

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

RECEIVED

JUL 06 2017

SC Court of Appeals

IN THE MATTER OF THE CARE AND
TREATMENT OF HERMAN LEE ARCHIE,

APPELLANT

APPELLATE CASE NO 2016-002128

RECORD ON APPEAL

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State of South Carolina.,)	In the Court of Common
)	Pleas of York
)	
County of York.)	Case No.: 2016-CP-46-00123

State of South Carolina.,)	
)	
Plaintiff.,)	
)	
-vs-)	Transcript of Record
)	Trial
In the Matter of the Care.,)	
)	
and Treatment of.,)	
)	
Herman Lee Archie.,)	
)	
Respondent.)	
)	

October 10-11. 2016
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge, and a jury.

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ORIGINAL

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Official Court Reporter
To The Honorable John C. Hayes, III

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-N

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I-N-D-E-XE-X-H-I-B-I-T-S

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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (JURY ENTERS COURTROOM AT 10:29 AM.)

2 (COURT IN SESSION AT 10:40 AM.)

3 THE COURT: Good morning. Thank you, you may take
4 your seats. Members of the jury panel, I'm John Hayes from
5 Rock Hill. I along with Judge Hall from York are the two
6 resident judges here in York County and in Union County,
7 the Sixteenth Circuit in this state. We travel all over
8 the state but I'm assigned this week to hold what is known
9 as a Civil term. That is, we're not dealing this week with
10 cases involving individuals who are alleged ot have
11 committed a criminal act, but rather we have two cases
12 involving civil issues.

13 We will draw both juries today. The first will be for
14 a what's called a medical malpractice case and I'll tell
15 you more about that later and we will draw that jury and
16 then we'll draw the second jury and we'll actually start
17 that trial before the medical malpractice case. That's
18 just maybe sounds illogical but that's the way it's gonna
19 work. From my feelings it's the best way to proceed.

20 Now what we're gonna first do is go through roll. The
21 Clerk will call your name and what we want you to do is
22 stand and give us your - - Mr. Hamilton's already told you
23 what information you need to give to us when you stand so
24 if you will do that we would appreciate it. Once we get
25 through with that -- When you do that, use a good strong

1 voice. You don't need to shout. This is a fairly small
2 courtroom but we do want to hear what you have to say so
3 try to project your voice out for us.

4 After we go through that list I will go over with you
5 certain qualifications, disqualifications and exemptions
6 that the law has for service as a juror with us this week.
7 So please give us the information the Clerk request.

8 (JURY SWORN AT 10:42 AM.)

9 (JURY ROLL CALL AT 10:42 AM.)

10 THE COURT: Thank you. I appreciate that. I'm now
11 going to go over the list of exemptions, qualifications and
12 disqualifications for service as a juror.

13 What I will do is I will go through the entire list.
14 Once I have done that I will step down by the court
15 reporter and the attorneys have a right to come up and hear
16 what we have to say but you won't have to stand up in front
17 of everyone and this has to do with if you need to respond
18 to any of these. That is if I ask a question and you think
19 it applies to you and you need to talk to me about it don't
20 stand up right then.

21 Wait until I go through the entire list and I'll
22 invite any of you that need to talk to me about any of
23 these matters come forward at that time. So please at this
24 time, in order to serve as a juror in this particular type
25 court you need to fall into one of the following

1 categories. You must either hold a driver's licence, South
2 Carolina driver's license, or, you must hold a South
3 Carolina Department of Public Safety Identification card,
4 or, be a registered voter. That is, hold a voting
5 registration card. You don't have to have them on you but
6 you have to fall into one of those categories.

7 If you do not fall into one of those categories then
8 wehn I step down please come forward.

9 If any of you are not citizens of the United States or
10 if you reside in a county other than York County, South
11 Carolina please come forward in just a moment.

12 If any of you hold any elected office, counselman or
13 anything like that in York County or for the County, or, if
14 you work in one of our courthouses, please come forward in
15 just a moment.

16 If any of you hold a constables license either with or
17 without pay, please come forward in just a moment.

18 If any of you have been convicted or pled guilty in a
19 state or a federal court for a crime for which you could
20 have received a prisonment term of one year or more than
21 one year in jail, and if your civil rights have not been
22 restored by pardon or amnesty. If call your attention that
23 this has to do with offenses that carried a penalty that
24 exceeded one year. It's not tied to any sentence one may
25 have received.

1 If any of you have less than a sixth grade education
2 or its equivalent or if you cannot read, write, speak, or
3 understand the English language, please come forward in
4 just a moment.

5 If any of you are sixty-five or older you have an
6 exemption. You can serve if you wish and if you are sixty-
7 five or older and wish to serve keep your seat. If you're
8 sixty-five or older and wish to be excused please come
9 forward in just a moment.

10 If any of you have any mental or physical health
11 issues that would prevent you from serving with us as a
12 juror this week, please come forward in just a moment.

13 If any of you have a child under the age of seven, and
14 you are the primary care giver for that child, and do not
15 work outside of the home, or, if you take care of someone
16 who because of either mental or physical issues they cannot
17 take care of themselves, that is someone who is disabled
18 and needs constant care, and you are a person that provides
19 that as opposed to a job, please come forward in just a
20 moment.

21 If any of you are a teacher or a student and serving
22 with us this week would interfere with your - - that
23 enterprise please come forward in just a moment.

24 If any of you have served on a Circuit Court jury such
25 as this within the last three calendar years, or, if any of

1 you have served on a state wide or a county-wide grand jury
2 within the last five calendar years, please come forward in
3 just a moment.

4 Finally, if any of you have any compelling reason why
5 you cannot serve with us as a juror this week, you may come
6 forward and we'll discuss that also.

7 Now again, I'm gonna step down by the court reporter
8 cuase she has to take down what we talk about. The Clerk
9 will be over there and the lawyers have a right to gather
10 around and hear what we have to say. Anybody that needs to
11 come.

12 (COURT LEFT BENCH AT 11:05 AM.)

13 THE COURT: All right. Yes, sir.

14 MR. CLERK: Juror Number Forty-four is Alfred L.
15 Ellis, Juror Number Forty-four.

16 THE COURT: If y'all want to hear you can come in a
17 little closer.

18 (BLACK MALE COMES FORWARD.)

19 THE COURT: Good morning, Mr. Ellis.

20 MR. ELLIS: Good morning, your Honor. The first thing
21 is I have an appointment to see my doctor about my back
22 tomorrow. The other thing is I have a criminal record on
23 me when I was younger.

24 THE COURT: What did you have?

25 MR. ELLIS: I had a couple of burglaries and a

1 possession.

2 THE COURT: And it hadn't been restored by pardon or
3 amnesty?

4 MR. ELLIS: No.

5 THE COURT: Okay. You can be excused.

6 MR. ELLIS: I can leave now?

7 THE COURT: You may leave. Thank you.

8 Did you get him?

9 MADAM COURT REPORTER: Yes, sir, I got him.

10 THE COURT: Okay. Hope your back feels better.

11 Unfortunatley I can identify with that.

12 MR. CLERK: Juror Number Twenty is Ricky Brown. Juror
13 Number Twenty.

14 (BLACK MALE COMES FORWARD.)

15 THE COURT: Good morning, Mr. Brown.

16 MR. BROWN: Good morning, Judge. How you doing?

17 THE COURT: I'm doing good.

18 MR. BROWN: I had a charge in '86 I believe it is.

19 THE COURT: For what?

20 MR. BROWN: Failure to stop for a blue light and
21 resisting arrest I think it was.

22 THE COURT: Did you plead guilty or did you get a
23 probationary sentence or did you have to serve some time in
24 jail?

25 MR. BROWN: I think it was probation. No time no,

1 sir.

2 THE COURT: Well failure to stop carries over a year
3 so you'll be excused.

4 MR. BROWN: Okay.

5 THE COURT: Appreciate you coming.

6 THE CLERK: Juror Number Sixty-two is Bruce Hall.
7 Juror Number Sixty-two.

8 (WHITE MALE COMES FORWARD.)

9 THE COURT: Good morning, Mr. Hall.

10 MR. HALL: Good morning, Judge. I have two problems.
11 I have less than a eighth grade education.

12 THE COURT: Right.

13 MR. HALL: And my wife she's got a lot of health
14 problems. A while back she had a colon operation and she
15 might have to go back in the hospital any time to have an
16 operaton again.

17 THE COURT: All right. And how far did you go in
18 school?

19 MR. HALL: Yeah, I have less than sixth grade.

20 THE COURT: Okay. I'll excuse you. Thank you, sir.

21 MR. HALL: Okay.

22 MR. CLERK: Juror Number Fifty-one is Clarence
23 Ferguson. Juror Number Fifty-one.

24 (BLACK MALE COMES FORWARD.)

25 THE COURT: Good morning.

1 A. Uh, I was diagnosed with prostate cancer and I had
2 a procedure on the twentieth of September for seed implants
3 which causes frequent urination so I can't sit more than an
4 hour at this point without using the restroom.

5 THE COURT: Do you think that would be better or I
6 mean you think we ought to transfer you to another time or?

7 A. Yeah.

8 THE COURT: Let's just transfer this gentleman. Okay.
9 Sorry to hear that he had to go through that.

10 A. All right.

11 THE COURT: I hope you do good.

12 A. Absolutely.

13 THE COURT: All right.

14 THE CLERK: Juror Number Eighty-one is Shannon E.
15 Knowles. Juror Number Eighty-one.

16 (WHITE FEMALE COMES FORWARD.)

17 THE COURT: Good morning.

18 A. I'm a high school teacher.

19 THE COURT: Where do you teach?

20 A. In Rock Hill school system at Sullivan Middle School.

21 THE COURT: Huh?

22 A. At Sullivan Middle School in Rock Hill.

23 THE COURT: My wife is in Central Child Development.
24 She's the principle at Sullivan Middle.

25 A. I cannot tell.

1 THE COURT: I cannot deny it. We can transfer you.

2 A. That's fine.

3 THE COURT: What do you teach?

4 A. Sixth grade science.

5 THE COURT: Oh, sixth grade science.

6 A. Yes, sir.

7 THE COURT: Whow.

8 A. I got papers in here to grade. You want to see 'em?

9 THE COURT: No. I'm not gonna grade 'em for you I can
10 tell you that. All right, she'll be transferred.

11 A. Okay. Thank you, sir.

12 THE COURT: Thank you. Appreciate you coming.

13 A. Thank you.

14 THE CLERK: Juror Number One fifteen is Priscilla Ms.
15 Robinson. One Fifteen.

16 (WHITE FEMALE COMES FORWARD.)

17 THE COURT: Good morning.

18 A. Good morning. My husband's currently unable to work
19 so I'm the only income in the household. If I'm here I
20 can't pay my rent.

21 THE COURT: What do you do?

22 A. I work in a mill, it's a knitting.

23 THE COURT: Okay. I'll excuse you.

24 A. Okay.

25 THE COURT: She'll be excused.

1 THE CLERK: This is Juror Number Eighty-five, Michael
2 J. Lavelle.

3 (WHITE MALE COMES FORWARD.)

4 THE COURT: Good morning.

5 A. Good morning. How are you? My wife passed away last
6 June, took her own life, and my middle daughter has a
7 mental disorder and she's under a psychiatrist care and
8 she's struggling with depression.

9 THE COURT: I'll excuse you. I'll excuse you. I'm
10 sorry you have -- you're going through all that.

11 He'll be excused.

12 THE CLERK: We have another one. Juror Number Forty,
13 Dennis Dover. Juror Number Forty.

14 (WHITE MALE COMES FORWARD.)

15 THE COURT: Yes.

16 A. I have worked in this building.

17 THE COURT: Yeah, I recognize you. I thought I'd seen
18 you here before. But you don't work here now. You work in
19 some other building?

20 A. I just work in this one, occasionally. I'm working
21 down here.

22 THE COURT: In maintenance? In the Maintenance
23 Department?

24 A. Yeah.

25 THE COURT: Okay. You can stay with us. Thank you.

1 All right. That's it.

2 (COURT RETURNS TO THE BENCH.)

3 THE COURT: Members of the jury panel, we're gonna
4 take a break because once we go through this part of the
5 qualifications before we get to the next part the Clerks'
6 have to make sure they've got the right names in the
7 computer because some people have been excused.

8 By the way I noticed a couple of people were excused
9 or transferred sat back down. I don't think you still need
10 to stay if you've already been excused or if you've been
11 transferred. Rather than get up and leave at this time,
12 we're gonna take a break. We're gonna take about a ten
13 minute break for the clerk to get everything in order and
14 then we'll come back in. I've got - - I can't see the
15 clock, it's too far away, but I got ten after eleven, so
16 I'll tell you, let's be back at - - let's give yo fifteen
17 minutes, twenty-five after eleven please be seated and
18 we'll draw the jury in the first case which will be the
19 medical case. Thank you.

20 (COURT IN RECESS AT 11:09 AM.)

21 (COURT BACK IN SESSION AT 11:27 AM.)

22 (QUALIFICATIONS FOR JURY PANEL ONE IN THE MATTER OF
23 DONNA HORNE VERSUS AMISUB OF SOUTH CAROLINA BY THE COURT.)

24 (COURT AT EASE AT 11:45 AM./BACK ON RECORD AT 12:15
25 PM.)

1 (PETIT JURY PANEL NUMBER ONE STRUCK AT 12:15 AM.)

2 (JURY EXITS COURTROOM AT 12:16 PM.)

3 (BATSON MOTION MADE BY DEFENSE ON PETIT JURY NUMBER
4 ONE/MOTION DENIED TO RESET PANEL.)

5 (JURY REENTERS COURTROOM AT 12:24 PM.)

6 THE COURT: All right. If you hear your name called
7 please come forward and take a seat in the jury box.

8 Please bring with you any personal belongings that you may
9 have so you won't have to go back and get them.

10 (PETIT JURY NUMBER ONE IN THE MATTER OF DONNA HORNE
11 VERSUS AMISUB OF SOUTH CAROLINA SEATED AT 12:25 PM.)

12 (JURY POOL EXITS COURTROOM TO HALLWAY AT 12:28 PM.)

13 (PARTIES IN CIVIL MATTER DONNA HORNE VERSUS AMISUB OF
14 SOUTH CAROLINA DISMISSED AT 12:37 PM., UNTIL 11:00 AM.,
15 TUESDAY, OCTOBER 11, 2016.)

16 THE COURT: We need to get Mr. Archie out.

17 (COURT AT EASE.)

18 (DEFENDANT HERMAN LEE ARCHIE, WHITE MALE, ENTERS
19 COURTROOM.)

20 (JURY POOL REENTERS COURTROOM AT 12:37 PM.)

21 THE COURT: Members of the jury panel, we're gonna draw
22 the jury for the other case and that is the case in the
23 Matter of the Care and Treatment of Herman Lee Archie.

24 This is Mr. Archie seated here with the black shirt
25 on. He's represented by Anna Good.

1 The State is represented by Mr. Jim Bogel of the
2 Attorney General's Office. And this case is pursued by the
3 State of South Carolina I don't want to say against Mr.
4 Archie because it's of a little unusual nature of this
5 proceeding.

6 The State has charged, alleged, and seeks to have Mr.
7 Archie designated as a sexually violent predator. In order
8 for the State to prove that there are certain elements.
9 I'm not gonna go over those now but I want you to be aware
10 that this case has to do with a factual issue as to whether
11 or not Mr. Archie suffers from a mental abnormality or
12 personality disorder that would make him likely to engage
13 in acts of sexual violence if not secured in a - - not
14 confined in a secure facility for long-term control care
15 and treatment so that's what the issue is in this case.

16 First I ask, if you are related by blood or marriage,
17 or, do any of you know from any source whatsoever Mr.
18 Herman Lee Archie; if so, please stand?

19 No one stands.

20 Do any of you on the jury panel been represented by
21 Mr. Bogel or anyone from the Attorney General's Office Mr.
22 Wilson, or, Ms. Good; if so, please stand?

23 No one stands.

24 Do any of you know Mr. Archie in anyway, whatsoever; if
25 so, please stand?

1 (NO ONE STANDS.)

2 THE COURT: Do any of you know anything about Mr.
3 Archie's background because it's an issue in this case Mr.
4 -- I'll go ahead and as -- know anything about Mr. Archie's
5 background in anyway whatsoever; if so, please stand?

6 No one stands.

7 Have any of you or a member of your immediate family
8 been the victims of what you considered a sexual offense?
9 That is some offense that's occurred to you or a family
10 member that had a sexual component to it; if so, please
11 stand?

12 I'm not gonna ask you to go into a lot of details
13 because that's very very personal and I just need to know
14 so just give me your name and number and then I'll follow
15 up with my fairness questions.

16 (WHITE FEMALE STANDS.)

17 A. Brooklyn Mason, Juror Number Ninety-one.

18 THE COURT: Okay. Yes, ma'am.

19 (BLACK FEMALE STANDS.)

20 A. Sherry Chisholm, I'm Juror Twenty-five.

21 (WHITE FEMALE STANDS.)

22 A. Sylvia Hoyle, Juror Number Seventy-two.

23 MS. GOOD: Can you slow down, your Honor?

24 THE COURT: Okay. All right.

25 A. Sherry Chisholm, Twenty-five.

1 THE COURT: Okay. And you can stand back up. Just
2 stay up. All right.

3 Yes, ma'am.

4 (WHITE FEMALE STANDS.)

5 A. Cynthia Hoyle, Juror Number Seventy-two.

6 THE COURT: All right. Yes, sir.

7 (WHITE MALE STANDS.)

8 A. Charles Feemster, Juror Number Fifty.

9 THE COURT: Now there are four of you standing and I'm
10 not gonna ask you anything personal but having that in your
11 background could you still be fair and impartial to Mr.
12 Archie based on what I told you he will be on trial four?

13 All right, raise your right hand if you cannot.

14 All right, all four do so all four of you will be
15 excused. Don't leave. Just have a seat but thank you for
16 being so up-front and honest with me. That's very
17 important in the way we conduct our business. Thank you.

18 Do any of you on the jury panel have any background in
19 law enforcement in any capacity whatsoever, or, in the
20 prosecution of criminal cases in any capacity whatsoever;
21 if so, please stand?

22 No one stands.

23 Do any of you have any background or training or
24 experience in psychiatry, psychology, or, a background in
25 legal matters; if so, please stand?

1 All right, yes, ma'am, your name and number again?

2 (BLACK FEMALE STANDS.)

3 A. Latona Blackmon, Thirteen. I'm a licensed social
4 worker in therapy.

5 THE COURT: All right. Would that affect your ability
6 to be fair and impartial to Mr. Archie?

7 A. No.

8 THE COURT: Okay. Thank you. The following are
9 possible witnesses and based on my conversation with the
10 attorneys it will be the witnesses. Doctor Amy C. Swan of
11 the South Carolina Department of Mental Health and Doctor
12 Geoffrey R. McKee, M-c-K-e-e. Do any of you ever been
13 treated by or know either of those individuals; if so,
14 please stand?

15 No one stands.

16 Have any of you been involved in anything like a
17 prison ministry or prison outreach program? Any kind of
18 program that would deal with incarcerated individuals; if
19 so, please stand?

20 No one stands.

21 Have any of you or -- Again this would be personal so
22 I'm not gonna ask you to tell me a lot about it other than
23 standing if you need to. Have any of you or a member of
24 your family been involuntarily or voluntarily committed to
25 a mental hospital or been the subject of a civil commitment

1 proceeding; if so, please stand?

2 No one stands.

3 I think I've already ask this when I ask about law
4 enforcement but have any of you been involved with any
5 prosecutorial authority such as a solicitor's office or the
6 Attorney General's Office or a Judge Adjucant General or
7 something like that; if so, please stand?

8 (NO ONE STANDS.)

9 THE COURT: Do any of you belong to or are you
10 contributors to Mother's Against Drunk Driving, Citizen's
11 Against Violence, Student's Against Drunk Driver's, CAV,
12 that's Citizen's Against Violence or CADRY. I'm not
13 exactly sure what -- What's --

14 MR. BOGEL: Citizen's Advocating Decency.

15 THE COURT: What he said.

16 Anybody, if you belonged to it you'd know it. Okay.

17 Anything further from the State?

18 MR. BOGEL: No, your Honor. Thank you.

19 MS. GOOD: No, sir.

20 THE COURT: All right. Do any of you know of any
21 reason whatsoever why you could not or should not serve as
22 a fair and impartial juror in the trial of Mr. Archie for
23 this issue that I've already gone over; if so, please
24 stand?

25 All right. Yes, sir.

1 (WHITE MALE STANDS.)

2 A. Brandon Anderson, Juror Number Four. Being in the
3 legal document business side I've been privy to legal
4 documents in cases such as this that are disturbing.

5 THE COURT: You don't need to go into detail but do
6 you think you would be unable to be fair and impartial?

7 A. No, sir.

8 THE COURT: You would be fair?

9 A. No, sir.

10 THE COURT: Okay. You can have a seat and you will be
11 excluded from the drawing. Thank you.

12 No one else stands. And Madam Clerk will give us the
13 twenty individuals plus three for alternates.

14 We'll be at ease like we were. Now, while we're at
15 ease this time, it takes a little while, if any of you need
16 to get up and go use the restroom or want to go get a cup
17 of water and not be gone but a few minutes that's fine just
18 don't disappear on me. But we'll be at ease for about
19 fifteen minutes while the panel list is prepared and the
20 attorneys have the right to confer.

21 (COURT AT EASE AT 12:48 PM.)

22 THE COURT: Mr. Bogel, you ready?

23 MR. BOGEL: Yes, your Honor.

24 THE COURT: Ms. Good?

25 MS. GOOD: Yes, sir.

1 THE COURT: All right. Using the numbers on the far
2 left the State strikes first.

3 MR. BOGEL: Yes, sir. The State would strike Number
4 Thirteen.

5 MS. GOOD: Respondent strikes Number Eight.

6 MR. BOGEL: The State would strike Number Eighteen.

7 MS. GOOD: Respondent strikes Number Nineteen.

8 MR. BOGEL: The State would stike Number Nine.

9 MS. GOOD: Respondent strikes Number Two.

10 MR. BOGEL The State would strike Number Fifteen.

11 MS. GOOD: And Respondent strikes Number Sixteen.

12 THE COURT: One each on the alternate.

13 MR. BOGEL: On the alternate the State would strike
14 Number Twenty-one.

15 MS. GOOD: Number Twenty-three, your Honor.

16 MADAM CLERK: Twenty-three? I'm sorry.

17 MS. GOOD: Twenty-three.

18 THE COURT: Madam Clerk, you want to check the strikes?

19 MADAM CLERK: Yes, sir. I want to verify the strikes
20 for both sides. For the State I have the following
21 strikes: Number Thirteen, Eighteen, Nine, Fifteen, and as
22 your alternate Number Twenty-one.

23 MR. BOGEL: That is correct.

24 MADAM CLERK: That is correct. Okay.

25 For the respondent I have the following strikes:

1 Number Eight, Nineteen, Two, Sixteen, and as your
2 alternate Number Twenty-three. Is this correct?

3 MS. GOOD: Yes.

4 MADAM CLERK: Ladies and gentlemen, if your name is
5 called please bring your personal belongings and bring them
6 down and have a seat to my left in the jury box at the
7 direction of the bailiff.

8 Juror Number Thirty-six, Julia B. Dibrell.

9 (WHITE FEMALE COMES FORWARD.)

10 THE COURT: Ms. Dibrell, I'm gonna ask you to be the
11 foreperson of this jury.

12 MS. DIBRELL: I'm sorry.

13 THE COURT: I'm gonna ask you to be the foreperson for
14 this jury.

15 MADAM CLERK: Juror Number Forty-seven, Michael D.
16 Faile.

17 (WHITE MALE COMES FORWARD.)

18 MADAM CLERK: Juror Number Seven, Sarah L. Austin.

19 (BLACK FEMALE COMES FORWARD.)

20 MADAM CLERK: Juror Number Eighty-four, Catherine E.
21 Lamb.

22 (WHITE FEMALE COMES FORWARD.)

23 MADAM CLERK: Juror Number One twenty-four, Monty L.
24 Salter.

25 (WHITE MALE COMES FORWARD.)

1 MADAM CLERK: Juror Number Twenty-four, G. Clark
2 Childs.

3 (WHITE MALE COMES FORWARD.)

4 MADAM CLERK: Juror Number Sixty-four, Lynn R. Hammond.

5 (WHITE MALE COMES FORWARD.)

6 MADAM CLERK: Juror 1-0-6, Rhonda R. Pearson.

7 (BLACK FEMALE COMES FORWARD.)

8 MADAM CLERK: Juror Fourteen, David R. Blair.

9 (WHITE MALE COMES FORWARD.)

10 MADAM CLERK: Juror Number One twenty-nine, Sherry A.
11 Sistare.

12 (WHITE FEMALE COMES FORWARD.)

13 MADAM CLERK: Juror Number Ninety-six, Deborah D.
14 Mills.

15 (WHITE FEMALE COMES FORWARD.)

16 MADAM CLERK: Juror Number One eleven, Joseph L.
17 Prince.

18 (WHITE MALE COMES FORWARD.)

19 MADAM CLERK: And serving as alternate is Juror Number
20 Thirty-eight, Barbara G. Doncaster.

21 (WHITE FEMALE COMES FORWARD.)

22 THE COURT: I didn't ask, Mr. Bogel, anything involving
23 the striking of the panel?

24 MR. BOGEL: No, your Honor.

25 THE COURT: Ms. Good?

1 MS. GOOD: Nothing.

2 THE COURT: All right. Those of you who were not
3 chosen this finishes you up for the week. I'm gonna ask
4 you to leave quietly.. You'll be mailed a check but if any
5 of you need any kind of document to take back to work Mr.
6 Hamilton is there he will direct you as to how to get
7 something to give to your employer or your spouse or
8 whoever needs to know where you were this morning.

9 Thank you.

10 (JURY PANEL DISMISSED AT 01:03 PM.)

11 THE COURT: Those of you who were chosen I'm gonna ask
12 you to stand and raise your right hand and the Clerk will
13 administer the oath.

14 (WHEREUPON, PETIT JURY DULY
15 SWORN AT 01:04 PM.)

16 MADAM CLERK: Thank you. You may be seated.

17 THE COURT: Members of the jury panel, it's one o'clock
18 so we're gonna break for lunch in just a minute and then
19 when you come back I'll have some more comments but I do
20 need to make some comments before we even leave for lunch.

21 The first is that you are on this jury panel now, so
22 you should not discuss, you cannot discuss the case among
23 yourselves and you cannot make up your own mind until we
24 reach the point in the trial where I instruct you to
25 jointly deliberate and return a unanimous verdict. Prior

1 to that time you don't have all the tools you need to make
2 a fair and reasonable decision. So don't try to make up
3 your mind and don't discuss the case among yourselves.

4 I do not believe this case will receive any news
5 coverage but if it does do not let yourself be exposed to
6 any news coverage. Don't listen, watch, or read anything
7 that could remotely deal with this trial.

8 Don't let anyone discuss this case with you outside
9 the courtroom. If anyone tries to discuss this case with
10 you report that back to me giving me the identity of that
11 person so I can take action against someone who has
12 attempted to talk to a seated juror.

13 Do not do any independent research. Don't pull out a
14 book to research anything that could remotely deal with
15 this trial. Don't go on line, don't go to Google or any
16 resource whatsoever to find out anything about the issues
17 in this case, about Mr. Archie, about the attorneys, about
18 me, about trial procedure, about trial evidence. You've
19 got to base your verdict solely on the law and the evidence
20 that is developed in the trial. So it would be improper in
21 violatin of your oath to go outside of that and do any kind
22 of research. And when I talk about electronic or those
23 devices that we all use and rely on so much I'm asking you
24 not to rely on the news for the next little bit while
25 you're on the jury.

1 Please don't even go to Face book or one of these
2 social media outlets to talk about your serving as a juror.
3 That sounds innocent enough but you may Tweet - - not Tweet
4 - but you may communicate some how ---- I got so many now I
5 can't keep up with them - - Snap Chat or something - that
6 you're serving on a jury. And even if you don't say what
7 the case is about someone may respond with something,
8 information or a comment, that wouldn't be healthy for your
9 service as a juror in this trial. So just stay away from
10 that as much as you can for the remainder of this case.

11 So I'm gonna let you go to lunch and when you come
12 back I'll have some more things to talk to you about; tell
13 you a little bit more about how we will proceed.

