

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Berkeley County

Honorable Ralph F. Cothran, Circuit Court Judge

\_\_\_\_\_  
IN THE MATTER OF THE CARE AND  
TREATMENT OF MICHAEL KAMINSKI,

**RECEIVED**

**AUG 18 2017**

**SC Court of Appeals**

APPELLANT

APPELLATE CASE NO. 2016-000606

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RECORD ON APPEAL  
\_\_\_\_\_

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1 General's office in Columbia. In these types of cases,  
2 people sometimes wonder why it's not with a local  
3 solicitor or the county attorney doing them. And the  
4 answer, well, when the general assembly wrote this law,  
5 the law you'll hear about today, they wrote down in the  
6 law that our office will be in charge of presenting these  
7 cases all around the state. I have eight different  
8 circuits in the state, including ninth circuit, which is  
9 Charleston and Berkeley Counties. There's another lawyer  
10 in our office, Attorney Moyer, has the rest of the state.

11 Here's what the general assembly said back in 1998.  
12 When they wrote this law they defined that a mentally  
13 abnormal and extremely dangerous group of sexually  
14 violent predators exists who require involuntary civil  
15 commitment in a secure facility for long-term control  
16 care and treatment. We further find the likelihood these  
17 sexual violent predators will engage in repeated acts of  
18 sexual violence if not treated for the mental condition  
19 is significant. So that's the law.

20 Now in this particular case, The State has to prove  
21 two things to you. Number one: has Mr. Kaminski been  
22 convicted of a sexually violent crime. The law defines  
23 sixteen, there's a list, sixteen crimes called sexually  
24 violent and he's been convicted of two of them. Lewd act  
25 on a minor child times two. Convictions back, I think

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1 2009 is when these happened. Now, he's been convicted.  
2 He's served his time. We're not here about that. The  
3 issue before you is does he have a mental abnormality or  
4 a personality disorder that makes him likely to commit  
5 the same types of crimes if he's released into the  
6 community. If he does, then the question is can he  
7 control himself enough and if not, does he need to be  
8 locked up, confined if you will, in the secure facility  
9 run by the Department of Mental Health or what they call  
10 long-term control care and treatment. Basically this is  
11 a civil commitment process.

12 Now The Court appointed Dr. Amy Swan. She is a  
13 psychologist who lives in Florida but she's licensed in  
14 several states, including South Carolina. They appoint  
15 somebody with the Department of Mental Health to evaluate  
16 these guys that come to this process. And Dr. Swan,  
17 because she's worked here and is licensed here...even  
18 though she lives in Florida, she was hired by the  
19 department to come here and evaluate several cases.  
20 She's done about, I'd say, twenty or thirty and this is  
21 another one. Her job was to evaluate the guy as a  
22 psychologist, examine him, use whatever tests or  
23 assessments you use in that profession to try and find  
24 out whether or not, in her expert opinion, she has an  
25 opinion, whether or not he does fit the criteria to be

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1 considered a sexually violent predator. Remember two  
2 things; one: convicted of the right kind of crimes, and  
3 that's happened. Number two: having a mental  
4 abnormality, and he does. The mental abnormality this  
5 man suffers from is called pedophilic disorder. You  
6 might have heard it called pedophilia. A sexual deviant  
7 interest toward young children. And that was what  
8 happened here. The young boy who he was convicted of  
9 offending was about eight years old.

10 So, now you're also thinking that this is civil  
11 court. Normally, I would expect to hear an auto wreck  
12 case or medical malpractice or something like that. In a  
13 civil court, what's the burden of proof? Who's got to  
14 prove what to you? The burden of proof in civil court  
15 normally is what they call preponderance of the evidence.  
16 Think of a scale balancing fifty-one percent, forty-nine  
17 percent, kind of like that. When the legislature wrote  
18 this law, they took it a step further. They said that  
19 The State has to prove the case to all twelve of you, to  
20 the jury, beyond a reasonable doubt.. The same burden of  
21 proof that they require in criminal court. We have to  
22 meet here. Now what you'll hear from today, maybe even  
23 tomorrow, you'll hear from Dr. Swan. She met with this  
24 guy. She met with Mr. Kaminski. She explained to him  
25 what this was about and he agreed to meet with her and

1 talk with her. She talked with him for about three or  
2 four hours, she administered some tests, and then she  
3 came up with an opinion, and she'll testify to you, about  
4 whether or not he has that mental abnormality and whether  
5 or not he can't control it so that he needs to be  
6 committed to a long-term control care and treatment. One  
7 thing that's important about what I just said, I used the  
8 word opinion, how she's going to give an opinion.  
9 Normally in a court case, witnesses can only testify  
10 about things they see, things they hear, things they  
11 smell. Like I saw her run the red light; I heard the gun  
12 go off; I saw him fleeing the police. Something like  
13 that. Normally witnesses can only testify about things  
14 they see or things they hear or smell. But if a witness  
15 has a level of education and is trained in a particular  
16 field and that level of education is such that it assists  
17 the person deciding the facts, and that person is you,  
18 the jury. And that person, that expert, can be declared  
19 an expert witness by The Court and allowed to give an  
20 opinion. And that's what's going to happen with Dr.  
21 Swan. She will give her professional opinion to a  
22 reasonable degree of psychological certainty as to  
23 whether or not Michael Kaminski has that mental  
24 abnormality and can he not control it to where he needs  
25 to be committed to long-term control care and treatment

1 in the Department of Mental Health. That's what the case  
 2 is. I thank you for serving. All I would suggest is  
 3 listen to everything you hear from the witness stand,  
 4 look at any exhibits that are introduced into evidence.  
 5 When all that is over, the judge will explain the law to  
 6 you and apply the law as he explains it and I believe you  
 7 will find that Mr. Kaminski is one of those rare people  
 8 that has this mental abnormality and cannot control and  
 9 needs to get further treatment. Thank you, Your Honor.

10 The Court: Yes sir. Thank you.

11 Mr. Falk: May it please The Court?

12 The Court: Yes sir.

13 **(Opening by Mr. Falk)**

14 Mr. Falk: Ladies and Gentlemen, Mr. Bogle. I'm  
 15 representing Michael Kaminski here today. My wife loves  
 16 to watch Tom Cruise movies and I hate watching them with  
 17 her because basically she's always comparing me to him.  
 18 But we were watching one the other day. We were watching  
 19 this one "Minority Report". I don't know if any of y'all  
 20 have seen that one but that's one where at some point in  
 21 the future, some people will predict how some of these  
 22 behaviors are going to be. They would come up to them  
 23 and then look them in the eye and then they would decide  
 24 whether or not they had to be put away, whether they  
 25 would be convicted of a crime before they ever committed

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1 a crime based on the view of the future. At some extent,  
2 that's what Dr. Swan is going to do here today. She is  
3 going - she has evaluated my client and my client has had  
4 a tough road. I'll get into that in a little bit. But  
5 my client has had a tough road and he's had some  
6 difficulty moving along. But the question here today, I  
7 mean, there's no question to what he did and he committed  
8 acts, he's convicted of a crime of which would be  
9 considered pedophilia. He did that, yeah, I get that.  
10 That's what he did. The question is whether or not he is  
11 a risk; whether or not he is a risk to do anything in the  
12 future. And that's going to be difficult for y'all to  
13 do. Because you're always going to want to sort of let's  
14 just play it on the safe side and just maybe he needs  
15 some more treatment. But you have to consider that he's  
16 been in prison since 2009 and prior to that in 2007, he  
17 did about seven-hundred days in Hill-Finklea Detention  
18 Center. He has been, he has been in situation where he  
19 has been getting treatment. He has been addressing  
20 issues that, he realizes that there's issues with his  
21 personality. He's been getting anger management  
22 treatment and he's been getting treatment about  
23 substances and he's had an opportunity to go through some  
24 treatment and talk about victim impact and being  
25 empathized with their victims. The thing that Dr. Swan

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1 has not done is in her evaluation she is giving no credit  
2 to the nine years that he has spent, really evaluating  
3 his life. He has been reformed. He's been to jail, he's  
4 been to prison, and he wasn't one of those that were just  
5 sitting in there playing video games the whole time.  
6 He's realized that he had to look at himself and find out  
7 why he has been so angry in the past and what he needs to  
8 do to change his life. And when I tell you he's been  
9 angry, he's had a tough life. He's had --- he was  
10 adopted and I don't think his parents probably really  
11 could appreciate some of the difficulties that he had.  
12 He has a relatively low IQ, he was adopted into a family  
13 of servicemen, a family of --- he was in, I guess, he was  
14 adopted in Germany and I think his father wasn't exactly  
15 the great santini, but I think he was pushing him along  
16 and couldn't really understand why his son couldn't do  
17 some of the other stuff and Dr. Swan will tell you that  
18 there's a reason for that. He's had some other problems  
19 in his life. He's the kid that always got beat up at  
20 school, he has never had a good break. You can look at  
21 him and you can see he has that eye and that's from an  
22 automobile accident that he suffers from. He's had some  
23 difficulties. There's no question about that. I mean  
24 he's committed some crimes that are horrible and he'll  
25 admit to that and he'll tell you about that when he takes

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1 the stand. But at the end of the day, you really need to  
2 decide whether or not enough is enough, whether or not he  
3 has paid his price, whether or not he has been  
4 rehabilitated, and whether or not it's okay to let him  
5 head back out into society.

6 Now there are a couple of different kinds of mental  
7 illness cases. I practice a lot of criminal law and you  
8 can have cases where somebody is found to be not guilty  
9 by reason of insanity. And that means that the person  
10 doesn't have any --- was not able to make a decision  
11 between right and wrong. And those people wind up going  
12 to a facility to get treatment. That's not the facility  
13 that my client will go to if he is found to be a sexually  
14 violent predator. The facility where he goes to as a  
15 sexually violent predator is the only people in that  
16 facility are going to be sexually violent predators. So  
17 it's not the same as somebody who has been found to have  
18 a mental defect. Excuse me, being found not guilty by  
19 reason of insanity. Now he pled, when he pled guilty to  
20 these charges, he pled guilty in his plea that the  
21 solicitor agreed to was that he was guilty but mentally  
22 ill. He's known that he's got mental illness issues.  
23 He's had mental illness issues all along. There's no  
24 doubt about that. He understands his mental illness  
25 issues. And that's why when he spent nine years in the

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1 Department of Corrections in the system, he did something  
2 to try and address those mental illness issues and I  
3 think it's time that, given the opportunity, to go out  
4 and try and live what's left of a normal life that's  
5 available to him. I hope that you all can sort of put  
6 aside what you have in your mind. I mean, I get it. A  
7 lot of people say that somebody who's committed a crime  
8 against a child, that we ought to lock them up and throw  
9 away the key. And he did nine years, that's not even  
10 half long enough for him to serve. I need you to sort of  
11 put away that prejudice, I got to believe, that some of  
12 y'all have. You have to put away that prejudice and just  
13 look to see whether or not, because you're going to hear  
14 from him. He's going to testify here probably tomorrow.  
15 And you'll have an opportunity, you'll probably spend as  
16 much time listening to him as Dr. Swan did when she  
17 evaluated him. And you'll have an opportunity to decide  
18 whether or not you think that he is the same person he  
19 was in 2009. Or whether or not he's a different person  
20 today. And if he's a different person today, I think  
21 that it would be appropriate to decide that it's time for  
22 him to go, to be let free. Thank you.

23 The Court: Okay. You ready for our first witness?

24 Mr. Bogle: Yeah I think she's in the room next door.  
25 You want me to go get her?

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1 The Court: Sure.

2 Mr. Falk: May we approach?

3 The Court: Sure.

4 (Attorneys approach)

5 The Court: Ladies and gentlemen, I need to send you  
6 to the jury room for a minute while I deal with a matter  
7 of the law. I'll get you back out here just as quick as  
8 I can. And I remind you, don't discuss the case yet.  
9 Thank you. If you'll follow the bailiff, he'll take you  
10 to the jury room.

11 (Jury exits courtroom 3:22)

12 The Court: Okay.

13 Mr. Bogle: Let's see. Let me get Dr. Swan in here.

14 Mr. Falk: Your Honor, may I approach?

15 The Court: Sure.

16 Mr. Falk: This is just the list of description of  
17 the testimony that's from Dr. Swan and I'll address  
18 specifically my objections to it but that's the items I  
19 have concerns about I expect to come from her testimony.

20 The Court: Okay.

21 Mr. Bogle: Your Honor, may it please The Court? The  
22 State's first Motion In Limine has to do with talking and  
23 questioning about the where respondent might go. As I'm  
24 sure Your Honor knows, since we're seeking a civil  
25 commitment, the only burden of proof upon The State is to

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1 show two things. Number one: has he been convicted of  
2 the right kind of crime, a sexually violent crime. And  
3 number two: does he have a mental abnormality or a  
4 personality disorder or both that makes him likely to  
5 commit such crimes again unless he's confined for long-  
6 term controlled care and treatment. Now, the Department  
7 of Mental Health facility where these guys go is  
8 currently located on the premises of the Department of  
9 Corrections, Broad River Corrections Institute in  
10 Columbia. There's another location located on Farrow  
11 Road where people go that have physical illnesses as well  
12 as mental illnesses. The question is we would ask in our  
13 first motion that there not be any question or testimony  
14 about the fact that this is in a prison, it's a life  
15 sentence, that they're being sent away for a long time,  
16 they're being punished. It's a civil commitment; it is  
17 not punishment. Testimony about it being death row  
18 because one of the wings that they're in is the old death  
19 row at Broad River. And such questions will distract the  
20 jury, have no value of nothing to do with what we have to  
21 prove and would be unfair and might distract the jury  
22 from their task at hand. We would ask any questions  
23 about the where he's going to go, location, it being the  
24 former death row, behind the wire, at a prison, being  
25 punishment not be allowed. That's our first motion.

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1           The Court: Okay. Do you want to respond to that Mr.  
2 Falk?

3           Mr. Falk: Yes Your Honor. Obviously I'm not going  
4 to talk about it being at death row but I do think that  
5 there is some discussion that the jury needs to know  
6 about that because the - in order to be a sexually  
7 violent predator, he has to be confined to a secure  
8 facility. So the jury needs to know what a secure  
9 facility is and there's a difference between a secure  
10 facility at where he would go as opposed to the other  
11 property, places on Farrow Road. And regarding treatment  
12 especially, I do think there's an issue, especially in  
13 this case. My client was found guilty, pled to not  
14 guilty, but mentally ill. He went to the Department of  
15 Corrections, he did, you know, as you know somebody under  
16 that statute is going to get in there and they're going  
17 to be getting mental health evaluation and counseling,  
18 probably the first nine months while he was incarcerated,  
19 he got some of that. Additionally, he did some more, as  
20 I eluded to in my opening statement. He did a lot of  
21 other things from the Department of Corrections as far as  
22 counseling. To say that that's, I think that that's  
23 relevant because I think the State has to say why that's  
24 inadequate. They can't just say it's inadequate without  
25 saying specifically what they need and how, what he would

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1 be getting is significantly different from what he has  
2 already done. I mean the evaluation that Dr. Swan gave  
3 is basically the snapshot of him in 2009 when he was -  
4 it's basically the snapshot of what he was like in 2009.  
5 He had only two offenses; one disciplinary offense while  
6 he was in custody. I mean, my point is - what I'm going  
7 to argue is that he has already been rehabilitated in the  
8 nine years that he's been in custody and if he needs more  
9 rehabilitation, we'd want to know why what he already has  
10 is not adequate. And if it's not adequate, I need to  
11 know what's different about it specifically.

12 The Court: Okay.

13 Mr. Bogle: My second motion on treatment -

14 The Court: Let me deal with the first one. His  
15 first motion as far as facility, death row, I mean,  
16 obviously the fact that part of this is long-term  
17 commitment and care, and I think you can at least go into  
18 some minimum by way of commitment and care versus, I'm  
19 not going to let you talk about death row and the fact  
20 that he's going to ...

21 Mr. Falk: I have no intention to ...

22 The Court: And so that seems relatively - and you  
23 just told me that's not an issue that you're really going  
24 into anyway.

25 Mr. Falk: Right.

1           The Court: Now the second issue is whether he's  
2 received adequate care in the Department of Corrections  
3 through whatever mental health. And so you object to  
4 him. Is that not an issue he can't ask the doctor on  
5 cross examination.

6           Mr. Bogle: He can ask her about that. When I  
7 mention treatment, my second motion in limine has to do  
8 whether or not he can examine or bring out evidence about  
9 the treatment that Mr. Kaminski might receive at the  
10 Department of Mental Health. All I'll go into that,  
11 that's a separate issue. Cross-examining her about what  
12 she found in her examination of SCDC records and what she  
13 got from him about what he's had at SCDC, that's probably  
14 fair game.

15           The Court: Okay. I agree.

16           Mr. Falk: But to the extent, she's not going to say  
17 it's inadequate, it's not what he would get had he gone  
18 to SVP treatment program then I think the jury needs to  
19 know why it's going to be different so if they need to  
20 have some, because I think a lot of what they do at the  
21 SVP is very similar to what he has already been doing.

22           The Court: And you think he can't ask her about  
23 that?

24           Mr. Bogle: Well, you got to remember what we're  
25 required to prove. The burden of proof on The State is

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1 just what I mentioned earlier. Has he been convicted of  
2 the right kind of crime and does he have the mental  
3 abnormality that he can't control. And that's it. For  
4 us to go into the issue of treatment, you get into places  
5 to talk about the type of treatment he might get. The  
6 first problem is it places an additional burden on The  
7 State, which is not in the statute. The second thing is  
8 it is speculative because Dr. Swan has no idea what he  
9 will get and what type of treatment he might need at the  
10 Department of Mental Health. It would be speculative at  
11 best. And third, does it's prejudice outweigh the  
12 probative value that would cause the jury to speculate on  
13 things that are not before them. So any issue is the  
14 type of treatment he might get if he's committed would  
15 not be allowed under those reasons. Or should not be  
16 allowed for those reasons. Not our burden of proof.  
17 It's speculative and it may prejudice the jury and cause  
18 them to wonder about the field, looking for things that  
19 aren't before them.

20 Mr. Falk: I disagree with Mr. Bogle's  
21 characterization of what The State has to prove because  
22 my client, he has a diagnosis of pedophilia, I'm sure Dr.  
23 Swan will say you'll always have the diagnosis of  
24 pedophilia. The issue is whether or not he needs to be  
25 confined to a long-term care facility whether or not it

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1 is likely he would commit an offense of sexual violence  
2 if not confined to a long-term care facility. It's a two  
3 part test. It's A: Does he have the disease and I'll  
4 give you that but it's the risk of recidivism is what I'm  
5 sure Dr. Swan is going to talk about. And I think the  
6 treatment that he has gone to is already addressed the  
7 recidivism risk. It's more that it's just he has a  
8 mental abnormality.

9 The Court: Well I think that even based on Mr.  
10 Bogle's stipulation that the treatment that he's already  
11 gone through clearly is relevant as to whether he needs  
12 further treatment. Because, you know, I guess on of the  
13 issue is what treatment he needs or speculating on what's  
14 going to happen. I don't know that she can address that  
15 or not and I guess it's almost one of these situation is  
16 you're going to have to object if a question comes out  
17 that it is speculative and she doesn't know about. But  
18 clearly it seems to me that whatever treatment he  
19 received at the Department of Corrections through mental  
20 health at the Department of Corrections dealing with his  
21 abnormality is relevant in this case and you can ask her  
22 about that and her decision whether he needs further  
23 treatment or not and that is something they may have to  
24 decide. But, you know, as far as speculation and all,  
25 the treatment, you know, if she was running the program

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1 and she's setting up all the treatment that's one thing  
2 but if she's not she may not know that.

3 Mr. Falk: Can I ask her whether or not she knows it  
4 on the stand? If she answers the question and she says  
5 no that's fine.

6 Mr. Bogle: Again, we're getting into ... it's not  
7 what we have to prove. It might cause the jury to  
8 speculate to things we don't have to prove. The statue  
9 is very clear about the elements that the state has to  
10 prove.

11 The Court: I understand that and I'm not trying to  
12 put an additional burden on what you have to prove, it's  
13 just a question to as to whether he's in a situation  
14 where he needs further treatment, I guess in this  
15 scenario we're not trying the treatment. I mean, I'm not  
16 in a situation to say, well, you know, they're not going  
17 to determine whether the treatment is adequate or not,  
18 whether he needs it or not.

19 Mr. Falk: I appreciate that but the jury could also  
20 think what he needs is something radically different from  
21 what he is already done. My contention is it is not.  
22 He's, you know, they meet once a month, they meet once a  
23 week. They have homework, they come back, they discuss  
24 scenarios, it's group feedback. He's been doing that.  
25 And if the jury thinks he needs something special that's

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1 different from what he has already done. I think that's  
2 where the prejudice is to my client. Because I think  
3 what he's going to get at this stage is basically what he  
4 has been doing.

5 The Court: Well, I assume that her evaluation has  
6 been conducted after some form of treatment. I guess it  
7 becomes important. She evaluated him two years ago. Since  
8 the time she's evaluated him to now then whatever  
9 treatment he received then that may change her  
10 evaluation. That is relevant. If she evaluated him two  
11 weeks ago, that may not be.

12 Mr. Bogle: See the information we have from her, he  
13 told her that he never got specific sex offender  
14 treatment while at the Department of Corrections.

15 The Court: It's your contention now that he did get  
16 sex offender treatment?

17 Mr. Falk: My contention is, he got treatment that  
18 would be relevant to sex offender treatment discussing  
19 impulse control, victim empathy, which are all going to  
20 be components of sex offender treatment.

21 Mr. Bogle: Again, we don't know. They have a  
22 specific separate thing at the Department of Corrections  
23 about sex offender treatment known by that and nothing  
24 else. He didn't know. He might have gotten something  
25 else for anger management and being a good guy and all

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1 that but he didn't get the stuff that has to do with the  
2 sex offender treatment.

3 The Court: Well, I mean, anything that is relevant  
4 to her opinion as to what he needs, I think is fair game.  
5 You know, she's basing her opinion on that and I think  
6 it's relevant and you can ask her about it. If it has  
7 nothing to do with her opinion then it's not, okay? I  
8 don't know how else to answer that. You ask the  
9 questions and if it's ...

10 Mr. Bogle: See what happens.

11 The Court: ... if it's totally irrelevant and has  
12 nothing to do with it then I'll sustain the objection if  
13 the State makes it. Anything else?

14 Mr. Bogle: Well, I was handed the motion like five  
15 minutes ago from Mr. Falk about excluding and not letting  
16 her make any reference to four different things. The  
17 first one, as part of this evaluation Dr. Swan had a PPG  
18 or a penile plethysmograph run on Mr. Kaminski. The  
19 expert for doing that sort of thing is Dr. William Burke  
20 down in Summerville. So, she had him sent down there to  
21 have Burke run a report. Now, we don't plan to introduce  
22 Dr. Burke's report into evidence. At the same time, Dr.  
23 Swan is also trained on the PPG. This is like you're  
24 going to the doctor because your chest is hurting and the  
25 doctor sends out for x-rays. He doesn't take the X-rays.

