been drinking at the club
23 that night and somebody put something in his drink. And when
24 I noted that these assaults happened over a time period of at
25 least a couple of months and that, you know, I asked him, did

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

54

1 someone put something in your drink every single time that you
2 assaulted these boys. And he said that he'd been going back
3 to the club all the time and then he'd come back to the house,
4 and he said that he was drunk. And that was in contrast to
5 when I asked him about his substance abuse history, he said
6 that he'd only been drunk four times in his life and the most
7 he ever drank was he had one beer or one shot. So, this story
8 of being drunk and sexually assaulting these boys didn't seem
9 truthful either.

10 Q: Dr. Swan, how does Mr. Dorsey's criminal history factor
11 into your evaluation of whether he meets the criteria of
12 commitment under the Sexually Violent Predator Act?

13 A: The number of times that an individual has been arrested
14 and convicted of a sexual crime is a proxy for how strong
15 their desire is for deviant sex; in this case, the sex with
16 boys.

17 Q: And Dr. Swan, can you explain to the Jury how an
18 individual's past sexual behavior relates to his future sexual
19 offense behavior?

20 A: Yes. We know that the best predictor of future behavior
21 is past behavior. So, if he's been convicted of having sex
22 with boys, then he's at a higher risk to have sex with boys
23 again in the future. But one of the things we look at is once
24 someone receives some kind of punishment for a sexual crime,
25 for example his 1988 crime, he was convicted of that, he went

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

55

1 to prison. A reasonable person would say, you know, I really
2 didn't like going to prison, I'm not gonna do that anymore.
3 But in this case, Mr. Dorsey has such a strong desire for sex
4 with boys and girls, for that matter, underage children, that
5 he offended over and over again even though he knew he would
6 go back to prison.

7 Q: Dr. Swan, is your opinion today based solely upon his
8 criminal history?

9 A: No, it's not.

10 Q: And would it be professionally acceptable to do so?

11 A: No, it would not.

12 Q: Were there any other things in Mr. Dorsey's interview that
13 caused you concern?

14 A: Yes. Mr. Dorsey got confused when I was asking him about
15 that 1988 crime and he began telling me about another boy that
16 he had sex with who was twelve years old. So, we know that
17 Mr. Dorsey was not arrested or convicted for this crime, it
18 was mainly undetected. So, that leads me to believe that
19 there are other victims that we just don't know about.

20 Q: Now, Dr. Swan, did Mr. Dorsey receive any sex offender
21 treatment while at the South Carolina Department of
22 Corrections?

23 A: He did not.

24 Q: Did he tell you why?

25 A: He said that he was never offered. Occasionally, I see

1 that happening. Typically, anyone who is convicted of two
2 lewd acts is offered sex offender treatment but I did not see
3 in the records that he'd had any of it. When I asked him if
4 he needed treatment, he said no, that he did not, that he'd
5 learned his lesson. So, the fact that he did not have sex
6 offender treatment leads me to believe that nothing has
7 changed with him and he is not any different than he was when
8 he entered prison in 2000 or 2001.

9 Q: Dr. Swan, what is a mental abnormality?

10 A: A mental abnormality is a mental condition affecting a
11 person's emotional or a volitional capacity, that means their
12 feelings or their ability to take charge of a situation that
13 predisposes the person to commit sexually violent offenses.

14 Q: In the context of sexually violent predator proceeding,
15 what kinds of mental abnormalities or personality disorders
16 are you looking for?

17 A: We're typically looking at sexual disorders or disorders
18 of sexual deviance that would predispose him to commit future
19 acts of sexual violence.

20 Q: And what is sexual deviance?

21 A: Sexual deviance or the mental abnormality that we're
22 looking at in this case, these are behaviors, sexual behaviors
23 that are considered abnormal and the reason that they are
24 considered abnormal is that most people don't want to engage
25 in them or they have a high risk of harming the victims in

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

57

1 this behaviors. For example, pedophilia is sexual interest in
2 children. Well, most people don't want to have sex with
3 children and the children have a high probability of being
4 damaged, physically, emotionally and sexually by being forced
5 to have sex against their will.

6 Q: Based on your interview and all other relevant information
7 that you took into account, did you determine whether Mr.
8 Dorsey has a mental abnormality or personality disorder?

9 A: I did. I determined that he has other specified
10 paraphilic disorder sexually attracted to pubescent males and
11 females.

12 Q: And what information led you to that diagnosis?

13 A: Well, that's a long term indicating that he's sexually
14 aroused to children between the ages of like twelve and
15 fourteen and these are not small children, these are children
16 who have the beginnings of secondary sexual characteristics.
17 They've just entered puberty.

18 In the case of Minor 1, the sexual assault examination
19 indicated that he only had two pubic hairs, so he's started
20 puberty but he has not yet fully entered it so he doesn't have
21 the body of an adult. And the reason that I diagnosed him
22 with this is that he has a history of sexually assaulting
23 males and females who are between the ages of eleven and
24 fourteen and those are the ages they are considered to be
25 adolescent. It used to be like twelve to fourteen but now

1 kids are entering puberty at an earlier age so they've
2 extended it to eleven to fourteen.

3 Q: And Dr. Swan, how does Mr. Dorsey meet the criteria for
4 other specified -- other specified paraphilic disorder?

5 A: He was convicted of assaulting an eleven-year-old girl, a
6 twelve-year-old boy, a fourteen-year-old boy and he admitted
7 that he sexually assaulted a twelve-year-old boy, only he
8 didn't call it sexually assaulting, he called it he had sex
9 with him, but it was a sexual assault because the boy was
10 twelve and not able to consent.

11 Q: Dr. Swan, we've talked about his conviction for sexually
12 violent offenses. We've talked about your diagnosis for
13 mental abnormality. How do you measure his risk to reoffend?

14 A: We measure his risk to reoffend using a couple of
15 different instruments. We look at risk factors that have been
16 identified in the research to determine those individuals who
17 are at risk to go on and commit a future sexual crime after
18 they've already been arrested or convicted for one sexual
19 crime.

20 Q: Dr. Swan, you just mentioned the risk factors. What is a
21 risk factor?

22 A: A risk factor is anything that increases or decreases
23 someone's risk from committing another sexual crime.

24 Q: Are there multiple types of risk factors?

25 A: We typically assess two different types of risk factors.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

59

1 One are static risk factors. Those are things that don't
2 change. And we typically measure another group of factors
3 called dynamic risk factors. These are factors that can
4 change and these are the things we target in treatment to
5 reduce someone's risk for another offense.

6 Q: All right. That first type of risk factor you talked
7 about, static risk factors. You talked about those as being
8 the factors that do not change. How do you measure those?

9 A: Well, we look at the biggest factor identified in the
10 research is the research is the sexual preference for children
11 or being interested in having sex with children. And this
12 could be prepubescent children or children who don't have
13 secondary sexual characteristics or pubescent children who
14 have just entered puberty. That is the largest risk factor
15 and that is Mr. Dorsey's number one risk factor.

16 Q: Dr. Swan, did you perform any assessments or use any
17 assessment models to determine his static risk factors?

18 A: I did.

19 Q: And what -- did you use something called an actuarial
20 assessment?

21 A: I did.

22 Q: How do actuarial assessments work?

23 A: Actuarial instruments are instruments that function very
24 much like the actuarial tables that insurance agents use to
25 determine what your premium is for your insurance. In this

1 case, the actuarial instruments are based on the premise that
2 if you're convicted for a sexual crime and you continue to
3 reoffend that you're at higher risk for another sexual crime.
4 And the actuarial tables that we use in this have been put
5 into an instrument, a ten-item instrument and it -- an example
6 is that -- for example, we know that young men under the age
7 of twenty-five are at a much higher risk of being involved in
8 a car accident. So, they're premiums are higher because the
9 insurance company gets to take greater measures to ensure
10 against a loss, and the actuarial tables for the Static-99R
11 function the same way. The more times he's been arrested or
12 convicted of a sexual crime and gone on to reoffend, the
13 higher his risk is for another sexual crime and the more
14 measures we need to put into place to protect the community.

15 Q: What is the Static-99R?

16 A: The Static-99R is a ten-item risk assessment instrument.
17 It is the most commonly used one in sexually violent predator
18 cases.

19 Q: And is the Static-99R, is it the type of instrument that's
20 typically and reasonably relied upon by other experts in your
21 field?

22 A: Yes.

23 Q: And how does it measure risk?

24 A: Well, it was based on a study in which they researched
25 30,000 different sex offenders and they identify

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

61

1 characteristics that were pertinent to the ones who went on to
2 commit a later sex offense. So, they took those top ten
3 factors that were the most risky for those particular
4 individuals and put them together in a risk assessment
5 instrument which is the Static-99R.

6 Q: What was John Henry Dorsey's score on the Static-99R?

7 A: His score on that instrument was a three which is in the
8 moderate low risk range.

9 Q: And what is that score, moderate low risk, mean?

10 A: Well, the moderate low risk is a category, you have low,
11 moderate low, moderate high, and high risk. So, his falls in
12 the moderate low risk. And if he were only using the
13 actuarial instrument alone, without looking at other risk
14 factors, then you'd probably think that he would not meet the
15 criteria because his risk is in the moderate low category.
16 But, there are a number of important things that we need to
17 remember about the Static-99R.

18 Q: And what are the deficiencies in the Static-99R?

19 A: Well, it's important to know that the Static-99
20 underestimates risk. It specifically underestimates risk for
21 Mr. Dorsey because we know he had victims that he was not
22 arrested or convicted for. The actuarials use the basis an
23 individual being arrested or convicted of a sexual crime, but
24 less than ten percent of sexual crimes result in an arrest or
25 a conviction. So, because in the research studies, so many

1 crimes were undetected, we know that they underestimate risk.
2 We also know that the Static-99 tells us if someone will be
3 arrested or convicted in five years or ten years. But what we
4 want to know, under the statute, if this person is going to
5 commit a sexual crime the rest of his life, so you can tell
6 that's a different standard. We use legal records for arrests
7 or convictions because those are the most easy to identify if
8 someone has committed a sexual crime but they an underestimate
9 of the true incidents of sexual crimes.

10 Now, it's also important to note that risk for most
11 sexual offenders declines at about age sixty. Mr. Dorsey is
12 fifty-eight, so you would think that his risk would be
13 declining in a couple of years. However, for child molesters,
14 the risk does not decline like it does for rapists. And in my
15 experience, I had an eighty-year-old man who -- I'm sorry, a
16 ninety-year-old man who was -- told me that he was going to
17 have sex with a boy the minute he got out. So, you can see
18 that for a child molester the risk extends into advanced
19 adulthood. So, we can't say automatically that his risk will
20 decline in two years.

21 Q: Now, Dr. Swan, was the Static-99R the sole basis of your
22 evaluation?

23 A: It was not.

24 Q: And would it be professionally acceptable to do so?

25 A: No, it would not.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

63

1 Q: And why not?

2 A: We're doing a comprehensive evaluation and we potentially
3 taking away someone's liberty, so that's not something that
4 you would take lightly. So, you have to do a very
5 comprehensive evaluation. So, not only do we look at the risk
6 assessment instrument but we look at other factors that might
7 impact on his risk.

8 Q: Dr. Swan, a second ago, when we were talking about risk
9 factors, you'd mentioned that there were static risk factors
10 and also another type of risk factors called dynamic risk
11 factors. What are dynamic risk factors?

12 A: Dynamic risk factors are factors that can change and
13 those, as I said, are the things we determine the treatment to
14 develop skills in that area so that they don't reoffend.

15 Q: And does Mr. Dorsey have any dynamic risk factors that you
16 were able to identify?

17 A: Oh, he does. One of the dynamic risk factors he has is
18 lack of emotionally intimate relationships with adults. The
19 reason this is a risk factor is that individuals who have a
20 sexual preference for children often are not interested in
21 intimate relationships with age-appropriate adult partners.
22 And so, we look at whether the individual has had a consensual
23 age-appropriate relationship that extends for at least a
24 period of two years and Mr. Dorsey has not. His longest
25 relationship lasted a year and the only other one he had

1 lasted six months. And so the -- this is the risk factor that
2 we look at as well to determine if he continues to be at risk.

3 Q: Dr. Swan, why are these dynamic risk factors important?

4 A: I'm sorry, I didn't finish looking at ---

5 Q: I'm sorry. I didn't mean to interrupt your answer.

6 A: That's okay.

7 Q: What were some of his -- you had mentioned some other
8 additional risk factors?

9 A: I did; I'm sorry. He also has poor problem solving and we
10 talked about that a little bit because he would -- as I said,
11 if someone is arrested and convicted for a sexual crime and
12 they go to prison, which is not a nice place, you'd think that
13 they'd say, I'm not gonna do that anymore. But in Mr.
14 Dorsey's case, he has trouble identifying the problems that he
15 actually has. He tends to avoid addressing them in an
16 appropriate way. He doesn't seem to have consequential
17 thinking which would be, you know, I've already been in prison
18 for this, if I molest this boy, another boy, I'm gonna go to
19 prison again for a long time. So, he can't see the cause and
20 effect. And he also seemed to have difficulty generating
21 appropriate solutions to his problems which is what has ended
22 him up in prison. He also has a lack of concern for others or
23 callousness. These -- men can have this particular risk
24 factor or what's described as selfish, cynical, and willing to
25 be cruel to another person to get their needs met. You just

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - DIRECT BY MORROW

65

1 have to hear the descriptions that these boys gave of the pain
2 that they experienced to understand that Mr. Dorsey didn't
3 care about the pain that he inflicted on them, he only cared
4 about getting his sexual gratification and he had no concern
5 at all for the harm he did to these boys and girls.

6 Q: Dr. Swan, why is it important to consider both the static
7 risk factors that you talked about earlier and these dynamic
8 risk factors that you just mentioned?

9 A: Well, it's important because if we just looked at the
10 Static-99, we might be under the false assumption that he was
11 not at a high risk and that he didn't require long-term care,
12 control and treatment, but an assessment of the dynamic risk
13 factors increases our ability to determine who continues to be
14 at risk.

15 Q: And Dr. Swan, after evaluating Mr. Dorsey's risk to
16 reoffend, do you have an opinion to reasonable degree of
17 psychological certainty as to whether Mr. Dorsey's mental
18 abnormality unspecified paraphilic disorder makes him likely
19 to engage in crimes of sexual violence if not confined to a
20 secure facility for control, care and treatment?

21 A: I do. His particular mental abnormality, unspecified
22 paraphilic disorder, sexually attracted to pubescent males
23 means that over a period of at least six months, he had sexual
24 urges, fantasies, or behaviors involving pubescent young men
25 and women, and clearly that's the case because he offended

1 over a period of years. He offended -- his known offenses
2 occurred in 1988 and 1999, but he told me that he noticed that
3 he was sexually aroused to young boys as early as thirteen.
4 So, we know that his arousal to young boys and girls has
5 extended for at least twenty-eight years. And we also know
6 that we cannot cure that type of arousal. If he is sexually
7 aroused to young boys at thirteen, he's still gonna be aroused
8 at seventy. That doesn't change. The only thing that changes
9 is the amount of time that they spend fantasizing about the
10 young boys and girls and masturbating to it. And we can't
11 cure them, we can only treat them, and that's what we're
12 asking to do with Mr. Dorsey because he clearly has a sexual
13 disorder that puts him at risk of harming other boys and girls
14 and he needs care, control, and treatment in a secure facility
15 to help him to learn strategies so that he doesn't reoffend
16 again.