14 Anything else from the State before we break for
15 lunch?

16 MR. BOGEL: No, your Honor, thank you.

17 MS. GOOD: No, sir.

18 THE COURT: All right. It's about five after one, we
19 will break 'till two, fifteen. That's a little over an
20 hour. Have a pleasant lunch and we'll see you back at two
21 fifteen. Thank you.

22 (JURY EXITS COURTROOM ON LUNCH RECESS AT 01:06 PM.)

23 THE COURT: All right, any matters or issues we need to
24 resolve before we start presenting the case to the jury
25 immediately after lunch?

1 MR. BOGEL: Nothing from the State, Judge.

2 MS. GOOD: No, sir. I just wanted the stipulations at
3 two fifteen that he has filed.

4 THE COURT: Oh, the motions about -- Yeah.

5 MS. GOOD: And they're quick.

6 THE COURT: Yeah, their quick. Why don't we try to go
7 back at two. Does that give you enough time to eat?
8 That's just fifty-five minutes. We'll get together at two
9 and go over those motions. Glad you reminded me.

10 Thank you.

11 MR. BOGEL: Thank you, Judge.

12 (DEFENDANT HERMAN ARCHIE, EXITS COURTROOM.)

13 (COURT IN LUNCH RECESS AT 01:08 PM.)

14 (COURT BACK IN SESSION AT 02:04 PM.)

15 (DEFENDANT, HERMAN ARCHIE, REENTERS COURTROOM.)

16 THE COURT: Thank you. You may take your seats.

17 I'm sorry, I left motions on my desk. I think.

18 All right, we've got the Motions in Liming. Two from
19 the State. One, I'll let Mr. Bogel tell me about 'em.
20 We'll start with the first, first.

21 MR. BOGEL: Yeah, let me make things easier for you,
22 Judge. We're gonna withdraw the second motion in limine.

23 THE COURT: Done.

24 MR. BOGEL: All right. Regarding the first one, as
25 your Honor knows the Sexually Violent Predator treatment

1 location where the people go if they're committed is
2 located in a facility run by the Department of Mental
3 Health but on the premises of the Department of
4 Corrections. In fact the actual wing of the Department of
5 Corrections they use used to be Death Row many years ago.
6 And what we're doing is asking to prohibit any referece to
7 that location being a prison, about the person being
8 committed for life, or being the old Death Row or something
9 like that.

10 As your Honor knows the only things the State's
11 required to prove is Number One: Has he been convicted of
12 a violent crime, a sexually violent crime. And Number Two:
13 Does he have a mental abnormality or a personality disorder
14 that makes him likely to commit the same sexual crimes
15 unless he's confined in a secure facility for long-term
16 control, care and treatment, run by the Department of
17 Mental Health. To describe the location in the terms I
18 mentioned before would distract the jury with the unfair
19 prejudice to the State and it might take the jury - - they
20 would get the impression this is punishment and not
21 treatment; this incarceration and not treatment and might
22 disregard the proper instructions of the Court.

23 We would ask that any reference to the location being
24 a prison, death row, being there for life; things like
25 that, being incarcerated not be allowed.

1 MS. GOOD: Your Honor, we don't object to that. We
2 just want to be able to ask inpatient versus out patient
3 treatment. I'm not exactly where it is but inpatient
4 versus out patient.

5 THE COURT: I appreciate that. It appears to me that
6 would be somewhat similar to staying away from sentencing
7 arguments.

8 MR. BOGEL: Thank you, your Honor.

9 THE COURT: Anything else?

10 MR. BOGEL: Nothing further from the State.

11 MS. GOOD: Your Honor, I do have a quick motion just
12 based on the fact that the State just stated that they have
13 to prove one, that he's been convicted and two, that he has
14 a mental abnormality that makes him likely to reoffend.

15 I have tried several of these cases with Mr. Bogel.
16 In his opening and closing a lot of times he has recently
17 been quoting Section 44-48-20 which is the first section of
18 the Sexually Violent Predator Act, your Honor, as to the
19 legislative findings.

20 Your Honor, I believe it is prejudicial as it goes
21 toward the jury's emotions on this as the legislative
22 findings goes into about how there is just this extremely
23 dangerous group of sexually violent predators that exist
24 and that the likelihood they are gonna engage in
25 significant and it just goes on about this whole population

1 of sexually violent predators when Mr. Archie has not been
2 determined to be one yet. That's what the jury is to
3 determine today. So I would ask that he not be able to
4 mention this, your Honor, as it's more prejudicial than
5 probative as to the why the legislature --

6 THE COURT: Mr. Bogel.

7 MR. BOGEL: Just that, your Honor, I think the correct
8 quote of the law, and yes I do do that, if I read to the
9 jury briefly the first paragraph under Section 40-48-20
10 which is the legislative finding about the mentally
11 abnormally and extremely dangerous group of sexually
12 violent predators exist. It's part of the law. I think I
13 should be allowed to read the law. Certainly your Honor
14 will instruct them with the law in the case. I've even had
15 some judges include that section but very few do.

16 I think the State should be allowed to quote the law
17 to the jury. That would negate any prejudicial - -

18 THE COURT: That's a finding though. That's not
19 analogous to -- That doesn't prohibit any conduct. It
20 doesn't -- It's not -- It doesn't affect conduct. It's a
21 finding.

22 MR. BOGEL: It's just their statement of intent as to
23 why they enacted the law.

24 THE COURT: Well I don't think that's relevant. I'm
25 gonna grant the motion. I don't think it's relevant as to

1 why they enacted the law.

2 MR. BOGEL: Well, just ---

3 THE COURT: Unless you want to call --

4 MR. BOGEL: --- their finding that there is this group
5 of people out there that need to be looked at this way.

6 THE COURT: Well, I don't think that's relevant to
7 whether or not he meets the definition.

8 MR. BOGEL: Thank you, your Honor.

9 MS. GOOD: And, your Honor, I would ask, I'm sure
10 you're probably gonna -- I don't know if you're gonna do
11 this or not, since the media is obviously here at this
12 point, I would ask some type of maybe prejury instruction
13 to them or at least to recognize that they are not to
14 notice the media or base any of your or anything on the
15 fact that the media came to court.

16 THE COURT: Well, that's one of those things where if
17 you want it I'll mention it but usually I kind of stay away
18 from.

19 MS. GOOD: It's up to you, your Honor.

20 THE COURT: Well I mean that -- Obviously they see the
21 camera. If they see it they'll know what it's here for but
22 I usually don't draw attention and I don't think I've ever
23 drawn attention to the fact that something was receiving
24 news coverage. What I usually say is what I said earlier
25 that if there is any to stay away from it.

1 I have on occasion particularly back when we first
2 started allowing cameras in the courtroom made sure the
3 jury knew that they would not -- gonna be filmed; that they
4 were off limits. But I'm not gonna say one way or the
5 other about it.

6 MS. GOOD: Thank you, your Honor.

7 THE COURT: As soon as we've got all thirteen we're
8 ready. We're a little early yet. If they're here we'll
9 start. If not, we'll wait until time.

10 THE BAILIFF: Your Honor, I'll bring 'em in.

11 THE COURT: Yeah. Ready to proceed, Mr. Bogel?

12 MR. BOGEL: Yes, your Honor. Just to be clear, I will
13 not be reading from the statute but I will argue to the
14 jury in my opening statement what the elements are that the
15 State has to prove.

16 THE COURT: Oh, of course you -- That's right. And
17 don't start arguing to them because I think I'm gonna tell
18 'em that you're not arguing. I'm just gonna tell 'em
19 you're giving a statement.

20 MR. BOGEL: Opening statement. Thank you.

21 THE COURT: Certainly what you're required to prove is
22 what you need to tell 'em. I won't be telling 'em that
23 anyway.

24 (JURY ENTERS COURTROOM AT 02:13 PM.)

25 THE COURT: Members of the jury panel, I'm gonna chat

1 with you just a minute and then I'll turn the case over to
2 the attorneys and they have the right to make what we call
3 opening statements. These are not arguments, they are not
4 trying to convince you of anything.

5 Have we sworn them? Did we swear them?

6 MADAM CLERK: Yes, sir.

7 THE COURT: - - - they at a later time will have an
8 opportunity to come before you and make what we call
9 closing statements where they will be trying to convince
10 you your verdict should be a certain verdict based on the
11 evidence that's been presented at that time and the law
12 that they know I will be charging you.

13 I have three primary jobs in a trial. All trial
14 judges do. One is I'm the logistic's person. I sometimes
15 call it the wagon master. I make sure we take breaks; I
16 make sure one person's speaking at a time, the logistics of
17 the case that's my responsibility.

18 My second job is that I rule on questions of evidence.
19 If one side believes certian evidence should be allowed in
20 the record and the other based on some case law or evidence
21 law rule believes that the evidence is not admissible, it's
22 up to me to rule on that and determine whether that
23 evidence is admissible or not.

24 My third job is that I am the sole judge of the law in
25 this case. I am giving you some legal principles now; I

1 may during the trial give you some and at the end of the
2 trial I will give you a concise and comprehensive charge on
3 the law that you are to apply to the facts as you determine
4 them to be. You are not to infer from anything I say or do
5 at any time during the trial as being an indication of an
6 opinion of mine on the facts. I am not allowed as a trial
7 judge to formulate or express to a jury any opinion on the
8 facts. That is solely your job. It is solely up to you to
9 examine the evidence and to give to the evidence the
10 effect, the value, the weight, and the truth you believe it
11 should have.

12 In doing this you may believe one witness as opposed
13 to several; several witnesses as opposed to one. You may
14 believe all, part, or none of a witnesses' testimony. Use
15 your common sense, your sense of logic, your sense of
16 reason; use your experiences in life as you analyze the
17 evidence. As judges of the facts you necessarily must
18 judge the credibility of the witnesses, that is the
19 believability. In assessing believability use the things
20 I've talked about. Use the things that you find in your
21 day to day life as being indicative of truthfulness. And
22 you can use certain evaluators; a witnesses' demeanor on
23 the stand, are they hesitant or straightforward. Is their
24 testimony consistent or inconsistent. Do they have any
25 reason to help or hurt one side or the other? All these

1 things you consider determine the true facts and you'll be
2 able to apply the law and return a verdict that speaks the
3 truth.

4 In this case we'll have testimony from individuals we
5 nominate as experts. Generally a witness can only testify
6 as to something they sense with one of their five senses.
7 It's usually something they've seen or heard but it could
8 be taste touch or smell. However where an individual has
9 certain training, background, experience and knowledge in a
10 certain field, that person can take facts and from those
11 facts render an opinion.

12 I use as an example a physician. The experts in this
13 case may have MD's; I don't know but I use the example of a
14 doctor. I could have a child who is obviously ill;
15 lethargic, maybe nauseaus, hot to the touch. I could come
16 in and testify to all of those things but I could not give
17 an opinion as to what was wrong with the child. I could
18 take that child to a physician who has training, skill and
19 knowledge and experience as a doctor and that doctor could
20 take those same facts and from those facts reach an
21 opinion, say the child has X Y or Z. So that's what an
22 expert does. They take facts and from those reach an
23 opinion.

24 Those opinions are allowed into evidence to assist
25 you. They are not binding on you. Just like the

1 witnesses, other witnesses, you can take accept or reject
2 any or all of a witnesses' -- of an expert's testimony.

3 In addition to the things I talked to you about the
4 witnesses in general, they all apply to experts but in
5 addition to experts you can look at their qualifications.
6 It's up to the judge, the court, to determine whether or
7 not that person can testify as an expert in that field but
8 you have the ultimate right to determine whether you
9 believe they were an expert in that field.

10 You also have the right to examine the reasons they
11 gave for reaching their opinion. All those things you
12 consider determine the true facts as I've said and return a
13 verdict that speaks the truth.

14 I talked to you about what not to do as far as
15 discussing the case and those sort of things. I'm not
16 going over those again.

17 Madam Forelady, you will be the liaison between the
18 jury and myself, preside over the jury's deliberation and
19 ultimately enroll the jury's unanimous verdict.

20 We take breaks about every hour and a half. I find
21 that is a good comfort level but if any of you need a break
22 at any time with no questions ask we'll take a break.
23 Simply raise your right hand and we'll take a break. I
24 extend that to counsel and Mr. Archie also. We are not in
25 such a hurry, we want to move the case along but we're not

1 in such a hurry that we won't take a break if we need one.

2 If you can't hear or you can't see let me know. Cup
3 your ear, give me a voice raising gesture or a nudging
4 gesture and I'll try to correct it because it's not fair to
5 give you this task to make this determination in this case
6 and not give you an opportunity to see and hear those
7 things that are important for you to see and hear.

8 Mr. Bogel.

9 MR. BOGEL: Thank you, your Honor. May it please the
10 court.

11 OPENING STATEMENT BY MR. BOGEL:

12 MR. BOGEL: Ms. Good. Ladies and gentlemen.

13 I introduced myself and I was introduced by the court
14 earlier, my name is Jim Bogel. I'm out of Columbia with
15 the Attorney General's office. Often times when people see
16 these cases they wonder why it's not somebody local like
17 the county attorney, the solicitor, or something like that.
18 And the reason is that when the General Assembly passed
19 this law back in 1998 they gave these cases to our office.

20 And there are two of us, Cam Morrow and I, that do
21 these cases on a statewide basis and I'm assigned to the
22 Sixteenth Circuit. I've been here many times and I'm glad
23 to be back again.

24 Now, because of the nature of this case normally in
25 the Court of Common Pleas you'd be hearing a case involving

1 say a automobile accident, a medical mal-practice case,
2 contract case, some fight like that. This case is gonna be
3 different and I'd like to tell you up front that in order
4 to make the case both for the State and the Defense you're
5 gonna hear a lot underlying details about certain criminal
6 acts. That's just part of the game. I just want to give
7 you fair warning. And it won't be like the average case
8 you thought you might hear.

9 Now, what happens here is this. In 1998 the General
10 Assembly passed this law called a Sexually Violent Predator
11 Act. And basically what it set us was a civil commitment
12 procedure. Once a person is nearing the end of their
13 prison term they're file is evaluated. And that's what
14 happened with Mr. Archie. He finished his prison term,
15 he's being held in detention here in York County until this
16 case is local. And to qualify under this law a person has
17 to be convicted of at least one crime called sexually
18 violent.

19 There's a list of sixteen sexually violent crimes in a
20 law and he's been convicted of it three times. Criminal
21 sexual conduct with a minor in the third degree involving a
22 little girl who was about three or four years old. And
23 lewd act on a minor child two times involving another girl
24 who was about ten at the time the crimes happened. All of
25 these are convictions here in York County. You will have

1 in the jury room copies of the indictments and the
2 sentencing sheets. That's the first thing.

3 The second thing we have to prove is does he suffer
4 from some kind of mental abnormality or a personality
5 disorder that makes him likely to commit these same types
6 of crimes again unless we commit him to a secure place for
7 long term control, care and treatment and that's what we're
8 asking you to do.

9 Now normally in a civil case, auto accident, medical
10 malpractice, the burden of proof in civil court is by what
11 they call a preponderance of the evidence. I think fifty-
12 one percent for example.

13 In the case when the General Assembly wrote this law
14 they said, no, we're gonna place a higher burden on the
15 State so the burden here, even though we're in civil court,
16 is beyond a reasonable doubt. In other words what evidence
17 the State produces leaves you firmly convinced that this
18 man has been convicted of the right kind of crime and
19 cannot control himself to the extent that he needs to be
20 confined for treatment. That's the burden of proof beyond
21 a reasonable doubt and the judge at the end of the trial
22 he'll explain to you exactly what that means. That's what
23 the case is.

24 Now, in cases like this at the very beginning the
25 Court appoints a witness, an expert witness, who has

1 evaluated the guy and that's what happened here. The judge
2 has already explained to you the law about expert witnesses
3 and has given you some hints about that. Basically it's
4 the thing where people can't testify in court about
5 opinionis. Usually a witness talks about something they
6 heard; something they saw; something they smelled, like I
7 heard the gun go off, I saw the knife in his hand, I saw
8 the car run the red light. When it comes to giving an
9 opinion the witness has to have certain educational
10 qualifications that will help you the jury make your
11 ultimate decision as to what the facts are.

12 Now in this case the Court appointed Doctor Amy Swan.
13 She's with the Department of Mental Health, is sitting
14 right back there in the dark blazer, she was appointed to
15 evaluate Mr. Archie. And she looked at documents on him;
16 she ran test on him and she came up with an opinion; her
17 recommendation is that, yes, he cannot control this mental
18 abnormality. His diagnosis is he is basically a pedofile
19 which means he has a sexual interest in prepubescent
20 children and that he can't control it because this has been
21 going on with him for over twenty years. So that's what we
22 have.

23 The Defense has the right under the law to get their
24 own expert and they hired Doctor Geoff McKee a psychologist
25 who used to be with the Department of Mental Health.

1 You'll be hearing from him I believe when he testifies
2 tomorrow. So that's what the case is. The question is,
3 can the State prove beyond a reasonable doubt that this man
4 has been convicted of the right kind of crime right here
5 and has a mental abnormality, pedophilia, and there is no
6 dispute there among the two doctors, the two psychologist.
7 The question is, can he control it? Has he been able to
8 control it? We've got over a twenty-year period of
9 activity on this. We would submit to you that the evidence
10 would show that he cannot.

11 I ask that you use your common sense; listen to all
12 the testimony, listen to the laws as the judge gives it to
13 you, and render a verdict that speaks the truth.

14 Your Honor.

15 THE COURT: Thank you. Ms. Good.

16 MS. GOOD: Thank you, your Honor.

17 OPENING STATEMENT BY MS. GOOD:

18 MS. GOOD: Mr. Bogel just came up here and explained
19 exactly what you're gonna hear in this case and what all
20 the State has to prove to you beyond a reasonable doubt
21 which is the highest burden in this state that Mr. Archie
22 is likely to reoffend.

23 The first thing was that he has been convicted of
24 prior sexual violent acts. I'll go ahead and tell you
25 right now that's not gonna be an issue in this case because

1 everybody agrees that he has these prior convictions. And
2 we're not here to say that what he does was right or what
3 he did was good but we're here to determine what the future
4 is gonna hold for Mr. Archie and whether he is likely to
5 reoffend.

6 And in order to do that as you heard from Mr. Bogel
7 they're gonna put up Doctor Amy Swan. Mr. Bogel is gonna
8 ask questions of Doctor Swan and she's gonna give you a lot
9 of details of what happened in the past and they're gonna
10 be offensive. I'm not gonna stand up here and say that
11 they're not gonna be offensive, Ladies and Gentlemen.

12 However, that is not what you're here to look at what
13 he's done in the past but what he's gonna do in the future
14 or potentially do in the future. You're gonna hear a lot
15 of science, you're gonna hear statistics, you're gonna hear
16 how these doctor's determine under what's called a Static-
17 99 whether a person is a sexually violent predator or not.

18 I want you to listen carefully to these statistics;
19 put away your thoughts of how bad the past things he's done
20 are. I want you to look at the timing of his prior acts;
21 that Mr. Bogel just stated this was over a period of twenty
22 years. I want you to pay attention to exactly when these
23 things occurred and you're gonna see there is a big gap
24 where absolutely nothing happened at all where he was not
25 in prison or anything during that time.

1 I want you to pay attention to his behavior since he's
2 been incarcerated. I want you to pay attention to what
3 Doctor Swan says about why she thinks he should do
4 inpatient treatment. That's the main issue that you're
5 gonna hear, ladies and gentlemen, is whether he needs
6 inpatient or outpatient treatment and whether he's likely
7 to reoffend if he's gonna be out. There are certain
8 conditions he's gonna have to do when he gets out. I want
9 you to pay attention to those as well.

10 Mr. Bogel ask you to use your common sense. I ask you
11 to do the same and put away your emotions when it comes to
12 this case as bad as some of the facts may be and pay
13 attention to statistically and scientifically if he's
14 likely to reoffend. I'm not gonna stand up here and be
15 long winded. I want you to hear from the experts; from
16 Doctor Swan as well as from Doctor McKee. Look at their
17 experience, look at their credibility, and what they say
18 they think the issues are in this case. And at the end I'm
19 gonna come back and I'm gonna stand up in front of you and
20 ask that you find Mr. Archie not to be a sexually violent
21 predator.

22 THE COURT: All right. Call your first witness.

20 MR. BOGEL: Thank you, your Honor, may it please the
21 Court. The State would call Doctor Amy C. Swan.

22 MADAM CLERK: Ms. Swan, if I can have you step here to

DOCTOR AMY SWAN: DIRECT BY MR. BOGEL

-45-

be sworn. Place your left hand on the Bible and raise your right.

(WHEREUPON, AMY SWAN, BEING
FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION

DOCTOR AMY SWAN, BY MR. BOGLE:

Q. Good afternoon, Doctor Swan. For the record, your full name, please.

A. Amy C. Swan. That's S-w-a-n.

Q. And what is your occupation?

A. I'm a forensic psychologist.

Q. Now, what degrees do you possess, educational degrees?

A. I have -- In 1987, I received a bachelor of science degree in nursing. In 1993, I received a master's in clinical psychology; and then in 1997, I received a doctorate in clinical psychology.

Q. Do you have any additional specialized training or experience within the field of forensic assessment of sex offenders beyond your doctorate degree?

A. I do. I have received nine hundred and ten hours specifically in the study of sex offenders. It's pretty hard to get that type of training in a graduate program, so we typically get it through seminars and conferences. And two hundred and eighty-nine of those hours have been in assessing the risk that a sex offender would commit another

1 sexual crime.

2 Q. Now, Dr. Swan, what states are you licensed to
3 practice psychology in?

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

5 Q. And you live in Florida; is that right?

6 A. I do.

7 Q. How is it that you're here in South Carolina doing
8 evaluations for the Department of Mental Health?

9 A. I have a contract with the Department of Mental Health
10 to do the pre-commitment evaluations. And then, each year,
11 an individual who is committed, that is entitled to an
12 annual review, and I do those evaluations, as well.

13 Q. Okay. Do you have any experience working directly
14 with sex offenders?

15 A. I do. I have worked with sex offenders for twenty-
16 eight years this month.

17 Q. And about how many sex offenders have you done
18 assessments about?

19 A. I have done eight hundred and thirty sexually violent
20 predator evaluations, and over four hundred other types of
21 evaluations.

22 Q. What types of assessments have you conducted with
23 regard to sex offenders?

24 A. Obviously, I do pre-commitment and annual reviews. I
25 also do sentencing evaluations, where an individual has

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1 been convicted but they have not yet been sentenced. I do
2 For the Board of Psychology in Florida, I do evaluations on
3 licensed individuals who have been engaging in
4 inappropriate sexual behavior to see if they can continue
5 to practice safely, or if they need to be restricted from
6 practice.

7 Q. And Doctor, can you talk briefly about your experience
8 in relation to sex offenders?

9 A. Yes. I started out in 1988, and I set up a sex
10 offender program at a small psychiatric hospital. And
11 beginning in 1993 to 1996 I worked with -- at a community
12 mental health center doing evaluations and therapy with
13 victims and perpetrators of sexual abuse. In nineteen --
14 between 1996 and 1997, I worked with incarcerated
15 adolescent sexual offenders. In 1999, -- I'm sorry, in
16 1997, I began working at court psychology in Broward
17 County, and we specifically did victims and perpetrators of
18 abuse, and that included sexual abuse. And then, in 1999,
19 I was the first psychologist hired to provide treatment to
20 sex offenders detained under the Florida Civil Commitment
21 Act. And in the year 2000, I went into private practice
22 and started doing evaluations, eventually in three
23 different states.

24 Q. And what is your background, specifically with regard
25 to sexually violent predator cases, like the one before the

1 jury today?

2 A. I began doing them in 1999, so I've been doing those
3 kind of evaluations for seventeen years.

4 Q. Have you previously been recognized by the courts of
5 South Carolina and other states, and have you also
6 testified as an expert witness in the field regarding
7 assessment of sex offenders in general?

8 A. I have. I have been qualified as an expert witness
9 two hundred and thirty-three times in sexually violent
10 predator cases, and twenty-four of those were in South
11 Carolina.

12 MR. BOGLE: Your Honor, at this time we'd like to
13 offer Doctor Amy Swan --

14 Q. Well, one last question, Doctor Swan. At the
15 beginning, you said you were a forensic psychologist.

16 A. Yes.

17 Q. What does the word forensic mean in connection with
18 the word psychologist?

19 A. Okay. Forensic means any case that is involved in the
20 legal system. And so, a forensic psychologist would work
21 with cases that are involved in the legal system.

22 Q. Thank you, Doctor Swan.

23 MR. BOGLE: Your Honor, we would offer at this time
24 Doctor Amy Swan as an expert witness in the field of
25 psychology and forensic psychology.

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1 THE COURT: Any voir dire?

2 MS. GOOD: No.

3 THE COURT: I find she's qualified.

4 BY MR. BOGLE:

5 Q. Now, Doctor Swan, how did you get involved in the
6 case involving Herman Lee Archie?

7 A. I was appointed by the Court to evaluate Mr. Archie.

8 Q. And what type of evaluation did you do?

9 A. This is what we call a pre-commitment evaluation and
10 that is to determine if the individual has a mental
11 abnormality or a personality disorder that makes them
12 likely to engage in future acts of sexual violence if not
13 confined in a secure facility for care, control, and
14 treatment.

15 Q. What is your protocol, your method of operation, in
16 cases like this?

17 A. I receive a referral. In this case, it was from the
18 Department of Mental Health. And when I receive that
19 referral, I get documents related to the individual that
20 I'm going to see. And I review those documents, and then I
21 schedule an evaluation to see the individual. And when I
22 talk to the individual, I talk about everything from the
23 day he was born until the day he's sitting in front of me.
24 And that includes his family history, his educational
25 history, his background history, his relationship history,

1 his medical history, and his criminal history.

2 Q. Doctor, as part of this evaluation process that you
3 just described, did you meet with and interview Herman Lee
4 Archie, the respondent in this case?

5 A. I did. I saw him on March 31st of 2016.

6 Q. About how long was that one-to-one meeting?

7 A. I believe that was for three hours.

8 Q. Okay. Is the man you met with here in the courtroom
9 today?

10 A. Yes, he is. He is sitting over here in the black,
11 although he looked quite different when I saw him. He
12 didn't have any facial hair or any hair on his head, but I
13 do recognize him.

14 Q. Okay.

15 MR. BOGLE: Let the record reflect she's identified
16 Mr. Archie.

17 (WITNESS IDENTIFIED THE DEFENDANT HERMAN LEE ARCHIE AT
18 DEFENSE TABLE.)

19 BY MR. BOGLE:

20 Q. Now, Doctor, did you explain to Mr. Archie the purpose
21 of this evaluation, what was going on?

22 A. I did.

23 Q. And did he consent to the evaluation?

24 A. Yes, he did.

25 Q. Now, in addition to meeting with him, a minute ago you

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1 talked about getting documents and reviewing documents.

2 A. Yes.

3 Q. Briefly, could you summarize for the jury the types of
4 documents you got and looked at in connection with this
5 case?

6 A. Yes. I review arrest reports, indictments, sentencing
7 documents, police reports documenting the crimes. I also
8 receive any psychological evaluations that might be
9 available. I receive probation and parole information;
10 anything that is related to the crime, victim statements.

11 Q. Is this the type of information that is typically and
12 reasonably relied upon by other experts in your field?

13 A. Yes, it is.

14 Q. And did you consider and rely upon that information,
15 including and interview of Mr. Archie, regarding forming an
16 opinion about whether or not he should be civilly
17 committed?

18 A. Yes, I did.

19 Q. Now, could you explain to the jury how a person's past
20 sexual-offense behavior relates to future behavior?

21 A. The best predictor of future behavior is past
22 behavior. And I know that you've all heard that as a
23 saying, but that's actually been demonstrated and
24 researched that -- that that is the best predictor.

25 Q. Now, as I go through your report, has -- Based on your

1 research and the interview that you did with Mr. Archie and
2 the records you looked at, has he been convicted of any
3 sexually violent crimes?

4 A. Yes, he has.

5 Q. And what are they? Could you list what they are?

6 A. Yes. He has been convicted of criminal sexual conduct
7 with a minor, third degree; lewd act on a child under
8 fourteen and then another lewd act on a child under
9 fourteen.

10 Q. Okay. Now, the first name of the victim in the
11 criminal sexual conduct with a minor in the third degree
12 would be what?

13 A. That would be Child 1 .

14 Q. And then, the lewd act charges, there's two of them,
15 occurring at different times, what would be the victim
16 there?