1 He might read them when they get back maybe even someone  
2 else reads them and reports to him. An expert in these  
3 types of cases often consult with other experts who might  
4 want to run the test. So, Dr. Burke may have run a PPG,  
5 he provides the results to Dr. Swan, who has expertise  
6 and knowledge of the PPG, having been trained on it, she  
7 then reads it and have her testify how it's relevant and  
8 how it's a part of her overall opinion. How it impacted  
9 upon her opinion. So, as far as introducing Dr. Burke's  
10 report, we don't plan to. As far as Burke testing the guy  
11 and then her reading the result of that test, that's what  
12 experts do all the time. We plan to ask her about that.

13 The Court: You want to address that Mr. Falk?

14 Mr. Falk: I don't see anything in her report. Dr.  
15 Burke's report has all of the read outs. The 2 year old  
16 report or whenever it was. He has all the date from the  
17 PPG. That's the part I'd be concerned about coming in. I  
18 mean, if she provided any fresh testing, I believe that's  
19 a separate issue which I would like to address further,  
20 but as far as any of the results that Dr. Burke had from  
21 this report I don't think are relevant. The Burke  
22 reports that I've seen in the file go back to the  
23 criminal case that dated 2008 and 2009. Dr. Swan is part  
24 of --- all that can be appointed by the Court alleged  
25 here and have a new PPG run on the guy. She'll talk

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1 about. So, 2008, 2009 PPG I don't think is relevant.

2 The Court: Okay. And is your position --- I mean,  
3 understanding I don't know if it's relevant at this time,  
4 it maybe depends on what you're asking, but if he runs a  
5 new one and he says he's not going to put in Dr. Burke's  
6 PPG, is that right, Mr. Bogle?

7 Mr. Bogle: Yes.

8 The Court: Okay.

9 Mr. Falk: Your Honor, there's a issue just so I can  
10 preserve an issue for him. The case of Manigo, Henry  
11 Manigo talks about the hearsay testimony that can come in  
12 through an expert.

13 The Court: Right.

14 Mr. Falk: And the case specifically said that I  
15 think it was addressed on appeal. I think it was probably  
16 an oral argument. I think the issue was addressed but it  
17 must not have been briefed because the court made a  
18 reference to it but it was never briefed. So, I will  
19 assert here that bringing any scientific results through  
20 a doctor who did not provide those results is going to be  
21 a violation of the sixth amendment confrontation clause  
22 rights and his rights under the South Carolina  
23 Constitution. I guess his right to a jury trial and his  
24 right to a due process under the South Carolina  
25 Constitution. I know the courts have not addressed that

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1 yet but I do think you've got a confrontation clause  
2 issue that you've got another expert testifying about  
3 what a non in court expert is testifying to. In criminal  
4 cases there is plenty of law out there as far as a non  
5 expert who did not provide the testimony can boot strap  
6 it into a trial and I think there's a case that, there's  
7 a 2015 case McCray where they addressed the issue in  
8 that. I think the case law on that area is that if the  
9 expert actually does something with the report and  
10 incorporates it somehow into their report that's one  
11 thing but if they just testify as to the results from  
12 another report then that just is sort of skirting the  
13 confrontation clause issue.

14 The Court: Okay. Do you want to respond to that?

15 Mr. Bogle: Well, we go back to Rule 703 of the Rules  
16 of Evidence, which makes it very clear that the facts and  
17 data that the expert relies upon may be perceived by or  
18 made known to her at or prior to the hearing. If it is  
19 the type of stuff reasonably relying upon the experts in  
20 her field and she'll say that it is, then the facts of  
21 that need not be admissible into evidence per se. So,  
22 what we've got here is she is trying to do an overall  
23 evaluation of this man. She administer two psychological  
24 assessments. She also had administered by Dr. Burke at  
25 PPG, the report was given to her and based on her

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1 training and expertise with the PPG, she could read it  
2 and make and tell what it says and figure out how that  
3 affects her opinion. So, it's straight under Rule 703  
4 and the case I quote from is State vs. Kudrow from 2005.

5 Mr. Falk: And I can quote from two new cases since  
6 then where if you look at Jones vs. Doe, which is 372 SC  
7 53 640 SE2d 514 and also in Allegro vs. Scully which is 400  
8 SC 33, 733 SE2d 114, both of them basically say the same  
9 thing that the rule addressing this Rule 703, the rule  
10 does not allow for the unqualified admission of hearsay  
11 evidence merely because an expert has used in forming an  
12 opinion rather set forth in one of the treatises and I'm  
13 quoting from page, I'm sorry, I don't have the ... "That  
14 the expert may testify to evidence even though it is  
15 admissible under the hearsay rule but allowing the  
16 evidence to be received for this purpose does not mean it  
17 is admitted for its truth. It is only for the limited  
18 purposes for the jury and the basis for the experts  
19 opinion and therefore it does not constitute a hearsay,  
20 rule exception. Then in Allegro, again it says the Rule  
21 703 does not allow the admission of hearsay simply  
22 because an expert used it in forming his opinion. The  
23 rule only provides that an expert can give an opinion  
24 based on the facts that were not admitted into evidence.  
25 I mean, it's not a new exception to the hearsay rule. I

1 think both of those cases if you look at Doe and you look  
2 at Allegro, both saying that we can't just have this  
3 stuff come in through the experts, that's hearsay  
4 testimony.

5 Mr. Bogle: It doesn't change the rule. Everything  
6 that Mr. Falk says doesn't change the underlying basis of  
7 the rule. If it's part of her opinion, in forming her  
8 opinion, she can make reference to it. It may not be  
9 admissible standing along, it's not a hearsay issue, it's  
10 an opinion issue.

11 Mr. Falk: Then it becomes a relevancy issue ...

12 Mr. Bogle: ... to explain to the jury what  
13 happened and how it affects your opinion she's got to  
14 talk about the underlying facts behind the crime. What  
15 is it about this crime that she found significant to her  
16 to help her reach an opinion as to whether or not this  
17 guy can control his behavior. On the case law on that, we  
18 submitted a Memorandum of Law to the court in our  
19 previous documents is abundant in allowing that type of  
20 background information into evidence in a sexually  
21 violent predator act.

22 The Court: And I agree and I don't think that's what  
23 he is objecting to. And maybe I missed it. She  
24 certainly can testify as to certain things she used in  
25 forming her opinion, but can't just read his report into

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1 evidence if it wasn't otherwise admissible. I mean, the  
2 fact that, I assume that she wasn't going to do that. If  
3 she looked at it and you told me you weren't going to  
4 admit the report into evidence and so the report itself  
5 doesn't come in. Now, you know, it's kind of like ruling  
6 in the blind. I certainly think under the rule she has a  
7 right to use other reports and other documents in forming  
8 her opinion and explaining how she came to that opinion.  
9 She just simply can't put those documents in when she  
10 didn't create them.

11 Mr. Bogle: Let's just see what happens when we get  
12 there.

13 Mr. Falk: Well, she's looking at a police reports  
14 and she's reading in witness statements, there's a point  
15 there that the relevancy as far as what she based her  
16 opinion on probably does not require a wholesale  
17 quotation of what the witnesses statement was.

18 The Court: Right.

19 Mr. Falk: Because that would clearly be trying to  
20 come back in and try him twice for the same crime.

21 The Court: Right.

22 Mr. Falk: I appreciate that there's a point where  
23 she is obviously entitled to talk about things and I  
24 think there becomes a big back door to let all this  
25 testimony in which goes beyond what is necessary for her

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1 to show her basis of her report.

2 Mr. Bogle: That's where you go to the Corley case in  
3 2003, 577 SE2d 451 where the Supreme Court held that the  
4 probative value of the underlying details of the crime  
5 outweigh any danger of undue prejudice. Dr. Donna  
6 Schwartz-Watts made the diagnosis there. She talked  
7 about the underlying details behind the crime. Same  
8 thing in the Matter Care and Treatment of Harvey. Now,  
9 Harvey was reversed for a different reason. Having to do  
10 with introduction of a document but the underlying facts  
11 in Harvey that Dr. Donna Schwartz-Watts could make the  
12 diagnosis and explain what he done to get there. The  
13 underlying details behind the crimes with a five year old  
14 younger brother and that was all allowed. The details and  
15 underlying sexual offenses if it's necessary for her to  
16 explain to the jury how she gets to the conclusion this  
17 guy is a predator, she's got to tell them why. And this  
18 has been allowed over and over again by the Courts of  
19 South Carolina in these types of cases.

20 Mr. Falk: In Corley, the fact that they talk about  
21 the probative value out weighting the prejudicial value  
22 they were clearly doing a 403 analysis and they were  
23 looking at the specific testimony in Corley. My position  
24 here is that your decision on each piece of testimony on  
25 whether or not you think it meets the 403 test to be more

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1 probative than prejudicial. I mean, you can't just say  
2 that some testimony in Corley came in that means we can  
3 do, you know, it all comes in going forward.

4 The Court: Oh, I agree. I think I have to do a 403  
5 but, of course, I haven't heard the answers and  
6 questions.

7 Mr. Falk: Exactly.

8 The Court: And certainly some basis needs to come in  
9 for her opinion, you know, if she's going to diagnose him  
10 with pedophilia she's got to have some basis that she's  
11 making that diagnosis. If that comes in, you know, and  
12 some details could be more prejudicial than probative.  
13 And, I almost have to rule it on a question versus ...

14 Mr. Falk: Okay.

15 The Court: Okay.

16 Mr. Falk: There's one other big area. There was in  
17 2007, there was a Berkeley County Sheriff's incident  
18 report. Basically, it's a DSS case and it relates to a  
19 four year old male victim. If you read the DSS reports,  
20 it is very speculative as to whether or not that ever  
21 happened. It is real problems with the complaining  
22 witness in that case who has been described as possibly  
23 being mentally defective. She recanted her statement in  
24 that case. There was no adjudication in that case and if  
25 she is going - I'm afraid that Dr. Swan is going to say,

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1 well, he also did it again with a four year child and I  
2 think there has to be some ...

3 The Court: Right.

4 Mr. Falk: ... the court has to be more comfortable,  
5 that it actually did happen. I get that a lot of times  
6 stuff goes unreported but there is real questions as to  
7 the reliability of that report.

8 The Court: Is that a issue in this case, Mr. Bogle?

9 Mr. Bogle: One of the questions, and this is part  
10 of the evaluation that they do. They don't just look at  
11 stuff you are convicted of they look at charged items or  
12 investigative items. They look for some kind of  
13 similarities. Some kind of patterns of behavior. She  
14 was allowed to examine as part of her investigation  
15 documents from the Department of Social Services  
16 suggesting Mr. Kaminski sexually assaulted a four year  
17 old boy. And she read those documents. It's normal for  
18 her to look at other allegations as well as convictions.  
19 Now, what weight she give them, probably not much because  
20 nothing was ever proven, nobody got convicted of it. At  
21 the same time that is something that you've got to look  
22 at. Now, what weight the jury gives it is up to the  
23 jury. I'll ask her the question, what weight did you  
24 give it? Was he convicted, not he wasn't.

25 Mr. Falk: Your Honor, if it comes out of her mouth

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1 in this case, even if she says I didn't --- if she didn't  
2 give it the weight, then it doesn't need to be said.

3 The Court: If that's the issue, we probably need to  
4 address that. Because every allegation, you know, the  
5 simple fact that the allegation was made, is not  
6 substantiated how is that going to be admissible.

7 Mr. Bogle: Again, it's one thing experts in her  
8 field look at this sort of thing. The Static 99R, the  
9 actuarial exam includes charges as well as convictions.  
10 It's part of the process they do in these types of cases.  
11 I'm not the psychologist here. I'm just saying what I've  
12 learned from these doctors they have to look at  
13 everything.

14 The Court: I understand that. Many times you have  
15 charges and you have somebody charged with a number of  
16 potential crimes and some prosecutor makes a decision to  
17 drop all of them if they plead to this one are these two  
18 for a number of reasons, you know, versus one that is  
19 totally unfounded and they don't have any evidence that  
20 somebody made a statement and they are different, you  
21 know, the fact that he was charged and there is evidence  
22 in this case and they decided to let him plead to  
23 something else is one thing, but a totally unfounded  
24 charge with no basis at all and he doesn't even  
25 constitute enough probable cause to get a warrant.

1 That's a whole different standard. If he was arrested  
2 and at least probable cause, the fact that somebody made  
3 an allegation and if you go into that he's got a right  
4 to, you know, open that door. Is that where we're going  
5 in this case?

6 Mr. Bogle: I don't believe in this case --- there  
7 was an investigation by DSS. There was no criminal  
8 arrest as far as I know. Is that right? I'm sorry.  
9 We've got Dr. Swan right here. If I can ...

10 The Court: Maybe if we can find out whether that's  
11 an issue or not.

12 Dr. Swan: There was no arrest in this case. It  
13 happened not long before he was actually arrested for the  
14 known child victim. Mr. Kaminski told me that he got  
15 papers about this from the Department of Social Services  
16 while he was in prison saying that they were going to put  
17 him on the central registry for life.

18 Mr. Bogle: There it is. Now is that something  
19 that's important and necessary for you to develop and  
20 know about to develop an opinion in these types of cases?

21 Dr. Swan: Yes it is. We're permitted to use charges  
22 where there's some credible information.

23 The Court: They can't put him on something for life  
24 can they? I mean, DSS can't put him on ...

25 Mr. Bogle: This is what he told her.

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1 Mr. Falk: I don't know if he's ...

2 Mr. Bogle: Not saying it's true. It's what he told  
3 her.

4 Mr. Falk: I don't know if he's on the registry  
5 because I think the facts in this case was a four year  
6 old who gave a forensic interview and I think the term  
7 was the interview was problematic. The prosecution was  
8 uncomfortable using the forensic interview probably  
9 because the child was led to the answers.

10 Mr. Bogle: We don't know though.

11 Mr. Falk: Okay.

12 Mr. Bogle: I guess the question for Dr. Swan - Dr.  
13 Swan, what did he tell you about this incident? About  
14 what happened or didn't happen with this boy?

15 Dr. Swan: Well he denied that anything happened.

16 Mr. Bogle: Okay.

17 Dr. Swan: He said when he was at McCormick, I  
18 received letters from DSS and they said they were going  
19 to put me on central registry.

20 Mr. Bogle: And that had to do with this  
21 investigation?

22 Dr. Swan: This investigation, yes.

23 Mr. Falk: Well there was a DSS investigation and  
24 that's what they do is they threaten to put him on the  
25 central registry but ...

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1           The Court: The fact that he told her that they  
2 threatened to put him on the registry, how is that  
3 relevant?

4           Mr. Bogle: Well, it goes like she said as an expert  
5 in this field, one of the things that they're permitted  
6 to look at is other allegations. And this allegation  
7 happened real close in time to the actual convicted  
8 conduct with an eight year old boy.

9           The Court: But the only allegation that she's saying  
10 is what he told her.

11           Mr. Bogle: Well, she also looked at the DSS reports,  
12 including an allegation about the boy sleeping in the bed  
13 with Mr. Kaminski because Mr. Kaminski quote loves kids.  
14 Is that the DSS caseworker or the mother or who was  
15 saying that?

16           Dr. Swan: That was in the report from the DSS  
17 caseworker and that came from the child's mother that she  
18 wasn't sleeping with Mr. Kaminski because they were  
19 saving themselves for marriage but he was sleeping with  
20 her child.

21           Mr. Bogle: Okay.

22           Mr. Falk: So they didn't have enough bedrooms in  
23 this house. Sleeping with is not the euphemism. He was  
24 in the same bedroom but they weren't in the same bed.  
25 He's getting --- he's going to wind up getting convicted

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1 on all this assumptions that this is all going on. Once  
2 you have somebody who has this diagnosis was then we're  
3 assuming that everything else that you can possibly read  
4 as being further supporting this diagnosis. I think it's  
5 - it wasn't in the diagnosis this is how it started.

6 Coming back from Myrtle Beach, the child is in the back  
7 seat of the car, screaming. My client actually thought  
8 that the child had been abused by a babysitter and that's  
9 ...

10 Mr. Bogle: Your Honor, now we're getting into,  
11 excuse me, facts of underlying investigation so I can ---  
12 we're not here to try that case, but you know, I can get  
13 into what the people saying it happened told Dr. Swan.  
14 It's just - I'm not sure however you want to go.

15 The Court: Well the problem is you opened that door,  
16 how am I going to get it shut? He has a right, if she's  
17 going to claim that he was molested by a four year old.  
18 He has a right to go there.

19 Mr. Bogle: He was investigated for being molested --  
20 - for molesting a four year old and a few months later,  
21 he's arrested for really molesting an eight year old.  
22 That's what brings it in. That's what makes it relevant  
23 to her analysis. I'm not trying to convict him of it.  
24 I'm trying to explain to the jury how she reached her  
25 conclusion. What analysis, things she looks at, that are

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1 allowed by her field. Other experts in her field would  
2 use in looking at a case like this.

3 The Court: I understand that but she's used this to  
4 --- as analysis to make her determination.

5 Mr. Bogle: A small part of it, but it's part of it.  
6 It's part of what they do.

7 The Court: I understand that but you want to open  
8 that door? And if you open it, he's got a right to go in  
9 it.

10 Mr. Bogle: Well, that's no problem. I'm just asking  
11 to open it.

12 Mr. Falk: He said it's a small part. I'm saying  
13 it's a huge prejudice. I mean I think the prejudice is  
14 way outweighed by its prejudice clearly outweighs its  
15 probative value. They're already saying it's a small  
16 part of the investigation.

17 The Court: If it is a small part, why do we need to  
18 open that door?

19 Mr. Bogle: Dr. Swan?

20 Dr. Swan: About the solicitor?

21 The Court: No about the four year old with the DSS.

22 Dr. Swan: Oh.

23 The Court: In your evaluation, how important does  
24 that play?

25 Mr. Bogle: What's the importance of it, Dr. Swan?

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1 Dr. Swan: Well it's important because it's a pattern  
2 of behavior and this was not the only allegation. There  
3 was other information from --- can I say this?

4 Mr. Bogle: Did you talk to Ann Williams?

5 Dr. Swan: I did talk to Ann Williams.

6 Mr. Bogle: Is she the prosecutor that does these  
7 types of cases here in Berkeley County?

8 Dr. Swan: Yes.

9 Mr. Bogle: She's doing a second rape case right now  
10 right down the hall isn't she?

11 Dr. Swan: That's correct.

12 Mr. Bogle: Okay. Why would you want to talk to the  
13 assistant solicitor who prosecuted Mr. Kaminski?

14 Dr. Swan: Because there were other victims.

15 Mr. Bogle: Okay were these prosecuted victims?

16 Dr. Swan: They were not prosecuted victims.

17 Mr. Bogle: Were they not located?

18 Dr. Swan: Well they located one. It was Mr.  
19 Kaminski's - I'm sorry, the eight year old victim's  
20 sister.

21 Mr. Bogle: Okay.

22 Dr. Swan: And the two children's father did not want  
23 his children to testify. So those were not prosecuted.

24 Mr. Bogle: And why is it important for you, as an  
25 expert, to look at what the assistant solicitor said

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1 about other victims that were never prosecuted? Why is  
2 that important?

3 Dr. Swan: Because she had information that I didn't  
4 have access to.

5 Mr. Bogle: Okay. Is that something experts in your  
6 field do?

7 Dr. Swan: Yes. And there were other victims as  
8 well. Two other boys.

9 Mr. Bogle: And why is that ---- and this is  
10 something experts in your field customarily do in  
11 developing opinions in cases like this. Is that right?

12 Dr. Swan: Yes.

13 Mr. Bogle: Why are they allowed to do that?

14 Dr. Swan: Well, because we're psychologists and  
15 we're not held to the same standard as perhaps the  
16 prosecutor in prosecuting these and it's information  
17 that's relevant because it would be unusual for someone  
18 with pedophilia to have one victim and then no others.  
19 In fact, there were other victims that we were aware of.

20 Mr. Bogle: It's expert testimony, Judge...

21 Mr. Falk: Did she tell you that evidence? Did Ann  
22 Williams give you that evidence? Or did she just say it  
23 existed?

24 Dr. Swan: I spoke with her about it.

25 Mr. Falk: And did she say what it was?

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1 Dr. Swan: She said that in the investigation of  
2 this, it came to light that there were two other boys in  
3 the neighborhood and she and her investigator went out to  
4 locate the boys and they were not there, they had moved.

5 Mr. Falk: So this is an accusation that didn't even  
6 have a DSS investigation to it. She says in order to  
7 prove pedophilia, you have to prove multiple victims and  
8 now she's using the multiple victims to prove the  
9 pedophilia. She's saying well because they're  
10 pedophiles, they have multiple victims and I can prove  
11 that he's a pedophile because he had ...

12 Mr. Bogle: She didn't say that. Dr. Swan?

13 Dr. Swan: You don't have to have multiple victims to  
14 have pedophilia. All you have to do is the fantasies,  
15 urges, or behaviors. You can have pedophilia and never  
16 have a hands-on victim.

17 Mr. Falk: What did you just say about they have  
18 multiple victims?

19 Dr. Swan: I just said we know from research that  
20 they have more victims and that the investigation  
21 revealed that there were other victims.

22 Mr. Falk: I appreciate that we're in civil court but  
23 this is ...

24 The Court: You know, there's got to be at least -  
25 you say there's other victims? He was not arrested, he

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1 was never charged, he was never indicted. I mean, is  
2 there any substantiation of how these other victims were  
3 there? At least in a situation where he was --- a  
4 warrant was signed by a magistrate and grand jury  
5 indicted him, it's simply a statement that he had other  
6 victims but nobody ever talked to those victims? Nobody  
7 ever investigated it? How can that come in?

8 Mr. Bogle: Again, she's looking for some kind ---  
9 not a pattern of behavior. Not that it happened or got  
10 indicted or got investigated but if the pattern's out  
11 there suggesting that these are happening, involving  
12 these multiple victims, then that makes it --- reenforces  
13 ...

14 The Court: I understand that. There's got to be  
15 some other credible evidence. Who says there are other  
16 victims other than she heard on the street? I mean,  
17 there's got to be something. Because the fact that just  
18 allegations of victims. It's hugely prejudicial.

19 Mr. Bogle: If this was a criminal case, I'd be right  
20 with you. Because of the nature of this case, we're in  
21 civil court, she's an expert talking about the foundation  
22 of her opinion that she can be cross-examined about. All  
23 these things go to the weight of her testimony. It's the  
24 way psychologists in evaluating these types of cases ---  
25 what they do, what they look at.

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1           The Court: I understand that. I'm just trying to --  
2           - also once you ring that bell, you can't unring it. You  
3           know, if she'd interviewed witnesses, she'd read reports,  
4           if she'd done anything about other victims is one thing  
5           versus just a rumor that nobody ever found versus a  
6           conversation that we had. You know, if the solicitor  
7           says she's talking to the solicitor over a cup of coffee  
8           and the solicitor says we think based on the nature of  
9           this crime, they can't be the only victim, we think there  
10          are other victims and we're going to look into this  
11          versus we have victims who have come forward, who  
12          investigations have been done, that's a whole different  
13          issue. And if she's got that, that's one thing versus  
14          the solicitor saying there were other victims that we  
15          heard about but we couldn't ever find them. Is that the  
16          testimony?