17 Q: So, again, Mr. Dorsey has been convicted of a sexually
18 violent offense; is that correct?

19 A: Yes, three of them, criminal sexual conduct in the second
20 degree and two counts of lewd act on a child under sixteen.

21 Q: And Dr. Swan, do you have an opinion as to a reasonable
22 degree of psychological certainty as to whether Mr. Dorsey
23 suffers from a relevant mental abnormality?

24 A: Yes, I do; and yes, he does.

25 Q: And Dr. Swan, do you have an opinion as to whether his

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

67

1 mental abnormality unspecified paraphilic disorder sexually
2 attracted to pubescent males and females causes him serious
3 difficulty in controlling his behavior?

4 A: Yes, I do. Obviously, he was arrested and convicted and
5 went right back out a short time after he got out of prison
6 and started molesting other boys.

7 Q: Dr. Swan, did you find evidence as to whether Mr. Dorsey
8 has difficulty controlling his behavior?

9 A: Yes, he does. I believe he has significant difficulty
10 controlling his behavior because, after being in prison, he
11 started doing it again knowing he could go to prison again.

12 Q: And Dr. Swan, do you have an opinion to a reasonable
13 degree of psychological certainty as to whether Mr. Dorsey's
14 other specified paraphilic disorder makes him likely to engage
15 in acts of sexual violence if he is not confined for long-term
16 control, care and treatment?

17 A: I do and I believe it does.

18 Q: Thank you, Dr. Swan. Please answer any questions that the
19 Respondent may have or the Court may have.

20 THE COURT: Mr. Falk?

21 CROSS EXAMINATION OF AMY C. SWAN BY MR. FALK:

22 Q: Ms. Swan, I believe part of your testimony was that it was
23 your opinion that he was sexually attracted to boys or
24 children eleven to fourteen; is that correct?

25 A: That's correct.

1 Q: Where is the evidence that there were eleven-year-olds?

2 A: Well, his conviction in 1988 was for an eleven-year-old
3 girl. Some of the records indicated that she -- or Mr.
4 Dorsey's statement was that she was thirteen but the
5 indictment says eleven.

6 Q: It could be an inaccuracy in the indictment, is it not?

7 A: Well, I think it's more likely that the indictment is
8 correct as opposed to Mr. Dorsey's statement.

9 Q: Well, if you believed that she was eleven, they why when
10 you prepared -- you prepared a report in this case, did you
11 not?

12 A: I did.

13 Q: And why did you -- when you described that offense, why
14 did you describe her as a thirteen-year-old girl?

15 A: Mr. Morrow had documents that I did not previously see and
16 one of those was an information or an indictment and it said,
17 in fact, in a couple of different places it said she was
18 eleven. The only description of that crime that I had
19 initially was Mr. Dorsey report and he said she was thirteen.

20 Q: You had said that he's a -- you have made some comment
21 about people who are attracted to children that have not had
22 secondary sexual characteristics; was that right?

23 A: That's correct. That would be pedophilia.

24 Q: Okay. Which of his victims were -- what do you know about
25 this secondary sexual characteristics of the people he was

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

69

1 charged with?

2 A: Well, the two boys, one was twelve and fourteen, and those
3 are within the range of individuals who are in the beginning
4 stages of puberty, and as I said, Minor1 had a few pubic
5 hairs on the sexual assault examination which seems to
6 indicate that he had entered puberty. An average age that a
7 girl enters puberty is about 10.9 years now, and the little
8 girl that was discussed was 11. I can't assume that she was
9 pubescent or prepubescent because I really don't know but I
10 assume that she was just for -- to make sure that I was
11 accurate as I could be.

12 Q: I'm sorry, you assumed what?

13 A: That she was in the beginning stages of puberty based on
14 the average age that girls enter puberty.

15 Q: And you have now reason to right now to know that that's
16 not correct, is it?

17 A: Well, no, I don't, but if that were -- if she was not
18 pubescent, then he would get an additional diagnosis of
19 pedophilia because that would demonstrate sexual interest in
20 prepubescent children. If he was not diagnosed with
21 pedophilia; is that correct?

22 A: I did not diagnose him with pedophilia, no.

23 Q: You're familiar, I would guess, with the DSM-5?

24 A: Yes, that's an 800-page book that gives us the criteria
25 for diagnosing all the different mental disorders.

1 Q: And there are specific diagnostic criteria for pedophilic
2 disorder, are there not?

3 A: There are.

4 Q: And are those specific diagnostic criteria for the disease
5 that you -- is that right?

6 A: Unspecified paraphilic disorder, sexually attracted to
7 pubescent males and females. The technical name for that in
8 psychology, pedophilia just means it's what we call sexual
9 deviants, there are different disorders. And the technical
10 name for being sexually aroused by children who are just
11 entering puberty is called hebephiliac, so that would be the
12 technical name for that as opposed to pedophilia which is a
13 sexually attraction to pre-pubescent children.

14 Q: Now, there is no discussion of hebephilia, there's no
15 separate diagnostic number next to it. For example pedophilic
16 at this order gives a number that says 302.2, that's some type
17 of identifier?

18 A: Yes. There are 540 different what we call paraphilic
19 disorders or different things that turn people on sexually
20 like children, shoes, wearing clothing of the opposite sex.
21 There are only eight that are specifically delineated in that
22 800-page book. The other 539 fall under the category of other
23 specified paraphilic disorder. The ones that are listed, the
24 eight that are listed are just there because we have more
25 research on them than they do on some of the other ones.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

71

1 Q: So, are you equating the commonality, I guess, between
2 having a sexual fantasy about shoes and about a fourteen-year-
3 old girl?

4 A: No, I'm just giving you examples of the different kinds of
5 things that people can be aroused by. Pretty much, if you can
6 think about it, someone is turned on by it sexually. But, in
7 this, you know, some of those are relatively harmless. You
8 know, who cares if you're aroused to shoes as long as you're
9 not knocking people down on the street to steal their shoes
10 and masturbate in them. But, certainly, this is a very
11 important disorder that we're talking about because it
12 involves harm to children.

13 Q: That's what I'm concerned about if it is a very important,
14 why is it not in the DSM-5, I mean, we're talking about one
15 that you just said is important yet it is not in the DSM-5,
16 hebephilia?

17 A: Well, there's been some controversy about actually
18 including it in the book. There's not much controversy at all
19 that it exists because anyone who has worked with sex
20 offenders know that there are some individuals who like that
21 age and they are sexually aroused by it. Part of the arousal
22 is maybe the vulnerability and the powerlessness of the child
23 but, in fact, it's a very well-known disorder. There's been
24 some political controversy about whether to include it in the
25 book or not and there have been many issues, much discussion,

1 but as I said anyone who works with sex offenders knows that
2 it is a distinct entity.

3 Q: If somebody was sexually attracted to six-year-old girls,
4 that would be what?

5 A: Deviant and against the law.

6 Q: That would be pedophilic disorder?

7 A: Pedophilic disorder, yes.

8 Q: Is there a uniform understanding that people who have had
9 sex with, you know, prepubescent children are committing acts
10 of pedophilia?

11 A: Yes.

12 Q: There is no -- there is no dispute about that?

13 A: No dispute.

14 Q: Is there any dispute about people having sex with thirteen
15 or fourteen-year-olds as being a paraphilia?

16 A: There is. I have a 101 research articles about sexual
17 attraction to the pubescent males and females. There -- in a
18 review of those articles, there doesn't seem to be much, much
19 controversy that there are individuals who are aroused to that
20 but it has been a big political issue. One of the reasons
21 that they recently wanted to include it in a book is that
22 there's a lot of crossover, men who have sex with a twelve to
23 -- eleven to fourteen-year-olds, a lot of them also have sex
24 with children, so they wanted to sort of bifurcate it under
25 pedophilia and say that one was pedophilia and one was

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

73

1 hebephilia but under the same diagnosis. However, as I said,
2 there's been a lot of controversy but the controversy doesn't
3 seem to be about whether it exists or not but whether it should
4 be included in the book.

5 Q: So, you're a forensic psychiatrist -- I mean, you're a
6 forensic psychologist; is that correct?

7 A: That's correct.

8 Q: So, that is an area that deals with the interface between
9 law and psychology?

10 A: That's correct.

11 Q: Are you familiar with age of consent laws in the United
12 States?

13 A: Yes, generally.

14 Q: Now, you -- are you familiar with how they have changed
15 over time?

16 A: Yes, I am. And typically, they've gotten lower because
17 children are entering puberty at much earlier ages that we had
18 before.

19 Q: I have an article here that says that prior to 1880 three-
20 quarters of the states, the age of consent was ten.

21 A: That's correct. In earlier times, people didn't live as
22 long and, you know, once someone, once a female in particular
23 hit their menstrual cycle, they were considered fair game for
24 marriage. I think we've come a long way from that and
25 realized that they're still children and they still are not

1 able to think consequentially and understand the issues
2 involved in having sex. So ---

3 Q: That's why it's criminal conduct; is that correct?

4 A: That is correct.

5 Q: Because what you're saying is conduct that was lawful,
6 maybe a hundred years ago, is now evidence of a mental
7 disease?

8 A: Yes, that's exactly -- the more we've learned about
9 emotional development and how sex occurring at too young an
10 age can harm someone. They were very young in the, like
11 1800s, when people didn't live as long, then they got older,
12 it was typically sixteen, seventeen and eighteen, and now they
13 are dropping it down.

14 Q: Do you know what a bat mitzvah is?

15 A: I do.

16 Q: What age do girls go through bat mitzvah, do you know?

17 A: Thirteen.

18 Q: And do you know what the significance of that is?

19 A: Well, yes. That is -- indicates that they're entering
20 adulthood. However, that doesn't say anything about their
21 sexual development or whether they're ready to have sex at
22 that age.

23 Q: Is it -- but under orthodox Jewish law, they would be
24 legal to marry?

25 A: Well, I guess so, but in the United States, if they tried

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

75

- 1 that, they'd be arrested.
- 2 Q: For committing a crime?
- 3 A: That's correct.
- 4 Q: You had said that -- early in your testimony you said that
- 5 he'd raped three boys?
- 6 A: That's correct.
- 7 Q: Which ones?
- 8 A: It was Minor1 , Minor2 and then he told me about a
- 9 twelve-year-old that he -- he framed it as having sex but, you
- 10 know, the child is not able to consent so that would be a rape
- 11 in my view.
- 12 Q: On your testimony earlier, you made much of the fact that
- 13 he did not acknowledge Minor1 ; is that correct?
- 14 A: He did not.
- 15 Q: But he ---
- 16 A: He didn't take responsibility.
- 17 Q: But he admitted to you one that you had no information
- 18 about; is that?
- 19 A: Only by mistake. He screwed up and he didn't realize that
- 20 he was telling me ---
- 21 Q: Excuse me. What is your basis for that assumption that he
- 22 was making a mistake?
- 23 A: Because I asked him about the female victim and he said,
- 24 oh, no, that was not, a twelve-year-old boy. And the he was
- 25 reluctant to discuss it and the only thing I could get out of

1 him was that he had sex with a twelve-year-old boy.

2 Q: Which he then admitted to you?

3 A: Yes.

4 Q: Did you have an opportunity to do an IQ test on him?

5 A: I did not but the records that I have indicate that he has
6 an IQ of 71, that's considered in the borderline range of
7 intellectual abilities. That means they're not quite mentally
8 retarded but they're certainly not average either. And they
9 definitely have some intellectual limitations.

10 Q: That would explain what you were saying, I think, earlier
11 you were characterizing his discussion with you about the
12 other twelve-year-old boys, could that also not be the basis
13 that he's got a 71 IQ and just not very smart, doesn't have
14 the recall that would come with somebody with a more standard
15 IQ?

16 A: Well, I don't think he intended, based on his reaction in
17 the interview, I don't think he intended to tell me about that
18 boy. I think that he -- I was discussing the girl and then he
19 came out with that and he was very reluctant to discuss it and
20 so it was my view that it wasn't just, you know, that he had a
21 low IQ. I don't think he meant to tell me about that because
22 obviously, no one knew about it.

23 Q: A couple of times in your testimony, you discussed
24 masturbation. You mentioned that twice.

25 A: That's correct.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

77

1 Q: And is it fair to say that a paraphilia -- excuse me -- is
2 a fair definition of a paraphilia would be a recurring intense
3 sexually arousing fantasies?

4 A: Urges or behaviors, yes.

5 Q: He's been in prison for seventeen years?

6 A: That's correct.

7 Q: You've had an opportunity to read a lot of these types of
8 cases; is that right?

9 A: That's correct.

10 Q: And part of that you're gonna look at prison disciplinary?

11 A: That's correct.

12 Q: Okay. Is it not -- and you have seen possibly frequently
13 men being written up for public exposure?

14 A: That's correct. There are men who expose themselves to
15 the female officers or nurses in prison and masturbate
16 publicly. That has a name; it's called exhibitionism. Mr.
17 Dorsey doesn't have that disorder so I would not anticipate
18 that I would see anything in his records about that. He just
19 doesn't have it.

20 Q: Well, he was never caught; it was never seen, right?

21 A: Well, no one ever saw him do it and I expect that if he
22 has that disorder, at least once in prison they would've cited
23 him for it and that was not the case. In seventeen years,
24 there was no record or any kind.

25 Q: In fact, there's no record of any kind of sexual

1 disciplinary action?

2 A: There are not but there are no children in prison either.

3 Q: Is there contraband in prison?

4 A: There is contraband, yes.

5 Q: So, there can be photographs in prison; is that right?

6 A: There could be, yes.

7 Q: It always seem that you jump to the negative conclusion
8 every time?

9 A: Well, individuals are able to get, unfortunately, child
10 porn in prison and that sort of thing or they might even
11 masturbate to, you know, their roommate's, you know, child.
12 Certainly, we wouldn't know about that unless they could get
13 caught with pictures and all. But typically I see some
14 decline in the masturbating with individuals who are sexually
15 aroused to children because simply they're just not there in
16 prison.

17 Q: You're making a distinction between hebephilia and
18 pedophilia; is that correct?

19 A: That's correct.

20 Q: If you looked at the continuum of pathologies, where would
21 hebephiliac rate relative to pedophilia?

22 A: I'm not sure what you're asking.

23 Q: Well, you've already said that it's not -- we're not
24 worried about too much with people who get sexually aroused by
25 shoes; is that correct?

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

79

1 A: That's correct.

2 Q: So, there's a continuum of pathology; is that correct?

3 A: Yes.

4 Q: Where would you put pedophilia on that continuum?

5 A: Well, pedophilia or sexual arousal to prepubescent or
6 pubescent children is the number one highest risk factor for
7 someone to reoffend sexually. Rapist don't have nearly as
8 high a risk in that regard as individuals who molest children
9 and that's because it's just a deeply entrenched disorder and
10 it's very difficult to treat, it's very difficult to even
11 teach them strategies to control it.