17 A. Child 3 .

18 Q. The name --- The first name of the victim.

19 A. Child 3 .

20 Q. Okay. Now, in your report, there is reference to a
21 victim named Child 2

22 A. Yes.

23 Q. Was there an error in the documents you looked at that
24 led to that?

25 A. Yes. Although Mr. Archie was arrested for the offense

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1 against Child 2 he was not convicted of that offense.

2 Q. Okay. Did you -- Have you examined the report
3 regarding that contention, that there's basically two
4 convicted victims, as opposed to one convicted victim?

5 A. There are two, yes.

6 Q. Okay. Does that change your ultimate conclusion about
7 Mr. Archie?

8 A. Not at all.

9 Q. Okay. Now, I'd like to hand you three indictments,
10 marked State's Exhibits One Two and Three.

11 MR. BOGLE: If I could approach the witness?

12 THE COURT: Yes, sir.

13 BY MR. BOGLE:

14 Q. The first one is a certified copy of a conviction in
15 York County, 2011-GS-46 dash 3-4-9-1, with the sentencing
16 date of December 18, 2012, State's Exhibit Number One.

17 A. Yes. This is a conviction for a lewd act against
18 Child 3 .

19 Q. Okay. The second one is a certified copy from the
20 Clerk's Office downstairs, Indictment Number 2011-GS-46
21 dash 3-5-0-9, of the indictment sentencing sheet, State's
22 Exhibit Number Two. What do we have there?

23 A. This is also a conviction for a lewd act on a child
24 under fourteen, for the victim Child 3 .

25 Q. And finally, State's Exhibit Three, a certified copy

1 of the sentencing sheet and indictment for Case Number
2 2012-GS-46 dash 3-3-1-1. Would you examine that?

3 A. Yes. This is a copy of the conviction for criminal
4 sexual conduct with a minor, third degree, for Child1 .

5 Q. Okay. As part of your work on this case, Doctor Swan,
6 did you review all these documents I just handed you?

7 A. Yes, I did. I reviewed forty-one different legal
8 documents.

9 Q. Okay. Including the convictions I handed you a minute
10 ago?

11 A. That's correct.

12 Q. And again, are these indictments and sentencing
13 sheets, are these typically relied upon by experts in your
14 field, and reviewed by them?

15 A. Yes, they are.

16 Q. And is it necessary to study the underlying details
17 behind each crime?

18 A. It is.

19 Q. Okay.

20 MR. BOGLE: Before we get that, at this time, your
21 Honor, I would like to move to introduce into evidence
22 State's Exhibits One, Two and Three, as I've described them
23 to the witness.

24 MS. GOOD: Your Honor, I don't object to the
25 sentencing sheets, but I do object to the indictments going

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1 in, as that's not part of what they have to prove. It's
2 just the sentencing sheet that he was convicted.

3 MR. BOGLE: The indictment and sentencing sheet are
4 one document together. In one case, there's an arrest
5 warrant for the --

6 THE COURT: Well, let me let the jury go to the jury
7 room for just a minute while we discuss this.

8 You want to hand them up to me?

9 (JURY EXITS COURTROOM AT 02:40 PM.)

10 THE COURT: All right. Your objection is what, again?

11 MS. GOOD: Your Honor, I do not object to the
12 sentencing sheets being introduced, as they do have to
13 prove that he was convicted of these. However, I do object
14 to the indictments going in, as the obtain facts that may
15 or may not have been determined. And they're not relevant
16 as the conviction sheets would be in.

17 THE COURT: Well --

18 MR. BOGLE: We would submit that the indictments are
19 very relevant. They describe the exact crime by name, by
20 date, by location, and by the victim, that the respondent
21 was convicted of. The sentencing sheet and the indictment
22 make a complete package.

23 THE COURT: I --

24 MR. BOGLE: You can't have one without the other to
25 understand what the crime is.

1 THE COURT: I overrule the objection, because it does,
2 at the very top, have the indictment case number. And
3 then, it states, "in disposition of the said indictment
4 comes now the defendant" who was either convicted or pled;
5 and then, it's got the offense. So, I overrule the
6 objection.

7 MS. GOOD: Thank you.

8 THE COURT: They're in, over objection.

9 MR. BOGLE: Thank you, your Honor.

10 THE COURT: Let's get the jury back in.

11 (JURY REENTERS COURTROOM AT 01:42 P.M.)

12 THE COURT: You may proceed.

13 MR. BOGLE: Thank you, your Honor. May it please the
14 Court. We move at this time to introduce into evidence
15 State's One, Two and Three, the indictments just described
16 by this witness.

17 THE COURT: Over the objections of Respondent, they're
18 in.

19 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE, TWO AND
20 THREE, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

21 MR. BOGLE: Thank you, your Honor.

22 Q. Now, Mr. Swan, first, I'd like to ask you this, make
23 sure we've got this straight. Why is it necessary to look
24 into the underlying details behind the crime?

25 A. It's important because what I have to look at is,

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1 first of all, does he have a mental abnormality or
2 personality disorder, so, I look at the facts of the crime
3 to assess that. And then, I have to determine if that
4 mental abnormality or personality disorder makes him likely
5 to engage in future acts of sexual violence. So, it's very
6 important that I have all the facts, so that I can see if
7 there's a pattern that would make him a risk in the future.

8 Q. Okay. Let me show you State's Exhibit Number Two,
9 Indictment 2011-GS-46 dash 3-5-0-9.

10 A. Yes.

11 Q. What is that a conviction for?

12 A. This is a conviction for a lewd act committed upon a
13 child under fourteen years old.

14 Q. And the name of the -- the first name of the victim
15 involved ---

16 A. It would.

17 Q. --- as shown on the indictment would be who?

18 A. Child 3 .

19 Q. Okay. And how old -- Well, what are the underlying
20 details behind this conviction that you found significant
21 in making your diagnosis and recommendation about Mr.
22 Archie?

23 A. Child 3 reported that she had been molested by Mr.
24 Archie on three different occasions when she was a child.
25 She said that he molested her when she was approximately

1 ten years old. On the first occasion, she said that she
2 and Mr. Archie and -- had -- and her sister, Mr. Archie's
3 wife, were sleeping on a couch in the living room. And she
4 said that she was asleep on the couch, and his -- Mr.
5 Archie and his family were asleep on the floor, and she
6 woke up to find Mr. Archie touching her vagina. She looked
7 up and saw that it was him, and he quickly hunched back
8 down and she said that she hit him, and laid back down and
9 went to sleep.

10 She said the second incident occurred a year or so
11 later at Mr. Archie's house in Clover, South Carolina when
12 she was eleven or twelve. And she said again that Mr.
13 Archie and his wife and family members were sleeping -- all
14 sleeping in the same room, and she woke up, and Mr. Archie
15 was touching her, and rubbing her legs and vagina. She
16 stated that he kept doing it, and he wouldn't stop, so she
17 grabbed a blanket and went into another room.

18 She said the third incident occurred in a tent in the
19 mountains of North Carolina. She said that she woke up to
20 find Mr. Archie, again touching her vagina. She said that
21 she disclosed the incident to her family about seven years
22 prior to going to the police, and she said that no one
23 believed her at that time, and it caused such an uproar in
24 the family that it was never reported to the police.

25 Q. Now at some time later, it was reported to the police?

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1 A. Yes. In 2011, it was reported to the police.

2 Q. Okay. Let me show you the second indictment. Now,
3 this is State's Exhibit One, Indictment 2011-GS-46 dash
4 3491. Who is the victim in that -- what's the charge he
5 was convicted of there?

6 A. This is, again, lewd act committed upon a child under
7 fourteen, and this involves the victim Child3 .

8 Q. Okay. Now, going back to the first one -- before I
9 get to this one, we've got -- you've just described what
10 the police reports found in the first case?

11 A. Yes.

12 Q. Okay. What did he say to the police when he was being
13 investigated about that?

14 A. He told the police that he was sleeping on the floor
15 beside his wife, and Child3 was asleep on the couch. He
16 said the only way that he could have touched Child3 was if
17 he accidentally stretched his arm out and touched her.
18 When ask -- When the police asked him if that happened, he
19 said it could have. And when he was asked if he touched
20 Child3 on her vagina, he said, I could have.

21 Q. Now, so we've got what the police found from the
22 victim, what he told the police at the time; now, he talks
23 to you.

24 A. Yes.

25 Q. What did he say -- what does he say to you about -- to

1 you?

2 A. He told me that he didn't do it. He said that Child 3 ,
3 who was his wife's sister, resented him for marrying her,
4 because he basically took her sister away from her. He
5 said that her mother didn't like him, either, and so they
6 -- she fabricated these allegations. When I pointed out
7 that Child 3 made really specific details about the abuse,
8 like she had three different places that it occurred, who
9 was in the room with them when it happened, and you know,
10 whether she was sleeping on the couch and the floor and
11 that those were not things that people could make up in
12 that much detail.

13 He looked at me, and he didn't say anything for a long
14 time. And then, he said that she was always bad about
15 telling fibs, that no one would have believed her. He
16 said, the one at my house she never even spent the night at
17 our house. When I asked him why he took a plea if he
18 didn't do it, he said, I didn't know nothing about the law.
19 I had to get in there quick, because we had a good judge.

20 Q. Okay. Now, the indictments you've looked at shows
21 this was a guilty plea in front of a judge in court, just
22 like we are right now, right?

23 A. That's correct.

24 Q. Okay. Now, the second case I handed you a minute ago,
25 the other State's Exhibit, Number --

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1 A. Right here.

2 Q. Is it Number One? State's Exhibit One? Yeah.

3 A. Yes.

4 Q. You testified a minute ago, that was also another lewd
5 act charge, same victim, Child 3, right?

6 A. Yes.

7 Q. What happened there that it is important for this jury
8 to know, to understand, that crime?

9 A. Well, what's important to understand the crime is that
10 this demonstrates a pattern of sexual interest in children
11 that extended over at least two years, because there were
12 three separate incidents over a period of two years.

13 Q. Okay. And what is the time frame we're talking about,
14 19 -- when did this occur?

15 A. Yes. We're talking about 1986 to 1987. 1987, yes.

16 Q. Okay. And what did Mr. Archie say about this second
17 crime? Were you -- Or what were the underlying details you
18 found from the police reports regarding this second
19 indictment that I showed you a minute ago?

20 A. Well, --

21 Q. Where did this happen?

22 A. Okay. So, these two that we just talked about ---

23 Q. Um-hmm.

24 A. --- were Child 3.

25 Q. Okay.

1 A. Okay. He had a third indictment. I don't believe
2 we've talked about that.

3 Q. All right. Let's do that in a minute though. But is
4 he basically -- So, his statement about at least one of
5 these indictments, you said a minute ago, was that his hand
6 might have accidentally touched her?

7 A. Yes.

8 Q. Was that his story on both of them?

9 A. That was his story on both victims, yes.

10 Q. Okay. Now, what's the date of sentencing, at the
11 lower right-hand corner, on that -- on both indictments?

12 A. December 18, 2012.

13 Q. Okay. I'd like to hand you State's Exhibit Three, a
14 third indictment. This one, Indictment 2012-GS-46 dash 33-
15 1-1 for criminal sexual conduct with a minor, third degree.

16 A. Yes.

17 Q. Before I ask you that, let me ask you this. The other
18 two indictments, the crime was lewd act on a child under
19 fourteen. Is lewd act, was that a sexually violent crime
20 at the time it happened?

21 A. Yes.

22 Q. Under South Carolina law?

23 A. Yes.

24 Q. Okay. Now, the one you're holding in your hand, what
25 is the crime there that he's convicted of?

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1 A. This is criminal sexual conduct with a minor in the
2 third degree.

3 Q. And is that -- Was that a sexually violent crime when
4 it happened, and when he pled guilty to it under South
5 Carolina law?

6 A. Yes, it was.

7 Q. Okay. What are the underlying details? What was the
8 first name of the victim involved in that case?

9 A. The first name of the victim involved in this case was
10 Child1 and she was a three-year-old child.

11 Q. What was the age of Child3 in the prior two cases we
12 talked about a minute ago?

13 A. Child3 was ten to eleven years old when he molested
14 her.

15 Q. Okay. Let's go forward in time, then, to Child1. When
16 did this crime happen, according to the indictment and the
17 sentencing sheet?

18 A. This crime occurred on July 14, 2012.

19 Q. And what are the underlying details that you found
20 significant from the police report, what he told the cops,
21 and what he told you?

22 A. Mr. Archie's twenty-five-year-old son reported that he
23 awoke at one thirty in the morning and because he heard a
24 noise. And at that time, he observed his father going into
25 Child1's room. He said that he went to the door and watched

1 as Mr. Archie knelt down over Child 1 , and slowly moved his
2 hands between Child 1 's legs, and placing his hand on the
3 outside of her clothing.

4 He said to his father, what are you doing? And Mr.
5 Archie said that he wasn't doing anything. So, his son
6 confronted him and told him not to lie, and asked what he
7 thought that he was doing, and he said, yes, I got
8 problems; I got the Devil in me. So, he asked Mr. Archie
9 if he had also molested Child 3 and Child 2

10 Q. Now, before you go any further, who is -- what is
11 Child 2 s connection to this whole thing?

12 A. Well, Child 2 is a third victim, the one for which Mr.
13 Archie was arrested but not convicted.

14 Q. Is it important for experts in your situation, this
15 case, to look at cases where a person is arrested, but not
16 convicted?

17 A. It is, because we know that even being arrested for a
18 sexual offense increases the risk for another sexual
19 offense, even if they're not convicted.

20 Q. Okay. Going back to the conversation now that the son
21 is having with Mr. Archie about Child 2 and about Child 1 .

22 A. So, his son asked him if he has molested Child 3 and
23 Child 2 as well and Mr. Archie said, no, but he might as well
24 have since he was being accused of it. So, at that point,
25 his son forced him to admit to his wife what he'd done, and

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1 Mr. Archie said to his wife, yes, Mama, everything he said
2 is true. He stated that he could not deny what Jeremy had
3 seen, and the -- that he had problems, because the Devil
4 made him do it.

5 At that point, Jeremy and Mr. Archie began to argue,
6 and Mr. Archie fled from the residence, and he was gone
7 overnight, and he was finally tracked down by the police in
8 a wooded area. And when the police caught him, he said,
9 the Devil made me do it.

10 Now, during that time, there were two different
11 mothers with children, in addition to Child 1, and one of the
12 mothers said, the entire day I kept noticing that Herman
13 Archie kept wanting to hold my daughter a lot more than he
14 did in recent visits, and he was constantly wanting to pick
15 her up. He befriended her. She said that when her son
16 came in the room, he barely paid any attention to him. She
17 said that he felt -- she felt uneasy about it, so she kept
18 her daughter away from Mr. Archie.

19 The second woman who had children in the house was the
20 girlfriend of Mr. Archie's son. And she said that she had
21 lived with Jeremy and Mr. Archer for the past year, and she
22 stated that she noticed that Mr. Archie paid more attention
23 to her daughter than she did her son, and that she was
24 closer to the other woman's daughter than her son, as well.
25 She said that Mr. Archie kept getting closer and closer to

1 her daughter, and that he would try to hold her, even
2 though she didn't want to be held. And she said that he
3 tried to get her daughter to lie on the couch with him.

4 Q. Now, after getting all this information, you talked to
5 Mr. Archie about this very crime, the crime involving
6 Child 1. What did he say to you about it?

7 A. To me?

8 Q. Yeah.

9 A. Okay.

10 Q. Well, what did he say to the police? Let's go -- back
11 up a bit. What did he tell the cops when the cops talked
12 to him about it, based on the reports that you looked at?

13 A. He told the police, the Devil made me do it, and the
14 officers asked him what the Devil made him do. And he said
15 the Devil put those children in the house, and he had been
16 fighting the urge since they'd been there. And the
17 officers told him what his son had reported, and Mr. Archie
18 said, he stopped me. And the officers asked him what his
19 son stopped him from doing, and he said, what I was going
20 to do; the Devil made me.

21 Q. Now, you then talked to Mr. Archie about this crime.
22 What does he tell you?

23 A. He told me that his son had put the children to bed,
24 and that he got up to get a drink of water at the fountain
25 in the living room. And he saw her laying in a fetal

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1 position on a mattress on the floor, and she didn't have a
2 cover on her so, he worried that she might be cold. And
3 so, he was going to get a cover from under -- from the
4 dresser, but there wasn't one there. So, he knelt down at
5 the foot of the bed, and he said, I was standing there, and
6 I had temptation. The thought came to my mind, and I said,
7 no, this is wrong I'm not going to do this. He said, I'm
8 fighting between the flesh and the spirit. When I asked
9 him how long he had been fighting between the flesh and the
10 spirit to molest children he said it came just out of the
11 blue.

12 But then, I pointed out that he had been molesting
13 children since 1987, but he denied that that was the case.
14 He denied that he saw -- that his son saw him rubbing
15 Child 1a's vagina. He denied that he followed Child 1 around.
16 He said that it was just this one time that he had that
17 urge. And so, he said that what the two women said about
18 him, about following the children around, was not true.

19 Q. Now, the indictment records you've looked at, all
20 three cases show that he pleaded guilty here in York
21 County, back in December of 2012.

22 A. That's correct.

23 Q. On the back of the indictments is the word Alford,
24 written next to the plea. Are you familiar with a guilty
25 plea made under *North Carolina versus Alford*, a Supreme

1 Court case from some years ago?

2 A. Yes.

3 Q. Basically, in your work as a forensic psychologist,
4 does such a guilty plea under our law still count as a
5 conviction?

6 A. Yes.

7 Q. What does it mean when someone -- how do they plead
8 guilty under *North Carolina versus Alford*?

9 A. When they're plead guilty under the *Alford* plea,
10 they're not admitting that they did the crime, but they're
11 just admitting that the facts were sufficient to prove that
12 they did the crime.

13 Q. Okay. But it has the same effect as a convic -- as a
14 straight-up guilty plea, correct?

15 A. Yes.

16 Q. Now, this guy's denial, on the first indictment, he's
17 saying he stretches his arm and accidentally touched the
18 girl's vagina.

19 A. That's correct.

20 Q. What's he saying about how it happened to Child 1?

21 A. With Child 1, he said that he actually went in the room,
22 and he was standing over her, and he had the urge and he
23 began fighting because he had that urge to touch her.

24 Q. Okay. Was he also arrested on another case that
25 didn't result in a conviction?

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1 A. He did.

2 Q. And who was the victim there, the first name of the
3 victim there?

4 A. The victim here is Child 2

5 Q. Now, you've explained a minute ago why it's important
6 to look at that. What did you find about the Child 2 case
7 that had an impact on your evaluation of Mr. Archie?

8 A. In this case, Mr. Archie's sister-in-law, Child 3, the
9 one that we previously talked to, went to the Department of
10 Social Service and indicated that she was worried about her
11 niece because she believed that Mr. Archie was sexually
12 assaulting her. It turned out that, at the time, Child 2 was
13 visiting with Mr. Archie and his wife. And so, her
14 brother, her twin brother Luke, had a nightmare, and so he
15 went in to sleep with Herman and his wife, and Child 2 went
16 in, also.

17 So, her brother went to sleep with Mr. Archie's wife,
18 and she said the bed wasn't big enough for both of them so
19 Child 2 got into bed with Mr. Archie, and Child 2 reported that
20 Mr. Archie had his fingers in her vagina, and he was
21 rubbing it. So, the children wanted to go home in the
22 middle of the night, and Mr. Archie refused to take them.

23 When they got home, they told their parents, but their
24 parents said that they were afraid to report the incident
25 to the police. So, when Child 3 then reported it, and the

1 police took Child 2 to the Child Advocacy Center, and Child 2
2 again disclosed that Mr. Archie had touched her vagina and
3 her buttocks when she and her twin brother spent the night
4 at the trailer.

5 Q. Was Mr. Archie out on bail for one of these crimes
6 when one of the other crimes happened?

7 A. Yes. Mr. Archie had been arrested for the crimes
8 against Child 3 and Child 2. And then, while he was still out
9 on bond for those crimes, he committed the crime against
10 Child 1. And --

11 Q. Now, there's -- go ahead.

12 A. And that's very significant, because we know that one
13 of the things that increases the risk for committing
14 another sexual crime is not complying with the supervision.
15 So, if you can't control your sexual urges while you're out
16 on bond for a sexual crime, then that tells us that you
17 can't control your sexual urges.

18 Q. Now, in your talking to Mr. Archie, one-on-one with
19 him, he's denying these offenses; is that right?

20 A. He is.

21 Q. Yet, you have the guilty pleas in front of you. You
22 have the records, the things he told the police about
23 stretching, about the Devil made him do it. What effect
24 does this denial have upon your evaluation of Mr. Archie?

25 A. Well, the research indicates that denial in someone

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1 who scores low on an actuarial -- and we'll talk about
2 actuarial instruments later -- but if they score low on an
3 actuarial, that that actually increases their risk for
4 another sexual offense.

5 Q. Now, did you rely only on his criminal history in
6 making an evaluation and a recommendation about him?

7 A. I did not.

8 Q. Okay. Would that be ethical to do so?

9 A. It would not.

10 Q. What about his criminal history, though, did you find
11 significant to making a recommendation or an opinion about
12 whether or not he should be committed for treatment?

13 A. The thing that I found significant was that there were
14 five incidents of sexual abuse between 1986 and 2012. Each
15 time he denied that -- for two of the victims, he gave the
16 same excuse, that he stretched his arm out and accidentally
17 touched their vaginas. But for Child 1, he said that he
18 actually had the urge, even though he didn't admit actually
19 touching her.

20 That's important for me, because that is a pattern of
21 behavior that extends over twenty-five years of molesting
22 young girls, and I actually asked him about that. I said,
23 it seems to me that your pattern is creeping into the rooms
24 of little girls while they're sleeping, and touching their
25 vaginas, and he denied that he did any of those.

1 Q. What did he say to you about his sexual interests?

2 A. He told me that he was one hundred percent attracted
3 to females over the age of eighteen.

4 Q. In fact, he had been married for a long time, had he
5 not?

6 A. He had. About thirty-two years at the time that I
7 evaluated him.

8 Q. Did you ask him if he had any sexual fantasies about
9 children?

10 A. I did, and he denied that he did. He denied any
11 sexual interest in children, and even when we talked about
12 having the urge, he vacillated. But then, he came back and
13 said, no, I'm not interested in children.

14 Q. Did you find anything to dispute these statements by
15 him?

16 A. Well, obviously, he molested children over a period of
17 twenty-five years, and if you did it maybe one time, you
18 might chalk it up to curiosity but he's had five different
19 incidents so he keeps doing it over and over again, which
20 clearly indicates that he's interested in young girls.

21 Q. Now, a minute ago, you used the term actuarial.

22 A. Yes.

23 Q. There's something called a STATIC-99R. Could you tell
24 us what that is?

25 A. Yes. Actuarial's are instruments that we use to

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1 assess the risk that an individual will commit another
2 sexual crime. And these are like the actuarial tables that
3 are used for, like car insurance, and I'll give you an
4 example. We know that young males under the age of twenty-
5 five are most likely to have a car accident So, the
6 insurance premiums for those individuals are higher. And
7 in the same manner, the more times that an individual has
8 committed a sexual crime, then the stronger -- the higher
9 their risk is for committing another one, and the more
10 precautions we have to put in place to ensure the safety of
11 the community.

12 Q. Now, did you then score a STATIC-99? You add up
13 numbers on it, right?

14 A. I did.

15 Q. About certain things in his life, prior convictions,
16 varied things like that?

17 A. That I did.

18 Q. You get a number.

19 A. I did.

20 Q. Now, in this particular case, what number did you get
21 for Mr. Archie? Well, first off, what is the range of
22 numbers, the low end and the high end, on the Static?

23 A. The low end is a minus three and the high end is
24 twelve. Mr. Archie scored a zero, which is in the low risk
25 range.

1 Q. Okay. Now, is the STATIC-99R, that's been developed
2 by these people, is it based on studies of thousands of sex
3 offenders in multiple countries?

4 A. Yes. There are originally thirty thousand in the
5 development of the actuarial, the STATIC-99.

6 Q. Uh-huh.

7 A. Where now, the STATIC-99R, which is a revised version.

8 Q. Now, I'm hearing a score of zero. That seems kind of
9 on the low end. What does that tell you about Mr. Archie's
10 risk to re-offend? What do we need to know about these
11 actuarials?

12 A. Well, the actuarials underestimate risk. And the
13 reason they underestimate risk is because the less than
14 three per -- less than ten percent of sexual crimes results
15 in a conviction. So, only a small number of sexual crimes
16 actually results in a conviction, and these instruments are
17 based on the person being arrested or convicted for a
18 sexual crime. So, they underestimate risk. They also
19 don't capture all the risk factors that could lead to
20 sexual offending, so for that reason they underestimate
21 risk, as well.

22 Q. Okay. Let's talk about factors. The STATIC-99R is
23 based on existence of what they call static factors, right?

24 A. That's correct.

25 Q. And when I say static, what am I saying? What's the

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1 meaning of that word in that context?

2 A. Well, static risk factors mean that they don't change.
3 For example, the STATIC-99 has all static factors, all
4 things that don't change. So, his score on that is not
5 going to change unless he gets to the age of sixty.

6 Q. Okay. Now, do you also look for something called
7 dynamic risk factors?

8 A. We look at factors that are changeable, and these are
9 factors that we target in treatment, because we can change
10 them. And we hope that by changing them in treatment, that
11 that will lower his risk for another sexual offense.

12 Q. Now, what are the static factor -- the big static
13 factor you found, the unchangeable factor you found, in
14 this particular case?

15 A. Well, his major static risk factor is a sexual
16 preference for prepubescent children, and that means
17 children who have not yet begun puberty, so they don't have
18 any secondary sexual characteristics. They're children.

19 Q. Did you also find some dynamic, or changeable risk
20 factors, about Mr. Archie?

21 A. I did.

22 Q. What are they?

23 A. He has some risk factors, including lifestyle
24 impulsiveness, and this indi -- this is demonstrated by low
25 self-control, irresponsible decisions, and limited or

1 unrealistic long-term goals. Clearly, this -- Mr. Archie
2 made irresponsible decisions because he continued to molest
3 children even though he was arrested.

4 He also demonstrated poor problem-solving, which has
5 deficits in problem recognition. For example, he has
6 sexual interests in children, yet he's denying that that's
7 the case. He has a lack of consequential thinking, and
8 that means that they don't see cause and effect. Like, you
9 know, if I keep doing this and don't get help, I'm going to
10 be arrested. And they have difficulties generating a
11 suitably wide range of options for their behavior.

12 For example, if you identify the problem, I have a
13 sexual attraction to children, if I continue to do that,
14 I'm going to be arrested, and you know, what I should do
15 about this and so maybe I should get treatment. And he
16 didn't do any of those things. He continued to molest
17 children over a range of twenty-five years.

18 Q. While he was in prison, was there any record of him
19 committing offenses within the prison system?

20 A. There was not.

21 Q. Okay.

22 A. And that's likely because there are no children there.

23 Q. What about his -- Is sex offender treatment offered by
24 the Department of Corrections in South Carolina?

25 A. It is, and it was offered to Mr. Archie, but he

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1 declined it.

2 Q. Did you talk to him about sex offender treatment, and
3 does he need it, does he think he doesn't need it? What
4 was that conversation about?

5 A. Well, I asked him, and he said that a lady came to
6 talk to him about it, and that she asked him some questions
7 about his sexual problems. So, she asked him if he were a
8 -- if he was about to have oral sex with his last victim,
9 and he said that no, he wasn't. So, he said, I guess I
10 made her mad, and she said I didn't have to go. So, he
11 said that he would have gotten treatment if she'd talked
12 right. So, he was blaming her for him not getting sex
13 offender treatment. When I asked him what would keep him
14 from re-offending, he said, the good Lord. And I said,
15 now, you just told me in all three of these cases that you
16 didn't do it. So, why would the good Lord need to keep you
17 from re-offending? And then, he got real defensive, and he
18 said I didn't do it.

19 Q. Now, Doctor Swan, based upon your interview with Mr.
20 Archie, the records you reviewed, including the indictments
21 we've introduced into evidence, all the documents we're
22 talking about, the interviews and things like that, have
23 you developed a conclusion or an opinion as to whether or
24 not Mr. Archie suffers from a mental abnormality, or a
25 personality disorder, or both?

1 A. Yes. I diagnosed him with Pedophilic Disorder,
2 sexually attracted to females, non-exclusive type. And
3 what that means is that, over at least a six-month period,
4 he demonstrated sexual interest in children. The sexually
5 attracted to females means that he's only interested in
6 little girls. And the non-exclusive type means that he
7 also had a sexual interest in adult females.