17           Mr. Falk: And Your Honor, to the extent that it's  
18          just another civil trial, I think the South Carolina  
19          Supreme Court - and if you look at her opinion under tab  
20          --- and granted, they were looking at other issues, but I  
21          mean the Supreme Court taft, which is 413 South Carolina  
22          16...they appreciated the fact that this is not just any  
23          civil action. This is a civil proceeding to commit an  
24          individual perhaps for life following the service of the  
25          criminal sentences in extraordinary remedy and taft, they

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1 look without giving them full sixth amendment rights and  
2 they certainly recognize that this is not just an  
3 automobile accident case.

4 Mr. Bogle: No question. We're not arguing, we're  
5 not disputing that. He's trying to get in the legal  
6 basis for her opinion. That's all we're doing.

7 The Court: I understand and I'm just trying to, you  
8 know, her opinion needs to be based on some factual  
9 scenario and not some rumor or speculation and if it's  
10 based on some underlying facts, it's credible, but if  
11 it's just rumor and no underlying facts, I mean, how  
12 solid is that? So ...

13 Mr. Bogle: All I can do is say what I've been  
14 saying; it's what experts do. It's what psychologists do  
15 in these cases. And then it's brought --- it becomes ...

16 The Court: Yeah but usually they're going to look at  
17 DSS report.

18 Mr. Bogle: If you look at the DSS investigation ...

19 The Court: Maybe I'm missing something. I thought  
20 the last one we were talking about had no DSS  
21 investigation.

22 Mr. Bogle: Let me clarify. There's a DSS report  
23 involving a four year old boy. This is the one sleeping  
24 in the bed with Mr. Kaminski.

25 The Court: Right.

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1 Mr. Bogle: Apart from that ...

2 The Court: It's the part from that that I'm talking  
3 about.

4 Mr. Bogle: Apart from that, she talked to the  
5 assistant solicitor prosecuting Mr. Kaminski and the  
6 assistant solicitor said there were information about  
7 other victims, they tried to find the other victims and  
8 could not, is that it basically, they couldn't find them?

9 Dr. Swan: Well they couldn't find the two little  
10 boys. They did find the eight year old sister.

11 Mr. Bogle: Okay.

12 Dr. Swan: And the father would not permit his  
13 children to testify.

14 Mr. Bogle: Okay I'll leave out the conversation with  
15 Ann Williams. I'll just leave that out.

16 The Court: Okay that's the one I'm having some  
17 problems with.

18 Mr. Bogle: I'll tell you what, I'll just leave that  
19 out, the conversation with Ann Williams about the stuff  
20 you just said. I'll take that out.

21 The Court: It's total speculation. We heard there  
22 were other victims and never found any.

23 Mr. Bogle: I'll take that out.

24 The Court: Okay, now so we've got that ...

25 Mr. Bogle: Do you want to cut the jury loose? We've

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1 still got some more to talk about I think. If Dr. Swan  
2 testifies, she's going to go a good hour and a half on my  
3 side alone.

4 The Court: Okay.

5 Mr. Bogle: What do you think?

6 Mr. Falk: Yes.

7 The Court: Alright, do you want me to bring them in  
8 here and do it or just send them home?

9 Mr. Bogle: I'd feel better if you brought them in  
10 and told them why we've been taking this long so they  
11 know we're working.

12 The Court: Okay. Alright bring them in.

13 (Jury enters courtroom 4:05 p.m.)

14 The Court: Ladies and gentlemen, this is taking a  
15 lot longer than I thought it would. Instead of having  
16 y'all sit back there in the jury room getting to know  
17 each other, I'm going to send you home. I'll ask you to  
18 be back at nine thirty in the morning because I don't  
19 know how much longer we're going to work and finish this.  
20 I don't know how much longer it's going to take so I  
21 don't want to waste your time. But I'll see you back at  
22 nine thirty. If you have an emergency tonight, you need  
23 to call the clerk's office and let them know that you  
24 have a problem because I can't --- until you all show up,  
25 we can't do anything in the morning. So if you don't

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1 call and you don't show up, I'm going to send a deputy  
2 looking for you asking him to bring you in to explain to  
3 me why you didn't, you know? I had a juror one time that  
4 didn't show up after lunch in another county and they  
5 spent all day trying to find her and finally got her in  
6 and she watched her stories every afternoon and she  
7 wasn't going to miss her story. I said that's not an  
8 emergency. You got to miss your stories. So I always  
9 tell the jury that because sometimes they misunderstand.  
10 But I appreciate it and I'll see y'all at nine thirty in  
11 the morning. And when you come back, you can just come  
12 back to the jury room. When you come in in the morning,  
13 just come straight into the jury room and I'll get you  
14 out and we'll get started. And no discussing the case  
15 tonight, don't Google anybody, don't do any research.

16 (Jury exits for day 4:06 P.M.)

17 The Court: Okay.

18 Mr. Bogle: Can I put Dr. Swan back up here?

19 The Court: Yes. If you'll come around please Doc?

20 Mr. Bogle: Could you swear her?

21 The Court: Do you solemnly swear the testimony you  
22 are about to give is the truth, the whole truth, and  
23 nothing but the truth so help you God?

24 Dr. Swan: I do.

25 The Court: Okay.

1 Mr. Bogle: We've covered ...

2 The Court: So number one is okay right? We've got  
3 that cleared and understanding that it will be an  
4 objection based on the question and answer it if you feel  
5 like we've overstepped the bounds on Dr. Burke. Now,  
6 what about number two, the disciplinary action? Is that  
7 an issue with the Department of Corrections?

8 Mr. Bogle: One of the things we do in cases of this  
9 nature, and I believe Dr. Swan will cover that, she's  
10 trying to decide if they can behave on the outside. If  
11 they can't behave in the twenty-four/seven structured  
12 environment like a prison, then that's relevant to her  
13 considering how they can control their behavior, be it  
14 sexual behavior in prison or even non-sexual misconduct  
15 in prison. So we do ask the witnesses about misconduct  
16 they do while they're in prison. And that's why.

17 The Court: Okay do you have any objections to that?

18 Mr. Falk: Well if we're trading horses, this is the  
19 one I'm least concerned about and certainly I think that  
20 anybody that's been in prison for nine years and gets one  
21 disciplinary action, that's almost a gold star. But I  
22 think I'll put my client on the stand to show that he  
23 made a, he did not make a threat. He was writing  
24 something in a journal, somebody in his --- his cellmate  
25 takes the page out of the journal and shows it to

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1       somebody. It was never intended to be delivered as a  
2       threat to anybody. And that's what the disciplinary  
3       action was about.

4               The Court: Okay.

5               Mr. Bogle: That's something you looked at Dr. Swan?

6               Dr. Swan: I looked at. I really didn't give much  
7       weight to it. As he said one in all those years doesn't  
8       really mean much to me.

9               Mr. Bogle: But it's something you got to look at,  
10       you got to hunt for --- you do have to hunt for  
11       disciplinary while you're in prison, right?

12              Dr. Swan: Yes.

13              The Court: Well, you know, it doesn't seem to be an  
14       issue. Obviously she used in her evaluation something to  
15       come in and she did or didn't. This one sounds pretty  
16       easy. Okay what about number three? The arson  
17       convictions.

18              Mr. Bogle: In the case of matter and care and  
19       treatment of Addle, which is from 2008, 660 SE2d 285. The  
20       Court held that the circuit trial judge promptly admitted  
21       Dr. Pam Crawford's testimony regarding prior sexual  
22       offenses, no problem there, but also regarding prior non-  
23       sexual convictions. And she also testified about some  
24       sexual charges that didn't result in convictions. Now,  
25       they're relevant because Dr. Crawford had him evaluated

1       whether or not Ettel is need for and likelihood for  
2       success in treatment, as well as his ability to control  
3       his behavior on the outside. In this case, this man has  
4       at least four arson convictions. Dr. Swan, why was it  
5       necessary for you to look at his arson convictions  
6       because they're not sexual crimes; are they or aren't  
7       they in this case?

8             Dr. Swan: Well, in this case they are because he  
9       admitted that he set the fires to masturbate to.

10            Mr. Bogle: Alright, nothing more.

11            The Court: Okay.

12            Mr. Falk: They're not crimes of sexual violence, I  
13       mean, I get that. I'm arguing that appeal but I don't  
14       think they are crimes of sexual violence and I don't  
15       think they're relevant.

16            The Court: Well, I mean if she's going to testify  
17       based on her evaluation that he did them and masturbated  
18       to them, I'm going to allow that in.

19            Mr. Falk: Yes Your Honor.

20            The Court: Okay. Alright, now we're down to number  
21       four. The Berkeley County Sheriff's Office incident  
22       report ...

23            Mr. Bogle: That's the one we just covered, the DSS  
24       investigation.

25            The Court: Right.

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1 Mr. Bogle: We're not going to talk about what Ann  
2 Williams said but ...

3 The Court: Right.

4 Mr. Bogle: The DSS investigation we argued about  
5 that earlier, how that being part of her overall things  
6 you have to look at in cases of this nature. We talked  
7 about that before you let the jury loose.

8 The Court: I know.

9 Mr. Falk: I'm not sure I know where we resolved  
10 that; if it's going to be, you know ...

11 The Court: And I haven't resolved it.

12 Mr. Bogle: Do you want to wait until it happens?

13 The Court: Either that or if you want to ask her  
14 questions about it now. You know, I don't know how  
15 relevant it is in her determination and how substantial  
16 or how substantiated those allegations were that would  
17 make it relevant.

18 Mr. Bogle: Well let me try this very briefly if I  
19 can.

20 The Court: Okay.

21 Mr. Bogle: Dr. Swan, when I ask you this question  
22 tomorrow, we've already talked about his convictions  
23 involving an eight year old boy. Now, in these types of  
24 investigations, do you look for other crimes or other  
25 allegations of crimes of a similar nature that where

1 there was no criminal charge or no conviction?

2 Dr. Swan: Yes I do.

3 Mr. Bogle: And why is that?

4 Dr. Swan: We do that because often in sexual abuse  
5 cases, the allegations come to the notice of social  
6 services or perhaps an individual counselor of some kind  
7 but they're never prosecuted.

8 Mr. Bogle: Now is this something --- why look at  
9 allegations that were never prosecuted, never indicted,  
10 never arrested, for example. What's the use of that to  
11 you in forming an evaluation in this type of case?

12 Dr. Swan: It goes to the diagnosis of pedophilia,  
13 the sexual interest in children and how long that pattern  
14 has endured.

15 Mr. Bogle: Okay. Is this something that is  
16 traditionally and customarily done by other experts in  
17 your field?

18 Dr. Swan: Yes.

19 Mr. Bogle: It is. Is it analysis or a type of  
20 analysis chain that you've done - that's not a good word.  
21 Is it a sequence of analysis you've done in other cases  
22 involving pedophilia disorder diagnoses?

23 Dr. Swan: Yes.

24 Mr. Bogle: In Florida as well as here?

25 Dr. Swan: Yes.

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1 Mr. Bogle: Okay. Please answer any questions that  
2 The Court may have or Mr. Falk may have about that.

3 Mr. Falk: Does it matter whether or not the events,  
4 the alleged events took place?

5 Dr. Swan: Well, of course, it does. And obviously I  
6 don't give as much weight to an allegation that has not  
7 resulted in a conviction. However, we know that less  
8 than ten percent of sexual crimes results in a  
9 conviction. So there's a disproportionate amount that  
10 occurred but did not get prosecuted.

11 Mr. Falk: But this one was never even indicted.

12 Dr. Swan: That's correct and that's often the case  
13 when it comes to the attention of social services.

14 Mr. Falk: Did you do any research into the  
15 complaining witness in this case?

16 Dr. Swan: The complaining witness was the mother of  
17 the victim or the alleged victim and she supposedly had  
18 the mind of a twelve year old. But she did indicate on  
19 numerous occasions that she caught him red-handed.

20 Mr. Falk: Not to you though?

21 Dr. Swan: Not to me.

22 Mr. Falk: No because she also said that, she said  
23 that she wasn't sure that he was touching his wee wee and  
24 it may have been his leg. Is that not true?

25 Dr. Swan: I didn't see that part.

1 Mr. Falk: Well I can show you the page.

2 Dr. Swan: Okay. That would be great. I'm sure I  
3 read that.

4 Mr. Falk: Some of that highlighted.

5 Dr. Swan: Okay.

6 Mr. Bogle: Can counselor, identify ...

7 Mr. Falk: Oh, I'm sorry. This was in the MDT. It's  
8 --- when I get it back, I'll identify it.

9 Mr. Bogle: Part of the DSS report?

10 Mr. Falk: Part of the DSS report.

11 Dr. Swan: Yes, I do recall reading that.

12 Mr. Falk: So she recanted her statement?

13 Dr. Swan: Yes she did.

14 Mr. Falk: And actually you said the complaining  
15 witness and you described her but it was my client that  
16 originally brought ...

17 Dr. Swan: Yes, he was the one that went or filed the  
18 police report that something had happened to this little  
19 boy and he originally said that the mother did it or he  
20 originally said that the babysitter did it but then he  
21 said the mother did it.

22 Mr. Falk: And you don't have some experience that  
23 people retaliate by if you bring an allegation of sexual  
24 misconduct towards a child that frequently some people  
25 will turn around and say no you did it? As in they make

1 a complaint as retaliation?

2 Dr. Swan: Well, I have seen that but I often see  
3 cases where individuals have actually committed the act  
4 and tried to blame it on their people to take the heat  
5 off of them.

6 Mr. Falk: So you were convinced he did it?

7 Dr. Swan: As I said, I didn't give it as much weight  
8 as the conviction.

9 Mr. Falk: Well, how much weight?

10 Dr. Swan: Well I'm not sure that I can give you a  
11 percentage weight. The mother said that she caught him  
12 touching his pee pee. He shortly thereafter, he did the  
13 same thing to other children.

14 Mr. Falk: You didn't look at the four year old's  
15 forensic interview, did you?

16 Dr. Swan: I did. Let me see if I can find that in  
17 here. If you have it ...

18 Mr. Falk: No, I don't have it.

19 Dr. Swan: Okay, I did. It's in here somewhere. Let  
20 me see if I can find it.

21 Mr. Falk: Did you read a summary of it or did you  
22 look at the interview?

23 Dr. Swan: Let me find it then I'll let you know.  
24 This was the summary by the individual that did the  
25 interview. So I didn't have the word for word. And in

1 that summary, the victim reported to the person doing the  
2 forensic interview that he received kisses on the butt  
3 and penis from Michael.

4 Mr. Falk: But there were also concerns about that  
5 interview?

6 Dr. Swan: He said that in the shower, he saw  
7 Michael's big wee wee.

8 Mr. Falk: He wouldn't be the first four year old  
9 that was led into those or told what to say?

10 Dr. Swan: That's always a possibility but this was  
11 done by a trained forensic evaluator. Obviously, it  
12 could happen but typically with trained individuals, you  
13 don't see it to that degree. It's usually the police  
14 officers that do the leading.

15 Mr. Falk: There was never a determination about  
16 whether or not this forensic evaluation fit the terms of  
17 the statute was there?

18 Dr. Swan: Not to my knowledge. I didn't receive any  
19 information about that.

20 Mr. Falk: Did you go anywhere beyond the police  
21 report here? I mean this DSS report?

22 Dr. Swan: Well, I had the DSS report, the forensic  
23 evaluation of the child, and I think that's the  
24 information that I received from social services.

25 Mr. Falk: What kind of degree of confidence can you

1 say right now that you think the event happened?

2 Dr. Swan: Well the fact that he provided information  
3 about the kisses on the butt and that he's seen Michael's  
4 wee wee in the shower and that it was big and that  
5 Michael attempted to show him pictures of people with no  
6 clothes on; those seem like things that a four year old  
7 would not have knowledge of apart from something  
8 happening.

9 Mr. Falk: Unless, I mean, he was living, Mr.  
10 Kaminski was living in the house at the time.

11 Dr. Swan: He was. The big wee wee was not an issue  
12 for me. It was the fact that he specifically said that  
13 Michael kissed him on the butt and the penis and tried to  
14 show him pictures of people with no clothes on.

15 Mr. Falk: My question is what confidence level do  
16 you have that you think that this happened?

17 Dr. Swan: Well, I have some confidence that  
18 something happened.

19 Mr. Falk: But you don't know what ...

20 Dr. Swan: Well, I can't put a percentage to it but  
21 if this had --- if information was in a police report,  
22 I'd give it less weight. But because it was done by a  
23 trained interviewer, it seems to carry a little more  
24 weight for me.

25 Mr. Falk: I have nothing further.

1 The Court: Okay. Anything further?

2 Mr. Bogle: No, Your Honor.

3 The Court: Okay. Any other issues concerning this?

4 Mr. Falk: I still think it's too speculative and I  
5 think it's way more prejudicial than probative.

6 The Court: Alright, I'm going to read these cases  
7 and let y'all know in the morning.

8 Mr. Falk: Thank you.

9 Mr. Bogle: Thank you, Your Honor.

10 The Court: Anything else we need to deal with?

11 Mr. Falk: We're not talking about Ann Williams's  
12 statement right.

13 Mr. Bogle: I'm not going to talk about it. Ann  
14 Williams quote and then I, at Dr. Swan's request, talked  
15 to Ann personally to get more information out of her but  
16 I'm not going to get into that.

17 The Court: Okay.

18 Mr. Falk: I have nothing further.

19 Mr. Bogle: Just to save us some time tomorrow,  
20 during her testimony I'll be putting in certified copies  
21 of the indictment sentencing sheet, the warrant for  
22 sexually violent crimes; can we go ahead and agree on  
23 those today then I can mark them as evidence?

24 The Court: Okay.

25 Mr. Bogle: The sentencing sheet, indictment, and the

1 warrant that went with it.

2 Mr. Falk: No objection.

3 The Court: No objection?

4 (State's Number One and Two were marked)

5 The Court: Okay, I'll see y'all at nine-thirty.

6 **3/1/16**

7 The Court: Alright. Where's your client? Do y'all  
8 have a issue?

9 Mr. Falk: He thinks he may have an issue. Do we  
10 need this for the record or ...

11 The Court: Sure. Do you need him here to do it?

12 Mr. Bogle: Let's bring him in.

13 Mr. Folk: I think he needs to be here.

14 The Court: Okay.

15 (Mr. Kaminski enters court room)

16 Mr. Falk: Your Honor, I spoke with my client this  
17 morning and he advised me that he believes there may be  
18 some animosity from the past between himself and juror  
19 number 63. As I understand it, my client was sponsoring  
20 or helping put on a charitable event at a church and the  
21 Grooms' were food vendors at this event. But they were  
22 not able to vendor food because there was already another  
23 vendor in place and they were getting mad at my client  
24 and threatening to sue him. Now, I'm aware that there  
25 are a whole lot of Grooms up here in Berkeley County but

1 I thought if you could bring juror number 63 out here and  
2 just see if they're at all related to the Grooms' that  
3 would've been vendors for food at this event.

4 The Court: Okay. And if they were --- she is  
5 related to the Grooms that are food vendors, then where  
6 do we go from there?

7 Mr. Falk: Then I guess ...

8 The Court: I mean, I'll ask if she ...

9 Mr. Falk: It may require further colloquy. I guess.

10 The Court: Well if she knows the ...

11 Mr. Falk: What's her relationship to, yeah, I guess.  
12 Any contact with her family but I don't know. Hoping  
13 that it's not.

14 Mr. Bogle: Despite all that, could she give The  
15 State and defense a fair trial?

16 The Court: I understand that. I just didn't know  
17 whether she, you know, I assume I asked the question  
18 whether she knew him but I'll assume that means she  
19 doesn't. If that changes, I mean, the fact that if she  
20 does know and didn't answer that right whether he  
21 would've exercised a strike or not. Now having said  
22 that, we still got an alternate, I guess, we could seat.  
23 Alright if you'll bring me juror number 62, 63, I'm  
24 sorry.

25 Mr. Bogle: Bobbie Jo Grooms.

1           The Court: Bobbie Jo Grooms. And while we wait, I  
2           went over the Taft case again in detail. It's the most  
3           recent cases, it seems to be pretty, it sets the standard  
4           so you're going to have to prove a presence situation and  
5           not use the stuff in the past so. I'm not going to  
6           introduce Burke's report. I assume you're not intending  
7           to ...

8           Mr. Bogle: No.

9           The Court: I assume she did a litany of tests  
10          herself ...

11          Mr. Bogle: Right, she did --- she first saw the guy  
12          back in '08 '09. Not worried about that. She's looking  
13          at him in 2014 and has a series of tests she does, one  
14          includes a PPG when she gets Burke involved in. I think  
15          the big issue is to diagnose pedophilia, you have to have  
16          the urges being present over a period of time. So the  
17          question is ...

18          The Court: I just need one juror.

19          Bailiff: Just one. Juror number 63.

20          (Jury 63 enters the courtroom)

21          The Court: Come on in and let me ask you a question.  
22          Is your family any way involved in food vendors in the  
23          food catering business?

24          Ms. Grooms: No sir.

25          The Court: Okay, do you know the respondent in this

1 case at all?

2 Ms. Grooms: I do not.

3 The Court: Have you ever had any contact with him?

4 Ms. Grooms: No sir.

5 The Court: Have you ever been involved in any church  
6 organizations dealing with food vendors?

7 Ms. Grooms: No.

8 The Court: Okay, thank you so much.

9 Ms. Grooms: Okay.

10 The Court: Okay. You know, based on her assessment,  
11 at least looking at Dr. Burke's findings in 2009, she can  
12 use that in her current opinion but as far as introducing  
13 that, I mean it's a situation based on current finding  
14 and an old finding is not going to work. And as far as  
15 DSS report, I mean, it's one of these situations you're  
16 going to have to object. I don't know, it's hard to rule  
17 in the blind. It's a situation that if she asks him  
18 about it in her evaluation, that she's got a report,  
19 she's stumbled on something and he responds to it, that's  
20 one thing. If he denies it or doesn't do anything else,  
21 I'm not going to let her bring up the facts of some  
22 hearsay issue. I don't know if we're going there or not.

23 Mr. Bogle: Let's wait til we get there and see what  
24 kind of foundation I can lay and then -

25 The Court: Okay.

1 Mr. Bogle: It will be clearer, I think, for you ...

2 The Court: Okay. Alright so are we ready for the  
3 jury now?

4 Mr. Bogle: Yes sir.

5 The Court: Okay. I need the jury. All of them.

6 (Jury enters courtroom 9:45)

7 The Court: Alright, Mr. Bogle, you may call your  
8 first witness.

9 Mr. Bogle: Thank you Your Honor, may it please The  
10 Court? The State will call Dr. Amy Swan.

11 The Court: Okay.

12 Deputy Clerk: Please raise your right hand. Do you  
13 solemnly swear to tell the truth, the whole truth, and  
14 nothing but the truth so help you God?