12 Q: All right. Now, I'm lost with your testimony. I asked
13 you what's the comparison between pedophilia and you said
14 that's the worst and then you said people who violate
15 children; is that correct?

16 A: Yes.

17 Q: Now, are you talking about pedophiles or are you talking
18 about hebephiles?

19 A: I'm talking about both. The risk factor identified in the
20 research is prepubescent or pubescent children, so they lump
21 it together.

22 Q: There is certainly medical and psychological experts that
23 would disagree with you, are there not?

24 A: Oh, I'm sure that there are individuals who would
25 disagree. There are some psychologists who believe that it's

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

80

1 not a disorder as we stated before and don't think it should
2 be in the DSM, but as I said, anyone who's really worked with
3 sex offenders realizes that it is a distinct disorder.

4 Q: Have you heard of Dr. Howard Barbaree?

5 A: I have.

6 Q: He's at the University of Toronto?

7 A: Yes, I know him.

8 Q: Has he spent some time working with sexual offenders?

9 A: He has.

10 Q: Did you ever have an opportunity to read the decision in
11 US v. Abregana, A-B-R-E-G-A-N-A, which was a -- in effect, an
12 SVP case, it was federal case under the Adam Walsh Act, did
13 you get a chance to read that?

14 A: I haven't read it recently.

15 Q: But in that -- and that case is 574 F. Supp. 2d, 1145,
16 it's a 2008 case. Does this sound familiar?

17 A: Yes.

18 Q: Dr. Barbaree was quoted in that as saying that as saying
19 that the degree of pathology is much less than that in
20 reference to the hebephilia. He said the degree of pathology
21 is much less than that involving paraphilias and the broad
22 spectrum of individuals who suffer from a paraphilia,
23 hebephiles, hebephiles would be among the least serious. So,
24 you don't endorse that position?

25 A: I did not. The researchers that I look to as having the

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

81

1 most valid research in this area are Blanchard, Cantor,
2 Thornton and Seto. And in my view, their opinion supports
3 mine that this is a legitimate disorder. My opinion follows
4 what I've read about them. I wouldn't be arrogant enough to
5 say that my opinion was more important than theirs.
6 Q: And it's your testimony today that all those studies group
7 twelve to fourteen-year-olds in the same group as seven to
8 eight-year-olds?
9 A: As I said, it's like eleven to fourteen-year-olds. And in
10 some of the studies, the attraction to the boys between eleven
11 and fourteen was actually stronger than attraction to
12 prepubescent children in some of the studies.
13 Q: Is a male being attracted to another male, is that a sign
14 of paraphilia?
15 A: Not if it's an age appropriate partner.
16 Q: You make much of the fact that he had sexual urges when he
17 was thirteen.
18 A: Yeah, he told me specifically that he noticed that he was
19 aroused to boys when he was thirteen.
20 Q: When he was thirteen?
21 A: Yes.
22 Q: In the diagnostic criteria for pedophilic disorder, it
23 says do not include an individual in late adolescence involved
24 in a ongoing sexual relationship with another twelve to
25 thirteen-year-old.

1 A: Well, this is ---

2 Q: That's the Romeo and Juliet?

3 A: Yes, he said that he first noticed his attraction to boys
4 when he was thirteen, and the first time he had sex was with a
5 thirteen-year-old boy. And what happens is that as you grow
6 older, most individuals, you know, the age of their partner
7 increases as their age increases but some individuals get
8 stuck and even though they get to be thirty, forty, fifty,
9 they're still interested in the thirteen-year-old boy that was
10 their first sexual partner and I believe that's the case with
11 Mr. Dorsey because him having sex with a thirteen-year-old boy
12 when he was thirteen would be normal exploration, but having
13 sex with a twelve or fourteen-year-old boy or an eleven-year-
14 old girl when he was thirty, forty, whatever, that's deviant.

15 Q: In all your testimony earlier, you didn't mention that
16 he's fathered one child or two children?

17 A: I think it's two children.

18 Q: So, that certainly would note a sexual interest in women
19 who can bear children; is that correct?

20 A: Well, not necessarily. He never lived with the one woman,
21 he just dated her for six months and they had a baby, and the
22 other one, he had lived with, he said for about a year. Just
23 being able to father a child doesn't mean that he's able to
24 have a romantic relationship that's intimate.

25 Q: But it does mean he can have arousal?

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

83

1 A: That's correct. And Mr. ---

2 Q: And he can complete the transaction?

3 A: That's correct. Mr. Dorsey is not an exclusive, not
4 exclusively aroused to the children. There are two types of
5 individuals who are aroused to children. One is an exclusive
6 type, that means they have no arousal at all to age
7 appropriate partners. He is a nonexclusive because he is
8 primarily aroused to boys and girls between the ages of eleven
9 and fourteen, but he has also had sex with adult, age-
10 appropriate partners.

11 Q: How much time is involved with preparing one of these
12 reports?

13 A: Typically anywhere between thirty and fifty hours.

14 Q: The first sentence of your report reads, John Henry Dorsey
15 is a fifty-six-year old Caucasian male.

16 A: Ah, that's a typographic error.

17 Q: Or is a cut -- is it typically just sort of cut and paste
18 these reports together?

19 A: Well, I have a template and it looks like I missed the
20 template.

21 Q: Now that we're talking about his age, you've made much of
22 -- the Static 99 discusses somebody's age, right?

23 A: It does. It has an item for age.

24 Q: And that's actually the only factor in Static 99 that can
25 change?

1 A: That's correct.

2 Q: Okay.

3 A: The individual can get older and that would diminish his
4 risk even more.

5 Q: And the risk is diminished -- you take one point off
6 between -- is it forty or forty-nine?

7 A: Forty and 55.9 you take one point off.

8 Q: Okay. How many points do you take off when he hits sixty?

9 A: It would be minus three at sixty.

10 Q: That's a big difference?

11 A: It is.

12 Q: What happens on a man's sixtieth birthday?

13 A: Well, there's no magic thing that happens on a man's
14 sixtieth birthday. In general, by the age of sixty an
15 individual's libido had diminished, and just, you know, by
16 virtue of testosterone decreases. And for rapist, it seems
17 that that's an age where you just don't see rapes after that
18 but not necessarily for child molesters, they retain that
19 desire into the late adult ages.

20 Q: But you don't have testimony, you don't have knowledge of
21 my client's libido at this time right now. He could be
22 approaching sixty and diminish libido; is that correct?

23 A: He could.

24 Q: And how would that have changed your grading here?

25 A: Well, unless he has -- well, it's not that important

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

85

1 actually because even though he may not have the desire to
2 function sexually on a physical level, for example maybe he's
3 got diabetes, can't get an erection, the sexual deviance is in
4 here and even though they may not be able to perform with his
5 penis, the arousal and the fantasies can still be there and he
6 can use other means to sexually assault his victims.

7 Q: That wasn't my question. Actuarially, how would that have
8 changed his risk had he been sixty years old?

9 A: Well, his score would have decreased a couple of points.

10 Q: To a low risk; is that correct?

11 A: It would've been to the low risk, yes.

12 Q: Okay. So, by being -- I believe Mr. Dorsey was born in
13 December of '58 so that makes him?

14 A: Fifty-eight.

15 Q: Fifty-eight?

16 A: Uh-huh (affirmative response).

17 Q: There's no sliding scale for those last few years because
18 it obviously would have a huge impact on your actuarial
19 tables?

20 A: Well, there is a sliding scale between forty and 59.9.
21 You take off one point between -- after sixty you take off
22 three points, so that's the sliding scale that they identified
23 as being significant in the research.

24 Q: So, had this proceeding been delayed for two years, he
25 would have -- he would've had -- he would've been sixty at the

1 time?

2 A: He would've but that doesn't necessarily diminish their
3 risk, as I said.

4 Q: Should there be some type of factor that you factor in? I
5 mean, a fifty-eight-year-old guy who'd been in prison for
6 seventeen years? Maybe he had -- you know, maybe he's gonna
7 act more like a sixty-year-old man?

8 A: As I said, the arousal to children, if you're aroused to
9 children at thirteen, you're still gonna be aroused at
10 seventy. The only thing that changes is that the amount of
11 time that he's been fantasizing and masturbating to children
12 diminishes but the arousal remains intact.

13 Q: What's the difference between living together for two
14 years versus one year?

15 A: That was the -- the research identified as being
16 significant and different, meaning someone who is attracted to
17 children and someone that's attracted to age-appropriate
18 partners.

19 Q: That's another arbitrary step, is it not?

20 A: Oh, no, it was clearly identified in the research. They
21 did many, many studies based on 30,000 sex offenders and that
22 was living with the -- an age-appropriate partner for two
23 years was something that differentiated people that were
24 attracted to children than people that were attracted to
25 adults.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

87

1 Q: But again, it's similar to the sixty-year-old, so there's
2 no sliding scale if he'd been together for twenty-three years
3 -- twenty-three months and that would've disqualified you for
4 that point?

5 A: Well, I figure if someone had been together twenty-three
6 months, I'd go on the benefit of the doubt on that, but his
7 did not. He was -- the most he was with someone was twelve
8 months, if that.

9 Q: Why do you say if that? Do you have any proof that it
10 wasn't twelve months?

11 A: I don't but he said that the relationship was conflictual,
12 that he just sort of moved out and left her and he said it was
13 around one year, so ---

14 Q: So, around one year could be fifteen months?

15 A: It could be but it still missed the two years.

16 Q: And it always seems that you're drawing the conclusion
17 that it's always less?

18 A: Well, I asked him specifically, have you ever lived with
19 an age-appropriate partner for two years. I'll be glad to
20 show it on my ---

21 Q: Are those the actual words you used?

22 A: Absolutely. I have it on my sixty-page form that I use to
23 ask the questions that I need to gather information. And the
24 question on there is, Have you ever lived with an age-
25 appropriate for a period of at least two years?

1 Q: He has an IQ of 71?

2 A: That's correct.

3 Q: You testified -- how much -- you have any type of private
4 practice where you were seeing patients that -- since 2000 --
5 oh, excuse me. Let me ask you another question. It's your
6 testimony today that he needs to be confined to a facility for
7 long-term care and treatment; is that correct?

8 A: That's correct.

9 Q: Okay. What kind of treatment do you get?

10 A: It is the most intensive treatment that you can get
11 anywhere in South Carolina.

12 Q: Shock therapy?

13 A: It's not shock therapy, it's ---

14 Q: Drug therapy?

15 A: It's called cognitive behavioral treatment. We teach an
16 individual to change their thoughts and by changing their
17 thoughts, we help them change their behavior.

18 Q: It's talk therapy?

19 A: It is talk therapy, yes, and behavioral interventions, we
20 teach them strategies to use such as thought stopping and
21 different types of things to interrupt the deviant sexual
22 thoughts so that they don't have to act on them.

23 Q: Why does it need to be in a controlled facility?

24 A: Because virtually, no sex offenders get treatment on their
25 own. They have to be mandated either by probation or some

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

89

1 court order because they just don't get treatment on their
2 own. And for Mr. Dorsey, he doesn't think he needs it, so
3 it's not likely that he would ever get it on his own.

4 Q: He has two years of probation, does he not?

5 A: Pardon?

6 Q: He has two years of probation?

7 A: Two years. Treatment typically takes longer than two
8 years. It's long-term comprehensive treatment. And for
9 someone who is so preferentially attracted to children, I
10 don't believe the two years would be sufficient, especially on
11 an out-patient basis where it doesn't have the intimacy,
12 you're not working on it every single day. Outpatient
13 treatment is like once a week for an hour and a half.

14 Q: So, your testimony is it's usually longer than two years?

15 A: Yes.

16 Q: And that would be confinement in a secure facility for
17 longer than two years?

18 A: That is correct.

19 Q: So, if he's found to be a sexually violent predator, he
20 will be in a secure facility for longer than two years?

21 Three, four, how many years?

22 A: Well, it depends. It depends on the program, it depends
23 on the person's motivation.

24 Q: So, between 2000 and 2013, you were providing services
25 primarily in Florida?

1 A: That's correct. Well, 2011 primarily in Florida.

2 Q: So, you named some other states, South Carolina, Missouri?

3 A: Missouri.

4 Q: West Virginia?

5 A: Iowa.

6 Q: Iowa. When did you start doing work there?

7 A: In Iowa, I believe it must've been about 2013.

8 Q: Okay.

9 A: Maybe 2012.

10 Q: Where did you start in 2011?

11 A: South Carolina, while I was licensed in South Carolina in
12 2011 and Missouri was 2011.

13 Q: So, as far as giving testimony as an expert witness, in
14 2011?

15 A: Yes.

16 Q: And Iowa -- excuse me, Missouri and South Carolina?

17 A: I'm not sure where exactly I started testifying, but it
18 was within a year or so of 2011.

19 Q: This has been financially rewarding for you?

20 A: Well, obviously, I earn a living, yes.

21 Q: Is it fair to say that between 2000 and 2013, the State of
22 Florida paid you 2.2 million dollars?

23 A: That's correct and that factors out to be \$140,000 a year,
24 which is pretty typical salary for a psychologist.

25 MR. FALK: Excuse me one moment, Your Honor.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

91

1 THE COURT: Uh-huh (affirmative response).

2 BY MR. FALK:

3 Q: So, you're familiar with the article that was in the Sun
4 Sentinel?

5 A: That is correct.

6 Q: And that article said that you testify mostly for the
7 State; is that correct?

8 A: That is correct. I'm hired primarily by the State.

9 Q: Okay. It was said that you are -- let me ask you another
10 question. You testified in the State of Florida?

11 A: I have.

12 Q: You testified in the case of *Santiago vs. State*?

13 A: I did.

14 Q: That's 21 So.3d 877?

15 A: I did.

16 Q: What happened in that case?

17 A: What happened in that case was the defense witness was
18 untruthful on the witness stand and I provided information
19 that would impeach her and the defense appealed that case and
20 the appellate attorney on that case did not understand the
21 fine discrimination between being a member of the Board of
22 Psychology and having a credential issued by the Board of
23 Psychology, and the case was eventually reversed based on that
24 error.

25 Q: So, you're saying that she gave false testimony?

1 A: She did give false testimony. She said that she was on
2 the Board of Psychology ---

3 Q: She said was a member; is that right?

4 A: She was a member of the Association for the state and
5 board of -- state and provincial psychology boards but you can
6 only be in that organization if the governor has appointed you
7 to a post and that never occurred for her.

8 Q: She had a card, though; is that right?

9 A: She had a credential. It's called a Certificate of
10 Professional Qualification, but it does not mean that you're a
11 member of the association of state and provincial psychology
12 boards. It only means that you have credential issued by
13 them.

14 Q: And it was your testimony that she lied?

15 A: She did lie, yes.

16 Q: Not a mistake, not a misunderstanding of the question?

17 A: No, because she'd previously been informed by the
18 Association of the state and provincial psychology boards that
19 she was not, in fact, a member.