8 Q. And is this a recognized mental abnormality that we
9 talk about in this statute that we're dealing with today?

10 A. Yes, it is.

11 Q. Doctor Swan, do you have an opinion, and again, to a
12 reasonable degree of psychological certainty, as to whether
13 or not this diagnosis, this Pedophilic Disorder diagnosis,
14 affects Mr. Archie's emotional or volitioney capacity,
15 volitional capacity, so that he his predisposed to commit
16 future acts of sexual violence?

17 A. Yes, I do.

18 Q. And what is that opinion?

19 A. I believe that he is at risk to commit future acts of
20 sexual violence.

21 Q. Do you also have an opinion, again, to a reasonable
22 degree of psychological certainty, as to whether or not
23 this propensity to be -- is it to be dangerous, and to
24 commit future sexually violent offenses?

25 A. I do.

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1 Q. And is it at such a level that it poses a menace to
2 the health and safety of others?

3 A. Yes, it is.

4 Q. Do you also have an opinion, again, to a reasonable
5 degree of psychological certainty, as to whether or not
6 Herman Lee Archie has serious difficulty in controlling his
7 behavior and his propensities to commit these crimes and be
8 dangerous?

9 A. Yes, we do.

10 Q. And what is that opinion?

11 A. That opinion is that he has serious difficulty
12 controlling his behavior, because he kept doing it over and
13 over.

14 Q. Okay. And finally, also, do you have an opinion,
15 again, to a reasonable degree of psychological certainty,
16 as to whether or not Mr. Archie's diagnosis of Pedophilic
17 Disorder and what he's done, makes him likely to engage in
18 acts of sexual violence, unless he's confined for long-term
19 control, care, and treatment?

20 A. Yes. I believe that his mental abnormality makes him
21 likely to engage in future acts of sexual violence.

22 Q. And is it your opinion, again, to a reasonable degree
23 of psychological certainty, does Mr. Herman Lee Archie meet
24 the criteria for this jury to find him to be a sexually
25 violent predator?

1 A. Yes, he does.

2 Q. Now, if he's not committed to the program, based on
3 the sentencing sheets you've looked at, is he facing any
4 kind of probation?

5 A. He has no supervision to follow his current sentence,
6 and that means that there's nothing in place to force him
7 to get sex offender treatment. And we know that sex
8 offenders virtually never get sex offender treatment,
9 unless they're mandated by some external thing by, like,
10 probation.

11 Q. What are his plans for future release? If he's let go
12 by this jury, if he's let go, what are his plans as he
13 explained them to you?

14 A. Well, he said that he was going to live out in the
15 country in a trailer with his wife. However, that's what
16 he was doing before, and he was able to find these three
17 victims to molest them.

18 Q. Now, Doctor Swan, who is Doctor Geoffrey McKee?

19 A. Doctor McKee is also a forensic psychologist in South
20 Carolina.

21 Q. And what is his position, or his -- his involvement in
22 this case, as far as you know?

23 A. Doctor McKee issued a report in which he said that he
24 did not believe that Mr. Archie met criteria as a sexually
25 violent predator.

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1 Q. Now, it appears, from what we've heard today, that you
2 disagree with that.

3 A. I do.

4 Q. Could you explain to the jury why it is you disagree
5 with Doctor McKee's conclusion?

6 A. I disagree with Doctor McKee's conclusion because
7 we've got a sexual offense history that spans twenty-five
8 years. He re-offended while he was out on bond, which
9 clearly demonstrates an inability to control his deviant
10 sexual behavior. Nothing has changed with him. There's
11 been no sex offender treatment, nothing that would decrease
12 his risk for committing another sexual offense. So, he's
13 essentially unchanged from the time he went to prison 'til
14 now. He could have had treatment, but he declined it. So,
15 nothing has changed, and he's still just as dangerous now
16 as he was when he went to prison.

17 MR. BOGEL: Thank you, Doctor. Please answer any
18 questions that Counsel and the Court may have.

19 THE COURT: Well, this is probably a good time to take
20 a break, before we get into cross-examination. So, we'll
21 take about a ten-minute refresher break.

22 Doctor, you can step down and use the facilities.

23 (JURY EXITS COURTROOM AT 03:15 P.M.)

24 THE COURT: We'll be at ease.

25 (COURT IN RECESS AT 03:15 P.M.)

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1 (COURT BACK IN SESSION AT 03:36 P.M.)

2 THE COURT: They bringing Mr. Archie in?

3 (DEFENDANT HERMAN LEE ARCHIE, WHITE MALE, REENTERS
4 COURTROOM.)

5 THE COURT: Bring in the jury.

6 (JURY REENTERS COURTROOM AT 03:37 PM.)

7 THE COURT: Cross?

8 MS. GOOD: Thank you, your Honor.

9 CROSS-EXAMINATION

10 DOCTOR AMY SWAN, BY MS. GOOD:

11 Q. Good afternoon, Doctor Swan.

12 A. Good afternoon.

13 Q. I'm going to start with the STATIC-99. You said, in
14 your direct testimony, that -- well, the first thing you
15 said was, the best predictor of future behavior is past
16 behavior, correct?

17 A. That's correct.

18 Q. Then what is the point of the STATIC-99R if you're not
19 gonna look at that actuarial system?

20 A. Well, it's one piece of a comprehensive evaluation.
21 It's not the be-all, end-all. Carl Hansen, the developer,
22 said that it does not capture all the relevant risk factors
23 for a sexual re-offense. And so, a prudent evaluator would
24 consider the other factors, as well.

25 Q. Okay. And I'm going to start -- I'll get to the

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1 dynamic in just a little bit. So, I'm just going to just
2 focus on the static risk factors right now. You stated
3 there is a range of negative three, up to twelve, correct?

4 A. That's correct.

5 Q. And what is considered the low range? Or what are the
6 different ranges a person can be in on this scale?

7 A. Well, the low range is minus three to three.

8 Q. Okay. So, that's considered the low?

9 A. Yes.

10 Q. Okay.

11 A. Moderate is four and five. And then, high is six to
12 twelve.

13 Q. Okay. So, based on Mr. Archie's score of a zero, he's
14 in the middle of the low range, correct?

15 A. Yes.

16 Q. All right. And the way you explained it to the jury
17 is, these are done like insurance premiums, correct?

18 A. That's correct.

19 Q. And there are certain percentages as to what someone
20 might or might not do, and you're basing that on those,
21 correct?

22 A. That's correct. We get an estimate of the probability
23 of their re-offending.

24 Q. Okay. And with offenders with a score of zero -- and
25 like I said, I'll get to the dynamic in a minute -- but

1 just as -- for the STATIC-99 with a score of zero, isn't it
2 correct that only seven percent have been found to re-
3 convict after five years?

4 A. Seven to thirteen percent.

5 Q. And after ten years, it's what? Thirteen percent?

6 A. Thirteen percent, yes.

7 Q. All right. So, about ninety-three to eighty-seven
8 percent of the people with a zero score do not re-offend,
9 correct?

10 A. If you're only looking ---

11 Q. Correct.

12 A. --- at the STATIC-99.

13 Q. Okay.

14 A. If you're looking at that in isolation.

15 Q. Okay. So, if you're looking at it in isolation,
16 ninety-three to -- do math -- eighty-seven percent do not
17 re-offend?

18 A. That's correct.

19 Q. Okay. Next, I'm going to go to the dynamic factors,
20 and in your report -- you have a copy of your report,
21 correct?

22 A. Yes, I do.

23 Q. All right. You state multiple things that are
24 considered dynamic risk factors, which include sexual
25 preoccupations, sexualized violence, multiple paraphelias,

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1 offense-supported attitudes, emotional congruence with
2 children, lack of emotionally intimate relationships with
3 adults, and it goes on and on.

4 A. That's correct.

5 Q. Okay. And in addition, you say there are some factors
6 found to have significant predictive value for sexual
7 recidivism, which include hostility towards women,
8 Machiavellianism, et cetera, et cetera. Tons of them,
9 correct?

10 A. That's correct.

11 Q. And in your report, you only found three of all these
12 multiple dynamic factors that would apply to Mr. Archie,
13 correct?

14 A. At the current time. It's likely that, in treatment,
15 more would be revealed as he reveals more of his history,
16 but the three that I noted -- well, actually, there were
17 four, because he has the sexual preference for the
18 prepubescent children, as well.

19 Q. All right. So, in your report -- let me count --
20 there was seventeen dynamic risk factors that you noted,
21 and he only has approximately four, correct?

22 A. That's correct.

23 Q. And we'll start with the first one. All right. Let
24 me start with the sexual preference. Your indication on
25 that was that he sexually prefers, in your opinion,

1 prepubescent or adolescent children, correct?

2 A. Yes.

3 Q. However, as part of your evaluation, was there what's
4 called a PPG conducted on Mr. Archie?

5 A. It was.

6 Q. And can you explain to the jury what a PPG is?

7 A. I will. A penile plethismograph is an instrument that
8 we use to determine if someone has a sexual interest in a
9 certain thing. The word -- it's penile plethismograph, and
10 that plethis means blood flow, so, it measures the blood
11 flow into the penis at the time of arousal. And what
12 happens in this test is that a gauge is placed around the
13 penis, and the individual is shown pictures of infant --
14 male and female infants, male and female preschool
15 children, male and female grammar school children, male and
16 female teens, and male and female adults. And they're also
17 shown each of these age groups in either persuasive or
18 coercive categories, and that means whether the person is
19 more seductive, or if they are forcing someone to engage in
20 sexual acts.

21 And while they are looking at the pictures, which are
22 all fully-clothed, there's no inappropriate pictures in
23 there, they listen to voices that depict what's happening
24 in the picture. On the penile plethismograph, Mr. Archie
25 did not have arousal to anything, and that is abnormal, and

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1 there are a couple of reasons for that.

2 About twenty percent of men do not respond at all to
3 the penile plethysmograph. They just flat-line, and
4 there's nothing you can do. You -- that doesn't mean that
5 they are not aroused to a specific scenario. In Mr.
6 Archie's case, he was taking blood thinner -- blood
7 pressure medication, and blood pressure medication can
8 cause a lack of blood flow to the penis, which would cause
9 him not to respond.

10 Doctor Burke is the doctor that did that penile
11 plethysmograph, and he said that it was likely the blood
12 pressure medication had caused him not to respond. It
13 would tell us something if he responded to adult females,
14 but then he had no arousal with children. So, that would
15 give us information. But the fact that he didn't respond
16 at all tells us nothing.

17 Q. Okay. And the reason on that STATIC-99, you said it
18 would never change until he got to be sixty, correct?

19 A. That's correct.

20 Q. And why is that?

21 A. Well, we know that sex offenders that diminish
22 significantly at the age of sixty. Now, that's true for
23 rapists. It's not necessarily true for child molesters,
24 because they continue to molest children into the very late
25 adult ranges. I've had one that's ninety that told me he

1 was going to molest children when he got out. So, it's not
2 the same, but statistically, sex offending declines at the
3 age of sixty, so he would lose a point for that.

4 Q. Okay. In fact, he would lose two more points for
5 that, correct?

6 A. That's correct.

7 Q. So, he would go down to a negative two?

8 A. Let me just look at that. I think he only loses one
9 at sixty. Yeah, he'd lose two points, you're right.

10 Q. Okay. So, he would go down to a negative two, on a
11 scale of negative three to twelve, correct?

12 A. That's correct.

13 Q. Okay. And could it -- is it possible medically that,
14 due to the fact he is fifty-one, almost sixty, to where the
15 sex drive does go down, and the fact that he did not become
16 aroused on the PPG, an indicator of his age?

17 A. Doctor Burke said that it was likely the blood
18 pressure medication.

19 Q. But it's possible it could have been due to his age,
20 also, correct?

21 A. Well, the libido declines somewhat as you age, and
22 it's most dramatic at sixty. If he had responded to
23 anything on the PPG, that would be important information
24 for us. But the fact that he flat lined doesn't really
25 tell us much. We cannot conclude that he's not interested

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1 in children from that.

2 Q. The second part, or the second dynamic factor that you
3 mentioned, was the lack of emotionally intimate
4 relationships with adults, correct?

5 A. Yes.

6 Q. And the way you phrased it was, it applies to both
7 offenders who have no intimate relationships, and those
8 whose relationships involved repeated conflict or
9 infidelity.

10 A. Yes.

11 Q. In this case, he has had an emotionally intimate
12 relationship with a woman for thirty-some years, because
13 he's been married to Tammy, correct?

14 A. That's correct.

15 Q. Okay. And based on a report on his background,
16 there's only been infidelity once, and that was on her, at
17 the very beginning of their relationship, correct?

18 A. That's correct.

19 Q. Okay.

20 A. The important factor in this one is that he was
21 molesting children while he was married to her, and that
22 seems to indicate that it wasn't emotionally intimate.

23 Q. Okay. Next is the lifestyle impulsiveness. One of
24 the reasons you state in there was that he had an
25 employment disability; that he had had construction jobs

1 throughout the years, correct?

2 A. That's correct.

3 Q Okay. So, he had been employed. And limited or
4 unrealistic long-term goals. In this case, you didn't
5 really go into what his long-term goals would be, did you?

6 A. I did. That was when I asked him about what he
7 planned to do if he were released, and he said, live in a
8 trailer out in the country.

9 Q. Okay. So, you didn't go any further than that with
10 him about what any long-term goals might be. Just it was
11 where he was going to live, and if he was going to work?

12 A. Let me just check that and make sure I have the full
13 answer to that. Yeah, that looks like the extent of it.
14 But he did not plan to get sex offender treatment. So,
15 that --

16 Q. And I'll cover that in a minute too.

17 A. Yeah.

18 Q. Okay. The last one you had mentioned were poor
19 problem-solving skills is, I guess, the main thing that
20 you're focused on, as you testified earlier, is he failed
21 to learn from experience, as he did it while he was also on
22 bond, correct?

23 A. That's correct.

24 Q. Okay. And the way you phrased it was, he lacked
25 consequential thinking, that something bad's going to

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1 happen -- something bad's not going to happen if I do this
2 again, correct?

3 A. That's correct.

4 Q. But in this case, he has now been convicted of and had
5 to do eight years in prison, correct?

6 A. That's correct.

7 Q. And let me show you State's Two. But on State's One
8 and State's Two, he was convicted to eight years, correct?

9 A. That's correct.

10 Q. And does it indicate whether there was any
11 recommendations or negotiations by the State on that?

12 A. Well, he was recommended to get sex offender
13 counseling, but there's nothing that will force him to do
14 that.

15 Q. Right. But prior to the plea recommended by the
16 solicitor in the case as to what the sentence should be.
17 Or was it what's called a straight-up plea?

18 A. I -- I'm not sure what you're asking.

19 Q. If you look on whether it was without -- it was
20 without negotiations or recommendations, correct?

21 A. Yes. That's correct.

22 Q. Okay. And in that case, it also shows that he was
23 looking at a potentially up to fifteen years in prison,
24 correct?

25 A. That's correct.

1 Q. And during the plea -- you're aware of pleas. As you
2 stated, you've done sentencing evaluations.

3 A. Sure.

4 Q. During a plea, the judge gets to listen to all the
5 facts of the case, and determine what they think the
6 appropriate sentencing is, correct?

7 A. That's correct.

8 Q. In this case, he could have received up to fifteen
9 years, and the judge determined eight years was what was
10 appropriate, in his opinion, correct?

11 A. That's correct.

12 Q. And sex offender counseling?

13 A. That's correct.

14 Q. And also, one of the things when you are convicted of
15 a lewd act, you are required to be on GPS monitoring,
16 correct?

17 A. Yes. He has lifetime GPS monitoring. However, that
18 does not prevent you from molesting someone. It just tells
19 them; the people who are monitoring it, where you were at
20 that particular time.

21 Q. And he's also required to be on the sex offender
22 registry, and which is available to everybody in the
23 public?

24 A. He is.

25 Q. And in these particular cases, not to downplay them in

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1 any way, however, these particular cases are what's called
2 almost inter-familial opportunist-type case, correct?

3 A. Well, not necessarily, because the third victim,
4 Child 1, was not a family member.

5 Q. But she was in the household with his son and their
6 family, correct?

7 A. Well, that's correct. But she is an extra-familial
8 victim, and having an extra-familial victim increases risk.

9 Q. To go -- Okay. One of the things, too, when you were
10 looking at the static scale and all the different things,
11 one of the things you look on when you see one of the worst
12 of the worst in these SVP programs, or when you're
13 determining if someone might be a sexually violent
14 predator, is whether they have any disciplinaries in --
15 while they're incarcerated, correct?

16 A. That's correct.

17 Q. In Mr. Archie's case, sexual or non-sexual, whether
18 there's fights or disobeying any type of orders, he had no
19 disciplinaries, correct?

20 A. That's correct. I typically look for disciplinary
21 infractions to see if they are just criminals, and they're
22 always getting into trouble, because that impacts risk.
23 But I also look to see if they have any sexual misconduct,
24 and in this case he did not. But that's significant,
25 because his victims were children, and there are no

1 children in prison.

2 Q. But he was able to follow any type of rules and
3 supervision while he was ---

4 A. He was.

5 Q. --- there, correct?

6 A. While he was supervised, which seems to indicate that
7 that was a good place for him.

8 Q. And in addition, he did do a program while he was in
9 there called Prison to Society, correct?

10 A. He did.

11 Q. In which helps prisoners have a smooth transition back
12 to society and it's based around faith and their religion?

13 A. It does, but it doesn't have any proven benefit for
14 decreasing sexual offenses.

15 Q. Okay. Just not -- I'm not saying it does in that way
16 but ---

17 A. Yeah.

18 Q. --- I'm saying he participated in this. He was very
19 cooperative in this, and was very active in it, correct?

20 A. That's correct.

21 Q. All right. I'm going to move to the sex offender
22 treatment. You're aware that he was incarcerated in 2012,
23 correct?

24 A. That's correct.

25 Q. And he was incarcerated at Kershaw County Correctional

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1 Institution, correct?

2 A. That's correct.

3 Q. And the prison system did not offer him sex offender
4 treatment until September of last year, correct?

5 A. That's correct. They usually issue it approximately
6 six to nine months before you're scheduled to be released.

7 Q. And in this case, Kershaw County does not actually
8 have a sex offender treatment program, does it?

9 A. They don't. They transfer you to Broad River.

10 Q. Okay. And based on your conversations with Mr Archie,
11 as well as what his conversations were with, I guess the
12 person at the Department, it seemed to indicate that he
13 thought his wife was going to be having to travel to
14 Columbia to be a part of the sex offender treatment,
15 correct?

16 A. Well, this is the issue. They talked about getting
17 treatment in prison, and he declined that. And then, she
18 talked about, well, there's outpatient treatment when you
19 get out and that is when he said that his wife couldn't
20 bring him to Columbia. That was too far away, because
21 apparently there weren't any sex offender programs that
22 provide treatment in his area, where he lived.

23 Q. In Kershaw?

24 A. Yes.

25 Q. While he was there. Okay. And so, it indicates that

1 he thought that the outpatient treatment would have to be
2 in Columbia, though, correct?

3 A. Yes.

4 Q. In fact, there are outpatient treatments here in the
5 Rock Hill area that do sex offender treatment through the
6 York County probation system and other systems, correct?

7 A. Well, there are, but he doesn't have anything that
8 mandates him to get treatment. And since he's denying that
9 he ever committed a sexual offense, he wouldn't go, anyway.

10 Q. So, the fact that a judge has ordered him to do that
11 is not a court order?

12 A. Well, it -- I'm not sure how that applies, but the
13 fact that he is not mandated by probation, in my
14 understanding, there's no way that you can force someone to
15 get sex offender treatment if they don't have probation or
16 some kind of community supervision when they're released.

17 Q. I'm going to go now to a little bit about the facts of
18 this case, the past sexual offenses.

19 A. Yes.

20 Q. Your report, what is your report dated that you're
21 looking at?

22 A. The first one was dated May 23rd, and then I corrected
23 the -- the charges. And so, I issued an amended report on
24 October 6th of 2016.

25 Q. And in fact, in your first report, the May 23, 2016

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1 report, you had a very glaring statement of the fact that
2 he was convicted for a third sex offense, correct?

3 A. That's correct. It was my understanding that, of
4 those two lewd acts, one of those was for Child2 but it was
5 not.

6 Q. Okay. And in fact, the one by Child2 was reported by a
7 prior victim, who hadn't reported anything for twenty-
8 something years, correct?

9 A. That is correct.

10 Q. And that's Child3?

11 A. That's Child3.

12 Q. Okay. And from 1987, '88-ish, when Child3's
13 allegations were to 2011, there's no indication that he
14 committed any crime during that twenty-year period,
15 correct?

16 A. He has not been arrested or convicted for a crime.

17 Q. But there's not been any -- on any occasion,
18 allegations, or anything that anybody is aware of at this
19 point that anything happened in that twenty-year period?

20 A. Not to my knowledge.

21 Q. Okay. And your May 23rd or to the October 6th report,
22 is that the only change that you made, the only mistake or
23 typ -- I guess it's not a typo in that sense, but ---

24 A. No.

25 Q. --- not -- it's not typos I'm worried about.

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1 A. That was a mistake on my charge. I'm not aware of any
2 others.

3 Q. Okay. And you stated you've been doing these for how
4 many years?

5 A. Twenty-eight years.

6 Q. Okay.

7 A. Well, sexually violent predators, for seventeen years.

8 Q. Okay. And have you always done the sexually violent
9 predator? Is that what you've been doing, only, for the
10 last several years?

11 A. No, I do other types of evaluations. I do custody
12 evaluations, child abuse evaluations, other civil cases, as
13 well.

14 Q. Okay. But you -- a lot of your work is based on the
15 SVP Act.

16 A. A lot of it, yes.

17 Q. Okay. And have you always done your evaluations this
18 way, or have they changed over the years?

19 A. Oh, they've changed over the years.

20 Q. And how have they changed?

21 A. Well, as the research has become more prevalent, you
22 know, we have different norms, different statistics, and we
23 know more about sex offenders. So, obviously, I
24 incorporate that into my reports.

25 Q. And it has actually changed since last February of

DOCTOR AMY SWAN: CROSS BY MS. GOOD

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1 2015, when you were ethically -- charged with ethically
2 violating and found to have ethically violated the way the
3 procedure is done when it came to SVP's, correct?

4 A. No, it was not.

5 Q. So, you're saying in February 27, 2015, the
6 Association for the Treatment of Sexual Abusers did not
7 find you being in violation of ethical principles Section
8 2(j)?

9 A Yes, they did. And what happened is that this was in
10 a sexually violent predator case, and as I've said, I've
11 done in excess of Twelve hundred and thirty. In this one
12 case, they determined that I placed too much weight in my
13 testimony on an un -- semi-structured interview that didn't
14 have norms and standardization. In psychology, norms and
15 standardization are a process that we know that the
16 individual compares -- is compared to other individuals
17 with similar characteristics.

18 Q. And that was called the relapse prevention interview,
19 correct?

20 A. It was.

21 Q. And how long had you been using the relapse prevention
22 interview as of February 2015?

23 A. Well, the relapse prevention interview was used by
24 countless psychologists for many years.

25 Q. Okay. And your violation was that you placed

1 inappropriate weight on that, versus what ---

2 A. In my ---

3 Q. --- it should have been ??

4 A. --- in my testimony, yes.

5 Q. So, in your court testimony?

6 A. In my court testimony, yes..

7 Q. And in fact, you were sanctioned for this violation,
8 correct?

9 A. I did.

10 Q. Okay.

11 A. I did.

12 Q. And you actually had to have supervision by another
13 doctor, to make sure that you were doing these evaluations
14 correctly?

15 A. Well, I had to submit two reports, and they were
16 reviewed, found to be within the standard, and I'm still a
17 member of ATSA in good standing.

18 Q. Okay. And that was by Doctor Eric Emhoff, correct?

19 A. Doctor Emhoff, yes.

20 Q. And he was the one that, I guess, supervised, or
21 consulted with you to make sure that you were doing those
22 correctly?

23 A. That's correct. .

24 Q. Okay.

25 MS. GOOD: No further questions, your Honor.

DOCTOR AMY SWAN: REDIRECT BY MR. BOGLE

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1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 DOCTOR AMY SWAN, BY MR. BOGLE:

4 Q. This ATSA organization, A-T-S-A?

5 A. Yes.

6 Q. What does that stand for?

7 A. It's the Association for the Treatment of Sexual
8 Abusers, and it's the largest organization devoted to
9 research and study on sex offender -- sex offenders. It's
10 a voluntary organization. I voluntarily belong to that
11 organization. I voluntarily submitted to their findings
12 and complied, so that I would remain a member in good
13 standing.

14 Q. So, it has nothing to do with who issues your license
15 to practice psychology?

16 A. I have never had a licensing complaint in the -- let's
17 see, I was licensed in 1998. So, I've never had a
18 licensing complaint in eighteen years.

19 Q. Now, this PPG, or penile plasmograph we talked about a
20 minute ago, it showed no reaction to anything, right?

21 A. Nothing. Yes.

22 Q. So, adult females, no reaction; children, no reaction.
23 Was it just a neutral here or a wash?

24 A. It's a wash, because if he showed arousal to anything,
25 then that would tell us it's a valid predict -- you know,

DOCTOR AMY SWAN: REDIRECT BY MR. BOGEL
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1 it was a valid assessment of his sexual interests. But a
2 flat line tells us that you -- we can't really say
3 anything.

4 Q. And in this particular case, the guy who ran it was a
5 Doctor Burke, out of Summerville?

6 A. Yes.

7 Q. So, you, working for Mental Health, got them to send
8 this guy down there to be evaluated, or to the -- is it his
9 place in Columbia, to be evaluated by Doctor Burke or his
10 staff; is that right?

11 A. I did.

12 Q. Okay. Thank you.

13 MR. BOGLE: Nothing further.

14 MS. GOOD: I have one followup based on what he ask,
15 your Honor.

16 THE COURT: Okay.

17 RE-CROSS EXAMINATION

18 DOCTOR AMY SWAN, BY MS. GOOD:

19 Q. Which licensing, I guess, organi -- who licenses you?
20 What organization licensed you?

21 A. Well, it would be the Board of Psychology in Florida,
22 South Carolina, and Missouri.

23 Q. Okay. So, is the American Psychological Association
24 not a licensing board?

25 A. No, it's not.

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1 Q. Okay. And that's separate from what I was just asking
2 you about?

3 A. Yes. Well, the same complaint was submitted to the
4 American Psychological Association, and they declined to
5 act on it. They didn't find any merit to the complaint.

6 MS. GOOD: No further questions, your Honor.

7 THE COURT: You can step down and be excused. We
8 appreciate your time.

9 (WITNESS LEAVES WITNESS STAND.)

10 THE COURT: Members of the jury panel, as you might
11 can tell, we've had a pretty busy day today, and we thought
12 we'd -- earlier on, we thought we might be in this case
13 later in this stage and so, we told Doctor McKee -- or I
14 didn't tell him -- but he was put on notice to be here in
15 the morning. I think he's the only other witness?

16 MS. GOOD: Yes, sir.

17 THE COURT: So, even though it's a little early we
18 usually don't stop at four o'clock in the afternoon, but
19 since Doctor McKee is out of town, and we told him he
20 wouldn't -- he was told he wouldn't be here 'til in the
21 morning, we're going to stop for the day and start back at
22 nine thirty. So have a pleasant evening, and keep in mind
23 those things I've already talked or addressed to you.

24 Thank you.

25 (JURY EXITS COURTROOM AT 04:02 P.M.)

1 THE COURT: We'll be at ease until nine thirty in the
2 morning.

3 MS. GOOD: Thank you.

4 MR. BOGLE: If I may, your Honor?

5 THE COURT: Yes. Slow door.

6 MR. BOGLE: Okay. Just to save some time in the
7 morning, that's the State's case. I'd like to rest in
8 front of the jury. The State's resting right now, would
9 you like to take care of motions at this time? If she
10 comes in the morning they'll come back in and I'll rest.

11 THE COURT: I'll let you rest in front of the jury.
12 Quite frankly, as I've said before, I've never tried one of
13 these before.

14 MR. BOGLE: Uh-huh.

15 THE COURT: So, I guess the standard, just like it is
16 in any case to -- in regard to a directed verdict, which I
17 presume you're inviting her to make, but make it that
18 invitation would be the same, and that is whether or not
19 there is sufficient evidence to submit the case to a jury.