15 Dr. Swan: I do.

16 Deputy Clerk: Thank you. Please state your first  
17 and last name, spell your last name for the record  
18 please.

19 Dr. Swan: My name is Amy Swan. That's S-w-a-n.

20 **DR. SWAN EXAM BY MR. BOGLE:**

21 Q Good morning, Dr. Swan.

22 A Good morning.

23 Q What's your occupation? What do you do for a  
24 living?

25 A I am a forensic psychologist.

1 Q And briefly, for the record, what is the study of  
2 psychology?

3 A Psychology is the study of the mind and behavior.

4 Q Okay and what advanced degrees do you hold?

5 A I have a doctorate in clinical psychology.

6 Q Are you licensed to practice psychology in South  
7 Carolina?

8 A Yes I am.

9 Q And what other states?

10 A Florida and Missouri as well.

11 Q Now you live in Florida, is that right?

12 A I do.

13 Q Okay, and how is it that you're here in South  
14 Carolina doing cases like this one on behalf of the  
15 Department of Mental Health?

16 A In 2013, there was a backlog in cases and since I  
17 was licensed in South Carolina, they retained me to  
18 help them with that backlog and I've been working  
19 here ever since.

20 Q Okay. Do you have any memberships in professional  
21 organizations related to psychology?

22 A I do. I served on the board of psychology in  
23 Florida for ten years. That's the part of the  
24 government that deals with psychology,  
25 psychologists, disciplining them if they do

1 something wrong, establishing laws and rules. And I  
2 was chairman of the probable cause committee,  
3 investigating all the complaints that came in about  
4 psychologists for five years. I just ended that  
5 term a couple of weeks ago.

6 Q Okay. Doctor, I'm sorry, did I stop you?

7 A Yes.

8 Q Go ahead.

9 A I'm also a member of the association of the  
10 treatment of sexual abusers, which is a large  
11 international organization devoted to the study of  
12 sex offenders. I'm a member of the Florida chapter.  
13 I'm a member of the American Psychological  
14 Association, the International Association of  
15 Forensic Nurses, and the Association of State and  
16 Prevential Psychology Boards.

17 Q Have you testified before in courts of other states  
18 besides this one right here and recognized as an  
19 expert witness in the field of psychology?

20 A Yes I have. I've testified in Florida, Georgia,  
21 Iowa, Missouri, and South Carolina.

22 Q And have you ever been qualified as an expert  
23 witness in sexually violent predator cases, not  
24 counting South Carolina?

25 A Yes I have. About two hundred times.

1 Q What about being qualified as an expert about the  
2 judges here in South Carolina in these types of  
3 cases, sexually violent predator cases?

4 A Approximately twenty times.

5 Q Do you also have experience working directly with  
6 sex offenders?

7 A Yes I do. I've worked with sex offenders for about  
8 twenty-seven years.

9 Q Can you give us an idea of what your experience is  
10 and how that ties in working with sex offenders?

11 A Yes, between 1999 and 1991 I set up a sex offender  
12 program at a small psychiatric hospital. Between  
13 1993 and 1995, I worked at a community mental health  
14 center with --- doing therapy and testing on victims  
15 and perpetrators of sexual violence. Between 1996  
16 and 1997. I worked with incarcerated adolescent  
17 sexual offenders. Between 1997 and 1999, I worked  
18 for court psychology where I evaluated victims and  
19 perpetrators of child abuse, including sexual abuse.  
20 In 1999, I was the first psychologist hired at the  
21 Florida Civil Commitment Center to provide treatment  
22 to individuals detained under the Florida law. And  
23 in 2000, I went into private practice and I started  
24 contracting with different states to do evaluations  
25 of sexually violent predators.

1 Q Have you had specialized training within the field  
2 of psychology for - other than your doctorate  
3 degree?

4 A I have. It's pretty hard to find a university that  
5 offers any specialization of sex offenders so we  
6 typically get our education by international  
7 conferences and those sorts of things. I have done  
8 eight-hundred and ninety-five hours since my  
9 doctorate, specifically in the area of sex  
10 offenders. And two-hundred and eighty-seven of  
11 those hours have been in assessing the risk that a  
12 sex offender would commit another sexual crime.

13 Q Now Dr. Swan, in this case, The State is trying to  
14 commit Mr. Kaminski to a secure place for treatment.  
15 Have you ever testified on behalf of people where  
16 The State has sought commitment?

17 A Yes I have.

18 Q Okay. About how many times?

19 A I think it's about two-hundred times.

20 Q Okay. What about people who have already been  
21 committed to a sexually violent predator program  
22 like the one we have in South Carolina; have you  
23 ever testified on their behalf as opposed to The  
24 State's behalf?

25 A Yes I have. When I determine that the individual no

1 longer meets criteria and they've benefitted from  
2 treatment, I recommend their release and then I  
3 testify on their behalf.

4 Q Have you ever recommended somebody for release from  
5 a sexually violent program?

6 A Yes I have, about thirty-one times.

7 Q What about in South Carolina?

8 A I think it's three times in South Carolina because I  
9 haven't been working here as long.

10 Q Okay. Thank you. Your Honor, I'd like to ask that  
11 The Court recognize Dr. Amy Swan as an expert  
12 witness in the field of psychology.

13 The Court: Okay.

14 Mr. Falk: Can, I just ask one or two questions.

15 The Court: Yes.

16 **DR. SWAN CROSS-EXAM BY MR. FALK:**

17 Q Since 2013, you said you testified twenty times in  
18 South Carolina?

19 A Approximately.

20 Q Were any of those pre-commitment cases?

21 A Some of them were pre-commitment, some of them were  
22 annual reviews, and some of them were release cases.

23 Q How many were pre-commitment cases?

24 A I don't know. I didn't have it separated out.  
25 Probably at least five or six.

1 Q And in those times when you testified in a pre-  
2 commitment case, was your recommendation commitment?

3 A Yes.

4 Q And do you know if those - when you were - testified  
5 in a pre-commitment case, do you know how many of  
6 those times you were providing a second opinion?

7 A I don't. But typically if I don't recommend that  
8 the individual be committed, I don't get called to  
9 testify. So I don't typically testify on behalf of  
10 the individual if my opinion doesn't meet criteria  
11 in a pre-commitment case.

12 Q In South Carolina since 2013, how many times have  
13 you recommended that the person not be committed?

14 A On a pre-commitment case, I haven't had any. On  
15 annual reviews, I've had three.

16 Mr. Falk: No further questions.

17 The Court: Okay.

18 Mr. Falk: And we would accept her as an expert.

19 The Court: And The Court so finds.

20 Mr. Bogle: Thank you, Your Honor.

21 **DR. SWAN EXAM CONTINUED BY MR. BOGLE:**

22 Q Dr. Swan, how did you get to become involved in this  
23 case involving Michael Kaminski?

24 A I was appointed by The Court to do an evaluation of  
25 Mr. Kaminski.

1 Q And what type of evaluation did you conduct of Mr.  
2 Kaminski?

3 A This is a pre-commitment evaluation. These are  
4 individuals who are currently in the Department of  
5 Corrections and they're coming up for release and  
6 they are asking for an opinion about whether the  
7 person meets criteria as a sexually violent predator  
8 under the Florida law - South Carolina law.

9 Q Okay and under the South Carolina law, what are the  
10 criteria that you're looking for to determine  
11 whether or not a person should be committed?

12 A Individual has to have been convicted of a sexual  
13 crime as delineated in the statute. And he must  
14 have a mental abnormality or personality disorder  
15 that makes him likely to engage in future acts of  
16 sexual violence if not committed to a long-term  
17 treatment facility for care control and treatment.

18 Q As part of this job, did you meet with and interview  
19 Michael Kaminski?

20 A I did. I met with him for four hours and fifteen  
21 minutes on March 26, 2015.

22 Q Is the man you met with present in the courtroom  
23 today?

24 A Yes I did. He's right at the table with Mr. Falk.

25 Q Now, in preparation to do this case, your protocol,

1 did you receive documentary information about Mr.  
2 Kaminski that you looked at?

3 A I did. I received a large file of information and  
4 that contains the police reports, arrest warrants,  
5 court documents, indictments, information from the  
6 Department of Corrections about his behavior there,  
7 information from the South Carolina Department of  
8 Law Enforcement, victim's statements, information  
9 from the Department of Social Services.

10 Q And in addition, did he ever --- there's a place  
11 called Gilliam's Psychiatric Facility, which I  
12 believe is a psychiatric facility run by the  
13 Department of Corrections. If he ever went there,  
14 did you also receive a copy of a report dealing with  
15 his treatment by that place?

16 A Yes, I just reviewed that report before I came into  
17 court this morning.

18 Q Okay and would some of the documents you looked at,  
19 would it include the investigator's summaries of the  
20 different crimes he was convicted of we're going to  
21 talk about today?

22 A Yes.

23 Q Okay, why is it necessary to look at all the  
24 background information? Who the witnesses were,  
25 what they said, what they didn't say, what the

1 police said; why is it necessary to consider all  
2 that information?

3 A Well, it's important because it's important for me  
4 to have all that information to see if there's a  
5 pattern of behavior or anything that would indicate  
6 that he has the mental abnormality or personality  
7 disorder.

8 Q Okay. Now is this the type of information that is  
9 typically and reasonably relied upon by other  
10 experts in your field?

11 A Yes, it is.

12 Q Let's talk about your protocol for doing this type  
13 of case and how you did it on Mr. Kaminski. What is  
14 your protocol for a sexually violent predator case  
15 like you did on Mr. Kaminski?

16 A I either --- I receive a court order indicating that  
17 I'm appointed to do the interview the individual and  
18 render an opinion about the particular case. I get  
19 all the documents that are available from the  
20 Department of Mental Health, the Department of  
21 Corrections, or any entity that he's had contact  
22 with. I review those documents before I go out to  
23 see the individual. When I see the individual, I do  
24 an interview that includes everything that happened  
25 to him from the time he was born until the day that

1 he's sitting in front of me. And that includes his  
2 early history, his educational history, his medical  
3 history, his occupational history, any contact with  
4 institutions such as foster care. And then I ask  
5 him about his sexual history and then about the  
6 particular crimes that he committed. And then I  
7 assimilate all that information and render an  
8 opinion about whether he meets criteria as a  
9 sexually violent predator.

10 Q And are these the step-by-step procedures you used  
11 in conducting an evaluation of Michael Kaminski?

12 A Yes, it is.

13 Q Did you find whether or not Mr. Kaminski met the  
14 criteria for civil commitment as a sexually violent  
15 predator?

16 A I did.

17 Q How many victims has Mr. Kaminski been convicted of,  
18 but I'm talking about for sexually violent crimes?

19 A For sexually violent crimes, he has one victim.

20 Q Now, I notice you report there's some other crimes  
21 you looked at that are not sexually violent, crimes  
22 of ... arson for example.

23 A Yes.

24 Q Why is it necessary to look at crimes that are not  
25 sexually violent crimes not listed in the statute?

- 1 A It's important because even though it's not listed  
2 in the statute as sexually violent, it may be  
3 sexually motivated and that could provide me  
4 information about what possible sexual disorders he  
5 has or a pattern of behavior that might be important  
6 in these cases.
- 7 Q Okay. If I may approach the witness Your Honor.  
8 Let's go ahead and get this out of the way. Let me  
9 hand you what's been marked as State's exhibit  
10 number one, a copy of indictment, sentencing sheet,  
11 and warrant on the case of State vs. Michael  
12 Kaminski, indictment number 2007-GS-08-1937, a  
13 conviction of lewd act on a child. Have you - is  
14 that a document that you looked at and studied in  
15 your preparation for this case?
- 16 A Yes it is. This was --- I relied on this in forming  
17 my opinion.
- 18 Q Okay. What is the date of that conviction?
- 19 A The date -
- 20 Q The lower right hand corner where the judge signed  
21 it.
- 22 A Is February 13, 2009.
- 23 Q Okay and the crime of lewd act on a child or lewd  
24 act on a child under sixteen, is that a sexually  
25 violent crime under our statute?

- 1 A Yes it is.
- 2 Q Okay. Now I'll hand you State's exhibit number two,  
3 State of South Carolina vs. Michael J. Kaminski,  
4 indictment number 2007-GS-08-1938. Is this a  
5 document you looked at?
- 6 A Yes it is.
- 7 Q Is that also a conviction for lewd act on a child?
- 8 A Yes it is.
- 9 Q And is it the same date down at the bottom?
- 10 A Yes, 2/13/09.
- 11 Q Okay. Is this crime also a sexually violent crime  
12 the list in South Carolina statute?
- 13 A Yes it is.
- 14 Q So these are the two convictions you're talking  
15 about?
- 16 A Yes.
- 17 Q The sexually violent crimes?
- 18 A Yes.
- 19 Q Okay. I move to introduce these into evidence Your  
20 Honor. I believe we had them mark them yesterday.  
21 The Court: Okay.  
22 Mr. Falk: No objection.  
23 The Court: Okay... objection.
- 24 Q Now Doctor, before we get to these though, you  
25 mentioned a minute ago you looked at some arson

1 cases ...

2 Mr. Falk: Objection, Your Honor. Relevance. I  
3 think the prejudicial value of this certainly outweighs  
4 it's probative value, especially since these are from  
5 activities that happened in 2002, that certainly would be  
6 a stale conviction to be talking about under 609 if he  
7 were to testify as a witness.

8 The Court: Okay.

9 Mr. Falk: And it doesn't represent current behavior.

10 Mr. Bogle: She testified earlier --- we can do this  
11 outside of the presence of the jury, but yesterday, in  
12 earlier testimony if there's a sexual component to the  
13 crime, that's why she felt it necessary to look at it.

14 The Court: Okay. Then I'll ...

15 Mr. Bogle: Let me rephrase that.

16 The Court: I'll allow you to continue questioning  
17 her assuming you said that you set a proper basis that  
18 there's a sexual component. If not, it doesn't come in.

19 Mr. Bogle: Thank you.

20 Q Now Dr. Swan, we've talked about the sexually  
21 violent crimes; I just handed you those two right  
22 there. Were there other crimes involving Mr.  
23 Kaminski that he was convicted of that are not on  
24 the list of sexually violent crimes but you felt it  
25 necessary to look at?

1 A There are.

2 Q Okay, why would you look at crimes that are not  
3 sexually violent in nature, not on the list, if you  
4 will?

5 A There are several crimes that he admitted that he  
6 masturbated during those crimes and because he  
7 masturbated, there's a sexual component to the  
8 crimes and that's important for me to consider.

9 Q Okay. Does this --- are the crimes you're talking  
10 about the arson conviction that he had back in the  
11 late 1990's?

12 A Yes it is.

13 Q Okay. Now there's one - arson second degree on  
14 March 24, 1998. Is that one that you looked at?

15 A Yes it is.

16 Q Why did you feel it necessary in this sexually  
17 violent predator case to examine that particular  
18 arson conviction?

19 A In this particular arson, he indicated that he  
20 masturbated during the fire and that was significant  
21 to my diagnoses.

22 Q Okay. What type of fire did he set and what type of  
23 building? Does your report say?

24 A Yes it does.

25 Mr. Falk: Your Honor, relevance on this?

1 The Court: Okay, I will overrule.

2 Mr. Falk: As to the specifics.

3 The Court: I understand that but I assume that she's  
4 using these specifics are important in her finding based  
5 on his questions. So I'll allow it

6 Mr. Falk: But I'm just, under 403.

7 The Court: I understand.

8 Mr. Falk: Thank you.

9 Q This particular fire, what did he set on fire?

10 A A motel.

11 Q Okay did he work at the motel?

12 A Yes he had.

13 Q Alright, now what did he say to you about that fire?  
14 Or what did he say to the police about the fire, you  
15 and the police, that you found significant in this  
16 sexually violent predator evaluation?

17 A He said that he also set the Rip Tide Motel Beach  
18 Club on fire twice and that he watched it burn and  
19 ejaculated to it.

20 Q Okay. Was there another arson? April 3, 1998  
21 another arson second degree also involving the Rip  
22 Tide Motel?

23 A Yes, there was.

24 Q And is that a crime you had to look at because it  
25 related to your evaluation of him as a sexually

1 violent predator?

2 A It was.

3 Q Was there a sexual component to that particular  
4 arson?

5 A Yes, there was.

6 Q And what was it?

7 A He said that when the flames were going real good,  
8 that's when I masturbated, that he was fascinated  
9 with the flames, it seemed to talk to him, and it  
10 was magnificent and the beauty of it, and he did not  
11 know what sexually turned him on about that fire.

12 Q And finally, there was a third arson. November 27,  
13 1998 that you also looked at. Did that particular  
14 arson also figure into or have a sexual component to  
15 it that you found relevant to studying Mr. Kaminski  
16 and rendering an opinion in this case?

17 A It did.

18 Q What was the part that you found significant that  
19 you had to include that?

20 A He set a fire in an apartment and he said I set the  
21 sofa on fire and I just sat there in a trance and I  
22 masturbated while the fire burned. It was the fire  
23 that was sexually arousing.

24 Q Okay. Now Doc, let's go to these two crimes I  
25 introduced into evidence earlier, the lewd act on a

1 child crimes involving the young boy. In these  
2 particular cases, would you tell the jury is it  
3 necessary for you to study the underlying facts of  
4 the case, who said what to who, what happened, what  
5 the defendant said to the police, what the defendant  
6 said to you, what the victim said; is it necessary  
7 to study all of those things in developing an  
8 opinion about whether or not he has a sexual  
9 deviancy or a mental abnormality?

10 A Yes, it is.

11 Q Why is it necessary to go into all of that?

12 A Well, there are many motivations for crimes. And  
13 it's important to my determination whether he has a  
14 mental abnormality or not. So I have to look at the  
15 pattern of offenses to see if the pattern that is  
16 applicable to this particular individual actually is  
17 a diagnosable mental disorder that meets criteria  
18 under the statute.

19 Q Okay. What did you find --- tell the jury what did  
20 you find significant about these two sexually  
21 violent convictions that we've already introduced  
22 into evidence?

23 A This involved a family who were friends to Mr.  
24 Kaminski and the victim was their eight year old son  
25 and he admitted that he sexually assaulted this boy

1 on three occasions. And he provided descriptions of  
2 the different acts that he engaged in.

3 Q Okay. What were the underlying facts as you  
4 understood them? How is it that he had contact with  
5 this boy?

6 A This was a family that he received a social  
7 security, a disability check and this family was  
8 sort of watching over him and managing his money.  
9 And they had grandchildren and they began trusting  
10 him to babysit for their grandchildren. And during  
11 the time that he was supposed to be babysitting for  
12 the grandchildren, he sexually abused the eight year  
13 old boy.

14 Q Okay and did the sister see it happening?

15 A She did. What happened on one occasion, Mr.  
16 Kaminski had the children and he said he needed to  
17 stop by his house and he took the eight year old boy  
18 in the house and they remained for a long time so  
19 the little girl was sitting in the car and she  
20 knocked on the bedroom door and Mr. Kaminski told  
21 her they weren't done yet and so she got suspicious  
22 and went around to the window and looked in the  
23 window and she was able to see that Mr. Kaminski and  
24 the little boy were naked and that Mr. Kaminski had  
25 the little boy on his stomach and they were engaging

1 in some type of a sexual act.

2 Q Now how old, the boy was eight. How old would Mr.  
3 Kaminski have been about this time?

4 A Mr. Kaminski would have been about twenty-three at  
5 this time.

6 Q Okay. What did Mr. Kaminski ...

7 A Oh, I'm sorry. He was in his thirties at this time.

8 Q Okay, early thirties?

9 A Early thirties.

10 Q What did you find significant about what Mr.  
11 Kaminski told the police and then what did he tell  
12 you that you found significant?

13 A Well, he told the police that there were three  
14 different occasions that he had molested this boy.  
15 And he said he pulled the boy's pants down, he put  
16 him on top of his chest, and he put his hands around  
17 the boy and began grabbing his penis. He said "I  
18 stroked him hard, I stroked him twice and he got  
19 hard right away. I stroked him some more but he  
20 would never ejaculate. I ejaculated on him. The  
21 second time I touched him was approximately two  
22 weeks later. Just like the first time, I pulled his  
23 pants down and then pulled mine down. We laid in  
24 the bed in the same position with his back on my  
25 chest and I put my arms around him and stroked him

1 several times. He got hard very fast. I continued  
2 to stroke him but he never ejaculated." And Mr.  
3 Kaminski indicated that he did ejaculate. He said  
4 the third time was they went to his house and he  
5 went into the room and he put a pornographic movie  
6 on and pulled his pants down, laid in the bed. He  
7 said it was the same position except that this time,  
8 instead of the boy's back facing him, he had him  
9 front facing. And he said "I was moving back and  
10 forth on his private with my private. This time we  
11 did not ejaculate and after we were done, we got  
12 dressed. I took the boy home and a little while  
13 later, the deputies arrived to arrest him.

14 Q Okay. And did he substantially admit to doing this  
15 when you interviewed him?

16 A He did and I asked him about that and he admitted  
17 that he engaged in those acts. And I asked him why  
18 and he said that the little boy wanted him to do  
19 that.

20 Q Okay. Was there an issue about pornographic movies  
21 involved in this scenario between him and the little  
22 boy?

23 A Yes, the little boy reported that he showed him  
24 pornographic movies.

25 Q Mr. Kaminski showed the little boy pornographic

1 movies?

2 A Yes.

3 Q Okay. Now, what sentence did he receive by the -  
4 from The Court when he was convicted of lewd act on  
5 a child, exhibits one and two, involving the little  
6 boy?

7 A He received a sentence of fifteen years.

8 Q Okay, is that on both of them?

9 A Yes, he did.

10 Q And they ran concurrent. Is that right?

11 A Yes, they did.

12 Q So he served both sentences at the same time?

13 A Yes, he did.

14 Q Okay. In these types of cases, are you looking for  
15 evidence of a pattern of behavior?

16 A Yes, I am.

17 Q Why is that? Why is pattern or why is other  
18 behavior significant in cases like this?

19 A Well, in this case where a child is involved, it's  
20 important to establish a pattern of behavior because  
21 you can't diagnose someone with pedophilia disorder  
22 based on one occurrence. You have to have  
23 information that the individual either had another  
24 victim that was at least six months in duration or  
25 you have to demonstrate a pattern of sexual

- 1 fantasies, urges, or behaviors involving children.  
2 So it's important to include any known victims in  
3 your assessment.
- 4 Q Now this particular case, the two exhibits we  
5 introduced, these crimes occurred in 2007. Is that  
6 right?
- 7 A That's correct.
- 8 Q So they occurred in 2007, he was convicted in 2009;  
9 did you have access to information about any  
10 investigations of him regarding ...  
11 Mr. Falk: Objection Your Honor.
- 12 Q Let me rephrase the question. Would it be  
13 appropriate for you to look into any investigation  
14 of him as to whether or not he had sexually abused  
15 another child?
- 16 A Very important because I always look at  
17 investigations that may have not resulted in a  
18 conviction.
- 19 Q Now why is it important to look at an investigation,  
20 even though that didn't result in an arrest or a  
21 conviction?
- 22 A It provides information about a pattern of behavior  
23 and we know that less than ten percent of sexual  
24 crimes results in a conviction. So often they are  
25 disposed of in other ways.