20 Q: You said that you were a member of ASTA?

21 A: ATSA, yes.

22 Q: ATSA?

23 A: Uh-huh (affirmative response).

24 Q: What is that?

25 A: The Association for the Treatment of Sexual Abusers.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

93

1 Q: I'm gonna show you what we would like to enter as Defense
2 Exhibit One or Respondent's Exhibit One. At least for
3 identification purposes, let's mark it as One.

4 DEFENDANT'S EXHIBIT NUMBER ONE

5 MARKED FOR IDENTIFICATION

6 BY MR. FALK:

7 Q: Can you identify that letter?

8 A: I can.

9 Q: And you are -- it was addressed to you in 2015?

10 A: Oh, it was. This is ---

11 Q: Excuse me. And as a result of this, you were sanctioned
12 by the ---

13 A: I was. I testified in a case and I put too much emphasis
14 on an interview that I did that was a non-structured
15 interview. It was called relapse prevention interview. Most
16 of the evaluators use it, but in my testimony, I placed too
17 much weight on it, and I did receive a sanction from ATSA, the
18 Association for the Treatment of Sexual Abuser. And my
19 sanction was that I needed to stop using it and provide two
20 reports for them to review to make sure that my practice was
21 sound, and they -- and I completed that, and I'm still a
22 member in good standing of ATSA.

23 Q: The ATSA promulgates ethical guidelines.

24 A: They do, they do.

25 Q: And 18.06 says, Members should use appropriate evaluation

1 procedures and instruments to address the referral questions?

2 A: That's correct.

3 Q: And ATSA found that you were violation of that?

4 A: Yes, because that particular interview doesn't have what
5 we call norms and standardization. And there's a question on
6 there that says, would you estimate your risk on a scale of
7 zero to ten, with a zero being not likely at all and ten being
8 very likely and you ask the individual to rate themselves. And
9 they believed that I placed too much emphasis on that question
10 because the guy said that his score was a five, which would
11 translate to a fifty percent risk. And they believed that I
12 placed too much weight on that question, and I agreed that I
13 did. And, so, that's why I completed -- even though I wasn't
14 required to, I completed an additional course in ethical
15 issues.

16 Q: And so 18.07 is another one?

17 A: That's correct.

18 Q: Members conducting risk assessments should use an
19 actuarial risk assessment instrument that is appropriate for
20 the client population being evaluated?

21 A: That's correct.

22 Q: And you were in violation of 18.09, members are aware of
23 the relevant strengths and limitations of the assessment
24 measures used to avoid making statements that exceed the
25 capability of these measures?

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

95

1 A: Yes, that was the particular question about the risk
2 assessment, the zero to ten.

3 Q: And here's one, members use 23.05, members use instruments
4 and methods for which they are appropriately trained, follow
5 recommended administration protocols for all assessment
6 measures utilized, you offer statements of findings that are
7 limited to the capabilities of these methodologies. What does
8 that mean?

9 A: That means that, as I said, I placed too much weight on
10 that particular instrument and was very commonly as we all
11 used it but in this particular case, they believed that I
12 should not have placed as much weight on it in my testimony.

13 Q: You had just said that then the only thing you had to do
14 was provide two evaluations?

15 A: They said, don't use that instrument anymore and provide
16 two evaluations for them to review.

17 Q: Could you look at the page where it says sanctions?

18 A: Yes.

19 Q: I guess, would you mind reading the first couple of
20 sentences there?

21 A: It says, cease and desist using the relapse prevention ---

22 Q: No, in the second paragraph that says supervision of
23 clinical consultation.

24 A: Supervision in clinical consultation, that's exactly what
25 I said that I submitted two reports to ---

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

96

1 Q: Would you reading it for me?

2 A: The resolution of the ATSA Board of Directors is that you
3 receive supervision and consultation from any of the following
4 professionals, and three names are given. Should the above
5 professionals be unavailable for this purpose, the ATSA
6 Committee can identify a suitable alternative. You must
7 commence this consultation in the next four weeks, work with
8 the consultant on the next two sex offender evaluations, what
9 I did. And I received a letter from that individual saying
10 that my evaluations were just fine. And as I said, that ended
11 the matter and I'm still a member in good standing with ATSA.

12 Q: Were those evaluations conducted here?

13 A: No, they were in Florida.

14 Q: Okay. What was the consultation starting within the next
15 four weeks; what was that referring to?

16 A: That was just to send the two evaluations to the
17 supervisor so that he could review them and get back to the
18 committee.

19 Q: In addition to ATSA, the sanction for ATSA, have you been
20 subject to any other sanctions or subject of any other
21 investigations related to your testimony in trial?

22 A: I have not. The individual -- there was a defense witness
23 who filed this and he also filed a claim with the American
24 Psychological Association but the American Psychological
25 Association dismissed it.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - CROSS BY FALK

97

1 Q: So, are you saying that there was no investigation --
2 requested to investigate allegations of perjury or purposeful
3 misrepresentation during the court proceedings by Amy Swan?
4 Are you saying that there was no investigation by the Attorney
5 General's office of Florida?

6 A: Oh, that was the first case that the -- the *Santiago* case?

7 Q: I don't know. I just -- I'm just looking at something
8 that I found, it's a State of Florida, Office of the Governor,
9 executive order number 0815.

10 A: Yes. Well, that was -- involved the first case. When I
11 indicated that the individual lied on the witness stand, she
12 filed a complaint for perjury against me and that complaint
13 was found to be totally without merit because I had not indeed
14 lied. And I might add that that individual filed six
15 different complaints against me and all of them were
16 dismissed.

17 Q: But this wasn't a civil action for perjury, this was a
18 criminal investigation.

19 A: It was, yes. She filed many different sanctions. I
20 believe that she was the person that I testified most
21 frequently against on the other side, and each time we had a
22 trial and her side did not prevail, she filed some kind of
23 complaint against me.

24 Q: Let me just see if I have any further questions.

25 Is there a -- no further questions.

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - REDIRECT BY MORROW

98

1 THE COURT: Redirect?

2 MR. MORROW: Briefly, Your Honor.

3 REDIRECT EXAMINATION OF AMY C. SWAN BY MR. MORROW:

4 Q: Dr. Swan, with regard to the ATSA sanctions, you completed
5 all requirements?

6 A: I did. And I would certainly not ever minimize an ethical
7 complaint because ethics is extremely important but this is a
8 very -- this was a very small sanction compared because often
9 if you violate ethical complaints, they kick you out of ATSA,
10 they do all sorts of things and so I had to stop using the
11 instrument and submit two reports.

12 Q: And also you indicated that the Attorney General's office
13 in Florida did not find any wrongdoing on your part?

14 A: No. I'll be glad to provide a letter in that regard. It
15 was totally dismissed. They found that I had not done
16 anything wrong.

17 Q: Thank you. No further questions for this witness, Your
18 Honor.

19 THE COURT: Any recross?

20 RECROSS EXAMINATION OF AMY C. SWAN BY MR. FALK:

21 Q: The effect of the report where you were sanctioned by
22 ATSA?

23 A: That's correct.

24 Q: What was the effect of -- at the trial level? Was the
25 person found to be a sexually violent predator?

In the Matter of John H. Dorsey - 2015-CP-22-563
AMY C. SWAN - RECROSS BY FALK

99

1 A: This was an annual review hearing.

2 Q: Was he released?

3 A: He was not..

4 Q: Thank you.

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

6 Do you have any other witnesses on behalf of the State?

7 MR. MORROW: Nothing further from the State, Your Honor.

8 THE COURT: Thank you very much.

9 How long do you think your client will take?

10 COURT REPORTER: May I have the exhibit?

11 MR. FALK: May we approach?

12 MS. SWAN: I don't think I have an exhibit.

13 COURT REPORTER: That Defendant's exhibit, do you have
14 it?

15 MR. FALK: Yeah, Exhibit Number One.

16 COURT REPORTER: Do you have it?

17 MR. MORROW: Did he admit it into evidence?

18 THE COURT: No, he did not.

19 COURT REPORTER: It was marked for identification.

20 MS. SWAN: Oh, I do have it. I'm sorry. I apologize.

21 MR. FALK: I walked up and said I'd like to admit this
22 into evidence.

23 THE COURT: No, but you can do it now. Go ahead.

24 MR. FALK: I'd like to admit a letter dated February
25 27th, 2015 into evidence.

In the Matter of John H. Dorsey - 2015-CP-22-563
MOTIONS

100

1 THE COURT: Any objection?

2 MR. MORROW: Without objection.

3 THE COURT: All right. Defendant's Number One into
4 evidence without objection.

5 MR. FALK: Sorry.

6 DEFENDANT'S EXHIBIT NUMBER ONE

7 ADMITTED INTO EVIDENCE

8 (REPORTER'S NOTE: A bench conference was held off the record
9 in the presence of but out of hearing of the Jury.)

10 THE COURT: Members of the Jury, we're going to resume
11 the trial at 9:45 in the morning and we'll finish it tomorrow
12 as well. You are excused for the day. Do not discuss the
13 case. Do not research the case.

14 Everybody else remain seated while the Jury is excused.

15 (REPORTER'S NOTE: Jury exits courtroom. 4:31 P.M. The
16 following takes place outside the presence of the Jury.)

17 THE COURT: Any motions from the Defense or Respondent?

18 MOTIONS:

19 MR. FALK: I would move for a directed verdict. I
20 believe that there has been certainly contradicted testimony
21 as to whether or not he suffers from a mental disease or
22 defect. There was testimony that she had said that he suffers
23 from hebephilia and she acknowledged that in the community
24 that there was a difference of opinion about whether or not
25 hebephilia was a serious mental disease and that, because she

In the Matter of John H. Dorsey - 2015-CP-22-563
MOTIONS

101

1 has to link the mental disease with the re-offense rate,
2 because it's not just showing that there's a mental disease
3 but that he is likely to reoffend if not confined to a long-
4 term care facility.

5 THE COURT: Would the State like to respond to that?

6 MR. MORROW: Yes, Your Honor. I would say that
7 considering of the evidence in the light most favorable to the
8 State, the State has provided at least a scintilla of
9 evidence, if not more than that, that he suffers from a mental
10 abnormality or personality disorder. Dr. Swan was very
11 specific as to that there wasn't much discrepancy in the field
12 as to whether hebephilia as a diagnosis exists. She said that
13 the controversy is whether or not to include it in the manual.

14 THE COURT: All right. I agree. I think there's a
15 question of fact, I'm going to deny the motion.

16 All right. We'll see y'all at 9:45 in the morning.

17 MR. MORROW: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (End of Day One.)

20 (RECESS - 4:32 P.M.)

21 *****OFF THE RECORD*****

22 APRIL 5, 2016

23 MOTIONS:

24 THE COURT: Anything we need to take up before we begin?

25 MR. FALK: Yes, sir, Your Honor. I suggested a jury

In the Matter of John H. Dorsey - 2015-CP-22-563
MOTIONS

102

1 charge. Mr. Morrow has seen it and I think he has an
2 objection to it. And there's another matter I wanted to talk
3 about.

4 THE COURT: Okay. Which one you want to talk about
5 first, the charge?

6 MR. FALK: The charge.

7 THE COURT: All right. I'll be glad to hear from you.

8 MR. FALK: I admit that I'm asking for a charge that's
9 different from the standard charge that's usually given.
10 However, there is authority for the use of the charge and I'll
11 give a case with a South Carolina -- excuse me -- a Wisconsin
12 case of Henry Saunders. The point I want to make is I want to
13 sort of emphasis the point that not all people who have a
14 mental illness are dangerous and I think, you know, I really
15 only want one sentence out of that charge but I don't think
16 that's fair. I just want that notion -- the sentence where it
17 says, not all persons who commit sexually violent offenses can
18 be diagnosed as suffering from a mental disorder. That's my
19 point. That's sort of my theme, whether or not criminal
20 conduct equates to a mental disorder. And, you know, I don't
21 think you can take one line out of context, that's why I
22 suggested the whole charge.

23 THE COURT: All right. Let me hear from you, Mr. Morrow.

24 MR. MORROW: Yes, Your Honor. The State is objecting to
25 that for two reasons. First, the proposed language is

In the Matter of John H. Dorsey - 2015-CP-22-563
MOTIONS

103

1 contradictory when compared to the actual definition of mental
2 abnormality in the statute. Specifically, if you look at that
3 Wisconsin case, it's not that the court -- in that case, the
4 respondent was challenging the jury instructions given by the
5 Court, not the State. And the respondent -- the State, the
6 Court of Appeals of Wisconsin found that the actually included
7 language and actually heard it -- actually helped the
8 respondent and, as a practical matter, the language did not
9 really harm him so they decided that it wasn't a reversible
10 error to include that language. However, that language is
11 confusing and contradictory to the statute, especially when
12 you compare it to 44-48-33, which provides that a mental
13 abnormality means a mental condition affecting a person's
14 emotional or volitional capacity that predisposes the person's
15 committing the acts of sexual violence. If you read those two
16 provisions together, they're just gonna be unnecessarily
17 confusing for the jury. And the second reason that we would
18 be opposing that is that it could be considered inappropriate
19 comment on the facts by the Court. It's designed such that it
20 could be a comment on the facts of this particular case versus
21 an explanation of the law.

22 THE COURT: All right. I tend to agree. If it were a
23 South Carolina case, I'd be more inclined to charge it but
24 otherwise I think I'm gonna stick with the charge that I have.

25 MR. FALK: Your Honor, I do not recall Dr. Swan

In the Matter of John H. Dorsey - 2015-CP-22-563
MOTIONS

104

1 testifying yesterday that my client was convicted of failing
2 to register as a sexually violent -- as a sex offender failing
3 to register. Does the Court recall that testimony?

4 THE COURT: Do we need it?

5 MR. FALK: Here's my point. I don't want to hear it on
6 closing.

7 THE COURT: I don't remember it.

8 MR. MORROW: I have no -- I have no intention of
9 mentioning it.

10 MR. FALK: My point would be probation and that he would
11 come back with that. I'm not opening the door any further
12 than that but I just wanted to make sure ---

13 THE COURT: That's fine. He's not gonna mention it and I
14 don't remember her saying it.

15 MR. FALK: Okay. Thank you.

16 THE COURT: All right. Anything else?

17 MR. MORROW: No, Your Honor.

18 THE COURT: Let's go ahead and bring out the Jury.

19 (REPORTER'S NOTE: Jury enters courtroom. 10:00 A.M.)

20 THE COURT: If the Respondent will call your first
21 witness.

22 MR. FALK: We would call John Henry Dorsey to the stand.

23 JOHN HENRY DORSEY, HAVING BEEN DULY
24 SWORN, TESTIFIES AS FOLLOWS:

25 CLERK: Please state and spell your full name for the

In the Matter of John H. Dorsey - 2015-CP-22-563
JOHN HENRY DORSEY - DIRECT BY FALK

105

1 record.