20 So, let me hear your motion and then I'll hear from
21 them.

22 MS. GOOD: Thank you, your Honor. At this time, we
23 make a motion for a directed verdict based on the fact --
24 of course, it's still in the light most favorable to the
25 State; however, based on the fact that they presented one

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1 witness, Doctor Swan, who has found him to be in a low-risk
2 -- a zero on his actuarial scale.

3 And your Honor, I don't believe that they can meet the
4 burden of proof of beyond a reasonable doubt when it comes
5 to that, just based on her testimony. With the actuarial
6 and the fact that there was only three or four of the
7 dynamic risk factors that she found.

8 THE COURT: Mr. Bogle?

9 MR. BOGLE: Your Honor, again, looking at the light --
10 the evidence in the light most favorable to the State, yes,
11 the static is low, it's a zero, it's in the lower range but
12 it's part of a comprehensive evaluation that this
13 psychologist did. And based upon her comprehensive
14 evaluation, the risk factors she found, the lengthy time of
15 offending, the diagnosis she found, the multiple
16 convictions, we think there is sufficient evidence to go to
17 the jury at this time.

18 THE COURT: And she did testify that she felt that he
19 met the definition of a sexually violent predator.

20 MR. BOGLE: She did, your Honor. She went through the
21 different ---

22 THE COURT: And I

23 MR. BOGLE: --- parts of the statute about that.

24 THE COURT: I deny the motion for directed verdict. I
25 believe that that evidence is sufficient to commit -- to

1 submit the case to the jury for its consideration.

2 MR. BOGLE: Thank you, your Honor.

3 MS. GOOD: Thank you, your Honor.

4 THE COURT: We'll see you all at nine thirty.

5 (COURT IN EVENING RECESS AT 04:05 P.M.)

6 (COURT BACK IN SESSION IN THE MATTER OF STATE VERSUS
7 HERMAN LEE ARCHIE TUESDAY, OCTOBER 11, 2016, AT 09:32 AM.)

8 THE COURT: Take your seats. Good morning.

9 We got Mr. Archie available?

10 (DEFENDANT HERMAN LEE ARCHIE, WHITE MALE, REENTERS THE
11 COURTROOM AT 09:33 AM.)

12 THE COURT: Mr. Bogle, is the State ready?

13 MR. BOGLE: Yes, sir.

14 THE COURT: Ms. Good?

15 MS. GOOD: Yes, sir.

16 THE COURT: Bring in the jury.

17 (JURY REENTERS THE COURTROOM AT 09:34 A.M.)

18 THE COURT: Mr. Bogle.

19 MR. BOGLE: Thank you, your Honor. May it please the
20 Court? At this time, the State would rest.

21 THE COURT: All right. Members of the jury panel, the
22 State is telling us it's presented its evidence so now, the
23 -- Mr. Archie has a right to present witnesses if he
24 desires.

25 MS. GOOD: Thank you, your Honor. Respondent calls

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1 Doctor Geoffrey McKee.

2 THE COURT: Please come up and be sworn.

3 MADAM CLERK: Doctor McKee, if I could have you step
4 here and be sworn, please. Place your left hand on the
5 Bible and raise your right.

6 (WHEREUPON, GEOFFREY MCKEE,
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 MADAM CLERK: Yes, sir. Have a seat. Just watch your
9 step up there.

10 DIRECT EXAMINATION

11 DOCTOR GEOFFREY MCKEE BY MS. GOOD:

12 Q. Can you state your name for the record, please, and
13 for the court reporter?

14 A. My name is Geoffrey R. McKee. First name is spelled
15 G-e-o-f-f-r-e-y. Last name is M-c capital K-e-e-.

16 Q. And Doctor McKee, where are you currently employed?

17 A. I'm currently employed in semi-retirement, in private
18 practice, here in South Carolina.

19 Q. And can you tell the jury a little bit about your
20 educational background?

21 A. I received my master's -- excuse me -- my bachelor's
22 degree in 1965 from Coe College, in Cedar Rapids, Iowa.
23 Master's degree in counseling psychology from the
24 University of Illinois in Champaign-Urbana. And Ph.D. in
25 counseling psychology from the University of Missouri,

1 Columbia, in 1969. In 1985 I became board-certified in
2 forensic psychology, by the American Board of Professional
3 Psychology and the American Board of Forensic Psychology.
4 Q. Okay. And are you currently licensed to practice in
5 the State of South Carolina?

6 A. I am.

7 Q. And can you tell the jury a little bit about your
8 background when it comes to your employment?

9 A. My first position after finishing my Ph.D., I was an
10 assistant professor in the Department of Psychology at
11 Northern Arizona University, in Flagstaff, Arizona. And
12 after about seven years of doing that, I joined the local
13 community mental health center in Flagstaff as their
14 director of clinical services. Following that, I spent a
15 year oin private practice in Phoenix, essentially doing
16 evaluations, like domestic evaluations, child custody
17 evaluations, and some criminal work, as well.

18 I then took a position as a director in clinical
19 services in Devil's Lake, North Dakota, with a community
20 mental health center up there. And then, in 1985, I came
21 to South Carolina and to Columbia to be the chief
22 psychologist in the division of forensic psychiatry of the
23 then state hospital, and a year later, the Division of
24 Forensic Psychiatry moved into the William S. Hall
25 Psychiatric Institute.

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1 I was with the William S. Hall Psychiatric Institute
2 in -- in Columbia, South Carolina until 1998, when I was
3 asked by the commissioner of the Department of Mental
4 Health to serve on the multi-disciplinary team, which is
5 the first step in the sexually violent predator process.
6 And I served on that committee for thirteen years,
7 reviewing some six thousand cases of adult and adolescent
8 convicted or adjudicated delinquent sex offenders. And I
9 did that until 2011, when I retired from the Department of
10 Mental Health, and opened my private practice.

11 Q. Okay. And can you explain a little bit more about the
12 MDT team, and what your role in the MDT team was?

13 A. The Multi-Disciplinary Team is comprised, by statute,
14 of five representatives: One from the Department of
15 Corrections -- excuse me -- a retired judge; a member of
16 the Juvenile Probation Board; a member from the -- an
17 attorney from the Defense Bar and then, a member from the
18 Department of Mental Health.

19 And the member from the Department of Mental Health,
20 by statute, is the only one required to have extensive
21 experience in -- in evaluating and treating sex offenders.
22 And that committee met monthly, and approximately every
23 month, we reviewed some thirty cases of juveniles or adults
24 that were coming out of confinement, to determine whether
25 they might be sexually violent predators. And we made a

1 decision in that committee, then, to refer them on to the
2 next step, which was the prosecutor's review committee, and
3 the Attorney General for petition of -- for sexual violent
4 predator litigation.

5 Q. And you also mentioned that you are a part of the
6 sexually violent predator program, through the Department
7 of Mental Health. Can you explain to the jury what your
8 duties were there in that capacity?

9 A. I also was with the sexually violent predator
10 treatment program. My role there was principally to do
11 admission evaluations of newly-committed sexually violent
12 predators, to do those evaluations and to help establish a
13 treatment plan for those -- those individuals. I also
14 periodically did annual treatment review evaluations, where
15 those who had been committed every year, by statute, are
16 entitled to have a court review of their progress and
17 treatment in the program. I did a number of those, as
18 well.

19 Q. And you said that was until 1990 --

20 A. No, up until 2011.

21 Q. Okay. Up 'til 2011. And since 2011, you've been in
22 private practice. And what kind of cases do you do in
23 private practice?

24 A. The cases that I do principally in -- in my private
25 practice are criminal cases, some competency to stand trial

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1 and criminal responsibility evaluations. But also, a
2 number of evaluations for determination of whether someone
3 is a sexually violent predator, sometimes called an initial
4 evaluation; or evaluations for annual treatment review of
5 their treatment progress.

6 Q. You said that, in 1985, you became part of -- you
7 became licensed by the Board for Forensic Psychology,
8 correct?

9 A. Board-certified.

10 Q. Okay. And can you explain to the jury what forensic
11 psychology is?

12 A. Forensic psychology is the application of the theories
13 practiced and the research of psychology to questions of
14 law. For example, whether someone is competent to stand
15 trial or suffers from a mental illness or a defect that
16 prevents them from understanding what's going on in court,
17 or, a criminal responsibility evaluations which are
18 insanity evaluations. At the time of the offense, did they
19 know right from wrong, or was it impaired because of a
20 severe mental illness.

21 Q. And have you previously been qualified to testify as
22 an expert in South Carolina?

23 A. Yes.

24 Q. Okay. And about how many times, approximately?

25 A. Four hundred, something like that.

1 Q. And how many times have you actually testified for the
2 State, and for the Defense?

3 A. Well, since I retired -- I don't know how many times
4 for the State or for the Defense. I don't keep track of
5 those things. Much more commonly for the State than for
6 the Defense. Since I've retired and have been in private
7 practice, I've done some twenty-six, either initial SVP or
8 annual treatment review evaluations at the request of the
9 Defense. This is the first time that I've ever testified
10 for the Defense, because in those other cases, the data
11 that I collected, the evaluation that I completed, were
12 cases where my testimony would have supported the
13 prosecution or the Attorney General's position.

14 MS. GOOD: At this time, your Honor, I'd like to offer
15 Doctor Geoffrey McKee as an expert in forensic psychology.

16 THE COURT: Voir dire?

17 MR. BOGLE: No objection, your Honor.

18 THE COURT: I find he's qualified.

19 BY MS. GOOD:

20 Q. You did an evaluation of Mr. Herman Archie in this
21 case, correct?

22 A. That is correct.

23 Q. When you go to begin an evaluation of this type, what
24 are the first steps that you take?

25 A. Well, the first steps I take are to ask for all the

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1 records and reports and documents -- excuse me -- that are
2 relevant to the case. And I review all of those, and then
3 I schedule an evaluation of the respondent, which I did in
4 this case. And I saw Mr. Archie for over three hours, here
5 in the York County Detention Center.

6 Q. Okay. And after speaking with Mr. Archie, or while
7 you were speaking with him, was there any particular test
8 that you run when you are speaking with him?

9 A. I did. I have a battery of three different tests that
10 I administer in these kinds of cases. First of these is
11 the information and orientation scale from the Wechsler
12 Memory Scale, Third Edition. This is designed to test
13 long-term memory, and also to test orientation to person,
14 place, situation, things of that sort; time, date, and to
15 see whether there might be any indications of any kind of
16 neurological dysfunction that would warrant a referral to a
17 neuropsychologist or a neurologist.

18 I'm not a neuropsychologist, I'm not a neurologist,
19 but I want to make sure that those components of the
20 person's presentation are covered. In this case, I didn't
21 see anything that warranted referral for additional
22 evaluation.

23 I then also administered the trauma symptom inventory,
24 which is a paper-and-pencil inventory, wherein the
25 individual responds to how frequently, over the past six

1 months, the individual's experienced a variety of different
2 problems and conflicts, circumstances and symptoms that
3 reflect anxiety-related disorders, and in particular, post-
4 traumatic stress disorder.

5 Mr. Archie is a -- is a sexual assault victim, by his
6 report, so I wanted to assess whether he might be suffering
7 from post-traumatic stress disorder, in addition to any
8 other sexual disorder he might have.

9 I then also administered the personality assessment
10 screener, which is a brief scale that measures a variety of
11 different syndromes, a variety of different patterns, in
12 the lifetime of the individual. Patterns such as
13 depression and impulsivity and alcohol problems and suicide
14 problems and things of that sort.

15 Both in the trauma symptom inventory and in the PAS,
16 the Personality Assessment Screener, there were no
17 indications that Mr. Archie suffered from any other
18 diagnosable disorders, other than Pedophilic Disorder.

19 Q. And following the evaluation, the jury heard yesterday
20 Doctor Swan discuss the STATIC-99 test. Do you do a
21 STATIC-99?

22 A. Yes. The STATIC-99 revised is the newest version of
23 that. And that's not really a test in the sense that a
24 person is asked a question, and then a response or an
25 answer is obtained and scored by the individual. The

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1 STATIC-99 and the three other empirical risk guides, is
2 what they are, they are for sexual recidivism risk
3 instruments.

4 Q. And what is sexual recidivism?

5 A. Sexual recidivism is, what's the likelihood that an
6 individual who has been convicted of a sex offense is going
7 to do that sex offense or a similar sex offense in some --
8 at some future point.

9 Q. All right. And I will get to each, but how many
10 different risk assessments did you do similar to the
11 STATIC-99R, in addition to that one?

12 A. In addition to the STATIC-99, I also scored the
13 Static-2002, revised. The Rapid Risk Assessment For Sex
14 Offender Recidivism, thankfully abbreviated to the RRASOR,
15 and the Minnesota Sex Offender Screening Tool, revised. I
16 also scored another instrument that's not quite like those.
17 It's a non-connotative scale which research has shown to
18 have very good predictive capacities with sex offenders,
19 and that's called the Sexual Violence Recidivism-20, the
20 SVR-20, and that's a twenty-item risk assessment guide.

21 Q. Go ahead.

22 A. Some water? I've got a tickle in my throat here.

23 Thank you.

24 MADAM COURT REPORTER: Can I get you to set it on that
25 side, Doc? Appreciate it.

1 DOCTOR GEOFFREY MCKEE: Absolutely.

2 MADAM COURT REPORTER: I've had it dumped in my lap
3 before. Thank you.

4 MS. GOOD: Thank you.

5 Q. You just stated that you did the Sexually Violent
6 Risk 20, the SVR 20. And you also did -- you also scored
7 him on two other tests, including this -- or not tests, I
8 guess, but two other risk assessments, including the South
9 Carolina Department of Probation Parole and Pardon Service
10 Parole Risk Assessment, correct?

11 A. That's correct.

12 Q. And why was it important to you to do these extra
13 tests, in addition to the STATIC-99R?

14 A. Well, the whole function of sexual violent predator
15 evaluations, as I understand it; been trained to understand
16 it, is that we want to give the best possible, most
17 reliable, most valid, candidly most accurate as the science
18 allows, estimate of the likelihood of an individual to
19 commit a sexual offense in the future.

20 In my opinion, the best way to do that is to use as
21 many different instruments as has been shown by extensive
22 research. These instruments, the STATIC-99, the 2002R,
23 Minnesota Scale, and the RRASOR, have been used with --
24 with literally tens of thousands of convicted sex
25 offenders, to measure their likelihood of sex offending in

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1 the future. And so, with that broad array of data, we can
2 provide a more reliable and more accurate estimate of the
3 likelihood of sexual recidivism.

4 Q. And before I get into the tests and any of your
5 diagnosis, is it also important for you to look at a
6 subject's past criminal history?

7 A. It is.

8 Q. Okay. Why is that important?

9 A. Well, because many of those scales will have items,
10 risk factors, associated just with general criminal
11 activity on the part of the individual.

12 Q. And do you find, in your opinion, and based on your
13 experience, that in a lot of the tests, or assessments that
14 you do of sexually violent predators, do you find that they
15 do have an extensive, or at least some criminal history?

16 A. Yes.

17 Q. Okay. And in this case, did you find any criminal
18 history of Mr. Archie?

19 A. No.

20 Q. Okay. And why is that important to you?

21 A. Well, why it's important is that it -- because these
22 -- these historical facts are, in turn, risk factors that
23 are used to make decisions about future sexual offending.

24 Q. And also, do you look at any disciplinary infractions
25 someone may have while they're incarcerated?

1 A. I do. Of two types, actually. The first of these are
2 major disciplinaries. The Minnesota Sex Offender Screening
3 Tool Revised has this as one of the -- the risk factors.
4 But also, I looked for the possibility of sexual
5 disciplinaries while confined, and these are very serious
6 offenses.

7 Now, what I mean by that, sexual disciplinaries are
8 offenses committed while confined that, if the individual
9 were on the street, it would also constitute a crime. And
10 sexual disciplinaries then are scored as really new sex
11 offenses. It's offenses that occurred after the individual
12 had already been convicted of a sex offense, and it would
13 therefore increase his risk substantially, if he were to
14 have done that.

15 Q. And when you discuss sexual offenses or disciplinary
16 infractions, you don't mean sexually assaulting someone in
17 prison, necessarily, do you?

18 A. Oh, yes, I do. I mean, that -- because that would be
19 an offense.

20 Q. Is that just one of the many sexual offenses that you
21 look for?

22 A. Oh, certainly, certainly. Also, things like indecent
23 exposure, which is not uncommon in prison, especially to
24 female correctional officers. That would be an offense
25 that, if the person did that on the street, when he was not

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1 confined, would be a sexual offense.

2 However, when you're in prison, you can also get major
3 disciplinaries, less so now but for many years you could,
4 for engaging in consensual sexual activity among two male
5 inmates, for example. That is not specifically a crime in
6 the street, and therefore would not count as a sexual
7 offense.

8 Q. And based on your experience and your evaluations over
9 the years of sexually violent predators, have you found a
10 lot of them have these -- any type of infractions while
11 incarcerated?

12 A. It's not uncommon, because one of the things that
13 these disciplinaries reflect is a level of impulsivity on
14 the part of the person, either to commit criminal acts, or
15 you know, failure to abide by the rules and regulations of
16 the prison. Or, more importantly, in terms of this
17 context, sexual impulsivity that, even though they're
18 confined, they're still able to engage in -- unable, if you
19 will, to control their sexual impulses, such that they get
20 into trouble because of that behavior in prison.

21 Q. And do you find, based on your experience, that even
22 subjects or sexually violent predators that you've
23 evaluated, if their only victims previously had been
24 children, that they still have sexually -- some type of
25 sexual disciplinary while incarcerated?

1 A. Yes. That can happen.

2 Q. And in this case, you did not find any with Mr.
3 Archie, correct?

4 A. That's correct.

5 Q. And based on your evaluation of him and all the tests
6 that you've run, did you get a diagnosis for Mr. Archie?

7 A. I did.

8 Q. Okay. And what diagnosis did you give him?

9 A. Similar to Doctor Swan, my diagnosis was Pedophilic
10 Disorder, which means for a period of at least six months
11 or longer, very strong sexual urges, impulses, fantasies,
12 involving sexual activity with young people, generally
13 under age thirteen; that those impulses produce great
14 distress in the individual and a risk of harm to others.
15 And that the person is at least sixteen years old, and at
16 least, I think it's five years older than the victim of the
17 -- for which he has been charged. And so, on those
18 factors, I diagnosed Mr. Archie as having Pedophilic
19 Disorder.

20 Q. And just to be clear, just because somebody is
21 diagnosed with this disorder, does it necessarily mean that
22 they are a sexually violent predator?

23 A. No.

24 Q. And can you explain that?

25 A. Certainly. A sexually violent predator is an

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1 individual who is -- one way of looking at it is the worst
2 of the worst of sex offenders. There are no good sex
3 offenders. Okay? The act itself is horrific. But there
4 are certain persons whose sexual impulsivity is so strong,
5 and sometimes so indiscriminate, and so frequent, that they
6 commit sexual offenses on a variety of individuals. Not
7 just children, not just girl children; sometimes boy
8 children, or only boy children, or teenagers that are under
9 age sixteen and under the age of consent.

10 And when -- Through the research that I and others
11 have done with the sexually violent statute here in South
12 Carolina, we found that approximately three percent of the
13 individuals who were eligible to be determined as a
14 sexually violent predator, only about three percent have
15 actually been committed into the program.

16 Q. And it's been previously testified to, and as part of
17 your evaluation of Mr. Archie, that he has denied doing
18 some of these crimes, correct?

19 A. That's my understanding. Well, yes, to me, and I
20 believe, to others.

21 Q. And does this play into your decision, when it comes
22 to determining whether he is a sexually violent predator?

23 A. Well, I --

24 Q. Or if he was likely to re-offend in the future?

25 A. I -- I listen to that, but the way in which I do these

1 -- these -- These kinds of evaluations has sometimes been
2 called -- commonly called the actuarial approach, which is,
3 I use only those risk factors that research has found,
4 quantifiable research has found, to be indicative of an
5 increase likelihood of sexual recidivism. Decades of
6 research, studies involving tens of thousands of convicted
7 sex offenders, none of these scales that I use have as a
8 risk factor whether the person admits to the offenses or
9 denies the offenses. The research has shown that it
10 doesn't really correlate with whether a person will
11 subsequently sexually assault an individual.

12 Q. Okay. And you just discussed the actuarial method.
13 And all the methods that we discussed earlier, the STATIC-
14 99R, the 2002-R, et cetera, those are all actuarial
15 methods, correct?

16 A. That's correct.

17 Q. And the first one, which the jury does know a little
18 bit about at this point, though, is the STATIC-99R that you
19 conducted.

20 A. Yes.

21 Q. Can you explain to them exactly what the STATIC-99R
22 is, the scale, and how the different -- I guess, whether
23 you determine what range an individual is in?

24 A. Well, the STATIC-99 is comprised of ten risk factors,
25 and the clinician following the evaluation and whatever

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1 testing that was done, then goes ahead and scores
2 consistent with the coding rules that are established for
3 that -- that instrument, the STATIC-99R. And the risk
4 factors include the offender's age, whether the offender
5 has ever lived with a woman or a partner for in excess of
6 two years; whether the person has ever been criminally
7 charged in the past for a sex offense, or has been
8 convicted. And there's a scoring based on the number of
9 charges or number -- and/or number of convictions; whether
10 the person offended against a relative, a family member, or
11 against someone unrelated. Or whether they offended against
12 someone with whom they had no relationship with before,
13 called the stranger victim.

14 Other factors -- just a minute -- include the --
15 whether they've had any convictions for non-contact
16 offenses. These are the ones where there's been no
17 hands-on interaction with the victim, cases like indecent
18 exposure or a peeping Tom offenses, whether the individuals
19 had any of that. And then, whether they've had any prior
20 sentencing for any kinds of criminal offenses, not just
21 sexual offenses.

22 So, the clinician, then, goes through and scores that
23 up, comes up with a total score, and then compares that to
24 the risk fac -- the -- the risk categories that are
25 established, which are low, low-moderate, moderate,

1 moderate-high, and high risk. And then, refers to the --
2 the data from the STATIC-99, prior data, and gives an
3 estimate in a percentage range of the likelihood that a
4 person with that particular scale, the likelihood that they
5 would re-offend sexually within the next five to six years.

6 Q. And for the STATIC-99, there is a range of negative
7 three, up to twelve, correct?

8 A. That's correct.

9 Q. And what did you find Mr. Archie to be?

10 A. His score was zero.

11 Q. Okay. And for a zero, what risk category does that
12 put him in?

13 A. That would put him in the low risk category.

14 Q. And that's the lowest category that there is for this
15 --

16 A. Yes.

17 Q. Okay. And based on him being in the low risk category
18 and the actuarial method with this particular test, what is
19 the percentage of likelihood of sex offenders that fall --
20 with a zero that would re-offend?

21 A. Well, it would be 7.2 percent. I need to -- to put a
22 qualifier here. Both the STATIC-99R and the Static-2002R
23 have different norm groups for which the clinician can
24 compare this individual's score. There's a routine, what
25 they label as a routine sample, and this would be an

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1 individual who had -- was awaiting sentencing on their
2 first offense, their first known of sex offense. For the
3 sexually violent predator evaluations, clinicians, Doctor
4 Swan and I, for example, use the high-risk and high-need
5 group -- norm group, which is defined as those persons who,
6 as a result of evaluations and, or, assessments by various
7 treatment and, or, review programs, such as the sexually
8 violent predator process, have determined that these people
9 are in great need of intervention and treatment. So as a
10 rule, that group has much higher scores on the STATIC-99
11 than those in the routine group. So, this -- this is 7.2
12 percent of sexually violent predator-eligible offenders.

13 Q. So, approximately ninety-three percent are found not
14 to re-offend in that group?

15 A. That's correct.

16 Q. And for the Static-2002, what is the maximum score
17 that you can receive for that?

18 A. The maximum score for the Static-2002 is sixteen.

19 Q. And where did Mr. Archie fall on that scale?

20 A. He fell in the low-moderate risk, with about a twelve
21 percent likelihood of sexual recidivism.

22 Q. So, based on others in that category with him,
23 approximately eighty-eight percent did not re-offend,
24 correct?

25 A. That's -- Well, yes.

1 Q. On the what you call the RRASOR, I guess, what is the
2 maximum score you can get on that, and the lowest score you
3 can get on that?

4 A. The maximum score is six. The lowest score is zero.
5 Mr. Archie had a score of one, which put him in the low-
6 risk category.

7 Q. Okay. And with the low-risk category, approximately
8 how many -- or what percentage would re-offend?

9 A. Approximately eight percent would sexually recidivate
10 within the next five years.

11 Q. Okay. So ninety-two percent do not recidivate within
12 those five years?

13 A. That's correct.

14 Q. And then, finally, the Minnesota Test, what's the
15 maximum score you can receive on that?

16 A. The maximum score is thirty-one.

17 Q. And what did Mr. Archie receive on that?

18 A. He scored -- had a score of zero.

19 Q. Okay. And with a score of zero, can you explain this
20 scale a little bit, and how he falls in that scale and
21 what's the likelihood of re-offending on that and why it's
22 different from the others?

23 A. The Minnesota scale, an individual can have negative
24 numbers as well as positive numbers. And the reason for
25 that is that James Epperson, the creator of this scale,

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1 took the approach of saying, well, there's kind of an
2 average sexual recidivism rate across all sex offenders.
3 Some are higher risk, some are lower risk, but on average,
4 it's at this level, which happened to be about twelve
5 percent.

6 And then, what Epperson did was to say, well, what
7 factors would cause an individual to be deemed to be at
8 greater sexual recidivism rate, and which ones would cause
9 him to be at a lower rate, so a person at zero would be
10 equivalent to any other average sex offenders. The higher
11 the score, the greater the risk. The lower the score, even
12 scores below zero, the lower the risk.

13 Q. And in this case, he was a zero of thirty-one,
14 correct?

15 A. That's correct.

16 Q. And eighty percent of the people in that category do
17 not re-offend, correct?

18 A. That's correct.

19 Q. And then, finally, the last assessment that you did
20 was the South Carolina Department of Parole Probation and
21 Pardon Services Parole Risk Assessment. What is that?

22 A. The Parole Risk Assessment was devised and developed
23 by the South Carolina Department of Probation Parole and
24 Pardon Services. It is a quantitative scale, and it's used
25 to advise the courts and advise the probation and parole

1 officers of the likelihood that this particular individual
2 coming out of confinement is likely to re-offend
3 criminally, either in terms of non-sexual offenses, but
4 also sexual offenses, as well.

5 Q. And this has a maximum score of forty-one?

6 A. That's correct.

7 Q. And where did Mr. Archie fall on that scale?

8 A. Mr. Archie -- just a minute -- had a score of two.

9 Q. Okay. So, a two out of forty-one?

10 A. That's correct.

11 Q. And based on your data, with him being a two out of
12 four -- forty-one, what does that say about his likelihood
13 to re-offend.

14 A. Well, in terms of the PRA's risk categories, he would
15 fall under the low risk category, and approximately ninety-
16 two percent of persons in that category, by the South
17 Carolina DPPS data, about ninety-two percent would complete
18 their community supervision, probation or parole,
19 successfully. And only about seven percent would fail
20 either with a technical violation or a substantive
21 evaluation such as a new arrest and conviction.

22 But also, in terms of their data, these are just South
23 Carolinians. These are not people in Minnesota, it's South
24 Carolinians. In their data, zero percent failed community
25 supervision because of a violent offense. Violent offenses

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1 are certainly things like armed robbery and kidnaping and
2 so forth. But they also include sexual offenses, as well.
3 So, in Mr. Archie's case, based on this guide, his risk of
4 re-offending again is quite low.

5 Q. And after conducting all these assessments and doing
6 your evaluation of Mr. Archie, what is your opinion, to a
7 reasonable degree of psychological certainty that Mr.
8 Archie suffers from a mental abnormality that would make
9 him likely to re-offend?

10 A. Well, it's my opinion that he does suffer from a
11 sexual deviance disorder, Pedophilic Disorder, sexually
12 attracted to females, non-exclusive type, which means that
13 he has sexual arousal, both to adults -- females, and --
14 and children. However, on the basis of the risk guides
15 that I scored, it is my opinion that he is not likely to
16 re-offend sexually, that he requires placement in the
17 sexually violent treat -- sexually violent predator
18 treatment program. He does not require commitment to that
19 confinement.

20 Q. And when determining this, do you look at any dynamic
21 factors?

22 A. Well, there are dynamic factors incorporated in some
23 of the risk scales that I've already mentioned.

24 Q. Okay.

25 A. But also, the dynamic factors have simply not held up

1 well, in terms of research that has been conducted on them.
2 Certainly not as well as the risk factors incorporated
3 within my evaluation.