1 Q Now, if the investigation doesn't result in an  
2 arrest or a conviction, what weight do you assign  
3 that?

4 A Well, obviously it's not as much weight as in a  
5 conviction but if I have information that the  
6 individual received standard forensic interview, and  
7 made disclosures on a couple of different occasions,  
8 then I give that some weight.

9 Q But not the same weight that you give a conviction  
10 like that?

11 A Not the same weight that I give a conviction.

12 Q Okay. And is this type of examination into the  
13 facts like this, is this something that is typically  
14 reasonably done by other experts in your field.

15 A Yes, it is.

16 Q Is it part of protocol which you follow in  
17 evaluating someone to see if he is a sexually  
18 violent predator under our statute as well as the  
19 other cases that you've done in other jurisdictions?

20 A Yes, it is.

21 Q Okay. Thank you. At this time Your Honor, I'd like  
22 to begin questioning about a particular  
23 investigation. Let me ask you this: Did you have  
24 access to investigation that did not result in the  
25 charge or a conviction by an investigation done by

1 the South Carolina Department of Social Services?

2 A I did.

3 Q Okay. Why did you think it was necessary to review  
4 that investigation? What highlights of that  
5 investigation did you find were significant?

6 A I reviewed it because I wanted to see if there were  
7 any other victims who might fit a pattern that could  
8 be identified as a sexual disorder such as  
9 pedophilia disorder.

10 Q And in this particular instance you looked at, was  
11 an arrest made?

12 A No, it was not.

13 Q Was it a conviction made on Mr. Kaminski?

14 A No, it was not.

15 Q Was the forensic interview done by a trained person  
16 of the victim?

17 A Yes, on two separate occasions.

18 Q Okay and since there was no conviction, what weight  
19 would you have given this?

20 A Obviously not as much as the conviction but it could  
21 contain important information and I considered it  
22 important information.

23 Q Okay, given that framework, what information was in  
24 that report that you found ...

25 Mr. Falk: Objection Your Honor.

1 The Court: Okay.

2 (Attorneys approach bench without court reporter)

3 (Jurors exit courtroom 10:15)

4 The Court: Okay, if you want to state your  
5 objection, now that the jury's out, on the record.

6 Mr. Falk: Your Honor, we are objecting to the  
7 testimony that we are expecting to come forward as being  
8 hearsay. We would also object under 403 whether or not  
9 it's relevancy would not be greatly outweighed by the  
10 prejudice in these proceedings. She testified that she  
11 gives it some weight, little weight, but it's obviously  
12 going to be damning testimony and because of the  
13 speculative nature of the testimony, this is a case that  
14 the solicitor's office would not bring because the same  
15 forensic interview that she was relying on, the  
16 solicitor's office was not comfortable using it in order  
17 to bring a case. I mean, if it was a satisfactory  
18 forensic interview, I think that we could assume that the  
19 solicitor's office would've brought the case but they  
20 said that the interview was problematic and that they  
21 were not going to bring the case. So I have a problem  
22 with her representations about the forensic interview,  
23 which she did not look at the forensic interview, she  
24 just looked at a summary of the forensic interview. She  
25 did not actually view the tape and draw her own

1 conclusions from it. But presumably, people who did, did  
2 not like it. And again, I think there is a, we're going  
3 to raise a confrontation clause issue, both under the  
4 United States Constitution and the South Carolina  
5 Constitution because the result of this hearing is going  
6 to be a severe impairment of his liberty interest and he  
7 should have a right to confront his accusers who are  
8 making allegations, which have not been proven in any  
9 type of proceeding, whether it's an opportunity for a  
10 cross-examination, judicial review, et cetera. And  
11 although maybe she relies on some part of it, maybe she  
12 could say there were some similarities. But to go to the  
13 actual details, the only, I can see the only value in  
14 that is actually telling the jury what actually happened.  
15 But I don't think the specific details, other than maybe  
16 a summary statement. Yeah there might have been some  
17 similarities. I'm not even sure that's legitimate, but I  
18 certainly don't need to hear the nuts and bolts of  
19 something that, you know, not resolved.

20 The Court: And I guess I need to hear what she's  
21 going to testify to. As to whether I think it violates  
22 the confrontation clause and/or the hearsay. I mean,  
23 it's one thing as an expert, she can rely on certain data  
24 and form her opinion but whether we need to go into the  
25 details of that data. Go ahead and ask her the next few

1 questions you're going to ask her and let me see where we  
2 go.

3 **PROFFER EXAMINATION OF DR. SWAN BY MR. BOGLE:**

4 Q Did you have access to records involving the  
5 Department of Social Services investigation of  
6 Kaminski?

7 A I did.

8 Q Okay. And in those allegations, was there any  
9 criminal convictions, or any arrest warrant, or any  
10 indictment ever issued?

11 A No.

12 Q Okay. And in those allegations, what was the age of  
13 the potential victim that was involved?

14 A Four years old.

15 Q Was it a boy or a girl?

16 A Boy.

17 Q Okay, now we know he's already been convicted. He  
18 got convicted offending against an eight year old  
19 boy?

20 A Yes.

21 Q What was the time distance between the allegation  
22 involving the four year old boy that DSS looked at  
23 and the eight year old boy that he was convicted on  
24 for crimes occurring in 2007?

25 A This occurred prior to the case involving the eight

1 year old boy. And it was a few months prior.

2 Q Okay. Does the closeness in time, allegations  
3 versus convictions, is the closeness in time, is  
4 that a factor you find significant?

5 A Yes, it is.

6 Q Why is that?

7 A Well, it establishes a pattern of behavior over the  
8 same amount of time. There's like five months  
9 difference between the two crimes.

10 Q Okay. And is it your testimony, based on your  
11 research, not just your research, your research in  
12 the field that there are a lot of unreported victims  
13 in crimes committed by pedophiles? Is that right?

14 A Yes.

15 Q Okay now, going back into DSS investigation, was a  
16 forensic interview done with the child involved?

17 A Yes. Two of them.

18 Q Okay. Did you have access to the forensic  
19 interviews?

20 A I did not see the videotape. I saw the summary by  
21 the --- who conducted those forensic interviews.

22 Q Okay. What about the DSS forensic notes, either  
23 their investigation or the forensic interview  
24 summary, what about those documents did you find  
25 significant as it relates to your diagnosis of

1 Michael Kaminski?

2 A Well it involved a prepubescent male and it involved  
3 a similar time period and the little boy reported on  
4 two separate occasions the same information.

5 Q By same information, same type of --- same thing  
6 happened to him twice?

7 A Yes.

8 Q Or same things that has happened to the eight year  
9 old boy three months later?

10 A Similar things that happened to the eight year old  
11 boy and he reported what happened to him twice, on  
12 two separate occasions.

13 Q Okay. And as far as the ultimate decision on  
14 whether or not to try this case, you don't know why  
15 that was made do you?

16 A I do not.

17 Q Okay. And why was it, since he wasn't convicted of  
18 this did you give it a lot of weight?

19 A Not as much as I gave the conviction. Obviously  
20 because it does demonstrate a pattern of behavior, I  
21 gave it some weight.

22 Q Okay. And is this something consistently done by  
23 experts in your field?

24 A Yes.

25 Q Okay. Your Honor?

1           Mr. Falk: Your Honor, it only establishes a pattern  
2 of behavior if the behavior, in fact, occurred. And I  
3 don't think --- and that's the part that I'm concerned  
4 with. This seems to be where there's smoke, there's  
5 fire. Again, the forensic interviews she has, I think  
6 that's a separate confrontation clause issue and that's a  
7 separate hearsay issue because she's now boot-strapping  
8 the actual report of a forensic interview given in 2000,  
9 I'm not sure, in 2007. It's not even a current report.  
10 Again, I still think that my client has a right to  
11 confront the people who are in affect testifying against  
12 him and that would be the DSS investigator or the  
13 forensic interviewers. I mean, there is a statute that  
14 provides that gives the Court gate-keeping function on  
15 letting forensic interviews in and that's certainly and  
16 granted, the criminal case maybe has a different  
17 standard, but still, there's no, that has not been done  
18 in this case and possibly wasn't done in this case  
19 because it's not a valid interview or it was leading. I  
20 mean, kids will say stuff, especially when they're told  
21 to say stuff. And this is a case where, I mean, the  
22 biological father of this child was in custody for lewd  
23 acts. There's --- this is obviously a very dysfunctional  
24 house this child, this five year old child is in. The  
25 mother recanted her statement as far as what was

1       happening. I think there's plenty here to think that it  
2       is extremely speculative and it's going to convict my  
3       client or certainly go a lot farther. One more point:  
4       and the significant difference in the two acts, my client  
5       freely admitted to why which is the one he - I mean he  
6       was convicted because he admitted it. This was a plea  
7       bargain. I mean, he admitted to it, he gave a statement  
8       admitting to it. He did not give a statement to this.  
9       If somebody's going to admit to one, why wouldn't he  
10      admit to the other one?

11           Mr. Bogle: Well here's what we got. Right before  
12      you rule, I got to respond.

13           The Court: Okay.

14           Mr. Bogle: First off, we can speculate all day on  
15      what the solicitor decided, why they didn't ...criminal  
16      charge. That has nothing to do with this. Most of his  
17      objections involved the weight of her testimony and not  
18      the relevance. Our Supreme Court looked at the exact  
19      same facts in the case of the matter and the care and  
20      treatment of Ettel. And I'd like to make it as part of  
21      the record the memorandum of law introducing this type of  
22      evidence, which I sent to the court and a copy to Mr.  
23      Falk. In the Ettel case, the Court found the Circuit  
24      Judge properly admitted testimony regarding Ettel's prior  
25      offenses, including a prior non-sexual murder conviction.

1 And The Court noted that some of the sexual offenses that  
2 Dr. Crawford testified about had not resulted in  
3 convictions, but they were relevant because Dr. Crawford,  
4 the psychiatrist, relied upon them in evaluating Mr.  
5 Ettel's need for and likeliness in success of treatment,  
6 as well as establishing, and the Court said this, a  
7 pattern of sexual assaults. So we have a prior case  
8 right on point involving sexual crimes that did not  
9 result in convictions and the Supreme Court approved and  
10 the doctor's testimony.

11 The Court: I don't have that case. You said you  
12 sent it to me.

13 Mr. Bogle: I have a --- that summarizes the case.  
14 It was sent to everybody. I can pass a copy up.

15 The Court: Okay because I don't --- I didn't get  
16 this.

17 Mr. Falk: My response still would be that the  
18 Supreme Court did not say that it is always admissible.  
19 It was the judge is given a line of discretion and he let  
20 it ...

21 The Court: Well what about the Cromer situation -  
22 State vs. Cromer. It basically says just because an  
23 expert relies on it doesn't mean that you throw out all  
24 the hearsay rules. I mean, in normal situations where  
25 you have prior instances or allegations, the forensic

1 interviewer asks the client about it and if the client  
2 certainly admits that that happened, then that changes  
3 things. They say I got an interview from DSS or a report  
4 from DSS or forensic two years earlier and -- Yeah, I  
5 know versus admitting to actual detail. Is that the  
6 situation in Ettel?

7 Mr. Bogle: Well I've got a copy of Ettel case right  
8 here I can pass up.

9 The Court: Okay.

10 Mr. Bogle: It's got my underlining in there but  
11 basically it starts right here on 120 and goes --- you've  
12 got to turn the page, but that's my copy of Ettel.

13 The Court: Okay. See, in this case, he admitted to  
14 Dr. Crawford. He admitted to three, he admitted to prior  
15 sexual events that didn't result in convictions. So she  
16 used his admissions to those in her evaluation. And  
17 that's what I was asking in this case. Did he admit to  
18 her because it's a whole different standard because then  
19 we get around to hearsay rules because he admitted it  
20 because it's a statement from him. My whole issue in  
21 this case is the hearsay argument. We're getting into  
22 pure hearsay versus she asked him about it and he says  
23 yes it occurred or no it didn't occur. Then it's his,  
24 isn't that what happened? In Ettel, the client admitted  
25 to Dr. Crawford, even though they did not result in

1 convictions that he had done them.

2 Mr. Bogle: That's right.

3 The Court: And then in this case, that's why I kept  
4 asking questions. Did she ask him about it and then did  
5 he admit it. If he did, I think it comes in. If he  
6 didn't admit it, then we're back to, you know, how far  
7 can you go into pure hearsay.

8 Mr. Bogle: Well, when you go to rule 703, which  
9 talks about the facts of data need not be admissible into  
10 evidence if it's something typically relied upon by  
11 experts in the field. She said it is and that hasn't  
12 been challenged.

13 The Court: But it also says that in State vs.  
14 Cromer and that doesn't open the door to all hearsay.  
15 The fact that, you know, it is something that is normally  
16 relied on. And it is many times in situations that  
17 experts just like in Ettel, prior instances of sexual  
18 abuse, whether it's been ...

19 Mr. Bogle: Let me ask her one other question then:

20 **Proffer Testimony of Dr. Swan continued by Mr. Bogle:**

21 Q After reviewing all this stuff from DSS and the  
22 forensic interview, was this part of your interview  
23 with Mr. Kaminski?

24 A Yes, it was.

25 Q What did Mr. Kaminski have to say about this?

1 A He denied that he did this.

2 Q Okay, now he denied it and yet you're reading a  
3 forensic interview that suggests that he did so what  
4 weight do you apply to this?

5 A Well, typically I give a little less weight for the  
6 denial because this is an incident that he has not  
7 been charged for and there's typically a concern  
8 that he might be charged for it if he says anything  
9 about it.

10 Q Is it normal in your work to have guys deny  
11 committing offenses that they've been investigated  
12 for?

13 A Very common because they typically only admit the  
14 ones that they were actually convicted for, if that.

15 Q Some of them even deny the ones they were actually  
16 convicted for?

17 A Yes.

18 Q Okay.

19 Mr. Bogle: That's what we've got Judge. I think  
20 it's part of her opinion. It all comes to the jury.  
21 They can give it whatever weight they want to. I think  
22 we're talking about a weight issue more than anything  
23 else.

24 Mr. Falk: I would also say that there is a statute  
25 17-23-175 which would deal with the admissibility in

1 court's gate-keeping role as far as letting in a forensic  
2 interview. And by her testifying that yeah this was a  
3 forensic interview and I think it's valid, I think we  
4 will completely sidestep that process.

5 Mr. Bogle: But that's in a criminal case involving  
6 child abuse allegations. This is a civil case involving  
7 her evaluation as an expert. Apples and oranges, Judge.

8 The Court: Yeah -

9 Mr. Falk: Not so much because the end result is the  
10 same.

11 The Court: I understand this is a civil case. It's  
12 as close to a criminal case as you can get in a civil  
13 arena because the results, you know, and my problem too  
14 is that she didn't see the forensic interview. She goes  
15 on notes so we've got a kind of a double hearsay issue.  
16 She's relying on notes of a social worker, which as you  
17 know, the Supreme Court is pretty well done away with the  
18 whole forensic interview process. It's hard to even come  
19 up with a scenario now. They have put a whole class of  
20 forensic interviewers out of work in their last rulings  
21 in issues of bolstering a child's testimony.

22 Mr. Bogle: We're not ...

23 The Court: I understand.

24 Mr. Bogle: ... in the criminal field here, Judge.

25 This is a civil case involving expert witness who's

1 expertise has not been challenged.

2 The Court: I understand that. My problem is it's an  
3 objection under a hearsay. And the fact, State v Cromer,  
4 just because she used it doesn't mean all hearsay can  
5 come in just because somebody gave it to her. The  
6 reliability of that hearsay is an issue. The big issue,  
7 if he had admitted, you know, yeah I did it or he tried  
8 to explain it, that gets around hearsay but this simply -

9 Mr. Bogle: He tried to explain it to her. I didn't  
10 ask her that question.

11 Q He tried to explain what happened. Did he?

12 A Dr. Swan: Yes.

13 Q How do you try to explain away what the allegations  
14 were?

15 A Let me get that. Mr. Kaminski gave a pretty long  
16 detail about the fact that the babysitter was  
17 touching him and that he was the one that filed the  
18 police report because the child was screaming in his  
19 sleep. And when he woke him up, he said that  
20 Stephanie, the babysitter, was touching him.

21 Q Okay. So that was his response to you as to  
22 explaining what happened?

23 A Yes. He denied that he did it.

24 Q Okay he placed the blame on someone else?

25 A Yes.

1 Q And despite all that, was it still relevant for you  
2 to consider?

3 A Yes.

4 Q And why is that?

5 A Because as I said, it involves a pattern of behavior  
6 against prepubescent children.

7 Q So can that pattern exist even when the defendant  
8 doesn't admit doing it?

9 A Yes. And that's specifically stated in the DSM5.

10 Q Okay. Is the DS5, that's the Diagnostic and  
11 Statistical Manual Edition 5, the latest edition,  
12 and that's the guidebook for diagnosing mental  
13 abnormalities?

14 A Yes.

15 Q And in this particular case, the mental abnormality,  
16 or one of them that you've diagnosed was pedophilia  
17 - or pedophilia disorder. Is that right?

18 A That's correct.

19 Q Sexually attracted to boys?

20 A Yes.

21 Mr. Bogle: Okay. I don't know what else, Judge.  
22 The case law says we can do it. I know you're stuck on  
23 hearsay but I just think the case law is pretty clear,  
24 it's her expert opinion ...

25 The Court: The case law is clear.

1 Mr. Bogle: She's following her guidebook.

2 The Court: I will allow her to testify to what he  
3 said. She can say, you know, I have reports of prior  
4 instances, I asked him about it and he blamed the  
5 babysitter on it. That gets us around hearsay but it  
6 doesn't get into the details. Simply she had a number of  
7 reports alleged abuse, she questioned him about that  
8 alleged abuse, he denied and said that the babysitter.  
9 As she's testified, she used that in her overall  
10 evaluation to where she'd gotten it. The fact he did  
11 that versus getting into the details, which I think is  
12 hearsay.

13 Mr. Falk: Thank you, Your Honor.

14 Mr. Bogle: Thank you.

15 The Court: Alright.

16 Mr. Bogle: Can I go ahead and mark as court's  
17 exhibit two, this memorandum of law we submitted or do  
18 you want to just ...

19 The Court: You can call it whatever you want to.

20 Mr. Bogle: Court's exhibit one was the seven  
21 questionnaire the jurors filled out.

22 Court Reporter: You need to give that to me.

23 Mr. Bogle: Court's exhibit one was the seven  
24 questionnaire the jurors checked yes on it during our  
25 voir dire process yesterday.

**Continue Examination of Dr. Swan by Mr. Bogle**

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1 The Court: They are somewhere. She needs to have  
2 them.

3 Mr. Bogle: Thank you, Your Honor. This is seven of  
4 them.

5 The Court: That's the whole stack.

6 (Jury enters courtroom 10:45)

7 The Court: Okay.

8 Mr. Bogle: Thank you Your Honor, may it please The  
9 Court?

10 **Continue Examination of Dr. Swan by Mr. Bogle:**

11 Q Now, Dr. Swan, as part of your evaluation, do you  
12 look at cases where there's been investigations of a  
13 person that did not result in a conviction or even a  
14 criminal charge?

15 A Yes, I do.

16 Q Okay did you do that regarding Mr. Kaminski?

17 A I did.

18 Q Why would you look at an investigation of a crime  
19 when there's no conviction or no arrest made? Why  
20 is that important?

21 A If the allegation contains similar facts or a  
22 similar pattern to a known conviction, then that can  
23 provide important information for me.

24 Q Okay but in the course of this investigation, did  
25 you have access to a Department of Social Services

1 investigation of Mr. Kaminski?

2 A I did.

3 Q Did that also include a summary of a forensic  
4 interview done of the alleged victim in that case?

5 A Yes, it did.

6 Q Okay, now what was the age of the alleged victim?

7 A A four year old boy.

8 Q Okay. Did that case result in any arrest of Mr.  
9 Kaminski or any conviction?

10 A No, it did not.

11 Q Did you interview Mr. Kaminski about what the  
12 allegations were or what his version was?

13 A Yes, I did.

14 Q Okay. What did Mr. Kaminski tell you about what  
15 happened?

16 A Mr. Kaminski said that he got a letter when he was  
17 at McCormick Correctional Institution from the  
18 Department of Social Services and the letter said  
19 that they were going to put him on the central  
20 registry. And he said that he did not do anything  
21 to the little boy. And he blamed the little boy's  
22 female babysitter for touching him sexually.

23 Q Okay. Now the allegations in the DSS report and the  
24 summary of the forensic interview done on the four  
25 year old boy, did those allegations point toward Mr.

## Continue Examination of Dr. Swan by Mr. Bogle

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- 1 Kaminski?
- 2 A Yes.
- 3 Q But he wasn't arrested?
- 4 A He was not.
- 5 Q And not convicted?
- 6 A That's correct.
- 7 Q He denied it to you when he talked with you about
- 8 it?
- 9 A Yes, he did.
- 10 Q Did he blame the thing on somebody else?
- 11 A Yes, he did.
- 12 Q Okay, what was the time frame? When did this
- 13 alleged event happen compared to the events
- 14 involving the eight year old boy that resulted in
- 15 the convictions?
- 16 A This allegation came up in March of 2007 and the
- 17 crime against his eight year old victim was in
- 18 August of 2007.
- 19 Q Is the proximity of time between these two events a
- 20 factor to you?
- 21 A Yes, it is.
- 22 Q Okay and why is that?
- 23 A It demonstrates a pattern of behavior interest in
- 24 prepubescent children.
- 25 Q And is this something that's traditionally and

1 typically looked at by experts in your field when  
2 investigating these types of cases, like the one  
3 against Mr. Kaminski?

4 A Yes it is.

5 Q Now Doctor, in order to arrive at a diagnosis, did  
6 you do any kind of testing or have any kind of  
7 testing done of Mr. Kaminski?

8 A I did. I requested a penile plethysmograph and an  
9 ABEL assessment of sexual interest.

10 Q Okay let's talk about the, we're going to abbreviate  
11 the PPG or penile plethysmograph?

12 A Yes.

13 Q Okay, now these crimes happened in 2007?

14 A Yes.

15 Q You were appointed in 2014 or 2015 right?

16 A 15.

17 Q A long time's past?

18 A Yes.

19 Q Why send him out --- are you trained in the PPG  
20 yourself?

21 A I have been. I was trained in 1999 originally and  
22 I've had two updates. I think my last retraining  
23 was about two years ago in Utah.

24 Q Okay so you know how to read these reports?

25 A Yes.

## Continue Examination of Dr. Swan by Mr. Bogle

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1 Q Okay. In the PPG in this particular case, who was  
2 it done by?