2 MR. DORSEY: John Henry Dorsey, J-O-H-E, Dorsey.

3 CLERK: You may seated.

4 THE COURT: That's good. Okay.

5 DIRECT EXAMINATION OF JOHN HENRY DORSEY BY MR. FALK:

6 Q: Good morning, Mr. Dorsey.

7 A: Good morning. How you doing?

8 Q: I'm fine. How are you this morning?

9 A: I'm doing fine.

10 Q: Tell us how much school you had?

11 A: Beg your pardon?

12 Q: How far did you go in school?

13 A: I stop in the ninth grade.

14 Q: Okay. And then where did you work? Where have you
15 worked?

16 A: Where I worked?

17 Q: Yeah. What kind of places would you work at?

18 A: Oh, I been working Johnsonville.

19 Q: Johnsonville, what is that?

20 A: That's right on the outside of Hemingway.

21 Q: And what kind of work is that?

22 A: That's something like mill, a mill place work.

23 Q: Lumber mill or a knitting mill?

24 A: No, it's some kind of mill plant so they can make pants
25 and stuff.

1 Q: Okay. So, a fabric mill or whatever?

2 A: Yes, sir.

3 Q: What kind of work did you do there?

4 A: The only thing I been doing is just taking the fork and
5 then taking from the machine and just sit it over there to the
6 next mill over there.

7 Q: Okay. Manual labor?

8 A: Yes, sir.

9 Q: Okay. What have you been doing for the last seventeen
10 years?

11 A: Well, the last seventeen years, I've been working -- I've
12 been working in the dorms and stuff like that and I'm living a
13 better life when, you know, I changed my life around.

14 Q: Where all have you been? You've been to Lieber, right?

15 A: I've been to Lieber, 2001, and I left Lieber and went to
16 Allendale in 2005.

17 Q: Okay.

18 A: And then left Allendale and I went back to Lieber.

19 Q: Okay.

20 A: And then from Lieber, I went back to -- went to McCormick,
21 and I left McCormick then I came to Edwards.

22 Q: At all those facilities, did you ever -- did they ever
23 offer you sex offender training, sex offender treatment?

24 A: No, sir.

25 Q: Okay. Well, what kind of stuff did you do in prison? Did

In the Matter of John H. Dorsey - 2015-CP-22-563
JOHN HENRY DORSEY - DIRECT BY FALK

107

1 you have a job?

2 A: Yes, sir.

3 Q: And what was that?

4 A: I was just cleaning up, clean the showers and stuff.

5 Q: Okay. So, you had a couple of disciplinary infractions
6 while you were in detention -- custody?

7 A: No, sir.

8 Q: Did you ever get in trouble while you were in jail?

9 A: The only trouble I been in since I been in prison, no more
10 than I passed off a watch.

11 Q: Okay. So, you had somebody's watch and you weren't
12 supposed to have it?

13 A: I passed off a watch to another inmate, that's contraband.

14 Q: All right. Why did you plead guilty -- seventeen years
15 ago, why did you plead guilty?

16 A: Cause I plead guilty because, because I know I done wrong,
17 that's why I plead guilty.

18 Q: Okay. And prior to that, you also plead guilty; is that
19 correct?

20 A: Yes.

21 Q: On the other charges?

22 A: Yes, sir.

23 Q: And why did you do that?

24 A: Cause ---

25 Q: Is it because you did wrong or you ---

1 A: Cause I know I did wrong.

2 Q: Okay.

3 A: And I went to prison and I went to prison and done that
4 seventeen years, that's take my life all away, changed my
5 whole life.

6 Q: All right. We'll talk a little bit about that.

7 A: All right, sir.

8 Q: How has it changed your life? What have you done?

9 A: I beg your pardon?

10 Q: How has it changed your life?

11 A: Well, it changed my life, I changed my life like -- I
12 changed my life a whole lot because I done been to prison, I
13 pray a whole lot, I wakes up in the morning and I pray and
14 when I go bed at night, I pray.

15 Q: What do you pray for?

16 A: Beg your pardon?

17 Q: What do you pray for? What are you asking for?

18 A: Ask the Lord forgive me what I did.

19 Q: Uh-huh (affirmative response). Why should this Jury
20 assume that if you get out you're not gonna do it again?

21 A: Well, when I get out, I get out, the first thing I'm gonna
22 do when I get out, and that's my plan, get me a job and stay
23 in church.

24 Q: Okay. What church are you talking about?

25 A: Hopewell Church.

In the Matter of John H. Dorsey - 2015-CP-22-563
JOHN HENRY DORSEY - DIRECT BY FALK

109

- 1 Q: Where is that?
- 2 A: That's on Pleasant Hill.
- 3 Q: And where do you plan on living?
- 4 A: Beg your pardon?
- 5 Q: Where do you plan on living?
- 6 A: I living on .
- 7 Q: Okay. Do you have some place to live if you get out?
- 8 A: Yes, sir.
- 9 Q: Where is that?
- 10 A: My momma's trailer and she had passed away.
- 11 Q: When did she pass?
- 12 A: She passed away 2009.
- 13 Q: So, you were in custody when she passed?
- 14 A: Yes, sir..
- 15 Q: So, you have a place that's paid for; is that correct?
- 16 A: Yes, sir.
- 17 Q: Okay. And it's near the church?
- 18 A: Yes, sir.
- 19 Q: Okay. And what are you gonna do for money?
- 20 A: Beg your pardon?
- 21 Q: What are you gonna do for money?
- 22 A: I'm gonna work.
- 23 Q: You have any thoughts where you might work?
- 24 A: Yes, sir.
- 25 Q: Where is that?

In the Matter of John H. Dorsey - 2015-CP-22-563
JOHN HENRY DORSEY - DIRECT BY FALK

110

- 1 A: John Henry Gause.
- 2 Q: I beg your pardon?
- 3 A: John Henry Gause.
- 4 Q: John Henry Gause?
- 5 A: Yes, sir.
- 6 Q: We talked a little bit about him. What does he do?
- 7 A: He only -- only thing he do, he makes these steps, these
- 8 stone steps, and he and I make like boats and stuff.
- 9 Q: So, like for the outside of trailers?
- 10 A: Yes, sir.
- 11 Q: So, he makes cinder block steps for people?
- 12 A: Yes, sir.
- 13 Q: And what are you gonna do for him, do you think?
- 14 A: Beg your pardon?
- 15 Q: What do you think he'll do for him? What's he gonna have
- 16 you doing?
- 17 A: Oh, he gonna have me make steps, you know, cleaning the
- 18 rails and stuff like that, and sanding the rails down.
- 19 Q: Okay. Where you gonna be living, is that gonna be near
- 20 any children?
- 21 A: No, sir.
- 22 Q: Where do you think the children will be? Is there gonna
- 23 be anybody close by or ---
- 24 A: No, sir.
- 25 Q: Do you have any plans about what happens if you get near

In the Matter of John H. Dorsey - 2015-CP-22-563
JOHN HENRY DORSEY - DIRECT BY FALK

111

1 children?

2 A: Beg your pardon?

3 Q: What happens if when you're church if there's children
4 there? What are you gonna do? What's your plan?

5 A: What's my plan?

6 Q: Yes, so that you don't reoffend.

7 A: I'm gonna be -- I ain't gonna be nowhere, you know, around
8 any other children. There's a lot -- I'm gonna be in church
9 and I'm gonna be at work.

10 Q: Okay. You had how many children?

11 A: Two.

12 Q: And how old are they?

13 A: They -- well, one of them is twenty-one and the other one
14 is twenty-two.

15 Q: Okay. When was the last time you saw them?

16 A: I ain't saw them in a while but I did call and talk to
17 them.

18 Q: Okay. And so what -- you said you had twenty-two --
19 what's the twenty-two-year-old's name?

20 A: Beg your pardon?

21 Q: You said you had a child twenty-one?

22 A: Twenty-one and twenty-two.

23 Q: The twenty-one-year-old. What's that child's name?

24 A: Name Barron.

25 Q: And what kind of relationship did you have with Barron's

- 1 mother? Were y'all together?
- 2 A: We've been together about a year.
- 3 Q: Okay. Y'all were living together?
- 4 A: Yes, sir.
- 5 Q: Okay. And then what's the twenty-one-year-old's name?
- 6 A: Barron.
- 7 Q: No, the -- you said you had Barron, and then what's the
- 8 other child's name?
- 9 A: Oh, Keith.
- 10 Q: Keith?
- 11 A: Keith.
- 12 Q: Keith, okay. And you had a relationship with his mother
- 13 as well? Y'all were together for a while?
- 14 A: Yes, sir.
- 15 Q: You're attracted to women your age?
- 16 A: Beg your pardon?
- 17 Q: So, you've been attracted the women your age; is that
- 18 right?
- 19 A: Yes, sir.
- 20 Q: Did you take any classes while you were in custody?
- 21 A: No, sir.
- 22 Q: So, you spent three hours talking with Dr. Swan; is that
- 23 right?
- 24 A: Yes, sir.
- 25 Q: Did you understand what she was saying?

In the Matter of John H. Dorsey - 2015-CP-22-563
JOHN HENRY DORSEY - DIRECT BY FALK

113

1 A: Yes, sir

2 Q: Okay. Anything else you want to tell this Jury?

3 A: Yes, sir.

4 Q: It's your turn.

5 A: When I get out, when I get out, there ain't gonna be no
6 way in the world I'm gonna come back to prison, because when I
7 done my seventeen years in prison, that's enough right there
8 to break anybody. If that can't break a man from not going
9 back to prison, something wrong with them, and it break me, it
10 really did. I pray every night in the county jail and every
11 morning, I wake up, the Lord's with me and I'm proud of that.

12 Q: What do you mean by breaking you? You said it breaks you;
13 what do you mean by that?

14 A: Talking about the prison system?

15 Q: Yes.

16 A: That's enough to break anybody from not coming back to
17 prison.

18 Q: You're not talking about breaking bone; what do you mean?

19 A: No, I ain't talking about that; I'm talking about like if
20 you're doing time, you're doing time, that's, that's enough to
21 break you from coming back to prison, in the prison system.

22 Q: Seventeen years gave you a lot time to think about not
23 doing something that's gonna put you back there; is that what
24 you're saying?

25 A: Yes, sir.

In the Matter of John H. Dorsey - 2015-CP-22-563
JOHN HENRY DORSEY - CROSS BY MORROW

114

1 Q: Okay. No further questions. Answer any questions Mr.
2 Morrow has for you.

3 A: All right, sir.

4 CROSS EXAMINATION OF JOHN HENRY DORSEY BY MR. MORROW:

5 Q: Mr. Dorsey, you were convicted of criminal sexual conduct
6 in 1988, correct?

7 A: Yes, sir.

8 Q: And you pled guilty to that crime?

9 A: Yes, sir.

10 Q: Okay. And the victim in that case was your girlfriend's
11 little sister; is that correct?

12 A: Yes, sir.

13 Q: Okay. And you went to prison from 1988 to 1995; is that
14 correct?

15 A: That's right.

16 Q: Okay. So, you spent thirteen years in prison the first
17 time?

18 A: I done thirteen years.

19 Q: The first time?

20 A: Yes.

21 Q: So, you got out of prison and all you had to do to stay
22 free was not reoffend, correct?

23 A: That's correct.

24 Q: And yet in 2001, you plead guilty to two more crimes; is
25 that correct?

In the Matter of John H. Dorsey - 2015-CP-22-563

115

JOHN HENRY DORSEY - CROSS BY MORROW

- 1 A: That's correct.
- 2 Q: And that was two lewd acts on a child, correct?
- 3 A: That's correct.
- 4 Q: And those victims were two twelve-year-old boys?
- 5 A: That's correct.
- 6 Q: Okay. And so then you went to prison for seventeen years;
- 7 is that correct?
- 8 A: That's correct.
- 9 Q: Okay. And you agree that you spoke with Dr. Swan,
- 10 correct?
- 11 A: That's correct.
- 12 Q: Okay. And you would agree that Dr. Swan -- you told Dr.
- 13 Swan that you didn't need sex offender treatment; is that
- 14 correct?
- 15 A: That's correct.
- 16 Q: Okay. And so you're saying that prison was so bad this
- 17 time around that you won't come back; is that what you're
- 18 saying?
- 19 A: That's correct.
- 20 Q: But you agree with me that you had been in prison before,
- 21 correct, for thirteen years?
- 22 A: Yes, sir.
- 23 Q: Okay. And that you did reoffend and you went back to
- 24 prison?
- 25 A: Yes, sir.

In the Matter of John H. Dorsey - 2015-CP-22-563
MOTIONS

116

1 Q: Thank you. No further questions for this witness.

2 THE COURT: Any redirect?

3 MR. FALK: No redirect.

4 THE COURT: All right. You may step down.

5 Call your next witness.

6 MR. FALK: The Respondent will rest.

7 BY THE COURT:

8 THE COURT: Members of the Jury, if you would step into
9 the jury room, we have to take up some motions at this time
10 but we'll be back with you in a few minutes and we'll conclude
11 this case.

12 (REPORTER'S NOTE: Jury exits courtroom. 10:13 A.M. The
13 following takes place outside the presence of the Jury.)

14 MOTIONS:

15 THE COURT: All right. Any motions?

16 MR. MORROW: Nothing from the State, Your Honor.

17 MR. FALK: We'll renew our motion for a directed verdict.

18 THE COURT: Understand. I respectfully deny that motion.

19 BY THE COURT:

20 THE COURT: Here is the charge and the verdict form if
21 you would like to look at it briefly. It's very simple and
22 straightforward. It's been used before.

23 MR. MORROW: The State has no objection.

24 MR. FALK: I'm just renewing my objection to the record.
25 I proposed a different jury charge.

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY MORROW

117

1 THE COURT: All right. Other than that, is everything in
2 order?

3 MR. FALK: Everything else is fine. Thank you.

4 THE COURT: The verdict form look good to you as well?

5 MR. FALK: Yes, Your Honor.

6 THE COURT: Okay. Bring the Jury out.

7 (REPORTER'S NOTE: Jury enters courtroom. 10:16 A.M.)

8 THE COURT: All right. The State is recognized for your
9 closing statements.

10 MR. MORROW: Thank you, Your Honor.

11 CLOSING STATEMENT BY MR. MORROW:

12 MR. MORROW: John Henry Dorsey simply can't stop it. He
13 couldn't stop himself from offending against an adolescent
14 girl in 1988 when he chose to have sex with an eleven-year-old
15 girl, even though he was dating the girl's older sister at the
16 time, even though he knew it was illegal and he knew the girl
17 was eleven. None of that mattered to Mr. Dorsey. He was
18 sexually aroused and nothing was going to stand in his way.

19 Mr. Dorsey was charged and pled guilty in open court to
20 those charges and 1989. He was sentenced to thirteen years in
21 the South Carolina Department of Corrections. Mr. Dorsey went
22 to prison. What happened when Mr. Dorsey got out of prison?
23 He knew he was a convicted sex offender, he knew the
24 consequences of his actions, and he knew what could happen to
25 him if he did it again if he continued to engage in that kind

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY MORROW

118

1 of behavior, but John Henry Dorsey couldn't stop.