4 Q. So, just to make clear, in your opinion, do you
5 believe that Doc -- or that Mr. Archie is a sexually
6 violent predator, on your -- in your medical opinion?

7 A. My psychological opinion.

8 Q. Psychological opinion, excuse me.

9 A. In my -- in my opinion, Mr. Archie, based on the
10 evaluation that I did and the risk scores that I
11 calculated, it's my opinion that he does not meet the South
12 Carolina statute as a sexually violent predator.

13 Q. And based on your evaluation, do you believe that Mr.
14 Archie does need sex offender treatment?

15 A. I do.

16 Q. Okay. And there's inpatient treatment, which is what
17 long-term commitment care control would be, and then
18 there's outpatient treatment. Which do you believe is
19 better for Mr. Archie?

20 A. Well, I do not believe that he qualifies as a sexually
21 violent predator, but I do think that he -- he needs
22 outpatient sex offender therapy. He has a perophilic
23 disorder -- Pedophilic Disorder, as I mentioned. He denies
24 committing the offenses, and yet one of the important
25 things is that the risk guides that I use are scored in a

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1 light most favorable to the prosecution. Right? Such that
2 the victim's allegations, by the clinician -- for the

3
4
5 clinician, are considered to be the more accurate
6 description of what occurred. Okay? And Mr. Archie has,
7 in my opinion, committed offenses. He's been found guilty
8 of these, pled guilty to these, and he needs treatment to
9 further minimize his risk of re-offending.

10 Q. And are you aware, based on your experience doing --
11 do you do treatment with any --

12 A. Not any more. I did it for -- I did it when I was in
13 Phoenix, and also when I was up in North Dakota, but not
14 since coming here to South Carolina.

15 Q. Since being in South Carolina, are you aware in your
16 field if there is sex offender -- outpatient sex offender
17 treatment programs in York County?

18 A. I believe so. I haven't kept track of it, but there
19 are in -- in many regions of the state.

20 Q. Okay.

21 MS. GOOD: No further questions, your Honor.

22 THE COURT: Mr. Bogle?

23 MR. BOGLE: Thank you, your Honor. If it please the
24 Court?

25 CROSS-EXAMINATION

1 DOCTOR GEOFFREY MCKEE, BY MR. BOGLE:

2 Q. Good morning, Dr. McKee.

3 A. Good morning.

4 Q. How are you today? I've got two things I've looked
5 at. It's a one-page summary of your findings, and then
6 your lengthy report about -- seven-page, lengthy report,
7 right?

8 A. Yes.

9 Q. Okay.

10 MR. BOGLE: Madam Court Reporter, where's my exhibits?
11 Right here?

12 MADAM COURT REPORTER: Yes, sir.

13 MR. BOGLE: Thank you.

14 Q. Now, as a forensic psychologist, the word *forensic*
15 means the application of a law to the practice of
16 psychology, right?

17 A. The other way around.

18 Q. So --

19 A. Psychology ---

20 Q. Okay.

21 A. --- to law.

22 Q. Okay. And in this case, in one of your reports,
23 either the one page, one of the more detailed ones, you
24 mention that Mr. Archie pled nolo contendere, or no contest
25 to these sexual charges?

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1 A. That's -- that's my understanding, yes.

2 Q. Okay. You did get copies of the indictments and
3 sentencing sheets?

4 A. I did.

5 Q. That would be Exhibits One, Two and Three for the
6 State. Look like this, right?

7 A. Yes.

8 Q. Okay. In reality, in all three of these cases, he
9 pled under *North Carolina versus Alford*. He didn't plead
10 *nolo contendere*, right? Have you checked?

11 A. Well, I'm not a lawyer, okay.

12 Q. Well, you're a forensic psychologist, though.

13 A. I am a forensic psychologist, but he did plead under
14 *Alford*.

15 Q Okay.

16 A. Okay.

17 Q. Because generally, in South Carolina, *nolo pleas* are
18 not accepted in felonies.

19 A. I --

20 Q. You can plead guilty, or you can plead under *Alford*
21 ---

22 A. Okay.

23 Q. --- isn't that right?

24 A. Okay. I'm sorry. I used -- those -- that language
25 rather than *Alford*.

1 Q. Okay.

2 A. Which would indicate that he was conceding that there
3 was sufficient evidence to prove him guilty.

4 Q. And in all three cases, you describe the offenses as
5 lewd act on a child, or a lewd act on a minor offense; is
6 that right?

7 A. That's my understanding, yes.

8 Q. Okay. But in reality, on Indictment Number 2012 dash
9 3311, for Child 1, because of the date of the offense of July
10 14, 2012, and the description, instead of lewd act, he pled
11 guilty to criminal sexual conduct with a minor in the third
12 degree.

13 A. All right.

14 Q. Are you aware that lewd act got repealed in June of
15 2012, and replaced with criminal sexual conduct with a
16 minor in the third degree, effective that date?

17 A. I was not aware of that.

18 Q. Okay. So, based on the date of the offense, it was
19 CSC with a minor in the third degree, not lewd act, right?

20 A. Okay.

21 Q. Okay. Now, let's talk about, if I could, by my notes
22 here, you are a member of the Multi-Disciplinary team for
23 about, you said, thirteen years; is that right?

24 A. '98 to 2011.

25 Q. Okay. And the way the statute's set up, everybody

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1 convicted -- isn't it true that everybody who is convicted
2 of at least one sexually violent crime, and who has served
3 time in the prison system, has to be reviewed by that
4 multi-disciplinary team, which meets each month?

5 A. Well, yes, that's correct. It also covers person who
6 have been found incompetent to stand trial ---

7 Q. Right.

8 A. --- for sex offense and not likely to be restored. Or
9 by persons who have been found not guilty by reason of
10 insanity for a sex offense, and are ready to be released
11 into the community.

12 Q. Right. Because those are also considered convictions
13 the way this law is written?

14 A. That's correct.

15 Q. So, the first step is the meeting of that multi-
16 disciplinary team, consisting at the time of you and the
17 other different disciplines you described a few minutes
18 ago?

19 A. That's correct.

20 Q. And they might review at a typical meeting as many as
21 forty to sixty cases, right?

22 A. That's correct.

23 Q. And they might refer to the next level. Now, their
24 job -- isn't it true that their job at the multi-
25 disciplinary team meeting is to look at the guy's file, as

1 much information as they have on the guy, and decide
2 whether or not there's probable cause to believe he's a
3 sexually violent predator and, if so, then to go to the
4 next level called the Prosecutor Review Committee?

5 A. That's correct.

6 Q. Okay. And so, at a typical multi-disciplinary team
7 meeting, you all might review forty to sixty cases, but
8 those referred to the next level maybe five or six?

9 A. That's correct.

10 Q. And that --

11 A. Yeah, during my time there. I can't speak for ---

12 Q. Um-hmm.

13 A. --- since 2011. But during my time there, some twenty
14 percent of the cases would be referred to the next level.

15 Q. Okay. So, the overwhelming majority of these people
16 would be going to finish out their prison term and go their
17 way?

18 A. That's correct.

19 Q. Okay. So, the next step, then, is referring it to the
20 prosecutor review committee, a second level of review.

21 Right?

22 A. That's correct.

23 Q. And then, if that committee votes -- excuse me -- yes,
24 then the legal action starts, like we have today with Mr.
25 Archie?

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1 A. Well, the --

2 Q. Is that your understanding?

3 A. Well, it -- after the prosecutors review committee, it
4 would go to the Attorney General.

5 Q. Right.

6 A. To make a decision whether to file a petition.

7 Q. And then, once the petition's filed --

8 A. Filed, then it goes in front of a circuit court judge
9 ---

10 Q. Right.

11 A. --- for a review of the record ---

12 Q. Um-hmm.

13 A. --- without a hearing.

14 Q. Right.

15 A. And then, a decision there whether to have a hearing,
16 then after having the hearing, then a decision, if the
17 person is deemed to probably be a sexually violent
18 predator, then the evaluation step, which would be an
19 evaluation by a forensic psychologist ---

20 Q. Right.

21 A. --- or psychiatrist. And then, where we are now.

22 Q. Where we are. So, the MDT votes first?

23 A. Yes.

24 Q. The Multi-Disciplinary Team. The Prosecutor Review
25 Committee votes yes or no.

1 A. That's correct.

2 Q. The Attorney General then has to decide whether or not
3 the file a petition. And if he does, then the -- a judge
4 has to review that petition without a hearing.

5 A. That's right.

6 Q. And decide whether or not the case goes forward?

7 A. That's correct.

8 Q. And if he decides that, then we have a hearing to
9 decide whether or not the guy -- excuse me -- should be
10 evaluated.

11 A. That's right.

12 Q. And then, if the evaluation comes back saying he is a
13 predator, then we have a trial like we do today?

14 A. That's correct.

15 Q. So, Mr. Archie's case made it through all those steps
16 to get to where we are today?

17 A. That's correct.

18 Q. Now, you mentioned that you are also assigned to the
19 Sexually Violent Predator Treatment Program.

20 A. That's correct.

21 Q. Okay. And you were doing what they call admission --
22 once a guy got committed to the program, either by agreeing
23 to be committed or a trial like this one.

24 A. That's correct.

25 Q. Then, an evaluation was done after he got there?

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1 A. That's correct.

2 Q. Okay. And that was one of your jobs for awhile?

3 A. That's right?

4 Q. Okay. And then, was I correct in you saying that,
5 also, for guys who have already been committed, now once
6 they're already committed, isn't it true that, once a year,
7 they come up for an annual review?

8 A. That's correct.

9 Q. And a psychologist, like yourself, reviews their file
10 and writes a report on how they're doing in treatment and
11 whether or not they've gotten to the point where they're
12 safe to be at large.

13 A. Well, it would be all of that, plus a face-to-face
14 evaluation of the ---

15 Q. Right.

16 A. --- of the resident. Yeah.

17 Q. So, I guess what I'm getting at is, while you were at
18 the unit, the treatment place, did you also do those annual
19 review reports? Is that what you said earlier?

20 A. Yes. I did some of those, yes.

21 Q. Okay. Were you actively involved in the treatment of
22 the sex offenders?

23 A. No, not directly. I -- I would do the admission
24 evaluations and map out a treatment plan that the treatment
25 team then could consider as part of their work up. I think

1 for awhile I, like a six -- a six-month period, ---

2 Q. Uh-huh.

3 A. --- early on, I would sit in on some of the treatment
4 groups as an additional therapist. But principally, my
5 role, with respect to the treatment program, were these
6 admission evaluations.

7 Q. Okay.

8 A. And the annual treatment reviews.

9 Q. Okay. So, once the guy gets there, you would do a
10 fresh evaluation of him, and then he would go into
11 treatment?

12 A. Right. The structure -- well, okay. He's here for
13 treatment. What kinds of treatment does he need.

14 Q. Okay. This study you talked about a few minutes ago,
15 done by the South Carolina Department of Parole and
16 Probation Service, is that something that they came up with
17 as a tool to tell judges whether or not a guy is likely to
18 re-offend?

19 A. Yes, it's ---

20 Q. Okay.

21 A. --- that's my understanding. Yeah.

22 Q. Is it like a statistical study?

23 A. It is.

24 Q. Was it something you were involved in the making of,
25 or just learned about after the fact?

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1 A. No, I -- I learned about it as part of my practice,
2 and then started incorporating it in to aid in sentencing
3 evaluations that I would do, or evaluations of this type.

4 Q. And I'm seeing that a lot of these things you've
5 talked about today, and that Doctor Swan talked about
6 yesterday, like the STATIC-99R.

7 A. Uh-huh.

8 Q. The Static-2002, and the MnSOST. Is that a quick way
9 of saying it?

10 A. MnSOST.

11 Q. M, small n, for Minnesota.

12 A. Right.

13 Q. And then S-O-S-T for whatever it stands for?

14 A. That's correct.

15 Q. All of these things, to be effective, have to be peer
16 reviewed in journals by other scientists in the field,
17 don't they?

18 A. That's correct.

19 Q. Okay. But I don't believe the thing the DPS does, the
20 study you talked about, is a published study that's been
21 peer reviewed, has it?

22 A. No. It has -- to my knowledge, it has not been peer
23 reviewed. I only know that it's been used in South
24 Carolina.

25 Q. Okay. Okay. And the -- Now, we talk about there's

1 two -- two statics that you ran on the guy. You scored him
2 on the STATIC-99R and the Static-2002 ---

3 A. R.

4 Q. R. It has an R on it, too?

5 A. Yeah.

6 Q. When I was --

7 A. That was the only two with Static in their name.

8 Yeah.

9 Q. Got it. When I was looking things up, I came across
10 this Evaluator's Workbook.

11 A. Yes.

12 Q. It's by -- One of the authors is Carl Hansen. Isn't
13 he the guy that developed the Static -- or one of the
14 principle developers?

15 A. Well, he, along with a psychologist, I believe she's
16 in -- at California, Amy Phoenix.

17 Q. Yeah, she's on here, too. Amy Phoenix

18 A. Yeah. Yeah.

19 Q. Okay. Didn't he also develop the RRASOR, the R ---

20 A. Yeah.

21 Q. --- Rapid Risk Assessment thing?

22 A. Yeah.

23 Q. Okay. And isn't it true that Hansen himself has said
24 that the RRASOR should no longer be used, because the norms
25 are outdated, and it was replaced in 2009 by the Static?

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1 A. That's correct. But in his -- in the meta-analytic
2 reviews that he has done with Morton -- I don't speak
3 French; I'm not sure I'm pronouncing that correct -- both
4 in 2004 and 2007, he reports, again, multiple studies
5 involving the RRASOR as part of his research. So, yes, he
6 -- he -- he -- yeah, he made that recommendation, but those
7 data still exist.

8 Q. Okay.

9 A. So, it was my approach, as part of the actuarial
10 approach, to say, well, let's look at the data there. With
11 -- with the RRASOR, you know, eight thousand six hundred
12 and seventy-three sex offenders and twenty-eight studies,
13 why ignore that -- that research.

14 Q. Well, wouldn't you ignore it because the guy that
15 invented it said it's outdated? And he said -- and this,
16 you're talking about something in 2007, and the STATIC-99R
17 came out in 2009.

18 A. That's right. Yeah.

19 Q. Looking at the -- this Evaluator's Workbook here, has
20 a table in it.

21 MR. BOGLE: If I can approach the witness, Judge?

22 THE COURT: You may.

23 BY MR. BOGLE:

24 Q. Right here. It's called *Descriptive Information for*
25 *STATIC-99 Samples*, and what I take that to be is a list of

1 all of the countries sex offenders were in who got studied
2 for this -- for this thing, right?

3 A. Yeah. Uh-huh.

4 Q. And it's got U.S., Canada, Britain, Austria, and
5 Sweden.

6 A. Uh-huh.

7 Q. Multiple countries. So the sex offender study for
8 this thing, to make it valid, were from multiple countries,
9 right?

10 A. That's correct.

11 Q. Okay. And then, if you turn to the table in the 2002,
12 the study there just included only -- only offenders from
13 Canada; is that right?

14 A. That's correct.

15 Q. Now, looking at your eight-page report or seven-page
16 report here, there's no question, you can agree with me,
17 Doctor, that he's been convicted of three sexually violent
18 crimes.

19 A. That's correct.

20 Q. And the dates of these offenses range from the late
21 1980's to 2012.

22 A. That's correct.

23 Q. Which is almost a twenty-five-year period. And
24 there's no question that he has a diagnosis of Pedophilic
25 Disorder, which, in your report, on page four, at the

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1 bottom of page four, it says, like you testified earlier,
2 "over a period of at least six months, had recurrent,
3 intense, sexually arousing fantasies, sexual urges, or
4 behaviors involving sexual activity with a pre-pubescent
5 child or children."

6 A. Uh-huh.

7 Q. "Has acted on these sexual urges, or the sexual urges
8 or fantasies caused marked distress or interpersonal
9 difficulty." And then, it talks about, he's got to be a
10 certain age.

11 A. Yeah.

12 Q. Older than the victim. That's what he is, and that's
13 not something that can be cured, right?

14 A. That's correct.

15 Q. It can be treated, but it can't be cured.

16 A. It can be managed.

17 Q. It can be managed, it can be treated, but it can't be
18 cured. And the sentencing sheets in front of you right
19 there have no probation on them, right?

20 A. That's -- that's my understanding.

21 Q. In one of them, the judge recommends -- her order is
22 sex offender treatment, but there's no probation ordered in
23 any of these sentencing sheets, right?

24 A. That's right.

25 Q. So, there's no community supervision this guy is

1 facing?

2 A. That's correct?

3 Q. So, there's nothing out there hanging over his head,
4 like a suspended sentence or something like that, to say,
5 if you don't go to sex offender treatment, wham, you're
6 going back into prison?

7 A. That's correct.

8 Q. So, it's really up to him?

9 A. That's correct.

10 Q. Do you talk to him about his future plans?

11 A. A bit.

12 Q. And his future plan, as I understand it, is to go back
13 to his wife and live out in the country?

14 A. That's correct.

15 Q. Which is kind of where he was when these crimes
16 happened back in 19 -- in the late '80's, and in 2012,
17 right?

18 A. That's my understanding, yes.

19 Q. Okay. And there's nothing -- Did he say anything to
20 you about, yeah, I'm going to live in the country with my
21 wife, and I've got sex offender treatment lined up with
22 Doctor So-and-So, as soon as this trial is over, or a week
23 after, or something like that?

24 A. He did not. He -- he told me that he's supposed to
25 get sex offending treatment when I get past the sentencing,

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1 and electronic monitoring for -- for life, plus one month
2 of supervision.

3 Q. Right. You got to wear the electronic monitor, but
4 all that does is tell somebody where you've been, not what
5 you did?

6 A. That's correct.

7 Q. Okay. So, on page five of your report, when you're
8 describing -- it's the second big paragraph from the top,
9 Sex Offense Convictions.

10 A. Yes.

11 Q. It talks about here how he -- he went in there with
12 good intentions to where Child 1 was sleeping, and something
13 grabbed his arm. Was it the Devil? I mean, he told the
14 police the Devil made him do it, or something like that.
15 Did he tell you that it was the Devil?

16 A. He -- he wasn't -- he said he didn't know what it was,
17 but he knew it wasn't his son Jeremy.

18 Q. Okay. Because basically, he denies all of these
19 offenses, denies guilt.

20 A. In summary, yes.

21 Q. Okay. And are you aware that -- I couldn't find it in
22 your report, but are you aware now that he was out on bond
23 for one sex offense when he committed another?

24 A. Yes.

25 Q. And --

1 A. And that was -- and that's one of the factors of one
2 of the sexual recidivism scales. The m-SOST article
3 addresses that issue.

4 Q. So, isn't that a biggie? Here, you've been arrested
5 for a sex offense, you're facing a lot of time for it and
6 despite that, you commit another one?

7 A. Yes, it is. It's one of -- Again, there's some forty-
8 four different risk factors that are considered around
9 these recidivism scales.

10 Q. In one of the scales, you talked about earlier, you
11 talked about it being low to moderate, with a twelve
12 percent chance of likely to re-offend. I can't remember
13 which one that was.

14 A. Uh-huh. That was -- that was the Static --

15 Q. 2002?

16 A. 2002.

17 Q. Okay.

18 A. Based on, compared to the high-risk, high-need ---

19 Q. Uh-huh

20 A. --- group, which is the -- if it exists, what we -- we
21 use when we're forming opinions on ---

22 Q. And that's --

23 A. --- a SVP evaluations.

24 Q. That's a twelve percent likely to commit another sex
25 offense, on this case, against a child because that's where

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1. this guy is hard-wired to, right?

2. A. Well, it -- sex offense of any kind.

3. Q. Of any kind. But most likely, with this guy's wiring,
4. it would be with a child.

5. A. That's right.

6. Q. Okay. Not a conven -- not robbing a convenience
7. store, not shoplifting, but another ---

8. A. It would be --

9. Q. --- sex offense?

10. A. That's correct. These are specific sexual recidivism
11. guides.

12. Q. Thank you, Doctor.

13. MR. BOGLE: Your Honor.

14. THE COURT: Redirect?

15. MS. GOOD: Thank you.

16. REDIRECT EXAMINATION

17. DOCTOR GEOFFREY MCKEE, BY MS. GOOD:

18. Q. Dr. McKee, if you were to only focus on the STATIC-99R
19. based on your evaluation and your assessments, in fact,
20. that is the -- of all the four tests that you've run, that
21. has the lowest percentage of recidivism for Mr. Archie,
22. correct?

23. A. Correct.

24. Q. So, if the State told you to look at just that one,
25. what is the percentage of people who do not re-offend, is

1 not likely to re-offend within five years?

2 A. Ninety-three percent, approximately.

3 Q. And again, he spoke with you regarding the MDT program
4 proce -- or the MDT team, the process of going through it.
5 Just because somebody makes it through that process, does
6 that mean that they are a sexually violent predator under
7 the law?

8 A. Which part?

9 Q. Through the MDT -- well, let's start with the MDT
10 process.

11 A. With the M -- no.

12 Q. And once it makes it through the Prosecutor Review
13 Board, does that mean that they are found, under the law,
14 to be a sexually violent predator?

15 A. No. It's simply that committee's opinion.

16 Q. And when it discuss coming to court and determining
17 whether someone is to be evaluated or not, that burden of
18 proof in the court is probable cause, correct?

19 A. That's my understanding.

20 Q. And based on your experience in forensic psychology
21 and in the courtroom, as a psychologist, that's the lowest
22 burden, correct? Is it lower or higher than ---

23 A. Well, it --

24 Q. --- beyond reasonable doubt?

25 A. Yeah. It's below beyond a reasonable doubt.

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1 Q. And you stated when you became in -- or when you were
2 part of the SVP treatment program, there's initial
3 evaluations, correct?

4 A. That's correct.

5 Q. And those are done exactly like the ones you just did
6 on Mr. Archie, correct?

7 A. The admission evaluation?

8 Q. Yes.

9 A. No.

10 Q. How do you do -- how do you do those?

11 A. Well, they're done differently, because the focus is
12 now what kinds of treatment ought to be done.

13 Q. Okay. And you took that into account when doing the
14 evaluation of Mr. Archie, correct; as to what type of
15 treatment you believe is necessary for him.

16 A. Well, it would be sex offender-specific treatment,
17 yeah.

18 Q. Okay. And outpatient versus inpatient is based on
19 your psychological opinion to a reasonable degree of
20 certainty, that he is not a sexually violent predator?

21 A. That's correct.

22 Q. And outpatient treatment is appropriate?

23 A. I would recommend -- strongly recommend ---

24 Q. Okay.

25 A. --- outpatient treatment.

1 Q. And again, just because, based on your earlier
2 testimony, just because somebody denies that they did
3 something, it does not play into the actuarial system at
4 all, correct? The research does not support that it ---

5 A. Well, --

6 Q. --- predicts likelihood of re-offending?

7 A. Well, the research, again, based on thousands of sex
8 offenders, it has not been shown to predict the likelihood
9 of re-offending.

10 Q. And based on the sentences that Mr. Archie received,
11 he's going to be required to be on GPS monitoring, correct?

12 A. That's my understanding.

13 Q. For the rest of his life?

14 A. That's my understanding.

15 Q. And he will be on the Sex Offender Registry?

16 A. That's my understanding.

17 Q. Is the Sex Offender Registry public? Do people know
18 who's going to be on the Sex Offender Registry?

19 A. They can find out, yes.

20 Q. So, it would be very clear to somebody who is looking
21 at him that he will have a GPS monitoring on his leg,
22 correct?

23 A. Well, --

24 Q. Unless he's wearing pants ---

25 A. Yeah,

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1 Q. --- I guess. Yeah.

2 A. Yeah, wearing slacks unlikely.

3 Q. And they can simply just look up on the Internet and
4 see where he lives, what his charges are?

5 A. I believe that's how it's done, yeah.

6 MS. GOOD: No further questions, your Honor.

7 THE COURT: Re-cross?

8 MR. BOGLE: No, your Honor. Thank you.

9 THE COURT: All right. Doctor McKee, we appreciate
10 your time. You can step down, and can this witness be
11 excused, Ms. Good?

12 MS. GOOD: Respondent -- I have no objection to him
13 being excused.

14 MR. BOGLE: No objection.

15 THE COURT: All right. You can be excused. We
16 appreciate your time.

17 DOCTOR GEOFFREY MCKEE: Thank you.

18 THE COURT: Thank you.

19 (WITNESS LEAVES WITNESS STAND.)

20 THE COURT: Anything else on behalf of Mr. Archie?

21 MS. GOOD: No, sir, your Honor.

22 THE COURT: Okay. Anything in reply?

23 MR. BOGLE: No, your Honor. Thank you.

24 THE COURT: All right. Members of the jury panel, we
25 have now received all the evidence in the case. We have to

1 take up some matters outside your presence. You are not
2 yet in a position to start discussing the case or to make
3 up your mind because you haven't heard my charge on the law
4 and you haven't heard the closing arguments of the
5 attorneys, so, we'll take a break. We've got a couple of
6 legal matters we have to take up at this stage of the
7 trial. That's just the way it works. And so, we when we
8 send for you to come back in and hear the closing arguments
9 and my charge, and then we'll place this case in your hands
10 for your deliberation. So, we'll take a break.

11 (JURY EXITS COURTROOM ON RECESS AT 10:41 A.M.)

12 THE COURT: Anything from the State?

13 MR. BOGLE: No, your Honor. Thank you.

14 THE COURT: Anything -- I'm sorry. Slow door hadn't
15 quite - latched.

16 MS. GOOD: At this time, your Honor, I would renew my
17 motion for a directed verdict, based on Doctor McKee's
18 testimony. Even in the light most favorable to the State,
19 both have testified that, under the STATIC-99, that there
20 are only seven percent to re-offend. I do not believe that
21 remotely meets the burden of beyond a reasonable doubt, and
22 that a directed verdict should be granted.

23 THE COURT: Well, I don't think reasonable doubt
24 predicated on the -- on that particular type analysis.
25 Percentage of and admittedly, the testimony puts Mr.

1 Archie, from my perspective, in a very low-risk category,
2 but still in a risk category. I think it's a jury
3 question, and I deny the motion.

4 MS. GOOD: Thank you, your Honor.

5 THE COURT: Now, have you had a chance to look at the
6 proposed charge?

7 MS. GOOD: I have not, your Honor.

8 THE COURT: All right. We'll print it out and let you
9 take a look at it. We also have the proposed verdict
10 forms. We'll take a look at that. And then, when we come
11 back, we'll see if there's anything you want to add.

12 Do you have any requests to charge?

13 MS. GOOD: No, sir.

14 THE COURT: Okay. All right. We'll take a break and
15 let you look at these particulars.

16 (COURT IN RECESS AT 10:42 A.M.)

17 (COURT BACK IN SESSION AT 10:59 A.M.)

18 THE COURT: You may have your seats. Thank you. Is
19 the State ready?

20 MR. BOGLE: Ready to go.

21 THE COURT: Is the Defense ready?

22 MS. GOOD: Yes, sir.

23 THE COURT: Again, this is novel. Who goes first?

24 MR. BOGLE: As I understand it, I open in full; then,
25 it's her turn and if she says something new, I can bring it

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1 up, and basically that's it. It's not like criminal, where
2 we --

3 THE COURT: Well, see, that's -- this is a hybrid ---

4 MR. BOGLE: Yeah.

5 THE COURT: --- so that's why I'm a little confused.

6 MR. BOGEL: We're in Common Pleas, so, I open in full.
7 She does her full thing and she says something new I can
8 bring it up, but that in my experience is --

9 THE COURT: That's correct, the civil way we handle
10 it.

11 MR. BOGLE: Right.

12 THE COURT: All right. Bring in the jury.

13 (JURY REENTERS COURTROOM AT 11:00 A.M.)

14 THE COURT: Members of the jury panel, the attorneys
15 will now make their closing statements. Unlike the ones
16 yesterday, where they outline the trial for you, today they
17 will be arguing why the evidence, based on the law, which I
18 will charge to you, should lead you to a certain unanimous
19 verdict.

20 Mr. Bogle.

21 CLOSING ARGUMENT BY MR. BOGEL:

22 MR. BOGLE: Thank you, your Honor. May it please the
23 Court?

24 Ms. Good.

25 Ladies and gentlemen, I'd first like to say on behalf

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1 of the State, and I think Mr. Archie as well, and the
2 Court, thanks for doing your job. Okay? A lot of things
3 we'd all rather be doing, but one of the great roles we
4 play in this country is being called upon to be a jury. If
5 you step back and think about it, it always has amazed me,
6 twelve people, who may have never seen each other before
7 yesterday, and suddenly you come together as a unit, and
8 make a decision about somebody, and that's the job. It's a
9 wonderful job, and I thank you for doing it. And now,
10 let's talk about what has to be done.