3 A It was done by William Burke. He is a also a  
4 forensic psychologist.

5 Q Okay and is Dr. Burke's office used for PPGs by the  
6 Department of Mental Health?

7 A Yes, it is.

8 Q Okay as a result of that, now the PPG, could you  
9 please explain to the jury what that thing involves?

10 A Yes. plethysmograph is the study of blood flow.  
11 It's used in many different contexts. They can do  
12 plethysmograph on arteries, in the heart to see if  
13 there's a blockage, or something like that. In this  
14 particular case, it's a penile plethysmograph and  
15 that assesses blood flow in the penis during  
16 arousal. And the procedure for this is that the  
17 individual sits in a reclining chair, a strain gauge  
18 is placed around his penis, it's covered with a  
19 napkin. And then the individual is shown video  
20 vignettes and audio recordings to go with those  
21 video vignettes. And the types of vignettes involve  
22 pictures of normal adult consensual interactions,  
23 preschool --- adult on preschool child, children,  
24 male and female, typically about five to eleven.  
25 And they also have teenagers who have some evidence

1 of secondary sexual characteristics. And they also  
2 show scenarios involving persuasion, where someone  
3 is more like seducing the person in the video. And  
4 they also show coercion where the individual is  
5 forcing the person in the video to engage in some  
6 type of sexual encounter.

7 Q Okay and the question is as the person sees or hears  
8 these things, is he aroused by it?

9 A That's correct. And a baseline measurement is taken  
10 of the width or the circumference of the man's penis  
11 prior to showing any of the videos and then during  
12 the course of each video presentation, measurements  
13 are taken about how enlarged or engorged with blood  
14 the man's penis is. The more engorgement indicates  
15 the more sexual arousal. So obviously if he shows  
16 only arousal to adult females, then that's pretty  
17 normal male arousal, adult females or adult males.  
18 But if the individual shows arousal to like  
19 preschool children, grammar school children, those  
20 types of things, then that's considered deviant and  
21 those are the things that we take a look at.

22 Q Now is the result of the PPG the only thing you're  
23 relying on?

24 A No, it is one part of a comprehensive evaluation.

25 Q And would it be a mistake, in your profession, to

1 solely rely upon a PPG result?

2 A Well absolutely because even though someone may  
3 demonstrate arousal, if they don't always act on it.  
4 So in this case it's important to look at the  
5 convictions and the arousal patterns to determine if  
6 the individual is currently sexually interested in  
7 deviant scenarios and if he's actually acted on  
8 that.

9 Q Now based on your reading of the PPG test that was  
10 done here, what scenarios did Mr. Kaminski show  
11 arousal to?

12 A The things that he showed arousal to were normal  
13 adult females - or adult females, adult female  
14 coercive, so that would be a rape scenario. He  
15 showed arousal to teenager coercive, which would be  
16 a rape scenario involving a teenager. He showed  
17 arousal to coercive preschool females, so that would  
18 be a rape involving a preschool girl; grammar school  
19 females persuasive, so that would be persuading or  
20 seducing a grammar school child to engage in a  
21 sexual encounter. He showed preschool male  
22 persuasive, so seducing a preschool male child to  
23 engage in a sexual encounter. He showed preschool  
24 male persuasive presentations, and I think I already  
25 said that. And his preference was for a female

1 child over an age-appropriate adult partner.

2 Q Okay. Now Dr. Swan, there's something also, another  
3 test you mentioned a minute ago called the AASI or  
4 the ABEL Assessment.

5 A Yes, it is.

6 Q Is the ABEL Assessment something that is used by  
7 people in your profession in evaluating sexually  
8 violent predator cases as well as other types of  
9 cases?

10 A Yes, it is.

11 Q What is the ABEL Assessment?

12 A In the ABEL Assessment, an individual is shown a  
13 series of slides in two separate presentations. And  
14 the first time a measurement is taken of how long  
15 the person views that slide. And the theory behind  
16 this is the more time that they look at a slide, the  
17 more interested that they are in that particular  
18 scenario that's depicted on the slide. So they have  
19 done research and they've found that average  
20 reaction time for individuals to view the slide and  
21 so if the person looks at the slide longer then it's  
22 assessed that they have a sexual interest in that  
23 particular scenario. For example, if the slide of  
24 little girls in bathing suits is viewed longer than  
25 the average time, then it would say that the

1 individual is interested in female children. During  
2 the second time, they watch the slides, they rate  
3 how sexually exciting the slides are to how  
4 revolting they are. And so then they look at  
5 whether the person is admitting that they have a  
6 sexual interest in the things that they demonstrated  
7 beyond conscious awareness in the scenarios.

8 Q Now, in your report, you refer to the ABEL, that's  
9 spelled A-B-E-L is that all caps?

10 A Yes, I believe it is.

11 Q Or regular letters?

12 A Yes.

13 Q You also refer to it as the AASI - an acronym. What  
14 is AASI stand for?

15 A Abel Assessment of Sexual Interest.

16 Q Okay.

17 A And I believe this is the second version.

18 Q Okay. And is this something that you've relied upon  
19 exclusively in exclusion of all other things?

20 A No. Again, it was one piece of a comprehensive  
21 evaluation.

22 Q And what was the result you gleaned from this  
23 assessment of Mr. Kaminski?

24 A The results of the ABEL indicated that he admitted  
25 to all of the allegations against him; that he

1 demonstrated significant preference for eleven to  
2 thirteen year old Caucasian females and adult  
3 females. And they arrive at a pedophilia  
4 approximation quotient to determine how his pattern  
5 fits those of known pedophiles and his pedophilia  
6 approximation quotient matches the profile with  
7 known pedophilia offenders.

8 Q And Dr. Swan, just jumping ahead for a second, was  
9 one of the - now in this particular case, as we  
10 talked about, as you said before, we've got him  
11 pleading guilty to a sexually violent crime, we have  
12 two convictions, and also he has some kind of mental  
13 abnormality that makes him likely to offend again.  
14 Is one of the mental abnormalities you diagnosed on  
15 this man pedophilia?

16 A It's pedophilia disorder.

17 Q Okay. Which is the, that's the name of the DSM5 for  
18 pedophilia, basically?

19 A Yes. The DSM5 is an eight-hundred page book that  
20 contains all the possible mental disorders that  
21 anyone could have. And the criteria that you need  
22 to find in order to diagnose them with that  
23 disorder.

24 Q This it?

25 A That's it.

1 Q Now, just going back to where we were though,  
2 there's another test referred to as the Burke Sexual  
3 Fantasy Scale.

4 A Yes.

5 Q Who's the Burke we're talking about in this one?

6 A That's Dr. William Burke, the individual that did  
7 this assessment on Mr. Kaminksi. He's well-known in  
8 the field.

9 Q Okay and was the result of that test made available  
10 to you?

11 A Yes, it was.

12 Q And would that have been the only thing you used in  
13 this evaluation?

14 Mr. Falk: Objection Your Honor. Hearsay on this  
15 test coming in. I mean this is, you know, she didn't  
16 conduct the test. She's didn't get the results of the  
17 test. I think we should have Dr. Burke in here to talk  
18 about the test.

19 Mr. Bogle: I think what happens is experts can rely  
20 on tests under other people just like you had chest pains  
21 and your doctor ordered an x-ray. He would look at the  
22 x-ray. Your doctor would look at the x-ray.

23 The Court: Well, I mean I guess the question assume  
24 he's testifying, he's objecting as far as hearsay is  
25 concerned. I mean, I think she has a right to look at

1 this test and base it using it however in her own  
2 evaluation, but are you planning on offering the test in  
3 evidence?

4 Mr. Bogle: No.

5 The Court: Okay.

6 Q Now, this Burke Sexual Fantasy Scale, or B-S-F-S for  
7 the acronym, what is it?

8 A It is a nationally formed and standardized test.

9 And what that means is they've done research all  
10 over the country using specific questions about the  
11 individual's thoughts, fantasies, and masturbation  
12 patterns and actually acting out pedophilia  
13 behavior. Or pedophilia behavior. A pedophilia is  
14 just the psychological term that we use for sexual  
15 deviance or a mental abnormality. And I will  
16 explain that a little bit later.

17 Q Okay. So if I talk about pedophilia, that is a type  
18 of pedophilia?

19 A Yes it is.

20 Q Okay and there's other types of deviant behavior and  
21 they fall under this umbrella of pedophilia right?

22 A Yes.

23 Q Now, what did the results of this BSFS, the Burke's  
24 Sexual Fantasy Scale, what did it reveal that you  
25 found significant to your evaluation?

- 1 A In this testing, Mr. Kaminski admitted that he had  
2 committed pedophilia acts. He admitted that he had  
3 masturbated publically. And he admitted that he had  
4 made obscene phone calls.
- 5 Q Okay, now there's no charge against him for obscene  
6 phone calls. Why is that important for you to look  
7 at?
- 8 A That is one of the other sexually deviant behaviors  
9 that we look at when we're doing an assessment.
- 10 Q Did he deny any forethought or any planning or well  
11 what did he deny to you?
- 12 A He denied that there was any planning of his acts,  
13 that he had masturbated before he - in order for a  
14 sexual offense to occur, there is always some level  
15 of planning of the offense and fantasizing it but  
16 before the act can occur, obviously in order to  
17 sustain sexual arousal, there has to be some sort of  
18 a fantasy. And he denied that any of those things  
19 were involved in his particular case.
- 20 Q What significance did you attach to that?
- 21 A Well, when we are assessing whether someone has  
22 insight or understanding of what made them sexually  
23 offend, the steps that got them to where they  
24 actually touch the child and whether he has any  
25 strategies in place so that he doesn't have to do it

1           again, or doesn't commit sexual crimes again, that's  
2           part of the assessment. And that's important  
3           because that tells us whether he needs treatment or  
4           not. And so this indicates that he doesn't have  
5           that insight or understanding and that would be an  
6           indication that he needs treatment.

7           Q     Would that also be an indication that he would have  
8           difficulty controlling his behavior if just turned  
9           loose?

10          A     Absolutely. If he doesn't know what steps go into  
11          it or how he ended up where he was actually touching  
12          a child, then he certainly doesn't have any  
13          strategies to control it and those are the things  
14          that we look at. So he does have difficulty  
15          controlling that behavior.

16          Q     Dr. Swan, what is a sexual deviance? In your field?

17          A     Okay, sexual deviance, as I just said, is called a  
18          pedophilia and there are many different areas of  
19          pedophilia under that title in the diagnostic and  
20          statistical manual. In our case today, the statute  
21          says that we have to look for a mental abnormality  
22          and those are typically sexually deviant disorders  
23          that are listed in the DSM5.

24          Q     Based upon your interview, the testing that was  
25          done, the assessments that you've made, did you

1 determine to a reasonable degree of psychological  
2 certainty does Michael Kaminski have a mental  
3 abnormality or a personality disorder?

4 A I diagnosed him with two mental abnormalities and no  
5 personality disorder that are relevant to this  
6 evaluation.

7 Q And what is the sexual mental abnormality that you  
8 diagnosed?

9 A The first one is pedophilia disorder and that is  
10 sexual interest in children. The technical criteria  
11 is that over a six month period, the individual has  
12 to have demonstrated fantasies, urges, or behaviors  
13 involving prepubescent children, typically under the  
14 age of thirteen. And the reason that this is  
15 considered sexually deviant is that most people  
16 don't want to have sex with a child and there is a  
17 high probability of harm for someone who does have  
18 sex with a child mentally and physically. So that's  
19 why it's classed as deviant sexual behavior.

20 Q In your report, you talk about paraphilic disorder,  
21 sexually attracted to both, non-exclusive type.  
22 That's a bunch of things. You explained just now  
23 what paraphilic is, the paraphilic disorder; when  
24 you say sexually attracted to both, what does that  
25 mean?

1 A That means that he's interested in male and female  
2 children.

3 Q Okay and then when you say non-exclusive type, what  
4 do you mean by non-exclusive type?

5 A There are some pedophiles who are only interested in  
6 children but there are a larger subset that have  
7 interest in adult appropriate partners as well. And  
8 so the non-exclusive means that he is interested in  
9 appropriate adult partners.

10 Q What led you to this diagnosis?

11 A What led me to this diagnosis is his sexual offenses  
12 against the eight year old boy. It was the  
13 information from the PPG, the Abel, and Burke Sexual  
14 Fantasies Scales demonstrating current interest in  
15 deviant sexual activities, specifically with  
16 children.

17 Q Because the crimes happened in 2007.

18 A That's correct.

19 Q And you're looking at him now.

20 A That's correct.

21 Q Okay. Did he have a sexual disorder, another sexual  
22 disorder we haven't talked about yet?

23 A He did. In that particular book, there are eight  
24 specifically delineated sexual disorders and that's  
25 because those are the ones that we have the most

1 knowledge and research about. There are five-  
2 hundred and forty-seven different sexual deviant  
3 disorders have been identified and so five-hundred  
4 and thirty-nine of those would go under the  
5 classification of other specified paraphilic  
6 disorder. Those are the more rarer ones. And in  
7 this case, I diagnosed him with other specified  
8 paraphilic disorder specifically involving sexual  
9 arousal to fire, sexual arousal to non-consent or of  
10 coercive sex, raping victims, and also teenage males  
11 and females because all of those are deviant, but  
12 they're not specifically delineated so they would  
13 fall under other specified paraphilic disorder.

14 Q Okay, so the arsons. You talked about it on here.  
15 The sexual arousal to the fires was a factor you  
16 looked at?

17 A Yes.

18 Q Now, does having one sexual disorder or more than  
19 one in combination with a mental abnormality and the  
20 sex disorder, does that make him more likely to  
21 commit offenses than just having one and not both?

22 A It does. The research indicates that having  
23 multiple pedophilia or multiple sexual disorders  
24 increases the risk that they'll act out because they  
25 have different things that arouse them sexually so

1 there's broader pool of potential victims.

2 Q There's something called pyromania mentioned in your  
3 report. Did you diagnose him with  
4 pyromaniaaraphilia?

5 A I did.

6 Q Isn't that the disorder we just talked about related  
7 to the fires?

8 A It is not. Pyromania is one of the sexual disorders  
9 that I diagnosed him with and that's sexual arousal  
10 to fire. He also has pyromania, which is a fire  
11 committed out of retaliation, revenge, or to reduce  
12 tension or just for the pleasure of it. And he also  
13 had some of those fires. And so those would fall  
14 under a different diagnosis because he did not  
15 masturbate to those fires and he said he was not  
16 sexually aroused during those particular fires.

17 Q Okay. Let's jump ahead to risk factors. What are  
18 risk factors you look at in cases of this nature?

19 A Risk factors are things that we know from the  
20 research that increase the risk that someone will  
21 commit another sexual offense after they have  
22 already been convicted of one sexual offense.

23 Q Now, there's two types as I understand it; one is  
24 called static risk factors.

25 A Yes.

1 Q. What is static risk factors? What does that word  
2 mean with regard to a risk factor?

3 A A static risk factor is a risk factor that doesn't  
4 change. And in this regard, sexual arousal to  
5 children does not change. If you have it when  
6 you're seventeen, you're still going to have it when  
7 you're seventy. What changes though is the amount  
8 of time you spend fantasizing about children and the  
9 amount of time you spend masturbating to those  
10 fantasies. Those typically decline somewhat with  
11 age. However, the age at which they decline is age  
12 sixty. So Mr. Kaminski is thirty-nine; he still has  
13 at least twenty-one years before they decline and  
14 pedophiles, the fantasies may occur and acting-out  
15 behavior may occur over a longer period of time,  
16 even up to the age of ninety.

17 Q What are his static risk factors?

18 A Well, his static risk factors are sexual interest in  
19 prepubescent children and the young adolescents who  
20 have some secondary sexual characteristics. That's  
21 his static factor. And we use an actuary instrument  
22 to assess that particular part of his risk.

23 Q Okay and I'll get to that in just a second. You  
24 also said there's another type of risk factor called  
25 dynamic risk factors, right?

1 A Yes.

2 Q What's a dynamic risk factor?

3 A Dynamic risk factors are factors that change and  
4 these are the factors that we target in treatment to  
5 bring about change so that the person can gain  
6 control over their sexual impulses and not act on  
7 them. As I said, if you're a pedophile at  
8 seventeen, you're going to be one at seventy. So we  
9 can't cure it. But what we teach individuals in  
10 treatment is how to control those impulses so that  
11 they don't harm another child.

12 Q What are Michael Kaminski's dynamic risk factors  
13 that you found significant?

14 A The dynamic risk factors that he has are sexual  
15 preoccupation. And sexual preoccupation refers to  
16 an abnormally intense interest in sex that dominates  
17 psychological functioning. And in this case, Mr.  
18 Kaminski reported that he watched pornography on a  
19 daily basis and masturbated to it at least twice a  
20 day. So that is greater than most men fantasize  
21 about anything and masturbate. And in this case, he  
22 masturbates to children. So that is a deviant  
23 sexual interest. We know that he said - or he  
24 reported to me that it was distressing to him that  
25 he couldn't control his masturbation; that when he

1 was in the Department of Corrections, he  
2 specifically asked them to give him some help in  
3 controlling it because he wasn't able to control it  
4 himself. Now we know from the research that high  
5 rates of sexual interest and masturbation, high  
6 rates of using pornography, and high rates of  
7 impersonal sex, that would be masturbating as  
8 opposed to having a live sexual partner are  
9 correlated with an increased risk for sexual re-  
10 offense.

11 Q Does Mr. Kaminski have multiple paraphilias?

12 A He does. As I said, he has the interest in  
13 children, the interest in setting fire - or sexual  
14 arousal to fire, and he has interest in teenagers,  
15 male and female. When you have multiple different  
16 areas of sexual deviance, it also increases your  
17 risk for another sexual offense.

18 Q Is another one of these risk factors, dynamic  
19 factors, something called lifestyle impulsivity?

20 A Yes, we know that when sex offenders are stable,  
21 they're less likely to commit a sexual offense. So  
22 lifestyle instability target low self-control, for  
23 example not being able to control their sexual  
24 impulses or different circumstances in their life,  
25 chronic instability and employment, housing, lack of

1 meaningful daily routines, irresponsible decisions,  
2 and long-term - limited long-term plans.

3 Q Okay. Now let's talk about something you mentioned  
4 a minute ago. You referred to the static 99 R. Is  
5 that a test or an instrument, if you will, a scoring  
6 system, you did on Mr. Kaminski?

7 A Yes, it is.

8 Q Is the static 99 R something typically done by  
9 experts in your field, especially on cases like  
10 this?

11 A Yes, it is. It's the most common risk assessment  
12 instrument utilized in evaluating sex offenders in  
13 all different kinds of context, not only the  
14 sexually violent predator cases.

15 Q Now, in your report, you refer to it as an actuarial  
16 test or actuarial instrument; what does the word  
17 actuarial mean with regard to this? And you can  
18 give the jury some examples of this.

19 A Okay. The actuarial approach is approach that's  
20 common in the insurance industry in which they use  
21 tables to assess risk for a particular event. For  
22 example, we know that young males under the age of  
23 twenty-five have a higher rate of accidents and  
24 therefore their premiums are higher so that the  
25 insurance company can protect themselves against the

1 loss. With sex offenders, we know that the more  
2 times an individual has been arrested or convicted  
3 of a sexual crime, their risk increases and  
4 therefore the measures that are instituted must be  
5 greater in order to protect the public. So the  
6 actuarials have a table of results and based on  
7 individuals who had similar characteristics to the  
8 individual that is sitting before you, you rate them  
9 and assess their risk for being arrested or  
10 convicted of another sexual offense.

11 Q Now besides the scoring sheet that you mark the  
12 score on on the static 99 R, it looks at things  
13 besides just convictions, does it not?

14 A It does.

15 Q Okay, and is this system, this scoring system, based  
16 upon the testing done on thousands of sex offenders  
17 who've been arrested again from multiple countries?

18 A The original research had thirty-thousand sex  
19 offenders that were included in the research and  
20 these are the most recent update that occurred in  
21 January 2015 and they assessed individuals, sex  
22 offenders from eight different countries.

23 Q Now, so what type of score - now what is the low end  
24 or the high end of the scores you can get on a  
25 static 99 R?

1 A The low end is a minus three and the high end is a  
2 twelve.

3 Q And where did Mr. Kaminski wind up on that score?

4 A Any score a six and over is considered high risk and  
5 Mr. Kaminski's score was a six.

6 Q Okay. What does that tell you about his - based  
7 upon the static 99 R and the way it was developed,  
8 what does that score tell you about his chances of  
9 re-offending, say five years out, ten years out?  
10 Give us some numbers here.

11 A Yes. The static 99 indicates that ninety of his  
12 score is in the ninety-two point four percentile.  
13 And what that means is that out of every one hundred  
14 offenders, that Mr. Kaminski would be more at risk  
15 than ninety-two point four percent of them. It  
16 indicates that his score is three point seven seven  
17 times that of the average sex offender so he is more  
18 at risk than the average sex offender who scores a  
19 two on the static 99.

20 Q Now is there something else we need to remember  
21 about these actuarials like the static 99 R?

22 A There is. The static 99 is based on the fact the  
23 research indicates that a person has to be arrested  
24 or convicted of a sexual crime over five years or  
25 ten years. We know that less than ten percent of

1 sexual offenders are actually convicted for a sexual  
2 crime so that's an underestimate of the risk. We  
3 also know that the - it tells us what his risk is to  
4 be arrested or convicted at five or ten years. But  
5 what we want to know for the purpose of this  
6 evaluation if he will commit another sexual offense  
7 during the rest of his life. And as I said, he's  
8 got approximately twenty-one years before his risk  
9 for re-offense reduces to any significant amount.

10 Q And the way this static 99 R is developed, one of  
11 the big deductions reducing risk happens when you  
12 turn sixty? Is that right?

13 A That's correct.

14 Q Okay, now is this testing instrument something  
15 that's typically and reasonably relied upon by  
16 experts in your field?

17 A Yes it is.

18 Q But is your opinion about Mr. Kaminski solely based  
19 on his results of the static 99 R?

20 A It is not. It is one part of a comprehensive  
21 evaluation.

22 Q Okay. Now did you talk to Mr. Kaminski about any  
23 other fire incidents where he was not arrested or  
24 convicted.

25 A I did.

1 Q Why was that important to go into other fires where  
2 he might have set a fire but not been charged or  
3 convicted of it?

4 A A conviction for what we call a non-sexually violent  
5 offense increases risk for a sexual offense. In a  
6 non-sexually violent offense is one that doesn't  
7 have sexual motivation. It can be armed robbery, it  
8 could be kidnapping, it could be arson. And so we  
9 look at those because that's a factor that could  
10 increase his risk for another sexual offense.

11 Q And did you - now we've already talked about the  
12 arsons he was involved in, got convicted of that  
13 were sexually motivated. Were there other arsons,  
14 setting fire to things by him that were not sexual  
15 in nature but, in your opinion, increased his risk  
16 for re-offending?