2 Again, he gave into his sexually deviant desires, this
3 time forcing himself upon two twelve-year-old boys. He'd
4 already been sanctioned, already been to prison and yet so
5 intense were his sexually deviant attraction to pubescent
6 children that despite having been to prison for the 1989
7 offense, he again chose to sexually molest two twelve-year-old
8 boys all because John Henry Dorsey couldn't stop. It didn't
9 matter that he'd easily get caught. It didn't matter that his
10 victims did not and could not consent. John Henry Dorsey was
11 sexually aroused and nothing was going to stand in his way,
12 not the harm he doing to his adolescent victims, not the fact
13 that he had been to prison before for a similar crime, not the
14 fact that he could be sent back to prison for a significant
15 period of time. None of that mattered to Mr. Dorsey. John
16 Henry Dorsey is a sexually violent predator.

17 Let's talk about the evidence that was presented to you
18 yesterday. First, the State has provided you with certified
19 copies of Mr. Dorsey's criminally sexually violent
20 convictions. You'll have these, you'll be able to take them
21 back and look at them. The State has met its burden on that
22 point.

23 Now, I submit to you that the State has proven that
24 element. In fact, not only has he been convicted of one, he's
25 been convicted of three sexually violent offenses. The

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY MORROW

119

1 criminal sexual conduct with a minor in 1988 and then the two
2 lewd acts in 2001. All three of these convictions, and you'll
3 hear from the Judge later are considered sexually violent
4 under the South Carolina Sexually Violent Predator Act.

5 You also heard the testimony of Dr. Amy Swan, an expert
6 in forensic psychology. And what did Dr. Swan say? She told
7 that you after thorough review of the records and meeting with
8 John Henry Dorsey that it was her opinion that he suffered
9 from unspecified paraphilic disorder, sexually attracted to
10 pubescent males and females. She told you that she based the
11 diagnosis on the information she reviewed and on her interview
12 of Mr. Dorsey himself.

13 Now, during his interview, Mr. Dorsey admitted to a
14 fourth victim, another twelve-year-old boy, which he has never
15 been charged or convicted of. Now, she told you -- she told
16 you about Mr. Dorsey's minimization, his denial, and his
17 attempts to justify his behavior. She told you about his lack
18 of sex offender treatment, she told you about Mr. Dorsey
19 denies that he needs sex offender treatment. Mr. Dorsey
20 himself, today, in front you, denied that he needs sex
21 offender treatment and admitted to saying that to Dr. Swan.
22 Now, he says that he has been to prison for seventeen years
23 and is broken, but yet he went to prison for thirteen years
24 the first time, that didn't break him. He denies he has a
25 problem.

1 Dr. Swan talked to you about his risk factors for re-
2 offense and she talked about how forensic psychologist like
3 herself measure risk factors for re-offense. They use two
4 separate types of factors, static factors and dynamic factors.
5 Static factors are factors that cannot change and she uses an
6 actuarial table. But there are deficiencies in those kind of
7 factors so she uses an additional risk factors, and those are
8 his dynamic risk factors. So, those dynamic risk factors she
9 looked at are that he has a sexual preference for pubescent
10 children. He has a lack of emotional intimate relationships
11 with adults, yet none of those relationships lasted longer
12 than two years. And he has poor problem solving and a lack of
13 concern or callousness for others. It's the combination of
14 both his static and dynamic risk factors that make Mr. Dorsey
15 likely to reoffend.

16 So, to review, the State has provided you with proof that
17 John Henry Dorsey was convicted of three sexually violent
18 offenses. The State has provided you with a qualified expert
19 that diagnoses Mr. Dorsey with a relevant mental abnormality,
20 unspecified paraphilic disorder, sexually attracted to
21 pubescent males and females. And the State has demonstrated
22 how John Henry Dorsey's mental abnormality makes him likely to
23 commit acts of future sexual violence.

24 Now, the burden of proof in this case is on the State.
25 We have to prove our case beyond a reasonable doubt. Proof

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY FALK

121

1 beyond a reasonable doubt is proof that leaves you firmly
2 convinced. I submit to you that after weighing the evidence
3 today and yesterday that was presented to you that the State
4 has proven its case. I'm confident that you will find John
5 Henry Dorsey is a sexually violent predator and that he should
6 be committed to the South Carolina Sexually Violent Predator
7 Treatment Unit so that he can get the treatment that he so
8 desperately needs and so that the public of the State of South
9 Carolina can be protected from him.

10 Thank you.

11 THE COURT: Thank you.

12 Mr. Falk, you're recognized.

13 CLOSING STATEMENT BY MR. FALK:

14 MR. FALK: Good morning. I'll be the first one to tell
15 you that my client is no saint. He's committed crimes. He
16 admitted to these crimes. The question is whether or not he
17 suffers from a mental disease. And that's what I really think
18 is the issue that I want you all to focus on is whether or not
19 he committed crimes for which he was punished, for which he
20 was -- he's done his time or whether or not he's got a mental
21 disease.

22 First of all, let's consider the fact that a hundred
23 years ago the age -- well, maybe a little bit longer, maybe a
24 125 years ago, the age of consent in this state was ten. Dr.
25 Swan acknowledged that. Now, I can understand -- I mean,

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY FALK

122

1 everybody knows that society values and mores change from one
2 time to another, and conduct that at one time was lawful can
3 become criminal as things in society change. Similarly,
4 conduct that was criminal can then become lawful. I mean,
5 that's what society does, it changes, it evolves, and that's
6 what laws do. And, that what's the criminal code does is they
7 provide sanctions for people who cross that line. But what
8 the State wants you to believe is a conduct that was lawful at
9 one time in this state is now a sign of a mental illness, a
10 mental disease and that's the part that I think is very
11 difficult. They want -- Dr. Swan was constantly trying to
12 equate somebody who had taken advantage of little children,
13 prepubescent children as being the same as somebody who has
14 had victims who were pubescent, meaning they were approaching,
15 you know, they were no longer children, secondary sexual
16 characteristics, that's what -- that was the term that Dr.
17 Swan used. The question is whether or not that is the same
18 thing, and I may come back around to that.

19 But the other thing I want to consider is the fact that
20 if this was a -- if the issue here was a medical condition,
21 not a mental health condition but a medical condition, a
22 doctor could do a blood test, he could take an x-ray, they
23 could -- you know, I guess blood tests and x-rays is probably
24 about what they do and then they can reach an opinion. And
25 I'm willing to bet that a doctor on the other side of the

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY FALK

123

1 country could see those same test results and those same x-ray
2 results and blood test results would agree with that
3 conclusion because that's something hard, that's, you know,
4 that's science. But here, it's a lot less precise. Some
5 people will say, and she admitted that some people will say
6 that, you know, she believes that anybody who is a hebephile,
7 is what I think the term she used, victims who are older, is
8 the same as a pedophile, somebody who attacks six and seven-
9 year-old kids. However, at the same time she acknowledged
10 that a professional who she acknowledged and I think said was
11 her friend, has testified and I can put -- I bring this point
12 to you as this shows that there's a difference in the
13 community about hebephilia. This was testimony that was in
14 federal court where Dr. Barbaree testified and said that
15 hebephilia is a degree of pathology is much less than that of
16 other paraphilias. In the broad spectrum of individuals who
17 suffer paraphilia, hebephiles would be among the less serious.
18 So, there's differences of opinion as to, you know, what
19 mental condition he has and the seriousness of that type of
20 mental condition.

21 I'm quite confident I know why they brought Amy Swan up
22 from Florida to testify in favor of the State in this case
23 because the State knows who they can call if they need to get
24 a -- if they want a report that's gonna put somebody away.
25 Amy Swan knows -- she'll do what it takes -- she'll do what

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY FALK

124

1 it takes in order to try and convince you of her point.
2 She's an excellent witness. Anytime I would try and ask her a
3 question, she's gonna expand on it and talk right through.
4 She's an excellent witness. She'll do -- she'll does -- she
5 did what it takes, she wants to try to convince you. The only
6 problem I find with Dr. Swan is she has no concern for that
7 ethical boundary of what you're allowed to say and what you're
8 not. She acknowledged that the ATSA, the American -- the
9 Association of the Treatment of -- I'm not sure whatever her
10 -- her professional association -- excuse me the Association
11 for the Treatment of Sexual Abusers, ATSA. She's been
12 sanctioned for unethical conduct, for coming into a court just
13 like this at a commitment hearing just like this, and
14 exaggerating her facts, saying something, giving you some type
15 of -- giving that court at that time, drawing out statistics
16 that would make you believe that she's right. She's, you
17 know, overwhelmed that trial court with statistics that may or
18 may not have been valid. She'll do -- she's gonna try to make
19 -- she certainly is trying to convince you that my client has
20 a sexual abnormality, has a mental abnormality. And I think
21 you also saw is that she does not give him the benefit of the
22 doubt in any situation. He's fifty-eight years old. She did
23 was called a Static 99 test, that's what we talked about, and
24 you get a score on that test. Had he been two years older,
25 the score would've gone down to the low risk category, going

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY FALK

125

1 from -- on that test it would've gone from a moderately low
2 risk to a low risk category. Two years difference and I asked
3 her, what's the difference with a man on his sixtieth
4 birthday, that's all -- how does he all of a sudden become
5 less violent. She didn't really a good answer. She said just
6 statistically that's what it shows. This man has been wearing
7 a jumpsuit for seventeen years. I think he has been broken
8 down by the prison system and maybe it took two terms through
9 the prison system but it's whether that man right there,
10 approaching his sixtieth birthday is still a threat. He says
11 that he's put his faith -- he prays every day, that's how he's
12 gonna get through this. We can accept him at his word.

13 But, again, let's talk more about Dr. Swan. She wants you
14 to assume that -- when I asked her about this fifty-eight and
15 the two points and all that, she said, well, child molesters
16 will also have that kinda -- they're always gonna be
17 dangerous. What she wants to do, again, she's gonna now use
18 the nonspecific term child molesters and she wants to wrap the
19 whole thing up and make you think that he's a pedophile and
20 he's not a pedophile. She wants you to say that he has a
21 sexual preference for pubescent children, and again these are,
22 you know, secondary sexual characteristics. But, the man has
23 two children, so how that is a preference -- I mean, she never
24 even -- you had -- had I not asked her the question, you never
25 would've known that this man has had two children. So, I

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY FALK

126

1 mean, that certainly denotes a sexual interest in age
2 appropriate partners.

3 She wants to talk a lot about the fact that, you know, he
4 did not admit to her during an interview about the children
5 but he told the Court, he admitted to it, he admitted to it
6 again. In fact, he told them about another one. And she
7 wanted to say, oh, he, he was -- he just made a mistake, he
8 didn't mean to do that. Again, she's gonna take a negative,
9 she's gonna try and draw a negative from anything that comes
10 out of his mouth.

11 Honestly, you've heard him. You've seen him. It's
12 really gonna be to up to you all to decide whether or not you
13 that man is a sexually violent predator at this time. He's
14 spent, again, seventeen years. He missed the death of his
15 mother. He's gonna have a place to go, he's gonna have a
16 house. He's got somebody who is gonna offer him a job. So,
17 those kind of things are gonna be taken care of. He's gonna
18 go to church. That's his plan. He's also gonna be on two
19 years of probation because that's part of the criminal
20 sentence seventeen years ago. He's gonna be under two years
21 of probation. He's gonna be under two years of supervision.
22 So, there will be somebody looking over his shoulder for two
23 years. I asked Dr. Swan about that and she said, well, that's
24 not enough time. I think she told you that three years at
25 least is how long he needs to be confined to a secure

In the Matter of John H. Dorsey - 2015-CP-22-563
CLOSING STATEMENT BY FALK

127

1 facility, three more years. The man's done seventeen years
2 for a crime and she wants to put him in a secure facility for
3 three more years. He'll be sixty-one by the time he gets out
4 of there.

5 He's had a few disciplinary infractions while he was in
6 custody. He had no disciplinary infractions that were
7 sexually based. So, if he has these really intense desires
8 that Dr. Swan says that follow a paraphilia, he certainly
9 didn't act on those desires for seventeen years. He's found
10 no other inappropriate outlet in seventeen years while he was
11 in prison. I think that's a sign of a changed man.

12 You really almost have to look at the testimony of Dr.
13 Swan, and granted there's a lot of credentials, and the
14 testimony of my client. In considering the testimony of Dr.
15 Swan, this will be back with you, this is our Defense Exhibit
16 One, this is the letter that she received from her
17 professional society scolding her for unethical conduct and
18 for -- and this is somebody who is supposed to be at the
19 pinnacle, who has earned millions of dollars from the State of
20 Florida testifying in cases like that that she has to have
21 that -- the only way this society would feel safe is that she
22 had somebody else checking her work. She had to be
23 disciplined. She had to have somebody else review her work.
24 No one has reviewed it here and I don't know if she's crossed
25 another ethical line now or not? I know she's done it in the

In the Matter of John H. Dorsey - 2015-CP-22-563
REPLY CLOSING STATEMENT BY MORROW

128

1 past. I want you to compare Dr. Swan's testimony, and granted
2 she's got professional credentials, and you saw her -- you saw
3 her try and convince you in any possible way that he was a
4 sexually violent predator and she wasn't being fair and
5 balanced. Anything that she could make up that she's gonna
6 try and convince you that he's a sexually violent predator.
7 That man testified, he says that he's not gonna reoffend,
8 prays to God every day. At the end of the day, it's really
9 gonna be up to y'all.

10 Thank you.

11 THE COURT: State is recognized.

12 MR. MORROW: Briefly, Your Honor.

13 THE COURT: Sure.

14 REPLY CLOSING STATEMENT BY MR. MORROW:

15 MR. MORROW: Mr. Falk talked about Dr. Swan. Dr. Swan
16 has been a practicing professional psychologist for over
17 thirty years. The entire time she's been a professional
18 psychologist, she's been sanctioned exactly once, and she
19 completed the things that they recommended that she do and
20 she's never been -- she never lost her license, she's never
21 been suspended from practice. She's never been sanctioned by
22 any court or authority of law. She was sanctioned once. She
23 went to additional training and she had two reports monitored;
24 that's it.

25 You heard her credentials. You heard how long she's been

In the Matter of John H. Dorsey - 2015-CP-22-563
CHARGE TO JURY

129

1 a psychologist. Do you really think one sanction over a
2 period of thirty years is indicative of a thirty-year career?

3 Thank you.

4 CHARGE TO JURY:

5 THE COURT: Members of the Jury, the State of South
6 Carolina has brought this case under the sexually violent
7 predator law of this state. In this regard, the State seeks
8 an involuntary civil commitment of John Dorsey for long-term
9 control, care and treatment in a secure facility. You need to
10 understand that this is not a criminal proceeding seeking
11 incarceration but rather is a proceeding seeking civil
12 commitment.