11 Under this law, there's two things the State has to
12 show. Number one: Has Mr. Archie been convicted of a
13 sexually violent crime? And he has. We have three of them
14 over here, and you will have these back in the courtroom.
15 Lewd act on a child, times two, involving a victim named
16 Child 3. And then, criminal sexual conduct with a minor in
17 the third degree, involving a victim named Child 1. You'll
18 have these back in the jury room to look at. These are
19 sexually violent crimes. There's no question he's been
20 convicted of them.

21 The next question is, does he have a mental
22 abnormality or a personality disorder? No question there.
23 You've heard from two fine experts, two qualified doctors,
24 Doctor Swan and Doctor McKee. These folks know what
25 they're doing. Okay? Both qualified as experts by the

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1 Court, meaning they can give an opinion about something, as
2 opposed to what a witness normally is limited to talking
3 about, what they heard, what they saw, what they smelled,
4 that type thing. They can give opinions. You heard from
5 both of them.

6 And as I'm sure the judge will tell you, it is your
7 job as the ultimate finders of the facts in this case to
8 decide what weight to give the testimony you've heard. You
9 can't just declare it a draw because each side has their
10 own expert witness. You've got to decide which person has
11 the most credibility, which person does not, and why,
12 because you, not me, not Ms. Good, not the judge, you are
13 the ultimate finders of what this case is about, what the
14 facts are.

15 So, the next thing we all agreed upon, both experts
16 agreed upon is, he has the mental abnormality. This guy is
17 a pedophile. They call it Pedophilic Disorder, which means
18 he has a recurring, intense sexual urge for sex with young
19 kids. And because the attract -- and the qualifier is,
20 it's Pedophilic Disorder, attracted to females, because his
21 victims have all been young girls. Young girls. Three and
22 ten have been the ages we've heard about, and that's in the
23 indictment you've got there in front of you.

24 Also, it's called non-exclusive, which means he also
25 was able to have a sexual relationship with an age-

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1 appropriate woman, in this case, his wife. So, that's the
2 diagnosis, no question about that. Both experts agree.
3 The question, then, is, does he have sufficient control
4 over this to the point where he can be let go and go home,
5 live in the country, or, is it the kind of thing where he
6 doesn't have the control, and needs to be confined for
7 treatment because if he's let go he's likely to commit more
8 acts of sexual violence. And that's what you've got to
9 look at. That's where the difference is.

10 Now, I've heard -- I listened to all the testimony and
11 looked at all the different things. Look at Doctor Swan.
12 She's got twenty-eight years of working with sex offenders.
13 Doctor McKee had about six months. I think he was assigned
14 to the unit, and he was doing evaluations of guys after
15 they had already been committed. Okay? Not pre-
16 commitment, like we're doing today. He was not involved in
17 treatment at all, except he said for about six months he
18 sat in on some of the treatment sessions. Doctor Swan has
19 twenty-eight solid years of working with sex offenders and
20 she outlined the different places where she had done that.

21 We also have the type evaluation you have today. This
22 case is a case about committing Mr. Archie or not
23 committing him. So, the evaluation done by the
24 psychologist, and we call it -- in our office, we call it a
25 pre-commitment evaluation by which should he be committed

1 for long-term treatment and controlled? That's the
2 decision the doctor had to look at when you been appointed
3 by the Court to make that decision, and that's what she
4 did. And that's what Doctor McKee did, as well.

5 It's a pre-commitment evaluation. Doctor Swan has
6 done hundreds of those in Florida, Missouri, and at least
7 twenty-three, I think she said, or twenty-four in South
8 Carolina. As near as I can tell from what Doctor McKee
9 said, while he is certainly a qualified forensic
10 psychologist, this is his first, or the first one where
11 he's testified about. He did do some annual reviews of
12 guys already committed to the program, but as far as the
13 ultimate psychological opinion, should they go in or should
14 they not, this appears to be his first.

15 So, you've got to look at the qualifications and the
16 training of the two experts in deciding which one to give
17 more weight to. And what the judge will tell you is, just
18 because a person is declared an expert witness doesn't mean
19 their testimony has more weight than, say, a non-expert.
20 You've got to decide what to give the weight to.

21 And I think if you look -- step back and take a look
22 at it, Doctor McKee relied heavily on the STATIC-99R, that
23 scoring system. He relied heavily on the Static-2002,
24 another scoring system, which I think had a -- was it
25 twelve percent likelihood of re-offending sexually? That's

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1 not twelve percent chance of holding up a convenience store
2 or shoplifting. That's twelve percent of a sex offense,
3 and given this guy's makeup, of another young girl.

4 He also relied on something called the MnSOST or
5 Minnesota -- the acronym is M-n-S-O-S-T, and I think there
6 are some questions as to whether or not that thing is still
7 valid. He also relied on the RRASOR, R-R-A-S-O-R, Rapid
8 Risk Assessment, and there's some question about its evalu
9 -- its validity now because I think he mentioned an article
10 from 2007, by the creator, saying it was still good. Yet
11 in 2009, the STATIC-99 came out, and kind of replaced it.

12 But in any event, in any event, if you step back and
13 look, remember what Doctor Swan said about these things?
14 She got the same score on the STATIC-99R as Doctor McKee
15 did, a zero. But she didn't stop there. Even Hansen, the
16 guy that invented the thing, says, it's one step in a
17 comprehensive evaluation, and that's what she did. With
18 all due respect to Doctor McKee, it looks to me like he
19 scored the guy on three things and stopped there and didn't
20 do the kind of comprehensive evaluation that I think you're
21 entitled to, and that's what we have from Doctor Swan.

22 So, the burden of proof is beyond a reasonable doubt,
23 and the judge in his instructions to you will tell you what
24 that means. I'll leave that to him. Basically, my
25 recollection is, it's something about, if the case leaves

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1 you firmly convinced of something, okay? Not everything --
2 it's not the burden on the State to prove it beyond any
3 doubt or beyond all shadow of a doubt, just beyond a
4 reasonable doubt. And what do we have here? We have the
5 crimes. We have the time period. They happened in 19 --
6 late 1980's, and in 2012. That's a twenty-five year span,
7 with nothing in between to suggest that, hey, I've got a
8 problem, I need sex offender treatment from somewhere. No
9 outpatient, not at the prison, nothing. Twenty-five --
10 over a twenty-five-year span from these two crimes and
11 admittedly, there's a big gap in between them, but the
12 diagnosis is still there; he still has it.

13 So, we have that. We have the lack of sex offender
14 treatment while in prison. Now, he didn't act out in
15 prison. That's a good thing. That's a good thing in his
16 favor. He didn't commit any misconduct while he was in
17 prison, and no sexual misconduct. But it's like Doctor
18 Swan said, how many little girls are there at the
19 Department of Corrections? So, that's where we are.

20 He's got the mental abnormality. He's got the right
21 kind of conditions. He's got the diagnosis. We have a
22 twenty-year span, twenty-five-year span. We have the type
23 of crimes. And the question is now, does he need to be
24 confined for further treatment, and that's what this is
25 about, and it's your decision. And I would submit to you

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1 that the State has met its burden of proof. If you sit
2 back and look at these evaluations you heard about and
3 compare the two people who talked about them, you will find
4 that Mr. Archie is a sexually violent predator.

5 Your Honor, thank you very much.

6 THE COURT: Ms. Good.

7 CLOSING ARGUMENT BY MS. GOOD:

8 MS. GOOD: Thank you, your Honor. Mr. Bogle.

9 How many of you have ever heard the term can't judge
10 a book by its cover? Kind of put it in a different context
11 for you. My nine-year-old son seems to think he's thirteen
12 is able to watch PG-13 movies now. He doesn't want to read
13 what's called little kid books. I tried to convince him
14 and say, look, Harry Potter, great books. You are going to
15 love them, just wanting him to read. However, he looked at
16 me and said, Mom, those are about magic. Those are little
17 kid things. I don't even want to look at 'em. I don't
18 even want to think about 'em because I'm judging it based
19 purely on what I see. Eventually, I convinced him, more
20 like bribed him with Play station time, to say, just try,
21 try it. And when he opened up the book and he started to
22 look at the chapters and the actual details in the book, he
23 started to see, it's not exactly, what he thought it was.

24 This case, ladies and gentlemen, is very similar to
25 that. Mr. Bogle and the State is pressing on you three

1 lewd acts, three-year-old, five-year-old child. Yes, that
2 happened, and there is no excuse for it. There's no way
3 that I can even try to pretend to excuse what occurred.
4 However, that is not what you are here for today. You are
5 here to determine if Mr. Archie is likely to re-offend in
6 the future. Will his future acts, something you can't even
7 predict right now, happen. And when you look at all the
8 details of the case, and all the details of these actuarial
9 and recidivism tests, and everything in a whole, you will
10 see that he is not a sexually violent predator, and is not
11 likely to re-offend.

12 Mr. Bogle indicated this is over a twenty-year period
13 shows he has no -- no self-control. But I want you to look
14 at it closer. It first occurred in 1987 to 1988 with the
15 first victim. Then, there was a twenty-year gap where
16 absolutely nothing occurred. That indicates that he is
17 able to have some type of self-control when he thinks about
18 it and he's able to. And then, yes, it did happen again.
19 However, there's a twenty-year gap there that shows nothing
20 happened and he has the ability to control himself.

21 So, the State has to prove to you beyond a reasonable
22 doubt, which is the highest burden, and the judge is going
23 to tell you what that is, but it leaves you firmly
24 convinced, firmly convinced, that he is going to re-offend
25 again. And ladies and gentlemen, based on the evidence and

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1 the testimony you've seen, the State has not been able to
2 prove that. Beyond a reasonable doubt, well because it is
3 somewhat of a legal term. It is -- When you think about a
4 milk carton, you buy milk at the store, and it has this
5 sell by or use by date on it. You go home, it says October
6 10th. And today is October 11th, and you look at it and
7 you say, I don't know. Not sure, let me smell it. So, you
8 smell it and you say, I'm just going to be safe, I'm not
9 going to use it.

10 Ladies and gentlemen, that is reasonable doubt, and
11 this case is filled with reasonable doubt, and you have two
12 witnesses to look at to determine whether the State has
13 proven this. You have Doctor Swan, which Mr. Bogle just
14 went into her multiple years of experience, twenty-eight-
15 plus years. And Doctor McKee's thirty-plus years of
16 experience doing forensic psychology. However, he failed
17 to mention, as recently as last year, last year, despite
18 twenty-eight years of doing SVP's, Doctor Swan was found in
19 ethical violation of doing a specific SVP evaluation and
20 wrongfully testifying about it in court, on that stand,
21 like she just did to you. Last year.

22 And then, she indicated to you, she also had to have
23 some supervision for her next couple SVP evaluations, to
24 make sure that she was even doing them correctly, and that
25 she could be released, and not be in ethical violation any

1 more. You didn't hear any of that regarding Doctor McKee.

2 In addition, Mr. Bogle made the point this is the
3 first time he's ever testified for the Defense. I want you
4 to listen to what he really said, though, Doctor McKee. He
5 said he's done tons of these evaluations, but he's never
6 testified for the Defense, because his position has always
7 been, my testimony is going to help the State more than
8 it's going to help you, so, I'm not going to be able to
9 testify for you, sorry. But in this case, he was finally
10 able to say, you know what? I've looked at this, and I
11 really do think that he is not an SVP. He's done initial
12 evaluations of people who are actually found to be sexually
13 violent predators in the program. He's been part of the
14 multi-disciplinary team that determines whether this
15 program should even start, whether somebody should even get
16 to this process for a jury trial.

17 And based on all that experience in South Carolina
18 with that program, the MDT team, and with doing initial
19 evaluations of people who are actually in the program, he
20 does not think that Mr. Archie is an -- is an SVP.

21 Now, the State wants you to focus on these past crimes
22 and how the facts of them are just terrible, and they are,
23 ladies and gentlemen. You heard Doctor McKee, there are no
24 good sex offenders. We're not here to excuse what Mr.
25 Archie did, and he has done his time in prison for that.

CLOSING ARGUMENT: BY MS. GOOD

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1 However, when you look, is what Doctor McKee said, the SV -
2 - the people that are found to be sexually violent
3 predators are considered to be the worst of the worst. And
4 not to downplay what happened at all, but Mr. McKee -- or
5 not Mr. McKee -- Mr. Archie was not out searching for
6 children. He was not out at the playground. He was not
7 out at a school, saying, which one do I want to take home
8 and do something to. They were opportunistic opportunities
9 a child could just happen to be in his home.

10 And ladies and gentlemen, he did not have intercourse
11 with these children. In fact, he was touching -- just
12 touching them. And that -- that's bad in itself. It is.
13 However, it's not the worst of the worst. It's not
14 stranger victims, just findings somebody on the street.
15 It's not completely raping somebody. And Doctor McKee
16 noticed that disciplinaries in prison, which Mr. Bogle has
17 downplayed, saying, well, there's no children in prison, so
18 he can't do anything, Doctor McKee has found, based on all
19 his experience with the program and everything else, that
20 even the SVP's who are in the program, who are found to be
21 sexually violent predators, who have just propensity
22 towards children, have sexual offenses while incarcerated,
23 have some type of disciplinaries, have some type of prior
24 criminal record.

25 Mr. Archie doesn't have any of those. So, that moves

1 us to the STATIC-99 test. Ladies and gentlemen, I think
2 this is what we submit to you the most likely indicator if
3 somebody is willing or going to re-offend again. And Mr.
4 Bogle says, well, why are you using all these other tests.
5 If you want to look at just the STATIC-99, as Doctor McKee
6 testified, that is the lowest of all the tests that he did
7 for the recidivism. Ninety-three percent. And if you
8 recall Mr. Bogle telling you in the opening arguments about
9 the preponderance of the evidence, is normally what civil
10 law is. It's by fifty-one percent they have to prove
11 something's going to happen in the future. This case,
12 ninety-three percent do not re-offend. Ladies and
13 gentlemen, that's more than reasonable doubt. Ninety-three
14 percent. And that's using just the STATIC-99, not looking
15 at these other tests. They actually have it just a little
16 bit higher. But he is a zero on a scale of twelve, which
17 puts him on the low category.

18 And in eight years -- they say he's fifty-one now, and
19 he turns sixty -- he's going to go to a negative one, which
20 makes it even lower. And Doctor McKee indicated that he --
21 he thinks he does need sex offender treatment. And this is
22 not going to be somebody who is just going to be hiding out
23 in the woods from people. When you think about -- when I
24 hear the word predator, I think about the movie *Predator*,
25 if anybody's ever seen that movie. The creature kind of

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1 blends into the woods, so you never see him, and then he
2 attacks on you.

3 In this case, ladies and gentlemen, it's going to be
4 blasted to the world that Mr. Archie is a sex offender. He
5 is going to be on the Sex Offender Registry where anybody
6 can see where he can live. He can't live within a school.
7 He can't do anything because of that Sex Offender Registry.
8 In addition, he's got to have GPS monitoring for the rest
9 of his life. Somebody is always going to know where he is.

10 The State is banking that you're going to focus on
11 these past crimes and not look at the actual numbers of
12 this case. They wanted to gloss over the numbers of if
13 somebody's actually going to do this again. If you notice,
14 Doctor Swan never testified to what the numbers of the
15 STATIC-99 were because they did not help their case. She
16 did not want to have to say seven percent -- only seven
17 percent re-offend. Only seven percent. Ninety-three
18 percent don't. If you notice, it was only on cross-
19 examination when that was brought up, because they did not
20 bring that up in direct examination, because it did not
21 help their case at all.

22 You are here as the jury, as Mr. Bogle said, nobody
23 really wants to be here, especially hearing a case like
24 this, ladies and gentlemen. But you have been picked, and
25 you are here, and it's your decision to make the hard

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1 decisions in this case. Growing up, my daddy always told
2 me the right thing to do ain't always the easiest thing to
3 do, Anna. Well, in this case, ladies and gentlemen, based
4 on these facts and the evidence that has been presented to
5 you, ninety-three percent don't re-offend. It ain't going
6 to be easy to look at Mr. Archie and say, you know what, I
7 think I'll not commit him to long-term care and treatment.
8 But with this case and with this evidence, it's the right
9 thing to do. So, we ask that you find him not to be a
10 sexually violent predator. Thank you.

11 CHARGE TO THE JURY:

12 THE COURT: Thank you. Members of the jury panel, I
13 appreciate the attention that you've given to me and to the
14 attorneys, and to the witnesses. It is now my duty to
15 charge you the law in this case, and it is your duty to
16 accept and apply.

17 The State has brought this matter into the court
18 alleging that Mr. Archie is a sexually violent predator
19 under the laws of our state. Our state -- Well, as the
20 state here, that is the -- Mr. Bogle is here on behalf of
21 the State, of course, Ms. Good is on behalf of Mr. Archie,
22 and the State seeks a civil commitment of Mr. Archie, the
23 Respondent. That will be a commitment, civil commitment,
24 for long-term control, care, and treatment in a secure
25 facility.

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1 This is not a criminal proceeding. The attorneys have
2 made that clear, and I want to make it clear to you. I
3 think I said this yesterday. It is not a criminal
4 proceeding seeking incarceration of Mr. Archie. But
5 rather, it is a proceeding seeking a civil commitment to a
6 secure facility of Mr. Archie.

7 The State of South Carolina alleges and claims that
8 Mr. Archie is a sexually violent predator under our law,
9 and I'll define that, what a sexually violent predator is
10 in a few moments. Mr. Archie has denied that he is a
11 sexually violent predator, and therefore the burden of
12 proving his -- that he his is a sexually violent predator
13 is on the State. Let me get the lawyers up here just one
14 minute.

15 This is an unusual proceeding, so I apologize.

16 (BENCH CONFERENCE, OFF THE RECORD, OUT OF THE HEARING
17 OF THE JURY AT 11:22 A.M.)

18 THE COURT: Thank you.

19 Now, Mr. Archie has denied that he is a sexually
20 violent predator, and therefore the burden is on the State
21 to prove, by evidence satisfying you beyond a reasonable
22 doubt, that he is a sexually violent predator. If the
23 State is unable to meet that burden as to one or more of
24 the elements in this case, and they must prove the
25 elements, which I will go over in just a few minutes, both

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1 -- each beyond a reasonable doubt, if they are -- if the
2 State is unable to do that, then Mr. Archie is entitled to
3 the finding that he is not a sexually violent predator.

4 Again, Mr. Archie is not accused of committing a crime
5 in this proceeding. That is, he is not in court today
6 being tried, or in violation of a criminal code, or
7 committing a crime.

8 As you heard, Mr. Archie has previous charges for
9 which he has been sentenced by the Court. He has now
10 completed his sentence for these charges, and the State is
11 alleging that he is a sexually violent predator. And as I
12 stated, the State must prove their claim beyond a
13 reasonable doubt. If you find the State has not met its
14 burden, Mr. Archie will be released. If you find that the
15 State has met its burden of proof, and find that Mr. Archie
16 is a sexually violent predator, he will not be released,
17 but will be committed to a secure treatment facility in
18 Columbia, operated by the South Carolina Department of
19 Mental Health.

20 In civil cases, generally, and this is a civil case --
21 I keep emphasizing that, not a criminal case -- the burden,
22 and the lawyers have alluded to this, is usually -- the
23 burden of proof is usually on the party seeking -- the
24 party bringing the proceeding to prove their case by a
25 greater weight or preponderance of the evidence. Some of

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1 you may have sat on such cases in the past. Even though
2 this case is in -- under the civil branch of our judicial
3 system, here the statute requires a greater burden. That
4 is, the State is required to prove Mr. Archie is a sexually
5 violent offender by beyond a reasonable doubt.

6 A reasonable doubt is proof, according to our courts,
7 proof beyond a reasonable doubt is proof that hesitates --
8 that causes one to hesitate to act. Proof beyond a
9 reasonable doubt is proof that leaves you firmly convinced
10 that Mr. Archie is a sexually violent predator. There are
11 very few things in our world that we can know with absolute
12 certainty, obviously, and our case law and our cases do not
13 require proof in this kind of case that overcomes every
14 possible doubt.

15 If, based on your consideration of the evidence, you
16 are firmly convinced that Mr. Archie is a sexually violent
17 predator, then you must return a verdict for the State.
18 If, on the other hand you think there is a real possibility
19 that he is not a sexually violent predator, you must give
20 him the benefit of the doubt and return a verdict from --
21 for Mr. Archie. He is entitled to any -- he is entitled to
22 each reasonable doubt you have as to any issue in this
23 case. Reasonable doubt may arise from evidence in the
24 case, or a lack of evidence in the case. It is up to you
25 to determine whether or not a reasonable doubt exists in

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1 this case.

2 Now, I told you yesterday that I have certain duties
3 to perform, and one of them is to charge you the law, and
4 in that regard, it is up to you and required by your oath
5 to accept and apply the law, even if you think I charge the
6 law in error, or, even if you think the law should be
7 different. Your oath requires you to apply to the facts as
8 you determine them to be, the law as a I charge it.

9 You are not to infer from anything I have said or
10 done, or anything I now say or do as being an opinion of
11 mine on the facts. Our law does not allow a trial judge to
12 formulate or express to a jury any opinion on the facts.
13 It is solely up to you to examine the evidence, and to give
14 to the evidence the effect, the value, the truth that you
15 believe it -- believe it should have.

16 In doing this, you may believe one witness, as opposed
17 to several; several witness, as opposed to one. You may
18 believe all, part, or none of a witness's testimony. In
19 analyzing the evidence, use your common sense, your sense
20 of logic, your sense of reason. Use your experiences in
21 life.

22 As judges of the facts, you must necessarily judge the
23 credibility, that is, the believability of the witnesses
24 who have testified. In assessing believability, use those
25 things I have just talked about. Use those things that you

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1 find in your day-to-day life are indicators of truthfulness
2 in an individual. And you can use what I call certain
3 evaluators. How a witness acts on the stand, that is,
4 their demeanor. Are they hesitant or straightforward in
5 responding to questions? Look at the consistencies or the
6 inconsistencies of the witness' testimony. Look at whether
7 a witness has any reason to help or hurt one side or the
8 other. That is, whether the witness has any bias or
9 prejudice. And look at the opportunity the witness had to
10 know those things which the witness testified about.

11 The fact that testimony is not controverted does not
12 mean you must accept it as true and undisputed. You still
13 must gauge credibility of the witnesses to determine the
14 believability or truth of the facts offered through ex --
15 offered through testimony. As I said, use your common
16 sense, your sense of logic, your sense of reason, and your
17 experiences in life.

18 In this case, we've had, as I've told you we would,
19 expert witnesses. I remind you that our rules of law
20 generally do not permit witnesses to testify as to
21 opinions. Generally, a witness can only testify to
22 something they've observed with one of their five senses.
23 As I've said, it's usually something someone has seen or
24 heard, but it could be touch, taste, or smell, also.

25 However, where an individual has special knowledge,

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1 skill, experience, and training in a particular area, that
2 witness can render what we call an opinion in that
3 particular field. In determining the weight to be given an
4 opinion, you should consider the testimony of an expert
5 with the same lenses that you look at all testimony or all
6 experts -- let me back up. When you look at experts'
7 testimony, look at that testimony just as you look at any
8 other witness in the case. Use those parameters I've
9 talked about, common sense and the evaluators. However, as
10 to a witness who testifies as an expert, you also look,
11 even though I found they were qualified to testify, you
12 look to determine whether you believe they were qualified
13 to testify and give an opinion in that particular area.

14 And also, in analyzing an expert's testimony, you can
15 analyze and consider the reasons they gave for reaching the
16 opinions they reached. You are not bound by those
17 opinions. Those opinions are allowed into evidence to
18 assist you as the jury. They are not binding on you. You
19 are to give them such weight as you -- opinions such weight
20 as you believe they should have, if any.

21 In cases such as this there are generally two types of
22 evidence presented: Direct and circumstantial evidence.
23 Direct evidence is the testimony of someone who claims to
24 have actual knowledge of a fact such as an eyewitness.
25 Direct evidence is evidence which immediately establishes

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1 the main fact sought to be proven.

2 Circumstantial evidence is proof of a chain of facts
3 and circumstances which indicate the existence of a fact.
4 Circumstantial evidence is evidence which immediately
5 establishes collateral facts from which the main fact may
6 be inferred. Circumstantial evidence is based on inference
7 and not on personal knowledge or observation. It is proof
8 that does not actually establish the fact in question, but
9 that it so describes something else from which you may
10 either reasonably infer the truth of the fact, or re -- or
11 at least reasonably infer an increase in the probability
12 that the fact is true.

13 For circumstantial evidence to be sufficient to
14 warrant a finding of fact, the circumstances must lead to
15 the fact with reasonable certainty. The facts and
16 circumstances should be considered in light of ordinary
17 experience and common sense. The existence of a fact
18 should not be based on speculation, surmise, or conjecture.
19 Our law makes absolutely no distinction between the weight
20 or value to be given either direct or circumstantial
21 evidence, nor, is a greater degree of certainty required of
22 circumstantial evidence, as opposed to direct evidence.

23 I am now going to talk to you about the charge, about
24 the statute. Our legislature did enact a statute. I'm not
25 going to go over the particular number, because that's not

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1 important. It is established that one may be determined to
2 be a sexually violent predator and treated as -- for such.
3 The elements which the State must prove beyond a reasonable
4 doubt, the first, that the Respondent, Mr. Archie, has been
5 convicted of a sexually violent offense. I charge you that
6 lewd act on a child under fourteen, and criminal sexual
7 conduct with a minor in the third degree, are sexually
8 violent offenses.

9 Additionally, the State must prove a second element,
10 and that is that Mr. Archie suffers from a mental
11 abnormality or personality disorder that makes him likely
12 to engage in acts of sexual violence, if not confined in a
13 secure facility for long-term control, care, and treatment.
14 Inherent in these two elements is that the State must prove
15 the requirement that Mr. Archie's mental abnormality or
16 personality disorder causes him serious difficulty in
17 controlling his behavior.

18 In other words, the State must prove beyond a
19 reasonable doubt that Mr. Archie suffers from a mental
20 illness which he cannot sufficiently control without the
21 structure and care provided by a mental health facility,
22 rendering him otherwise likely to commit a dangerous act.

23 In order for you to better understand the elements of
24 the State's cause of action, I'm going to define for you
25 some of the terms I have just used. The term mental

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1 abnormality means a mental condition affecting a person's
2 emotional or volitional capacity that predisposes the
3 person to commit sexually violent offenses. This mental
4 abnormality or personality disorder must cause Mr. Archie
5 serious difficulty in controlling his behavior.

6 The term likely to engage in acts of sexual violence
7 means, the person's propensity to commit acts of sexual
8 violence is of such a degree as to pose a menace to the
9 health and safety of others, so that he is dangerous to
10 others.

11 Again, I remind you that the burden of proof is on the
12 State to prove to your satisfaction beyond a reasonable
13 doubt that Mr. Archie has been convicted of a sexually
14 violent offense, as I have instructed you, and, also
15 suffers from a mental abnormality or personal --
16 personality disorder that makes him likely to engage in
17 acts of sexually violence -- sexual violence, if not
18 confined in a secure facility for long-term control, care,
19 and treatment.

20 If the State carries its burden of proof and convinces
21 you beyond a reasonable doubt as to each of the two
22 elements of its cause of action, it is entitled to a
23 finding that Mr. Archie is a sexually violent predator.
24 If, on the other hand, the State does not meet the burden
25 of proof as to one or both of these elements, the

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1 respondent is entitled to a finding that he is not a
2 sexually violent predator.

3 It is your duty, by your joint deliberations, to
4 determine the truth in this case and apply the law, giving
5 to Mr. Archie the benefit of every reasonable doubt as to
6 each issue. Once you take the facts as you determine them
7 to be and apply the law as I charge it, you will be in a
8 position to return a verdict that speaks the truth.

9 The word verdict is derived from the Latin term verus
10 dictum, which means to speak the truth. There are two
11 possible verdicts in this case, and I'll go over those with
12 you in just a moment, Madam Forelady. There is no
13 significance whatsoever in the order in which I state these
14 possible verdicts. One must be stated first, and the
15 other, of course, second. And the fact that one precedes
16 the other on that piece of paper that you'll have in the
17 jury room with you does not mean it's to have any greater
18 weight than the other.