17 A There were.

18 Q Can you tell the jury briefly about how many times  
19 and what these involved?

20 A There were numerous incidents where he set fires and  
21 he admitted to all of those during my evaluation.  
22 He said that his first fire occurred when he was  
23 fourteen and he set fire to the woods beside an  
24 elementary school. At the age of fourteen or  
25 shortly thereafter, he set a dumpster on fire at a

1 tennis club. He said he set fire at the Food Lion  
2 when he was working there. He said he set the  
3 dumpster on fire at McDonalds. He set a fire in a  
4 go-cart at the Myrtle Beach Grand Prix when he was  
5 working there. He said that he set fire to a  
6 vehicle at his parent's residence. The next fire  
7 that he confessed to setting was at a Hardee's  
8 restaurant at what used to be the Myrtle Beach Air  
9 Force Base when he was seventeen. He said that  
10 there were three different fires at Hardee's that he  
11 set. Shortly after the fire at Hardee's, he was  
12 committed for treatment at the Coastal Carolina  
13 Hospital because he was setting fires. In January  
14 of 1998, he set fire to his parent's home. He said  
15 that he wanted to kill them because he was angry  
16 with them. He also said that he wanted to kill  
17 himself in that fire. In November of 1998, his  
18 parents lost everything in the fire that burned  
19 their house down so they moved to a condominium and  
20 he set that condominium on fire and it damaged nine  
21 different condos and resulted in injury to two  
22 firefighters. He said that in one of his fires at  
23 the motel, the Rip Tide Motel, he said that numerous  
24 people had to go to the hospital because they were -  
25 of smoke inhalation as part of the fire.

1 Q And that was the one he eventually got convicted of.

2 A That was the one he got convicted of, yes.

3 Q Now how do these all impact his risk to sexually re-  
4 offend? These are non-sexual things that don't even  
5 result in convictions. How do they impact on your  
6 opinion about his risk to sexually re-offend?

7 A He was convicted of these - some of these fires that  
8 did not have sexual motivation and therefore that's  
9 considered non-sexual violence.

10 Q Okay. Is this something typically and reasonably  
11 relied upon by experts in your field in making these  
12 kind of assessments in sexually violent predator  
13 cases?

14 A Yes.

15 Q Now, you mentioned a minute ago him being committed  
16 to Coastal Carolina? Is that a treatment facility,  
17 a psychiatric facility, or -

18 A It is a psychiatric facility.

19 Q Did you also have occasions where reviewing records  
20 of him being committed or taken to Gilliam  
21 Psychiatric Facility at the Department of  
22 Corrections?

23 A Yes. In Mr. Kaminski's crimes, he pled guilty but  
24 mentally ill and as part of that, they sent him to a  
25 psychiatric facility for an evaluation and that's

1 what he did at Gilliam Psychiatric Hospital.

2 Q Okay. The results of these evaluations back when he  
3 was younger at the Carolina place and later at  
4 Gilliam after he went to prison, do those results  
5 factor - or how do they impact on your conclusions  
6 about Mr. Kaminski?

7 A Well he was diagnosed with pyromania at both of  
8 those along with like a depressive disorder and  
9 anxiety disorders. So certainly I considered those  
10 in my evaluation.

11 Q Did he ever get - did the records you looked at show  
12 that he ever got sex offender treatment while at the  
13 Department of Corrections?

14 A He did not.

15 Q Did you ask him about whether or not he thinks he  
16 needs sex offender treatment?

17 A Well, he said that he wanted to get it in the  
18 Department of Corrections and that he asked for it  
19 but then when I asked him what his risk was to  
20 commit another sexual offense, he said it was zero.  
21 So then I asked him "If you're not at risk to commit  
22 another sexual offense, why do you think that you  
23 need treatment?" But he didn't have an answer for  
24 that.

25 Q In this particular case or this type of situation,

1 is it typical for experts like you to rely on a  
2 person's criminal history to reach an evaluation  
3 conclusion in a sexually violent predator case?

4 A Yes it is.

5 Q Okay and did you rely on his criminal history, both  
6 the sexual crimes we talked about, the non-sexual  
7 crimes that had a sexual component to them in  
8 arriving at your opinion?

9 A I did.

10 Q Does this have to do with his strength or his drive  
11 for deviant sex?

12 A Yes. The number of times he's been convicted for  
13 sexually motivated crimes didn't stretch the  
14 strength of his drive for deviant sexual activities.  
15 For example, if he sets a fire and masturbates to it  
16 and then he's arrested and convicted for that and he  
17 goes to prison, most people would say hmmm, you  
18 know I didn't like prison, I'm not going to do that  
19 again. But the fact that he continues to do it and  
20 to engage in other sexual crimes afterward indicates  
21 the strength of his drive for deviant sex and the  
22 fact that he has trouble controlling it.

23 Q How does past sexual offense behavior relate to  
24 future sexual offense behavior?

25 A Well past behavior is the best predictor of future

1 behavior. If someone has done it in the past, they  
2 are more likely to do it in the future if there's  
3 not been any intervention, no treatment, or anything  
4 to help them gain insight and learn how to control  
5 that behavior. So you know, basically what we have  
6 with Mr. Kaminski is that he - nothing has  
7 intervened in that time to change his sexual  
8 interest or to help him learn strategies for  
9 controlling that sexual interest so that he doesn't  
10 act out again.

11 Q In your interview with Mr. Kaminski that went over  
12 for four hours, did he take any responsibility for  
13 his crimes?

14 A He did take some responsibility. He did not take  
15 responsibility for the planning that went into it,  
16 the fantasies he denied that he had sexual fantasies  
17 about these things, and he didn't demonstrate that  
18 he had any coping strategies to stop it.

19 Q Now were some of these denials inconsistent with the  
20 results of the testing in the evaluation that you  
21 did?

22 A Yes.

23 Q Now, based upon your review of Mr. Kaminski, the  
24 records you looked at, the interview with him, the  
25 testing you had done, the testing you scored

1           yourself, did you diagnose him to a reasonable  
2           degree of medical psychological certainty with a  
3           mental abnormality and a personality disorder?

4           A     I diagnosed him with the two mental abnormalities,  
5           the pedophilia disorder and the other specified  
6           paraphilic disorder that included fire, paraphilia,  
7           teenage boys and girls, and coercive sex or rape.

8           Q     And are these considered relevant mental  
9           abnormalities and disorders in cases like this for  
10          evaluations of people trying to be committed for  
11          sexually violent predators?

12          A     That's correct.

13          Q     Okay. Are they curable?

14          A     The sexual disorders are not curable. We can  
15          provide treatment and hopefully the individual will  
16          learn why they did it, the cycle that they get into  
17          prevents them to do it, and how to avoid acting out  
18          on those impulses in the future.

19          Q     Does having both of these disorders increase in one  
20          person - both of these things in one guy increase  
21          the risk of re-offending sexually?

22          A     Yes.

23          Q     Okay. Do you have an opinion, again, to a  
24          reasonable degree of psychological certainty, as to  
25          whether or not Michael Kaminski had serious

1 difficulty in controlling his behavior?

2 A Yes.

3 Q And does he?

4 A Yes.

5 Q Why?

6 A Obviously, he was convicted for offenses with sexual  
7 motivation then he went on to commit another crime  
8 where he actually acted out against victim, a  
9 contact offense against a victim.

10 Q Do you have an opinion, also to a reasonable degree  
11 of psychological certainty, as to whether Michael  
12 Kaminski has the propensity to commit future  
13 sexually violent offenses?

14 A I do. As I've said, nothing has intervened and so  
15 essentially there's no reason to believe that he's  
16 any different than when he went to prison in 2009  
17 than he is right now.

18 Q Do you have an opinion, again, to a reasonable  
19 degree of psychological certainty, as to whether or  
20 not Mr. Kaminski's mental abnormalities and  
21 disorders that you've talked about - pedophilia  
22 disorder and the other things, do these make him  
23 likely to engage in acts of sexual violence if he's  
24 not committed to a secure facility for long-term  
25 control, care, and treatment?

- 1 A Yes I do.
- 2 Q And what is that opinion?
- 3 A That opinion is that I believe that he has the  
4 relevant mental abnormalities that make him likely  
5 to commit future acts of sexual violence.
- 6 Q Are they such that he needs to be committed to a  
7 place for long-term control, care, and treatment?
- 8 A Absolutely.
- 9 Q And under the statute, is that place run by the  
10 Department of Mental Health?
- 11 A It is.
- 12 Q Okay. Would outpatient treatment be the right thing  
13 for this guy?
- 14 A Outpatient treatment would absolutely not be  
15 sufficient for him. We've already demonstrated that  
16 he has difficulty controlling his impulses. The  
17 intensity of outpatient treatment is not nearly  
18 sufficient to address the type of problems that Mr.  
19 Kaminski has. And he would still present a danger  
20 to the community if he was in outpatient treatment.
- 21 Q And again, in your opinion to a reasonable degree of  
22 psychological certainty, does Mr. Kaminski meet the  
23 legal criteria to be found by this jury to be a  
24 sexually violent predator at this time?
- 25 A Yes.

1 Q If released, who would be at risk?

2 A Children would obviously be at risk, teenagers would  
3 be at risk, and also anyone who might be involved in  
4 one of his fires, just any person who was in an area  
5 that he decided to set fire to.

6 Mr. Bogle: Thank you, Doctor. Please answer any  
7 questions Counsel may have or The Court may have.

8 The Court: Anybody need a break?

9 Mr. Falk: This may take a minute. Do you want to do  
10 lunch or do you want me to go forward?

11 The Court: You say a minute ...

12 Mr. Falk: I'm being facetious.

13 The Court: I understand. Do y'all want to go to  
14 lunch now? I usually either go now or twelve. Sometime  
15 after one - I mean, we can go to one. Do you want to go  
16 to lunch now and come back? Or do you want to wait and  
17 go around one? Doesn't matter to me. By one o'clock,  
18 I'm going to stop you now. So if you're not through in  
19 an hour and a half, you need to understand that.

20 Mr. Falk: I understand that.

21 The Court: Okay.

22 **DR. SWAN CROSS BY MR. FALK:**

23 Q Just to clear up a couple things. You had talked  
24 about engaging in obscene phone calls?

25 A Yes.

- 1 Q The information in the package really was that when  
2 he was a teenager, he and his sister called eight  
3 hundred numbers right?
- 4 A Yes.
- 5 Q So he wasn't calling people. He was like probably a  
6 lot of teenagers have done have called an eight  
7 hundred number.
- 8 A The telephone sex lines. However, the physiological  
9 testing that was done indicated that he still has an  
10 interest in obscene phone calls.
- 11 Q Okay.
- 12 The Court: Counselor, can you speak up a little bit  
13 some of the jurors can't hear you.
- 14 Mr. Falk: Is this better? Is this on?
- 15 The Court: I don't know.
- 16 Mr. Falk: I don't know if it's on.
- 17 The Court: It doesn't sound like it. Y'all have the  
18 ability to turn him on? His mic.
- 19 Q Again, that was calling eight hundred numbers.
- 20 A Yes, the telephone sex lines.
- 21 Q Yeah, okay. Another thing, when you were talking  
22 earlier about the, I think they're called stimulus  
23 test for the PPG?
- 24 A Yes.
- 25 Q He's not shown any child pornography is he?

1 A It is not child pornography. In earlier years,  
2 child pornography was used but there was a Supreme  
3 Court decision that outlawed that a number of years  
4 ago and so these are clothed individuals; they may  
5 have bathing suits, they might have shorts and a  
6 top. But the theory behind this is that they don't  
7 need, an individual that has an interest in children  
8 don't need to have a naked child to be turned on by  
9 them because that arousal is already in their brain  
10 that they attach their sexual arousal to any child.  
11 And so all of these are normal scenarios and they're  
12 not unclothed or child porn at all.

13 Q You had said that there was no intervention. I  
14 mean, there's been no intervening factors from his  
15 commitment date until today. Is that correct?

16 A That's correct.

17 Q Okay. Did you have an opportunity to look at the  
18 types of course he took while he was in custody?

19 A I did and well I advocate for individuals to take  
20 every course they can in the Department of  
21 Corrections because it helps them to be a better  
22 person. None of those courses are specific to sex  
23 offenders. And with a sex offender, there's such a  
24 fantasy life, there is a distinct offence cycle  
25 where they, for example, they may get depressed and

1 that precipitates a whole cycle of behavior that  
2 leads to them touching someone. And their strategy  
3 so that they don't have to act out in the future and  
4 none of that is part of what he received in the  
5 Department of Corrections. These are - a lot of  
6 them were courses focused on his Christian  
7 development and just general behavioral things that  
8 do not impact his sex offending.

9 Q You had testified that you'd set up some programs  
10 for sex offender treatment in Florida. Is that  
11 correct?

12 A That's correct.

13 Q Okay. And so the treatment that somebody would get  
14 at a facility - excuse me. If the treatment that  
15 they got at the facilities in Florida, that's not  
16 any type of surgery right?

17 A It's not. Neither is the one here in South  
18 Carolina. They don't cut out anything so that the  
19 person is not aroused to children anymore.

20 Q And it's not like electric shock therapy?

21 A It's not electric shock. It is strictly what we  
22 call cognitive behavioral therapy. And that means -

23 Q That's really like talk therapy?

24 A Yes, because people who molest children have a  
25 specific set of thoughts that permit them to do that

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because most people don't want to do it. And so what we do is we help them identify the thoughts that prevent them to do that. And then we teach them behaviors to intervene so that they stop those thoughts and they don't go on to commit a sexual offense.

Q You had said that you looked at the report that he had gotten when he was released from Gilliam?

A Yes.

Q And that was after he was - after he pled guilty to lewd acts but mentally - but mental illness?

A Yes. Guilty but mentally ill.

Q Okay, thank you. And you said that that was not in your original information right?

A It was not but I did have a letter from Mr. Kaminski indicating all of the courses that he had taken for self-improvement. So I did have -

Q Excuse me. I was going to ask you a different question.

Mr. Bogle: Can she be allowed to answer the question?

Mr. Falk: That wasn't the question.

The Court: Hold on a minute. She can respond to his question and she can explain her answer.

Mr. Falk: I just simply asked whether or not she -

1 if this was in her original packet.

2 The Court: Right.

3 Mr. Falk: It's kind of a yes or no.

4 The Court: Okay.

5 A: That would be a no.

6 Q: Alright thank you. But you have, since that time,  
7 had an opportunity to review it. Is that correct?

8 A: Yes. I reviewed it earlier this morning.

9 Q: Okay. Do you have a copy up there?

10 A: I do not.

11 Q: Can I hand you this copy?

12 A: Sure.

13 Mr. Falk: May I approach?

14 The Court: Yes sir.

15 Mr. Bogle: What is the document? It's a letter or  
16 something else? Oh, from Gilliam?

17 Mr. Falk: Yes.

18 Mr. Bogle: Okay.

19 Q: And could you just look at the front of the - I'm  
20 sorry. Turn it to page three. But would you look  
21 at the front of that?

22 A: Yes.

23 Q: And where is that from?

24 A: It is from the South Carolina Department of  
25 Corrections Gilliam Psychiatric Hospital.

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Q Would that be a typical kind of document like a discharge summary?

A It's just like a discharge summary from any psychiatric hospital that you would go to.

Q Typically, had you been provided it earlier, is that something that you could use in reaching your opinion?

A Yes.

Q Okay. And what is the date of that?

A Let's see. March 31, 2009.

Q Okay then if you would be so kind, go to the second page where it talks about the recommendations.

A Yes.

Q And could you read those please?

A Inmates should be encouraged to take all medications as prescribed. Necessary action should be taken with signs of decompensation such as increased depression, auditory hallucinations, suicidal ideations, or agitation. Inmates should participate in individual or group therapy sessions focusing on family issues, problem solving, patient education, and the importance of medication compliance, anger management, reducing stress and anxiety, and coping skills. Inmates should be encouraged to seek employment to learn skills and occupy time. Inmate

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follow-up with medical to rule out gallbladder disease.

Q Okay. Thank you. May I grab that back? And this is the document that was generated after he pled guilty and after he went into Gilliam.

A That's correct.

Q I did not hear you - none of the recommendations there referred sex offender treatment.

A That is correct.

Q And why would that be?

A Well, I was a psychiatric nurse in a psychiatric hospital for thirteen years and I only recall one instance where someone who was actually recommended for sex offender treatment and general psychiatrists often do not look at the psychosexual disorders in coming to their conclusions.

Q But he had just pled guilty to two counts?

A He did. He did.

Q So you said that there would be cognitive development therapy?

A Cognitive behavioral therapy. It's a very specific research-oriented type of therapy for sex offenders.

Q And does that include groups of people?

A Yes, it's group therapy typically. They also have individual therapy based on need. But no one

1 understands a sex offender like another sex offender  
2 and so when they present with what we call cognitive  
3 distortions or thinking errors about why they  
4 committed their offenses, individuals who've done  
5 similar things can call them on it better than a  
6 therapist who doesn't have that history. So that's  
7 why we use group therapy.

8 Q Would that also include maybe showing a vignette of  
9 a situation that could lead to a trouble in  
10 discussing it?

11 A At times. Typically what happens is the individuals  
12 present what's called a disclosure, where they  
13 disclose their sexual offenses. And typically at  
14 that time, they are engaging in thinking mistakes  
15 about what caused them to offend or what  
16 gratification they got out of it. And the group  
17 members challenge them and then they're encouraged  
18 to write another disclosure and as they progress in  
19 the group, they're able to fully disclose their  
20 sexual offense history without the distortions.

21 Q So you can - your testimony earlier was that you can  
22 suffer from pedophilia, pedophelic disorder, without  
23 being a sexually violent predator. Is that correct?

24 A That's true. There's a group called Virtuous  
25 Pedophiles and this group is for individuals who are

1 sexually attracted to children but who've never  
2 acted on it. And it's a support group for them so  
3 that they don't act out on them. It's - if they  
4 have the desire, it's called pedophilia. If they  
5 actually act out on it or it's causing them distress  
6 or impairment in their living situation, then it's  
7 called pedophelic disorder.

8 Q Arson is not a sexual crime is it?

9 A Well, not typically but it's commonly known to have  
10 sexual motivation. With arson, investigators first  
11 look for an accelerant and next they look for semen  
12 to see if there's sexual motivation and then they  
13 evaluate known individuals who masturbate to fires.

14 Q Are you aware of anybody who has been committed to a  
15 sexually violent treatment program because of  
16 pyrophelia, in your terminology?

17 A I have never known anyone where that was the sole  
18 basis for the commitment. Typically there has to be  
19 a contact victim in the statutes of the state.

20 Q And you said that you performed a static 99R on Mr.  
21 Kaminski?

22 A I did.

23 Q And one of the questions refers to prior sex  
24 offenses. Is that correct?

25 A That's correct.

- 1 Q If somebody committed prior acts of lewd acts on a  
2 minor, that would've gone in that box, would it not?
- 3 A That would've.
- 4 Q Okay. Criminal sexual conduct would've gone in  
5 there?
- 6 A That's correct.
- 7 Q Public exposure, I guess?
- 8 A Yes.
- 9 Q Okay. And he got two points for that. And his  
10 total score on this SR99 was a six. Is that  
11 correct?
- 12 A That's correct.
- 13 Q Okay. And if he didn't get two points in that box,  
14 he would've been a four. Is that correct?
- 15 A That would be a moderate high score, yes.
- 16 Q And what are the appropriate risk factors for  
17 somebody with a four?
- 18 A Well, it's still a moderately high range and they  
19 would be very similar. It's not quite as high risk.
- 20 Q Do you happen to have percentages?
- 21 A I don't have the percentages.
- 22 Q Alright. Do you have any feel for how much less  
23 they would be?
- 24 A You know, I don't have my scoring book. It's an  
25 eighty page book to score ten items. So I didn't

1 bring it with me. But it's important to note that  
2 these were sexually motivated offenses. He  
3 masturbated to them so they count on the static 99.

4 Q Nobody's ever - but they are not sex crimes?

5 A Just setting a fire where there's no sexual arousal  
6 and no masturbation would not be considered a sex  
7 crime for the purposes of this instrument. That  
8 would be non-sexual violence. And he received  
9 points for that as well because some of the fires  
10 were not sexually motivated.

11 Q Is there a relationship with somebody having sort of  
12 deep-seated anger issues and possibly a propensity  
13 towards committing sexual crimes?

14 A Yes, in the histories of arsonists in general, deep  
15 -seated anger is a risk factor for setting another  
16 fire.

17 Q And if somebody has bad relationships with their  
18 parents, can that sometimes, not necessarily for  
19 fire, but any sexual crime?

20 A Well, that relationship, with the parents, don't  
21 necessarily lead to a sexual crime. Certainly, most  
22 of the individuals that I evaluate don't have  
23 stellar relationships with their family because  
24 they're engaging in acts that probably their parents  
25 don't approve of.

1 Q No, but I mean when they were juveniles?

2 A When they were juveniles? Yes. I think that  
3 arsonists generally have anger issues because that's  
4 one of the factors for pyromania and often that  
5 develops in adolescents.

6 Q None of the testing that you did, the PPG or the  
7 Abel Assessment have nothing to do about pyrophelia.  
8 Is that correct?

9 A That's correct and that's because they are geared  
10 toward contact victims. There's no real test to say  
11 if someone has pyrophelia other than textbooks on  
12 sexual disorders.

13 Q Is there any data to support whether or not somebody  
14 who --- you had testified earlier that you can't be  
15 cured of pedophilia; how about pyrophelia?

16 A Well, in general, the perophilias are not curable  
17 but they can be reduced through treatment.

18 Q What would that treatment be?

19 A Well, there's been some research with juvenile  
20 arsonists that, again, cognitive behavioral  
21 treatment dealing with the issues underneath; if  
22 it's sexual arousal would be treated, if it's anger  
23 and resentment. That would be treated. There's  
24 also a factor in setting fires; it's called impulse  
25 control. They get angry, they don't have the

1 appropriate resources to control that anger and so  
2 they light a fire.

3 Q Impulse control is that similar to - would the  
4 treatment for impulse control be anger management?

5 A Not necessarily. There's different treatment for  
6 impulse control disorders.

7 Q What is that?

8 A Well, again, it is focused on - a lot of it is  
9 strictly behavioral. There's none of the cognitive  
10 stuff in there and the thinking stuff. For example,  
11 with individuals who pull their hair out, that's an  
12 impulse control disorder. And they're taught to  
13 recognize the factors that lead them to want to -  
14 pull their hair out and then diminish the stress or  
15 anxiety that's accompanied with that. And that's  
16 similar to what they do with pyromania.

17 Q Did he exhibit any of these impulse control: pulling  
18 his hair out while you interviewed him?

19 A No. Having one impulse control disorder doesn't  
20 necessarily mean you'll have a second one. But  
21 definitely, he has pyromania, which is classified as  
22 an impulse control disorder.

23 Q There have not been - and he was very open with you  
24 as far as the arsons that he committed. Is that  
25 correct?

- 1 A Yes he was.
- 2 Q And he did not indicate that there was anything
- 3 after he was released from prison for those arsons,
- 4 is that correct?
- 5 A There were no arsons after he was released from
- 6 prison, the first time that I'm aware of. They were
- 7 all before he was released from prison.
- 8 Q And when you had said earlier that he burnt down a
- 9 hotel, there was - he set a dumpster on fire. Is
- 10 that correct?
- 11 A In the Rip Tide Motel, he actually set the hotel on
- 12 fire and the rooms were damaged and people were
- 13 taken to the hospital for smoke inhalation.
- 14 Q And how old was he when he did that?
- 15 A Seventeen.
- 16 Q Is it common for seventeen year olds to have less
- 17 impulse control than thirty-nine year olds?
- 18 A It is.
- 19 Q If somebody is currently on - he's currently taking
- 20 mood-stabilizing medications. Is that correct?
- 21 A That's correct.
- 22 Q And what are those?
- 23 A Mood-stabilizing medications -
- 24 Q Specifically, what are the ones he is taking?
- 25 A Oh, let me just check right here. When I evaluated

1 him, he was taking Disipromene, which is for  
2 depression and Celexa, is for depression as well.  
3 He - those may have been changed but that's what he  
4 was on when I saw him.