13 The State of South Carolina alleges that John Dorsey is a
14 sexually violent predator under the law. John Dorsey denies
15 that he is a sexually violent predator, therefore the burden
16 of proof is on the State to prove by evidence sufficient to
17 satisfy each of you beyond a reasonable doubt that John Dorsey
18 is a sexually violent predator. In this regard, if the State
19 is unable to meet the burden of proof as to one or more of the
20 elements of this claim, then John Dorsey is entitled to a
21 finding that he is not a sexually violent predator. Please
22 understand that John Dorsey is not accused of committing a
23 crime in this proceeding. As you heard from the testimony, he
24 did have previous charges for which the Court sentenced him
25 and he has completed his service for those charges. The State

In the Matter of John H. Dorsey - 2015-CP-22-563
CHARGE TO JURY

130

1 is now alleging that he is a sexually violent predator. The
2 State has the burden of proof in this case and must prove its
3 case beyond a reasonable doubt. If you find that the State
4 has not meet this burden, then John Dorsey will be released.
5 However, if you find that the State has met its burden of
6 proof and find that John Dorsey is a sexually violent
7 predator, then he will not be released but will be committed
8 to a secure treatment facility in Columbia operated by the
9 Department of Mental Health. Under South Carolina law, John
10 Dorsey will have the right to petition the court annually for
11 review of his case to determine if he is safe to be at large
12 and unlikely to commit acts of sexual violence.

13 During this trial, you and I have separate duties to
14 perform. As the Judge, it is my responsibility to preside
15 over this trial. Furthermore, I have the duty to rule upon
16 the admissibility of the evidence offered during the trial.
17 In this regard, you are to consider only the evidence before
18 you. Thus, you are to consider only the testimony which has
19 been presented from this witness stand together with any
20 exhibits admitted into the record of this case. Also, I have
21 the additional duty to charge you on the law applicable to
22 this case and in that regard, it is your duty to accept and
23 apply the law as I now state it to you. If you have any
24 preconceived ideas as to what the law is or what you think the
25 law ought to be and it does not agree with what I tell you the

In the Matter of John H. Dorsey - 2015-CP-22-563
CHARGE TO JURY

131

1 law is, then you are obligated under your oath to abandon
2 these preconceptions and accept the law as I now state it to
3 you.

4 In this trial, you are the sole and exclusive judge of
5 the facts and I am the judge of the law. Do not infer that I
6 have any opinion about the facts in this case from anything I
7 have said during the course of this trial. In this regard,
8 the law simply does not permit me to have an opinion about the
9 facts. As jurors it is your duty alone to determine the
10 effect, value, weight and truth of the evidence presented
11 during the course of this trial.

12 Furthermore, it is your job as jurors, to determine the
13 credibility and believability of witnesses who have testified
14 in this case. In determining the believability of witnesses
15 who have testified in this trial, you may believe one witness
16 over many or many over one. You may believe a part of the
17 testimony of a witness and reject the remaining part. You may
18 believe the testimony of a witness in its entirety or reject
19 it in full. You may consider whether the witness has an
20 interest in the result of the trial, whether the witness is
21 prejudiced toward either party. The opportunity for the
22 witness to have seen the matters and things about which the
23 witness may testify and the way the witness acts on the
24 witness stand.

25 Furthermore, evidence may be direct or circumstantial.

1 Direct evidence is testimony by a witness about what the
2 witness personally saw or heard or did. Circumstantial
3 evidence is indirect evidence. In other words, it is proof of
4 one or more facts for which one can find another fact. You
5 may consider both direct and circumstantial evidence equally.

6 Furthermore, the rules of evidence ordinarily do not
7 permit witnesses to testify regarding opinions or conclusions.
8 An exception to this rule exists for witnesses we call expert
9 witnesses. A witness, who by education and experience has
10 become an expert in some art, science or profession, may give
11 an opinion as to the subject a witness claims to be an expert
12 in and they also give the reasons for the opinion. You should
13 consider any expert opinion given by a witness and like any
14 other evidence give it the weight you think it deserves. If
15 you decide that an expert witness' opinion is not based on
16 sufficient education or experience or if you decide that the
17 reasons given in support of the opinion are not sound or that
18 the opinion is outweighed by other evidence you may disregard
19 the opinion entirely. An expert witness' testimony is to be
20 given no greater weight than that of any witness simply
21 because the witness is an expert, and you do not have to accept
22 an expert's opinion even though it is uncontradicted.

23 In exercising your mental processes in attempting to
24 decide the truth, the law simply requires that you exercise
25 your good judgment, your common sense, your sense of logic and

In the Matter of John H. Dorsey - 2015-CP-22-563
CHARGE TO JURY

133

1 reason and your experiences in life. Then you apply these
2 attributes to the evidence and apply the law which I now state
3 to you and thus arrive at a verdict in this trial.

4 In most civil cases tried in the Court of Common Pleas,
5 the burden of proof of proving a claim is by the greater
6 weight or the preponderance of the evidence. However, in this
7 type case, under this particular statute, the State's burden
8 is higher than that. Here it is beyond a reasonable doubt.
9 As already stated to you, the State has the burden of proof.
10 In this case, according to the sexually violent predator
11 statute, the State must prove its case to that standard of
12 proof beyond a reasonable doubt. If the State fails to meet
13 this burden, then you must find that John Dorsey is not a
14 sexually violent predator.

15 Proof beyond a reasonable doubt is proof that leaves you
16 firmly convinced that the Respondent is a sexually violent
17 predator. There are few things in this world that we know
18 with absolute certainty, and in this type of case the law does
19 not require proof that overcomes every possibility. However,
20 if based on your consideration of the evidence, you are firmly
21 convinced that John Dorsey is a sexually violent predator then
22 you must return a verdict for the State and check yes on the
23 verdict form. If on the other hand you believe there is a
24 real possibility that he is not a sexually violent predator,
25 you must give him the benefit of the doubt and find a verdict

In the Matter of John H. Dorsey - 2015-CP-22-563
CHARGE TO JURY

134

1 for John Dorsey by checking no on the verdict form.

2 Reasonable doubt may arise from the evidence which is in
3 the case or from the lack or absence of evidence in the case.
4 It is up to you to determine whether or not reasonable doubt
5 exists in this case.

6 The elements which the State must prove beyond a
7 reasonable doubt are: That John Dorsey has been convicted of
8 a sexually violent offense. Convicted of a sexually violent
9 offense means a person has been found guilty of a sexually
10 violent offense. I charge you that criminal sexual conduct
11 and a lewd act on a child are sexually violent offenses. And,
12 that John Dorsey suffers from a mental abnormality or
13 personality disorder that makes him likely to engage in acts
14 of sexual violence if not confined in a secure facility for
15 long-term control, care, and treatment.

16 Inherent in these two elements is that the State must
17 prove the requirement that John Dorsey's mental abnormality of
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 commit suffers from a mental illness, which you cannot
22 sufficiently control without the structure in-care provided by
23 a mental health facility rendering him otherwise likely to
24 commit a dangerous act.

25 In order for you to understand the elements of the

In the Matter of John H. Dorsey - 2015-CP-22-563
CHARGE TO JURY

135

1 State's case of action, I'm going to define for you some of
2 the terms which just ease. One, a mental abnormality means a
3 mental condition affecting a person's emotional capacity that
4 predisposes the person to commit sexually violent offenses.
5 This mental abnormality or personality disorder must cause the
6 person serious difficulty in controlling his behavior.

7 Two, likely to engage in acts of sexual violence means
8 the person's propensity to commit acts of sexual violence is
9 of such a degree as to pose a menace to the health and safety
10 of others so that he is dangerous to others.

11 Again, I remind you that the burden of proof is on the
12 State to prove to your satisfaction beyond a reasonable doubt
13 that John Dorsey has been convicted of a sexually violent
14 offense as I have instructed you and also suffers from a
15 mental abnormality or personality disorder that makes him
16 likely to engage in acts of sexual violence if not confined in
17 a secure facility for long-term control, care and treatment.

18 If the State carries this burden of proof and convinces
19 you beyond a reasonable doubt as to each of these two elements
20 of its causes of action, it is entitled to a verdict that John
21 Dorsey is a sexually violent predator. However, if the State
22 does not meet the burden of proof, as to one of both of these
23 elements, then John Dorsey is entitled to a finding that he is
24 not a sexually violent predator.

25 Now, Mr. Bailiff, would you hand that to the foreman of

In the Matter of John H. Dorsey - 2015-CP-22-563
BY THE COURT

136

1 the Jury, please.

2 Thank you.

3 There are two possible verdicts which you may find in
4 this case. One, that John Dorsey is a sexually violent
5 predator and; if so, check yes on the verdict form. Or that
6 John Dorsey is not a sexually violent predator; if so, check
7 no on the verdict form. There is no significance whatsoever
8 in the order in which I state these possible verdicts. It is
9 simply that one must be stated first. Please understand that
10 all twelve of you must agree on the verdict. Your verdict
11 must be unanimous. Your verdict cannot be based on sympathy,
12 passion, prejudice, emotion or any other consideration not in
13 the evidence of this case.

14 Mr. Foreperson, when the Jury agrees on the verdict, you
15 will sign your name as foreperson on the line underneath the
16 jury verdict and date it. Then knock on the jury room door
17 and inform the Bailiff that you have reached a verdict.
18 Shortly thereafter, we will receive you back into the
19 courtroom to conclude this case. I ask that you now return to
20 the jury room but do not begin your deliberations until the
21 Bailiff tells you to do so. Thank you.

22 (REPORTER'S NOTE: Jury exits courtroom. 10:48 A.M. The
23 following takes place outside the presence of the Jury.)

24 BY THE COURT:

25 THE COURT: Any objections to the charge as stated from

In the Matter of John H. Dorsey - 2015-CP-22-563
BY THE COURT

137

1 the State?

2 MR. MORROW: Nothing from the State, Your Honor.

3 THE COURT: From the Defense?

4 MR. FALK: Your Honor, could we just -- maybe if the
5 Court Reporter could read back -- there's one section that
6 troubled me because at one point, it sounded to me like you
7 said, and I instruct you that, you know, unlawful acts are
8 sexually violent offenses and he suffered from a mental
9 disease. The way I heard it was it sounded like you were
10 instructing the Jury that he suffered from a mental disease.
11 I don't know if that's what you said, that's what -- I just
12 didn't know maybe we could hear it.

13 THE COURT: You want to come take a look and see if you
14 can figure out where in here we're talking about and then
15 we'll go from there.

16 MR. FALK: Yeah.

17 THE COURT: I think that's where you're talking about.

18 MR. FALK: Yeah. I mean, I just -- this transition makes
19 it sound like you're not reading -- but, I charge you that
20 criminal sexual conduct are sexually violent offenses and that
21 he suffers from a mental disease. I should've seen it before.

22 THE COURT: I mean, I ---

23 MR. MORROW: Just where it reads the law is then, you
24 know, we have to prove those two facts.

25 THE COURT: I can reread one and two if you'd like.

In the Matter of John H. Dorsey - 2015-CP-22-563
BY THE COURT

138

1 MR. FALK: Would you mind?

2 MR. MORROW: Just as long as it one and two.

3 THE COURT: And just from here to here.

4 MR. FALK: Uh-huh (affirmative response).

5 THE COURT: And just make it clear that you have to prove

6 ---

7 MR. FALK: Well, prove that you're -- I mean, in effect,
8 you've telling them they've proven that but it -- the way it
9 sounded like, I'm telling -- they've proven he's got a mental
10 disease.

11 THE COURT: How about if I put and the State must prove.

12 MR. FALK: Thank you.

13 THE COURT: I'll just read those two paragraphs.

14 MR. FALK: Thank you.

15 THE COURT: All right. Go ahead and bring them back out.

16 (REPORTER'S NOTE: Jury enters courtroom. 10:51 A.M.)

17 THE COURT: The lawyers want me to clarify that there are
18 two elements that the State must prove beyond a reasonable
19 doubt. And in this regard, I want to make sure that you
20 understand what these two elements are. One, State must prove
21 beyond a reasonable doubt that John Dorsey has been convicted
22 of a sexually violent offense. Convicted of sexually violent
23 offense means a person has been found guilty of a sexually
24 violent offense. I charge you that criminal sexual conduct
25 and lewd act on a child are sexually violent offenses. And

In the Matter of John H. Dorsey - 2015-CP-22-563
BY THE COURT

139

1 the State must prove beyond a reasonable doubt that John
2 Dorsey suffers from a mental abnormality or personality
3 disorder that makes them likely to engage in acts of sexual
4 violence if not confined in a secure facility for long-term
5 control, care and treatment.

6 All right. With that being said, if you would return to
7 the jury room but not begin your deliberations until told to
8 do so.

9 (REPORTER'S NOTE: Jury exits courtroom. 10:54 A.M. The
10 following takes place outside the presence of the Jury.)

11 THE COURT: Any objection from the State?

12 MR. MORROW: Nothing from the State, Your Honor.

13 THE COURT: Defense?

14 MR. FALK: No objection.

15 THE COURT: All right. If you would take in the
16 exhibits, which I believe are State's One and Two and
17 Respondent's One?

18 MR. MORROW: Yes, Your Honor.

19 THE COURT: If you'll take a look at those and make sure
20 they're in order, we'll hand them to the Bailiff and send
21 those in and we'll tell them to begin and we'll bring out the
22 alternates.

23 (REPORTER'S NOTE: Counsel confers and agrees on exhibits.)

24 THE COURT: If you'll carry those in and tell them to
25 begin and bring out the alternates.

In the Matter of John H. Dorsey - 2015-CP-22-563
QUESTION FROM JURY

140

1 (REPORTER'S NOTE: Deliberations begin at 10:56 A.M.)

2 QUESTION FROM JURY:

3 THE COURT: (To Juror 304 and Juror 223.) All right. I
4 want to let the two of you know that your job is complete.
5 You were the alternates. You were here as the second string,
6 you had to fill in if somebody got sick or had a personal
7 emergency or what have you because we have to have twelve.
8 Since we have twelve and they are not deliberating, you are
9 free to go. And I thank you for your services.

10 JUROR: Are we able to stay to see what the verdict --
11 what they decide?

12 THE COURT: Sure, absolutely. You can sit right back
13 there in the courtroom. You can't go back in the jury room
14 but you can sit back there and wait.

15 All right. We'll be at ease until something happens.

16 (RECESS - 10:57 A.M.)

17 *****OFF THE RECORD*****

18 (On the Record - 12:14 P.M.)

19 THE COURT: You may be seated. We have some questions.

20 All right. Question Number One, says, Can we see Dr.
21 Swan's report? What's the State say to that?

22 MR. MORROW: It's not been admitted into evidence, Your
23 Honor.

24 THE COURT: How about the Defense?

25 MR. FALK: We would object if it's not in evidence.

In the Matter of John H. Dorsey - 2015-CP-22-563
QUESTION FROM JURY

141

1 THE COURT: All right. You want me to just write in
2 there it's not in evidence?

3 MR. FALK: Or they should base their decision on what
4 they heard in the courtroom.

5 MR. MORROW: That's what I would recommend.

6 THE COURT: All right. I'll say, Your decision must be
7 based on the testimony you heard in court as well as the three
8 exhibits admitted into evidence.