19 All twelve of you must agree on a verdict. Your
20 verdict must be unanimous. Your verdict cannot be based on
21 sympathy, passion, prejudice, emotion, or matters outside
22 the record. Once you have unanimously agreed on a verdict,
23 Madam Forelady, you will write the verdict. And again, I
24 will go over the verdict form with you in just a moment --
25 and date it. If you have questions while you are

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1 deliberating, please knock on the door and tell the
2 bailiff, and we will -- and -- let me back up -- if you
3 have questions, write them down. Send them out by way of
4 the bailiff. I will after conferring with the attorneys,
5 respond. It may be that I can write an answer on the note
6 itself; it may be that I will have to bring you back in
7 here in open court answer your question.

8 I am not sending in a written copy of the charge, but
9 if you want me to go over any, or part, or all of my charge
10 on the law, let me know, and I'll bring you back in here,
11 in open court, re-charge you on the law.

12 When you have reached a unanimous verdict, knock on
13 the door and tell the bailiff, and the bailiff will come
14 and get me, and I will send for you as promptly as I can to
15 receive the verdict. I am going to be working, as you
16 probably know, on another case, but I'll stop that as
17 promptly as I can and send for you, once you have reached
18 your verdict.

19 When you first go into the jury room, do not start
20 deliberating. I have to go over my charge with the
21 attorneys. If I have made an error, I'll have to bring you
22 back in and correct it. I have told you that you must
23 follow my charge on the law, whether you agree with it or
24 not. So, I must make sure that I did not make an error.
25 If I have made an error, I will bring you back in and

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1 correct it. If I have not made an error, I will send in
2 the exhibits, which are the indictments and sentence
3 sheets, and the verdict form, and the bailiff will tell you
4 to start deliberating.

5 Ms. Doncaster, if you will please stay with us when
6 the jury goes out this time, we appreciate your assistance,
7 but you will not need to meet with the jury any further.

8 Again, don't start deliberating until you get the word
9 to do so. The verdict form, Madam Forelady, and members of
10 the jury, as I said, has two possible verdicts on it. You
11 will put an X or a check on the one the jury has
12 unanimously agreed upon. The verdict form says, "Has the
13 Petitioner, the State of South Carolina, proven beyond a
14 reasonable doubt that Herman Lee Archie is a sexually
15 violent predator under the South Carolina Sexually Violent
16 Predator Act?"

17 Then, it says, "We, the jury, unanimously answer the
18 question as follows" and the two options are basically yes
19 and no. "Yes, Herman Lee Archie is a sexually violent
20 predator. Or no, Herman Lee Archie is not a sexually
21 violent predator." There's a place for you to sign and
22 date. Again, your verdict must be unanimous.

23 Now, I'm going to let you go to the jury room,
24 everybody but Ms. Doncaster, and don't start deliberating
25 yet.

1 (JURY EXITS COURTROOM TO DELIBERATE AT 11:38 A.M.)

2 THE COURT: Anything involving the charge from the
3 State?

4 MR. BOGLE: No, your Honor.

5 THE COURT: Anything from the Defense?

6 MS. GOOD: No, sir.

7 THE COURT: All right. If you will check the verdict
8 form and the exhibits, and send them in. Ms. Doncaster,
9 you are through for the week. You can certainly stay
10 around if you wish, but you are certainly free to leave and
11 you will be mailed a check. If you need anything or a
12 statement to take to work, go by the Clerk's office, and
13 they'll give you one. Thank you for your help.

14 (ALTERNATE JUROR DISMISSED AT 11:39 AM.)

15 THE COURT: Thank you. We appreciate your help. All
16 right. We'll be at ease.

17 (COURT IN RECESS AT 11:39 A.M.)

18 (COURT BACK IN SESSION AT 11:40 AM IN THE MATTER OF
19 DONNA HORNE PLAINTIFF VERSUS AMISUB OF SOUTH CAROLINA
20 DEFENDANT.)

21 (JURY PANEL NUMBER TWO, EXITS COURTROOM AT 12:33 PM.)

22 (COURT AT EASE IN THE MATTER OF DONNA HORNE VERSUS
23 AMISUB OF SOUTH CAROLINA/BACK ON THE RECORD IN THE MATTER
24 OF STATE OF SOUTH CAROLINA APPLICANT VERSUS HERMAN LEE
25 ARCHIE RESPONDENT AT 12:35 PM.)

VERDICT:

-184-

1 THE COURT: Is Mr. Archie coming? Is Mr. Archie on
2 the way?

3 (DEFENDANT HERMAN LEE ARCHIE REENTERS COURTROOM.)

4 THE COURT: All right, Mr. Bogel and Ms. Good are
5 present along with Mr. Archie. I understand the jury has
6 reached a verdict. Anything before the jury comes in from
7 the State?

8 MR. BOGEL: No, your Honor, thank you.

9 THE COURT: From the Defense?

10 MS. GOOD: Nothing.

11 THE COURT: All right. Bring in the jury.

12 While Mr. Philips is going to get the jury, let me,
13 again this is the first one of these I've had, is a written
14 order necessary after which ever way they find?

15 MR. BOGEL: If they find he's not a predator a Form IV
16 ends it. If they find he is I've got a commitment order.

17 THE COURT: Okay. That answered my question. Thank
18 you.

19 (JURY REENTERS COURTROOM AT 12:37 PM.)

20 THE COURT: Madam Forelady, I understand the jury has
21 reached a verdict.

22 MADAM FORELADY: Yes, sir.

23 THE COURT: If you'll hand it up to the bailiff the
24 bailiff will hand it to me.

25 (VERDICT RECEIVED UP BY THE COURT.)

VERDICT:

-185-

1 THE COURT: Madam Clerk.

2 MADAM CLERK: The State of South Carolina the County
3 of York in the manner and care and treatment of Herman Lee
4 Archie, Case No. 2016-CP-46-123 the question, "Has the
5 petitioner or the State of South Carolina proved beyond a
6 reasonable doubt that Herman Lee Archie is a sexually
7 violent predator under the South Carolina Sexually Violent
8 Predator Act? We the jury unanimously answer the question
9 as follows: Yes, Herman Lee Archie is a sexually violent
10 predator signed this day by Julia Dibrell October 11, 2016.

11 Ladies and gentlemen of the jury, if this is your
12 verdict so say you all by raising your right hand.

13 Thank you. Let the record reflect all hands are
14 raised.

15 (ALL JURORS AFFIRMED VERDICT WITH RAISED HANDS.)

16 THE COURT: Anything from the State before the jury's
17 dismissed?

18 MR. BOGEL: No, your Honor, thank you.

19 THE COURT: Ms. Good, anything on behalf of Mr. Archie
20 before the jury's dismissed?

21 MS. GOOD: I would ask that the jury be polled, your
22 Honor.

23 THE COURT: All right. The Clerk is gonna ask each to
24 confirm your verdict.

25 MADAM CLERK: When I call your name if you'll please -

VERDICT:

-186-

1 Do they need to stand, Judge?

2 THE COURT: Well, stand. All of you stand and she
3 will call your name and number and once you've answered
4 then you can sit down.

5 MADAM CLERK: Juror Number Thirty-six, Julia Dibrell.

6 Ms. Dibrell, was this your verdict?

7 MS. DIBRELL: Yes.

8 MADAM CLERK: Is it still your verdict?

9 MS. DIBRELL: Yes.

10 MADAM CLERK: Juror Number Forty-seven, Michael D.
11 Faile.

12 THE COURT: You can sit down after you answer. Thank
13 you.

14 MADAM CLERK: Juror Number Forty-seven, Michael D.
15 Faile. Mr. Faile, is this your verdict?

16 MR. FAILE: Yes.

17 MADAM CLERK: And it's still your verdict?

18 MR. FAILE: Yes.

19 MADAM CLERK: Thank you. Juror Number Seven, Sarah L.
20 Austin. Ms. Austin, was this your verdict?

21 MS. AUSTIN: Yes.

22 MADAM CLERK: And it's still your verdict?

23 MS. AUSTIN: Yes.

24 MADAM CLERK: Thank you. Juror Number Eighty-four,
25 Katherine E. Lamb. Ms. Lamb, was this your verdict?

VERDICT:

-187-

1 MS. LAMB: Yes.

2 MADAM CLERK: And it's still your verdict?

3 MS. LAMB: Yes.

4 MADAM CLERK: Thank you. Juror Number One twenty-
5 four, Monty L. Salter. Mr. Salter, was this your verdict?

6 MR. SALTER: Yes.

7 MADAM CLERK: And it's still your verdict?

8 MR. SALTER: Yes.

9 MADAM CLERK: Thank you. Juror Twenty-four, Clark
10 Childs. Mr. Childs, was this your verdict?

11 MR. CHILDS: Yes.

12 MADAM CLERK: And still your verdict?

13 MR. CHILDS: Yes.

14 MADAM CLERK: Thank you. Juror Sixty-four, Lynn R.
15 Hammond. Mr. Hammond, was this your verdict?

16 MR. HAMMOND: Yes.

17 MADAM CLERK: And still your verdict?

18 MR. HAMMOND: Yes.

19 MADAM CLERK: Thank you, sir. Juror Number 1-0-6,
20 Rhonda R. Pearson. Ms. Pearson, was this your verdict?

21 MS. PEARSON: Yes.

22 MADAM CLERK: And still your verdict?

23 MS. PEARSON: Yes.

24 MADAM CLERK: Thank you. Juror Number Fourteen, David
25 R. Blair. Mr. Blair, was this your verdict?

VERDICT:

-188-

1 MR. BLAIR: Yes.

2 MADAM CLERK: And still your verdict?

3 MR. BLAIR: Yes.

4 MADAM CLERK: Thank you. Juror Number One twenty-
5 nine, Sherry Sistare. Ms. Sistare, was this your verdict?

6 MS. SISTARE: Yes, ma'am.

7 MADAM CLERK: And is still your verdict?

8 MS. SISTARE: Yes, ma'am.

9 MADAM CLERK: Thank you. Juror Number Ninety-six,
10 Deborah D. Mills. Ms. Mills, was this your verdict?

11 MS. MILLS: Yes.

12 MADAM CLERK: And is still your verdict?

13 MS. MILLS: Yes.

14 MADAM CLERK: Thank you. Juror Number One eleven,
15 Joseph L. Prince. Mr. Prince, was this your verdict?

16 MR. PRINCE: Yes.

17 MADAM CLERK: And still your verdict?

18 MR. PRINCE: Yes.

19 MADAM CLERK: Thank you.

20 THE COURT: Anything else from the State?

21 MR. BOGEL: No, your Honor. Thank you.

22 THE COURT: Anything else?

23 MS. GOOD: No, sir.

24 THE COURT: Members of the jury panel, thank you. You
25 will be mailed a check and that completes your work for the

-189-

1 week. We've already drawn a jury and started working on
2 the other case so I'm gonna let you leave at this time.

3 Thank you so much for helping us.

4 (JURY DISMISSED AT 12:40 PM.)

5 THE COURT: Anything now the jury's been dismissed?

6 MR. BOGEL: No, not from me. May I approach, your
7 Honor?

8 THE COURT: Yes. Anything, Ms. Good?

9 MS. GOOD: No, sir.

10 THE COURT: Okay. All right, you all can take Mr.
11 Archie back and we'll get the jury in on the other case.

12 Thank you.

13 Ms. Good, you and Mr. Bogel, I appreciate all your
14 courtesies during the trial. Thank you.

15 MS. GOOD: Thank you.

16 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
17 MARKED, RECEIVED INTO EVIDENCE.)

18 (DEFENDANT, HERMAN LEE ARCHIE, EXITS COURTROOM.)

19 (COURT IN ADJOURNED THE MATTER OF THE STATE OF SOUTH
20 CAROLINA VERSUS HERMAN LEE ARCHIE AT 12:42 PM.)

21 (END OF TRANSCRIPT OF RECORD.)
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 10th and 11th days of October, 2016.

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

Wanda Nelson

Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for,
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: Dec 31 / 2016

County: York
Date: October 10, 2016

VOIR DIRE/BATSON SHEET

Case No.: 2016-CP-46-00123 Judge: Honorable John C. Hayes, III

Pl./State: State of South Carolina Pl./State Atty's.: AG James Bogel

Defendant: Herman Lee Archie Defense Atty.: Anna Rawl Good

Court Reporter: Wanda Nelson, CVR-M

<u>Juror No.</u>	<u>Name</u>	<u>Sex</u>	<u>Race</u>	<u>STRIKES</u>			
				<u>*Court</u>	<u>Plaintiff</u>	<u>Defense</u>	<u>Accept</u>
36 **	Julia B. Dibrell	F	W				x -1
18	John C. Bradley	M	W			x-3	
47	Michael D. Faile	M	W				x-2
7	Sarah L. Austin	F	B				x-3
84	Catherine E. Lamb	F	W				x-4
124	Monty L. Salter	M	W				x-5
24	G. Clark Childs	M	W				x-6
32	Gayle B. Crowne	F	W			x-1	
109	Christine M. Petty	F	W		x-3		
64	Lynn R. Hammond	M	W				x-7
106	Rhonda R. Pearson	F	B				x-8
14	David R. Blair	M	W				x-9
68	Meredith M. Hauser	F	W		x-1		
129	Sherry A. Sistare	F	W				x-10
121	William H. Rogers	M	W		x-4		
151	William F. Adkins, III	M	W			x-4	
96	Deborah D. Mills	F	W				x-11
34	Joshua D. Davis	M	B		x-2		
97	Mary E. Mitchell	F	B			x-2	
111	Joseph L. Prince	M	W				x-12
40	Dennis Dover	M	W		x-1		
38	Barbara G. Doncaster	F	W				x-13
13	Latona R. Blackmon	F	B			x-1	

*For the Court column, indicate who made the motion to strike the jurors for cause.

C-Court, P-Plaintiff, D-Defense

** Foreperson

York Circuit Court RANDOM STRIKE SHEET

-192-

JUDGE NAME : Hayes, III, John C.

TRIAL TYPE : Civil

Sorted by: Random Nbr

PANEL ID : 2016CP4600123

DESCRIPTION : 2016CP4600123

Trial

JURY ROOM CRI

Panel II

NAME	JUROR NBR	RACE	SEX	ST	PLTFF	DEL	CHT	REMARKS
1 Dibrell, Julia B <i>foreperson</i>	36	W	F	()	()	()		<i>Seated -1</i>
2 Bradley, John C	18	W	M	()	()	-3	()	
3 Faile, Michael D	47	W	M	()	()	()		<i>Seated -2</i>
4 Austin, Sarah L	7	B	F	()	()	()		<i>Seated -3</i>
5 Lamb, Catherine E	84	W	F	()	()	()		<i>Seated -4</i>
6 Salter, Monty L	124	W	M	()	()	()		<i>Seated -5</i>
7 Childs, G Clark	24	W	M	()	()	()		<i>Seated -6</i>
8 Crowe, Gayle B	32	W	F	()	()	-1	()	
9 Petty, Christine M	109	W	F	()	-3	()	()	
10 Hammond, Lynn R	64	W	M	()	()	()		<i>Seated -7</i>
11 Pearson, Rhonda R	106	B	F	()	()	()		<i>Seated -8</i>
12 Blair, David R	14	W	M	()	()	()		<i>Seated -9</i>
13 Hauser, Meredith M	68	W	F	()	-1	()	()	
14 Sistare, Sherry A	129	W	F	()	()	()		<i>Seated -10</i>
15 Rogers, William H	121	W	M	()	-4	()	()	
16 Adkins, William F III	151	W	M	()	()	-4	()	
17 Mills, Deborah D	96	W	F	()	()	()		<i>Seated -11</i>
18 Davis, Joshua D	34	B	M	()	-2	()	()	
19 Mitchell, Mary E	97	B	F	()	()	-2	()	
20 Prince, Joseph L	111	W	M	()	()	()		<i>Seated -12</i>
21 Dover, Dennis	40	W	M	()	-1	()	()	
22 Doncaster, Barbara G	38	W	F	()	()	()		<i>Seated -13</i>
23 Blackmon, Latoya R	13	B	F	()	()	-1	()	

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF York
STATE VS.

Herman Lee Archie

INDICTMENT/CASE#: 2011GS4603491

A/W#: DJ157106

Date of Offense: 1/1/1987

S.C. Code §: 16-15-0140

CDR Code #: 0103

AKA:

Race: WHITE

Sex: M

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: LEWD ACT COMMITTED UPON A CHILD UNDER 14 YEARS OLD (no longer used after 6/4/96) (see 2468) 0-75

in violation of § 16-15-0140

of the S.C. Code of Laws, bearing CDR Code # 0103

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☒ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Desch, Jenny E.

72806 SC Bar#

Herman Archie Defendant

Daniel O. Hill Attorney for Defendant

011846 SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

8

days/months/years or

under the Youthful Offender Act not to exceed

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

DJ157107, N230105

☒ The Defendant is to be given credit for time served pursuant to S.C. Code

24-13-40 to be calculated and applied

by the State Department of Corrections. 156 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Def. Waives Hearing, ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS:

Recipient:

*Fine:

14-1-206 (Assessments 107.5%)

\$

14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

14-1-211(A)(2) (DUI Surcharge)

\$100

\$

56-5-2995 (DUI Assessment)

\$12

\$

56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

14-1-212 (Law Enforce. Funding)

\$25

\$

14-1-213 (Drug Court Surcharge)

\$150

\$

50-21-114 (BUI Breath Test Fee)

\$50

\$

56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$ 130

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Shirley Broom

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2140

Sentence Date: 12-18-12

STATE'S
EXHIBIT

10-10-16

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$

paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel.

§ 47-12 requires \$500 be paid to Clerk

during probation.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

CERTIFIED TRUE COPY
X
2016 OCT -7 PM 4:34

DAVID HAMILTON
CLERK OF COURT

At a Court of General Sessions, convened on July 19, 2012, the Grand Jurors of York County present upon their oath:

LEWD ACT UPON A CHILD

That the Defendant, Herman Lee Archie, did in York County, South Carolina, on or about September 1, 1986 through on or about December 31, 1987, commit the crime of Lewd Act upon a Child under the age of Fourteen Years, in that the Defendant, who was over the age of fourteen (14) years at the time of the incident, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or any part of member thereof, of victim Child 3, a child under that age of fourteen (14) years at the time of the incident, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the Defendant, Herman Lee Archie, or of the victim, Child 3, in that the Defendant, Herman Lee Archie, did touch and/or rub the vagina of the minor victim, Child 3, with what appeared to be his hand. All in violation of Section 16-15-140, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

YCSO/Neely

dc

ARREST WARRANT NUMBER

Direct Indictment Re:
J-157106

ACTION OF GRAND JURY

/s/ George White

TRUE BILL

10-13-2011 True Billed

Foreperson of Grand Jury

Date: 7/19/12

VERDICT

Foreperson of Petit Jury

Date:

AMENDED DOCKET NO. 2011-GS-46-03491

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 19, Term 2012

THE STATE

VS.

HERMAN LEE ARCHIE

Indictment for

LEWD ACT UPON A CHILD UNDER
THE AGE OF FOURTEEN YEARS

SC Code: 16-15-140

CDR Code: 0103

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to *Alford Plea*

Herman Archie

Defendant

Witness:
Regina J. Rutledge - Ct. Spec.
C.C.C. PLS. AND G.S.

196

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEYork
VS.

Jail

Herman Lee Archie

INDICTMENT/CASE#: 2011GS4603509

A/W#: DJ157107

Date of Offense: 1/1/1988

S.C. Code § 16-15-0140

CDR Code #: 0103

AKA:

Race: WHITE

Sex: M

Age:

DOB:

SS#:

2016 OCT -7 PM 4:34

Address:

City, State, Zip:

DL#:

SID#:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: LEWD ACT COMMITTED UPON A CHILD UNDER 14 YEARS OLD (no longer used after 6/4/96) (see 2468) 0-15

in violation of § 16-15-0140

of the S.C. Code of Laws, bearing CDR Code # 0103

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☒ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Desch, Jenny E.

72806 SC Bar#

Herman Archie Defendant

Daniel D Hill Attorney for Defendant

011846 SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of

8

days/months/years or

☐ under the Youthful Offender Act not to exceed

years.

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to, South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

DJ157106, N230105

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections: 156 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

14-1-206 (Assessments 107.5 %)	\$	
14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
14-1-211(A)(2) (DUI Surcharge)	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
14-1-212 (Law Enforce. Funding)	\$25	\$ 25
14-1-213 (Drug Court Surcharge)	\$150	\$
50-21-114(BUI Breath Test Fee)	\$50	\$
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 130

Obtain GED ☐

Attend Voc. Rehab. or Job Corp

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

no contact w/ victims
Sex Offender Registry
Sex Offender Counseling☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

David Hamilton

Court Reporter:

Shirley Broom

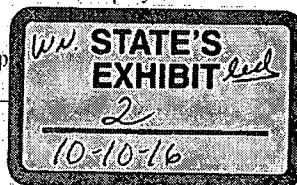
SCCA/217 (03/2011)

Presiding Judge

Judge Code: 240

Sentence Date:

12.18.12



STATE OF SOUTH CAROLINA) CERTIFIED TRUE COPY INDICTMENT
COUNTY OF YORK) 2016 OCT -7 PM 4:34

DAVID HAMILTON
CLERK OF COURT

At a Court of General Sessions, convened on July 19, 2012, the Grand Jurors of York County present upon their oath:

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

YCSO\Neely

dc

ARREST WARRANT NUMBER

Direct Indictment Re:
J-157107

ACTION OF GRAND JURY

/s/ George White

TRUE BILL

10-13-2011 True Billed

Foreperson of Grand Jury
Date: 7/19/12

VERDICT

Foreperson of Petit Jury
Date:

AMENDED DOCKET NO. 2011-GS-46-03509

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

July 19, Term 2012

THE STATE

vs.

HERMAN LEE ARCHIE

Indictment for

LEWD ACT UPON A CHILD UNDER
THE AGE OF FOURTEEN YEARS

SC Code: 16-15-140
CDR Code: 0103

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to *Alford Plea*

Herman Archie
Defendant

Witness:
Stephanie Naylor, Ct. Clerk
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK
STATEYork
VS.

Jail

INDICTMENT/CASE#: 2012GS4603311

A/W#: N230105

Date of Offense: 7/14/2012

S.C. Code: 3661

CDR Code #: 3661

AKA:

Race: WHITE

Sex: M

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: CRIMINAL SEXUAL CONDUCT WITH A MINOR, 3rd degree - Commit/Attempt Lewd Act (victim under 16 y/o) (0-15 yrs)

in violation of § 16-3-0655 of the S.C. Code of Laws, bearing CDR Code # 3661

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Desch, Jenny E.

72806 SC Bar#

Defendant

Attorney for Defendant

011846 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: DES 157106, DIS 157107☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 156 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SGDPSPS

Recipient:

*Fine:

14-1-206 (Assessments 107.5 %)

14-1-211(A)(1) (Conv. Surcharge)

14-1-211(A)(2) (DUI Surcharge)

56-5-2995 (DUI Assessment)

56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

14-1-212 (Law Enforce. Funding)

14-1-213 (Drug Court Surcharge)

50-21-114 (BUI Breath Test Fee)

56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/cr

\$

\$5

\$

\$ 130

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Cor ☐

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2140

Sentence Date: 12-18-12

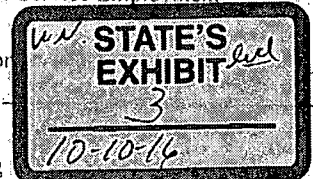
Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

David Hamilton

Shirley Broom



STATE OF SOUTH CAROLINA)

CERTIFIED TRUE COPY

INDICTMENT

COUNTY OF YORK)

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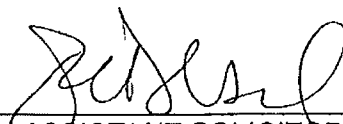
DAVID HAMILTON
CLERK OF COURT

At a Court of General Sessions, convened on September 13, 2012, the Grand Jurors of York County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, THIRD DEGREE

That the Defendant, Herman Lee Archie, a person over the age of fourteen (14) years, did in York County, South Carolina, on or about July 14, 2012, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: by touching a minor female child, Child 1, age 3 (D.O.B. 2008) between the legs, towards her vagina, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, all in violation of Section 16-03-655, S.C. Code of Laws 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

YCSO\Neely

dc

ARREST WARRANT NUMBER

N-230105

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury

Date: 9/13/12

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-46- 03311

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

September 13, Term 2012

THE STATE

vs.

HERMAN LEE ARCHIE

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR,
THIRD DEGREE

SC Code: 16-03-655

CDR Code: 3661

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to Alford Plea.

Herman Archie
Defendant

Witness:
Stephanie Naylor, Crim Supv
C.C.C. PLS. AND G.S.

ARREST WARRANT

N-230105

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

York

THE STATE

2012/23500

against

Herman Lee Archie

Address:

Clover, SC 29710-

Phone:

SSN:

Sex: M Race: W Height: 6 Weight: 201DL State: SC DL #:DOB: Agency ORI #: SC0460000Prosecuting Agency: York County SheriffProsecuting Officer: Carson Neely - N7078Offense: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd Act (victim underOffense Code: 3661Code/Ordinance Sec: 16-03-0655(C)This warrant is CERTIFIED FOR SERVICE in the☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Herman Archie
7-14-12
Carson Neely
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
 1675 York Hwy
 York, SC 29745

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant Carson Neely whobeing duly sworn deposes and says that defendant Herman Lee Archiewithin this county and state on or about 07/14/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd Act (victim under 16 & actor over 14 yrs)
3661

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Defendant did wilfully violate the SC Code of Laws by committing a lewd and lascivious act upon the body of a minor child (dob 2008). This occurring Clover, York County, SC. Defendant's date of birth is 1965.

Police investigation

Defendant statement

Witness statement

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address 1675 York Hwy.York, SC 29745--000Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe thaton or about 7/14/2012 defendant Herman Lee Archie

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York) as set forth below

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd Act (victim under 16 & actor over 14 yrs)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 07/14/2012

Signature of Issuing Judge

Lewis Daniel Malphrus Jr.

Judge Code: 5071Judge's Address Moss Justice CenterYork, SC 29745-7423Judge's Telephone (803)628-3095Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

RECEIVED
 2012 JUL 14 AM 8:26
 OFFICE OF THE CLERK OF COURT
 DETENTION DIVISION
 YORK, SOUTH CAROLINA

1. How long is Conviction?

2. Will there be reviews if convicted to allow for release?

You must rely on the evidence not my
charge or the law

John H. Hargis

Please return this note with the
Verdict form at the end of your
deliberation



Note @ 12:00 pm

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 HERMAN LEE ARCHIE,)
 RESPONDENT.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-46-00123

ORDER OF COMMITMENT

RECEIVED

OCT 17 2016

SC Court of Appeals

The trial of this case was held in the York County Court of Common Pleas the week of October 10, 2016. A jury of citizens from York County heard this case pursuant to a request for a jury trial filed by the State. Senior Assistant Attorney General James G. Bogle, Jr. represented the State and Anna R. Good, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:

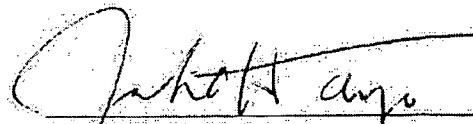
The State has proven beyond a reasonable doubt that Respondent, Herman Lee Archie, is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

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

(a) Respondent Herman Lee Archie is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent Herman Lee Archie is to continue to be detained at the York County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health, at 4460 Broad River Road, Columbia, SC 29210. The Detention Center is to transport Respondent on such scheduled date as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.



JOHN C. HAYES III
 Sixteenth Judicial Circuit
 Court of Common Pleas

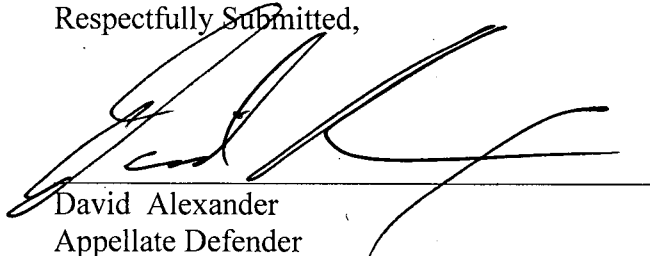
16/12, 2016
 York, South Carolina

2016 OCT 11 PM 1:29
 RECEIVED
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

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,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 6th day of July, 2017.

RECEIVED

JUL 06 2017

SC Court of Appeals