9 State okay with that?

10 MR. MORROW: No objection from the State.

11 MR. FALK: No objection.

12 THE COURT: All right. The next question says, and
13 testimony of her diagnosis. I'm assuming they want to hear
14 the testimony of Dr. Swan in regards to any diagnosis she may
15 have given.

16 MR. MORROW: I guess, Your Honor, we could bring them in
17 and replay the testimony of Dr. Swan for them.

18 THE COURT: How long did that take; do you remember?

19 MR. FALK: We'll be here an hour. And if that's what's
20 necessary, that's what's necessary. You know, I don't think
21 you can pick and choose.

22 THE COURT: Yeah, I agree.

23 MR. FALK: Do we do my cross also then? I mean, I
24 certainly had questions about her diagnosis and so only
25 hearing the good part a second time I don't think is fair.

In the Matter of John H. Dorsey - 2015-CP-22-563
QUESTION FROM JURY

142

1 THE COURT: Why don't you get the lunch orders first.
2 Once you have those from the Jury, let me know, and we'll be
3 getting ready to play the testimony again.

4 COURT'S EXHIBIT NUMBER TWO

5 MARKED FOR IDENTIFICATION

6 *****OFF THE RECORD*****

7 (On the Record.)

8 (REPORTER'S NOTE: The following takes place outside the
9 presence of the Jury.)

10 THE COURT: All right. You want me write something on
11 there to the effect that ---

12 MR. FALK: Let them know that they're not gonna hear, as
13 the Court suggested, five minutes of testimony, they're gonna
14 hear the whole thing, if they still want that.

15 MR. MORROW: I have no objection to that.

16 THE COURT: Okay. You want me to ask them do you still
17 want to hear that testimony?

18 MR. FALK: Well, that's the point, yes.

19 MR. MORROW: Yes, Your Honor.

20 THE COURT: All right. I wrote, In order to answer this
21 question, you need to know that you will need to hear her
22 testimony in full. Do you still want to hear her testimony?
23 You okay with that?

24 MR. MORROW: Yes, sir..

25 MR. FALK: Yes, sir.

In the Matter of John H. Dorsey - 2015-CP-22-563
QUESTION FROM JURY

143

1 THE COURT: All right. Send that in and let me know what
2 their answer is.

3 (REPORTER'S NOTE: Bailiff delivers note to Jury.)

4 *****OFF THE RECORD*****

5 (On the Record.)

6 (REPORTER'S NOTE: The following takes place outside the
7 presence of the Jury.)

8 THE COURT: We have an eleven-to-one decision. What must
9 we do? Need a little guidance.

10 How about if we just say, your decision needs to be
11 unanimous. Please continue. Any objection from the State?

12 MR. MORROW: No objection from the State, Your Honor.

13 THE COURT: From the Defense?

14 MR. FALK: No objection, Your Honor.

15 THE COURT: All right.

16 COURT'S EXHIBIT NUMBER THREE

17 MARKED FOR IDENTIFICATION

18 (REPORTER'S NOTE: Bailiff delivers note to Jury.)

19 THE COURT: They wrote another note that said, Lunch?
20 You want me respond, Coming soon. Is that okay with y'all if
21 I just write, It's coming soon?

22 MR. MORROW: Yes.

23 MR. FALK: Yes.

24 COURT'S EXHIBIT NUMBER FOUR

25 MARKED FOR IDENTIFICATION

In the Matter of John H. Dorsey - 2015-CP-22-563
VERDICT OF JURY

144

1 THE COURT: All right. Let me know if you have any more
2 questions.

3 (REPORTER'S NOTE: Bailiff delivers note to Jury.)

4 *****OFF THE RECORD*****

5 (On the Record - 1:05 P.M.)

6 VERDICT OF JURY:

7 THE COURT: Everybody have a seat. I believe we have a
8 verdict. Go ahead and bring out the Jury.

9 (REPORTER'S NOTE: Jury enters courtroom. 1:06 P.M.)

10 THE COURT: All right. Mr. Foreman, if you'll hand the
11 verdict form to the Bailiff.

12 I'll have the foreperson just date it, if you would.
13 That's that only thing you left off.

14 Thank you.

15 I find the verdict form in order and I would ask the
16 Clerk to publish it.

17 CLERK: The State of South Carolina, County of
18 Georgetown, in the Matter of the Care and Treatment of John H.
19 Dorsey, Respondent. Has the Petitioner, the State of South
20 Carolina, proven beyond a reasonable doubt that John H. Dorsey
21 is a sexually violent predator under the South Carolina
22 Sexually Violent Predator Act? We, the Jury, unanimous answer
23 the question as follows: Yes, John H. Dorsey is a sexually
24 violent predator.

25 THE COURT: Thank you very much.

In the Matter of John H. Dorsey - 2015-CP-22-563
POLLING OF JURY

145

1 Need for further polling from the Defense or the
2 Respondent?

3 MR. FALK: Yes, Your Honor.

4 THE COURT: All right. Ms. Clerk, if you would poll the
5 Jury?

6 POLLING OF JURY:

7 CLERK: Crisler H. Timmons, please stand. Is this your
8 verdict?

9 JUROR 308: Yes.

10 THE COURT: Is this still your verdict?

11 JUROR 308: Yes, sir.

12 THE COURT: You may be seated.

13 CLERK: You may be seated.

14 Rory N. Scott. Is this your verdict?

15 JUROR 263: Yes.

16 CLERK: Is this still your verdict?

17 JUROR 263: Yes.

18 CLERK: William T. Thomas. Is this your verdict?

19 JUROR 305: Yes.

20 CLERK: Is this still your verdict?

21 JUROR 305: Yes.

22 CLERK: Richard A. Poston. Is this your verdict?

23 JUROR 236: Yes.

24 CLERK: Is this still your verdict?

25 JUROR 236: Yes.

In the Matter of John H. Dorsey - 2015-CP-22-563
POLLING OF JURY

146

1 CLERK: William A. Moore. Is this your verdict?
2 JUROR 213: Yes.
3 CLERK: Is this still your verdict?
4 JUROR 213: Yes.
5 CLERK: You may be seated.
6 Rodney Smith. Is this your verdict?
7 JUROR 287: Yes.
8 CLERK: Is this still your verdict?
9 JUROR 287: Yes.
10 CLERK: Patricia C. Payne. Is this your verdict?
11 JUROR 227: Yes.
12 CLERK: Is this still your verdict?
13 JUROR 227: Yes.
14 CLERK: Beaufort N. McGirt. Is this your verdict?
15 JUROR 199: Yes.
16 CLERK: Is this still your verdict?
17 JUROR 199: Yes.
18 CLERK: You may be seated.
19 Val Jean Anderson. Is this your verdict?
20 JUROR 9: Yes.
21 CLERK: Is this still your verdict?
22 JUROR 9: Yes.
23 CLERK: You may be seated.
24 Lindsay T. Swinton. Is this your verdict?
25 JUROR 299: Yes.

In the Matter of John H. Dorsey - 2015-CP-22-563
BY THE COURT

147

1 CLERK: Is this still your verdict?

2 JUROR 299: Yes.

3 CLERK: You may be seated.

4 John L. Jones. Is this your verdict?

5 JUROR 163: Yes, ma'am.

6 CLERK: Is this still your verdict?

7 JUROR 163: Yes, ma'am.

8 CLERK: You may be seated.

9 Betty B. Altman. Is this your verdict?

10 JUROR 6: Yes.

11 CLERK: Is this still your verdict?

12 JUROR 6: Yes.

13 CLERK: You may be seated.

14 THE COURT: Is that everybody?

15 CLERK: Yes.

16 BY THE COURT:

17 THE COURT: Members of the Jury, I thank you so much for
18 your service this week. You are dismissed for the week and
19 you are done. You have completed your service. You've earned
20 a three-year exemption from having to serve in Circuit Court
21 again by being here. Thank you and you are dismissed.

22 Oh, yeah, you got lunch coming by the way. So, you're
23 gonna get a check and lunch. Don't forget to get your lunch.
24 You can eat it here or take it with you.

25 (REPORTER'S NOTE: Jury exits courtroom. 1:10 P.M. The

In the Matter of John H. Dorsey - 2015-CP-22-563
BY THE COURT

148

1 following takes place outside the presence of the Jury.)

2 THE COURT: Any motions from the Respondent?

3 MR. FALK: Not at this time, Your Honor.

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

5 Anything from the State?

6 MR. MORROW: I have prepared an order of commitment, Your
7 Honor.

8 THE COURT: Sure. If you'll bring it on up and show it
9 to the Respondent first.

10 (ADJOURNED - 1:13 P.M.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

In the Matter of John H. Dorsey - 2015-CP-22-563
CERTIFICATE OF COURT REPORTER

149

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of In the Matter of the Care and Treatment of John H. Dorsey, held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on April 4-5, 2016.

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

Kay H. Richardson

Official Court Reporter

July 10, 2016.

February 27, 2015

Dear Dr. Swan,

MAKING SOCIETY SAFER

ATSA's Ethics Committee has concluded its investigation of the ethical complaints that were lodged against you, and provided those findings to the Executive Board of Directors. The Board has made their final decision regarding disposition of the complaint, determined through discussion and a formal resolution. Therefore the next step in this process will be as outlined in ATSA's current Code of Ethics. The following is a synopsis of the Ethics Committee's decision and rationale:

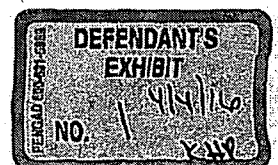
The committee reviewed the report of an independent examination you conducted and wrote, as well as your court testimony supporting it. Central to the complaint (but by no means the entirety of it) was that you had used an interview guide namely, the Relapse Prevention Interview that has little or no empirical support, and made specific conclusions from it which were not supported. This interview guide which you referred to as a "test" was a central part of your report, and you testified in court that since the client described himself as being at five out of a possible ten on a ten-point scale of risk for repeated sexual offending, this constituted a 50% risk. The Committee further noted that in this independent examination you had not used an actuarial scale and/or an established measure of dynamic risk to establish a baseline or offered a reason why you had not used such measures to arrive at a conclusion about his risk. We noted you took into account what this client's treatment team had concluded about the examinee's dynamic risk factors, and yet this is not the same as an independent review of these factors. Finally, you testified regarding the client's score on the Relapse Prevention Interview, "He scored 75 percent of the risk factors and 62.5 percent of the coping strategies, which seems to indicate that his coping strategies are not quite where they should be in order to be safe in the community." Given the lack of any empirically identified cut scores for the measure, it appears the Relapse Prevention Interview was not an appropriate measure to make such a conclusion, and the statement of finding was not limited to the capabilities of the measure.

ATSA's Ethics Committee has found you to be in violation of the following ethical principal, Section 2(j): Any deviation from the ATSA Standards (published in the ATSA Standards and Guidelines document) shall be considered an ethical violation, except to the extent that a Standard conflicts with applicable law or professional regulation that pertain to a member's practice.

The specific practice standards which were violated are:

- 18.06 Members use appropriate evaluation procedures and instruments to address the referral questions.

Association for the Treatment of Sexual Abusers
4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005 USA
Phone: 503.643.1023 | Fax: 503.643.5084 | atsa@atsa.com | www.atsa.com



- *18.07 Members conducting risk assessments use an actuarial risk assessment instrument that is appropriate for the client population being evaluated.*
- *18.09 Members are aware of the relative strengths and limitations of the assessment measures used and avoid making statements that exceed the capability of these measures.*
- *23.05 Members use instruments and methods for which they are appropriately trained, follow recommended administration protocols for all assessment measures utilized, and offer statements of findings that are limited to the capabilities of these methodologies.*

Based on the final resolution by the ATSA Board of Directors the following sanctions are being imposed with specific timelines for completion. Since the purpose for investigating Complaints is to improve the profession and instill confidence from the community, any corrective action, directive and/or sanction recommended by the Committee and resolved by the Board has been fashioned with an aim to instruct and provide an opportunity to improve one's performance.

Sanctions:

- **Cease and Desist** using the Relapse Prevention Interview immediately. It has little or no empirical support for risk assessment purposes. This interview guide, which you referred to as a "test," was a central part of your report, and you testified in court to this fact.
- **Supervision or Clinical Consultation Requirement:** The resolution of the ATSA Board of Directors is that you receive supervision and consultation from any of the following professionals: Dr. Eric Imhof, Dr. Sheila Rapa, or Dr. Robin Wilson. Should the above professionals be unavailable for this purpose, the ATSA ethics committee can identify a suitable alternative. You must commence this consultation within the next four weeks and work with the consultant on your next two adult sex offender evaluations/re-evaluations at a minimum. The focus will be on adhering to and understanding the identified practice guidelines violated above and to use appropriate evidence based evaluation tools. The consultation will conclude when the consultant believes ATSA's practice guidelines will be upheld in future evaluations or one year, whichever is sooner. This requirement will be coordinated, verified and monitored by the chair of the ATSA ethics committee.

According to section (3 k, page 22) of the ATSA Code of Ethics, it states that if the Board finds that the subject member has violated the Code of Ethics, *"it shall publish in the next scheduled issue of the ATSA newsletter the Subject Member's name; the circumstances of the violation; the Code of Ethics section(s) violated; the corrective action, directive and/or sanction(s) imposed; and the status of the Subject Member's ATSA membership."*

Important to note in ATSA's Code of Ethics is the intention to make sure that all members are using ethical practices. As such it is hoped this will be an opportunity to learn from errors and help direct the ethical practice of all ATSA members. These current sanctions do not impact your past or current membership. Should you decide to resign your membership because of the actions taken by the ATSA Board of Directors, and we hope that you would consider following the Board's recommendations and maintain your ATSA membership, Section 8 c, page 27 of the ATSA Code of Ethics states the following: *"A Subject Member's resignation shall have no effect upon the investigation and resolution of a Complaint, so long as the Code of Ethics violation(s) alleged in the Complaint took place during the term of the Subject Member's membership with ATSA."*

Please let me know who you choose as your consultant so that I can coordinate and monitor the process.

Sincerely,



Erik Fox, J.D., Ph.D.
ATSA Ethics Committee Chair

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."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 15th day of March, 2017.

RECEIVED
MAR 15 2017
SC Court of Appeals

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 15 2017

SC Court of Appeals

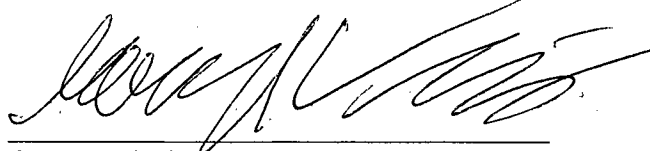
Appeal from Georgetown County
Honorable William H. Seals, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JOHN HENRY DORSEY,

APPELLANT

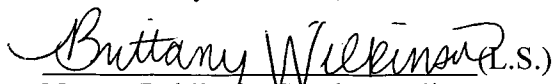
CERTIFICATE OF SERVICE

I certify that a 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, and John Henry Dorsey, at Correct Care, 1700 St. Andrews Terrace, Building A, Columbia, SC, 29210, this 15th day of March, 2017.



George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 15th day of March, 2017.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: November 3, 2026.