5 Q And again, if I could refer you back to the  
6 discharge summary from Gilliam.

7 A Oh yes. Okay, when he was discharged from Gilliam,  
8 he was taking Zoloft, which is an antidepressant.

9 Q And that's a mood-stabilizing?

10 A Mood-stabilizer.

11 Q Okay. Did you have an opportunity to look at his  
12 SCDC records as far as medications that he took  
13 while he was there?

14 A I did. Those were the medications that I found him  
15 to be taking in March of 2015. I haven't received  
16 any records since that time so I don't know if  
17 they've changed those medications or not.

18 Q Do you have any reason to believe he was not taking  
19 them before March 15?

20 A No.

21 Q So if somebody is taking those types of medications,  
22 mood-stabilizing, would that help with impulse  
23 control?

24 A It could to some degree. Because often anxiety  
25 preceeds an impulse control disorder and the acting

1 out of it. And if those medications reduce the  
2 anxiety, then that could help. For example, he was  
3 on Zoloft and Gilliam and Zoloft is one of those  
4 medications that does help reduce anxiety.

5 Q So and people who are on these - so would it be  
6 important to educate - if you were taking mood-  
7 stabilizer - would it be important to educate  
8 yourself as far as what the effects would be if  
9 you'd gone off your medications?

10 A Oh, absolutely.

11 Q And is there a correlation between substance abuse  
12 and acts of pedophilia?

13 A Well -

14 Q Or maybe just perophilia in general?

15 A Okay. There - many individuals have substance abuse  
16 issues who molest children but having a substance  
17 abuse issue doesn't make you abuse children. What  
18 happens is that it may disinhibit you to a degree  
19 that you actually act out on the fantasies that you  
20 already have going on.

21 Q And again, the impulse control.

22 A The impulse control could factor in that as well.  
23 If you have the fantasies, then you'd be more likely  
24 to act on them if you have poor impulse control.

25 Q And when you had done his study - and when you had

1 done his - there's a history that he had some  
2 substance abuse problems prior to his incarceration?

3 A There is, yes.

4 Q What did he tell you about his sobriety since he's  
5 been out of prison? Or since - what has he told you  
6 about his sobriety since that first arson?

7 A Let me just find that. He said that he received  
8 substance abuse treatment and history and that he  
9 doesn't drink frequently, that the most he ever had  
10 was two Budweisers. So I didn't think that his  
11 substance history was abnormal and I didn't use it  
12 as an aggravating factor in any way.

13 Q You were talking about the dynamic risk factors.

14 A Yes.

15 Q There are - you used a couple of actuarial  
16 instruments as part of your evaluation. Is that  
17 correct?

18 A Just one. The static 99.

19 Q Well what is the AAS?

20 A Oh, that is an assessment of sexual interest.

21 Q Okay. That's a test of some type?

22 A Yes. That's another - it's the visual reaction time  
23 where they actually -

24 Q Do they get a score on that?

25 A It's not a score, it just indicates - well, I guess

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there are scores but they are raw scores that are transformed into percentile ranks and then they're compared with normal individuals and sexually deviant individuals.

Q There are other tests that can be used to measure dynamic risk factors. Is that correct?

A There are. The factors that I evaluated are typically included on the stable 2007.

Q But you did not give him a stable 2007. Is that correct?

A I did not. I just assessed the risk factors.

Q And what is the acute 2007?

A The acute 2007 is an assessment of risk factors that may precipitate someone to engage in a sexual offense. And these are acute factors like intoxication, those types of things. So there are acute factors and there are stable factors that are used to assess.

Q And that's common to use the stable 2007 and the acute 2007 along with the static 99. Is that correct?

A Some evaluators do both and I have at times.

Q But you did not do that in this case?

A I did not.

Q Now when you had asked - you had indicated that -

1           you had asked him whether or not he would seek sex  
2           offender treatment?

3           A     Yes.

4           Q     And his response was no - his response was yes. Is  
5           that correct?

6           A     He said that he wanted to get it and he said that he  
7           tried in prison.

8           Q     And would you not take that as a recognition that he  
9           realizes that he could use treatment?

10          A     Well it's important that he recognizes that he could  
11          use treatment but the research indicates that sex  
12          offenders never get sex offender treatment if  
13          they're not mandated to do it by the court or by  
14          some other agency. So the likelihood that he would  
15          get sex offender treatment on his own is very small.

16          Q     You said never but you can't say never. Is that  
17          correct?

18          A     I meant to say almost never.

19          Q     Because you really don't know anything about my  
20          client?

21          A     I don't and that's research so that indicates the  
22          individuals who have characteristics like Mr.  
23          Kaminski almost never get sex offender treatment on  
24          their own.

25          Q     Because obviously any of your tests ... regarding

1           what he is likely to do in the future is all  
2           statistical?  
3       A     It is statistical, that's correct.  
4       Q     Because of course you have no way to know what he's  
5           going to do in the future.  
6       A     Right. I assess risk factors that we know through  
7           research precipitated individuals to engage in  
8           future sexual crimes after they've been reconvicted  
9           and then I compare his characteristics to those  
10          characteristics in making my assessment.  
11       Q     And you said that outpatient treatment would be  
12           ineffective?  
13       A     Insufficient for someone who's as sexually deviant  
14           as Mr. Kaminski.  
15       Q     And why is that?  
16       A     The intensity is not the same. In outpatient  
17           treatment, you go once a week. In inpatient  
18           treatment, they are watching you twenty-four hours a  
19           day, you are engaging in activities that are more  
20           intense, and it's everything you do is monitored  
21           because some of those things may be factors related  
22           to your sexual offenses that you need to get control  
23           of. And in fact, most of the assignments are  
24           individualized assignments based on your history and  
25           what they've observed on the unit.

1 Q So you had testified earlier that you were involved  
2 in setting up a program in Florida. Is that  
3 correct?

4 A Yes.

5 Q How often would there be group therapy sessions in  
6 the program that you had in Florida? On a weekly  
7 basis?

8 A On a weekly basis, it's typically once or twice a  
9 week depending on the particular phase the person is  
10 in.

11 Q So somebody could go to outpatient once or twice a  
12 week. Is that not correct?

13 A They could, but again, the intensity in outpatient  
14 is not the same. The intensity in the inpatient is  
15 much greater and that's the kind of treatment Mr.  
16 Kaminski needs.

17 Q Well you had testified that there's - obviously he's  
18 not under twenty-four hour surveillance if he's on  
19 outpatient.

20 A That's correct.

21 Q What makes the inpatient one more intense?

22 A It's more intense due to the depth of the issues  
23 that they involve. Outpatient treatment is not that  
24 intense and there are more opportunities for the  
25 assessment of factors related to their sex offending

1 they're addressed in inpatient whereas an outpatient  
2 therapist wouldn't have knowledge of those.

3 Q But I don't believe you said anything that would  
4 support the point that you can only have an intense  
5 session while you were inside the SVP treatment  
6 program.

7 A In my experience of doing sexual offender treatment,  
8 we never approach the intensity of what I did when I  
9 was actually working on the unit. It's just not  
10 dealt with at that level. It's much more intense to  
11 be observed twenty-four hours a day. Your treatment  
12 providers are looking at your behavior. For  
13 example, I noticed that you can't control your  
14 emotions, that you get upset at the littlest thing,  
15 how did that impact your sexual offenses, and let's  
16 do an assignment on that and figure out where the  
17 emotional disregulation played into your offenses,  
18 and that type of thing. And you do not get that in  
19 outpatient because there's no other observation and  
20 the person doesn't necessarily have to be honest in  
21 outpatient therapy the way they do in inpatient  
22 because they're constantly being observed and issues  
23 are noticed.

24 Q But they could be just as honest?

25 A There are some individuals who could be just as

1 honest. But the treatment, as far as providing  
2 strategies to deal with the impulses, is not as  
3 intense either. And that's the essential part of  
4 it. It's not the part that we're recognizing. It's  
5 the - applying strategy so he doesn't do it again.

6 Q Well part of whether or not he would be successful  
7 environment would be whether or not he could control  
8 - he could conform his activities to societal norm.  
9 Wouldn't you say?

10 A That's correct.

11 Q You had reviewed his SCDC disciplinary history?

12 A I did.

13 Q Is it common to find people who have sexual -  
14 violent sexual offenders to have some type of  
15 offenses while in custody that show a lack of  
16 impulse control?

17 A There are but those are the individuals who  
18 typically have antisocial personality disorder,  
19 which is an antisocial orientation. And they  
20 typically believe that they should have what they  
21 want and they take it no matter who they hurt. I  
22 did not diagnose Mr. Kaminski with any personality  
23 disorder because he strictly is sexually deviant.  
24 He doesn't have the criminal lifestyle.

25 Q It's not uncommon for people to get written up in -

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you've seen that plenty of SCDC reports with people who have had - been convicted of sexual violent offenses to get written up for public masturbation?

A That is but Mr. Kaminski does not have exhibitionism, which is a disorder in which they - their sexual arousal is to seeing a shocked look on someone's face when they expose their penis to them. He doesn't have that disorder so I would not expect him to be masturbating in the prison.

Q Always seem to be drawing a negative inference there. Could it not be that he has learned his lesson and that he is conforming to societal norms?

A Well, it's - he's in a structured environment, there are sanctions for that kind of behavior so it may be that he has learned, but since he's not aroused to it, I would not expect that he would ever do it just because it's not an area of sexual arousal for him.

Q He was aroused to females. Is that correct?

A That is correct but that's not the same as being aroused to pulling out your penis in front of a female and then watching the shocked look on her face. That's a totally different thing.

Q Assaulting a prison - female prison guard is ... other females in the prison.

A Well he did have some arousal to rape scenarios.

1 But I think that he is in a structured environment  
2 and he's doing pretty well, which seems to indicate  
3 that that's where he belongs for the time being, is  
4 in a structured environment where he can get  
5 treatment and not act out and hurt people.

6 Q He was out for - in between his release from prison  
7 after the arson charges and his arrest in 2007 on  
8 these charges, he was out - he was in public. Is  
9 that correct?

10 A He was and he committed an offense.

11 Q He committed the offense that put him in jail?

12 A Yes.

13 Q Okay. There was nothing - no arsons in the  
14 intervening period of time?

15 A No arsons in the intervening time but he did have a  
16 contact offense with a child.

17 Q And that's the one that he admitted to?

18 A He admitted that one.

19 Q Is that not significant in someone's treatment to be  
20 so open, as far as admitting to what they have done?

21 A Well, I'm not sure that I would call him open.  
22 Being open does not translate to having insight to  
23 what you've done and being able to control it. He  
24 was convicted for it and he admitted it to the  
25 police and he admitted it to me.

1 Q One moment please.

2 Mr. Falk: Your Honor, I'm sorry. There's something  
3 in here that's just come to me and I can't quite find it.  
4 I don't know if we could --- if I could just have few  
5 more minutes.

6 The Court: Sure.

7 Q Did he ever - has he ever spoken to you about how  
8 his actions affected Wyatt?

9 A I've asked him that. Let me see what he said. He  
10 said that he knew that Wyatt would have to go  
11 through counseling, that he harmed him ...

12 Q Where is that?

13 A I think it may be in the discussion of the crime..

14 Mr. Bogle: If I may, Your Honor?

15 The Court: Yes?

16 Mr. Bogle: On page 19 of your report, there's a  
17 section called sex offender treatment ... risk. In the  
18 bottom paragraph there it talks about when asked what  
19 effect his crimes had on the victim - is that what you're  
20 looking for?

21 Mr. Falk: That is exactly --- thank you.

22 Mr. Bogle: Okay. Page 19 of your report down at the  
23 bottom of that page, it looks like it might be what we're  
24 talking about.

25 Q Would you mind reading that?

- 1 A Yes. I asked him "Who has suffered the most?" And  
2 he said that the child had. And he said that he'll  
3 have to go through counseling and he might turn into  
4 a sexual predator himself. And when asked who  
5 suffered the most, him because he's in prison or the  
6 child, and he said the whole family did. Because  
7 his actions harmed the family as well.
- 8 Q That's somewhat of a recognition of victim empathy,  
9 would that not be correct?
- 10 A Well it is a recognition of victim empathy, but it  
11 still does not address his offense cycle, the  
12 pattern, and what he needs to do to change that  
13 pattern so he doesn't hurt other children.
- 14 Q But in appreciation of how your actions effect other  
15 people, that is a step along that way?
- 16 A It is one step along the way because obviously, you  
17 can't benefit from treatment if you don't admit that  
18 you've hurt the victims.
- 19 Q And he was certainly forthcoming there in that  
20 paragraph.
- 21 A Yes he was.
- 22 Q He wasn't minimizing the effect that his actions had  
23 on Wyatt?
- 24 A No he was not.
- 25 Q So really, you've testified that he suffered from a

1 pedophelic disorder and he will always suffer from  
2 pedophilia disorder?  
3 A That's correct.  
4 Q What the issue is here is whether or not he's a risk  
5 to reoffend. Is that correct?  
6 A That's correct.  
7 Q Because certainly somebody could have a pedophelic  
8 disorder and not reoffend?  
9 A That is true.  
10 Q I mean re-offend --- I mean get ...  
11 A Yes.  
12 Q And somebody who is motivated to continue self-  
13 improvement, that would be somebody who would be  
14 likely to seek counseling?  
15 A Not necessarily, not sex offender treatment.  
16 Q If somebody's acknowledged that they need sex  
17 offender treatment?  
18 A There are many individuals that acknowledge that  
19 they need it but don't seek it out voluntarily.  
20 Q And by the same token, there are people that do?  
21 A Very few, in my experience.  
22 Mr. Falk: I believe that's all. Let me ask my  
23 client.  
24 The Court: Okay.  
25 Mr. Bogle: Very briefly Your Honor.

1 The Court: Hang on just a second. He's going to  
2 talk to his client.

3 Mr. Bogle: Oh, I'm sorry.

4 The Court: Sure.

5 Q South Carolina Department of Corrections has an  
6 anger management program. Are you aware of that?

7 A I am.

8 Q Do you know what the program is like?

9 A It's a standard anger management program. Usually  
10 they last like eight weeks, a couple of months.  
11 Something like that. And they deal with the ... to  
12 the anger, you know, the behavior you exhibit when  
13 you're angry and teach you to have some control over  
14 it.

15 Q Did part of your evaluation include looking at his  
16 progress in that program?

17 A I had information that he had to have anger  
18 management but having anger management does not mean  
19 that he will not reoffend because those - it doesn't  
20 address the issues that lead to reoffense.

21 Q And what would be the type of family therapy - what  
22 would that program look like? You testified earlier  
23 that part of the group therapy sessions focusing on  
24 family issues, problem solving, patient education.

25 A I didn't testify to that. I read that

1 recommendation. Mr. Kaminski has been sort of  
2 estranged from his family since he burned their  
3 house down. And so the recommendation from the  
4 prison was that they have family therapy to try to  
5 work out those issues. But again, that has no  
6 impact on sexual offending.

7 Q But at the core of your offense is some family  
8 origin issues and people can have deep-seated  
9 problems with their family, is that correct?

10 A That's correct but that doesn't necessarily mean  
11 that they'll sexually offend. He sexually offends  
12 because he's turned on by fire and he's turned on by  
13 children.

14 Q But that can be related to issues that you have?-

15 A Well, obviously anger management is included in sex  
16 offender treatment for those individuals who have  
17 that problem, but it's not the core issue underneath  
18 sexual offending. The core issue is sexual arousal  
19 to deviant things.

20 Q Did you do any investigation in to sort of the  
21 curriculum of any of the other courses that he took  
22 while he was in custody?

23 A He provided me with a letter about the courses that  
24 he took. And as I said, a lot of them he was in the  
25 faith-based program so that's based on biblical

1 studies and you know, building character. And I  
2 think those are excellent, I think everyone should  
3 do those but they don't teach you how to prevent  
4 reoffense from sexual offending.

5 Q Did you get any record from the Department of  
6 Corrections about the programs he took?

7 A I did get records and I relied, though, on his  
8 letter about what he took and my knowledge of what  
9 they offer in SCDC.

10 Q What would a program look - further suggestions in  
11 the recommendations from Gilliam, it said reducing  
12 stress and anxiety and coping skills. What would  
13 those programs look like?

14 A Well, all of those are included in sex offender  
15 treatment, but they're not the core issue. The core  
16 issue in sex offender treatment is arousal  
17 management. Teaching them how to deal with their  
18 deviant sexual impulses and not act on them. Those  
19 are part of the program because everyone needs that  
20 and that helps them have a balanced life and that's  
21 important to remain stable because if you're  
22 unstable, you're more likely to commit a sexual  
23 offense.

24 Mr. Falk: I believe I have no further questions.

25 The Court: Thank you, sir. Mr. Bogle?

1 Mr. Bogle: Two things.

2 **DR. SWAN RE-DIRECT BY MR. BOGLE:**

3 Q Counsel mentioned some other psychological testings  
4 or scorings and one was called the Stable 2007, one  
5 the Acute 2007. You didn't run those. Why?

6 A I didn't use them just because I addressed all of  
7 those factors in the --- in my assessment. For  
8 example, the acute; he's in a structured facility so  
9 he's not likely to have any acute factors, he's not  
10 likely to get drunk, you know, that could  
11 precipitate an offense. The stable factors were the  
12 ones that I mentioned in my report as the dynamic  
13 risk factors and that's the purpose of that  
14 assessment.

15 Q Okay. Finally, the medications that were  
16 recommended by Gilliam and the medications that he  
17 was taking at the time you saw him, would the taking  
18 of these medications have any effect on his risk to  
19 reoffend sexually?

20 A No.

21 Q Thank you. Nothing further.

22 The Court: Okay.

23 **DR. SWAN RE-CROSS BY MR. FALK:**

24 Q Wasn't your testimony earlier that stress can lead  
25 to re-offending?

1 A Well, we know that individuals who have previously  
2 committed a sexual offense may respond to stress  
3 with another sexual offense. So that kind of  
4 instability can lead to another offense. Helping  
5 them deal with stress is not the be all end all so  
6 that they never commit another sexual offense.

7 Q No, but it certainly would --- staying on the meds  
8 would reduce stress, would it not?

9 A Well, it would and it would promote stability.  
10 Neither of those things in and of itself without sex  
11 offender treatment will make him stop re-offending.

12 Q But they are components of the offense cycle, is  
13 that correct?

14 A They are components, yes.

15 Mr. Falk: Thank you.

16 The Court: Okay. This a good time to stop for  
17 lunch?

18 Mr. Falk: Yes, sir.

19 The Court: Okay. Ladies and gentlemen, we will stop  
20 for lunch and I'll ask you to be back in the jury room at  
21 two o'clock. That'll give you an hour and a half to have  
22 lunch. When you get back in the jury room, I need you to  
23 do something for me. I need you to select a foreperson.  
24 I don't know any of you. You've been together a couple  
25 of days now. The foreperson does not have any more vote

1 than anyone else. They will simply preside over the  
2 deliberation and sign the verdict form. So if you will  
3 select a foreperson ...

4 Foreperson: We've done that this morning, Your  
5 Honor.

6 The Court: Oh, okay.

7 Foreperson: I'm the lucky guy.

8 The Court: Alright, so you're sitting in the hot  
9 seat. Well I'll instruct y'all with what you need to do.  
10 You have a nice lunch. Can't talk about this case yet.  
11 I'll see you back at two o'clock. Thank you.

12 Mr. Bogle: What was his number?

13 Clerk: 74.

14 The Court: From the timetable, is the State going to  
15 rest after this?

16 Mr. Bogle: I'm going to rest and I'd like permission  
17 to release her. Do you want me to do that right now and  
18 do the DV stuff before we go to lunch?

19 The Court: What do y'all want to do?

20 Mr. Bogle: When they get back, I'd like to rest in  
21 front of the jury but I don't want to rest in front of  
22 the jury then send them back out ...

23 The Court: Yeah, we can do that now or come back  
24 fifteen minutes early. Whatever y'all want to do.

25 Mr. Bogle: The State's going to rest. We've got no

1 more testimony.

2 The Court: Okay.

3 Mr. Falk: Your Honor, I'll make my motion for  
4 directive verdict. The State has not proven that he has  
5 --- that Mr. Kaminski will commit an offense in the  
6 future. They've only proven a propensity, possibly, they  
7 put on evidence of a propensity but they have not proven  
8 that Mr. Kaminski will commit an offense in the future.  
9 The jury's got to find that beyond a reasonable doubt. I  
10 think that sufficient evidence so far that Mr. Kaminski  
11 has undergone the treatment programs that the South  
12 Carolina Department of Corrections has asked for him to  
13 do and he's completed those and no further would be  
14 necessary in order to prove that he's not going to  
15 reoffend.

16 The Court: Okay. And I respectfully deny your  
17 motion. I think the State has presented evidence that,  
18 at least in the doctor's opinion, there's a likelihood.  
19 Nobody knows whether he's going to reoffend or not but I  
20 think they've met their burden and the existence of  
21 evidence. Whatever way that jury gives that evidence,  
22 it'll ultimately be their determination beyond a  
23 reasonable doubt. I respectfully deny your motion.

24 Mr. Falk: Thank you.

25 Mr. Bogle: Thank you Your Honor.

1 The Court: Okay. I'll see y'all. Now, just from a  
2 timetable, are you planning on putting in evidence.

3 Mr. Bogle: ... charge them on finding a guilty plea;  
4 guilty but mentally ill is a conviction under the act,  
5 which is in the statute.

6 The Court: Okay.

7 Mr. Bogle: It's not written down in there. I can  
8 ask somebody to email it to your law clerk over ...

9 The Court: That'll be fine. Any objection to the  
10 doctor being excused?

11 Mr. Falk: No Your Honor.

12 The Court: Okay. You're excused. Thank you so  
13 much.

14 (Defendant's Exhibit One and Two were marked)

15 **PM**

16 (PM)

17 **(The jury enters courtroom 2:01 p.m.)**

18 The Court: Okay.

19 Mr. Bogle: May it please The Court? At this time  
20 The State will rest.

21 The Court: Okay. Do you have any evidence you'd  
22 like to present?

23 Mr. Falk: Yes, Your Honor.

24 The Court: Okay.

25 Mr. Falk: Call my client to the stand.

1           The Court: Okay. Come around here please sir.  
2           Somebody find me a Bible. Place your left hand on the  
3           Bible. Do you solemnly swear that the testimony you're  
4           about to give will be the truth, the whole truth, and  
5           nothing but the truth so help you God?

6           Mr. Kaminski: Yes sir.

7           The Court: Thank you.

8           **MR. KAMINSKI EXAM BY MR. FALK:**

9           Q     Mr. Kaminski, can you hear me?

10          A     Yes sir.

11          Q     Okay. Why don't you tell us a little bit about your  
12          childhood.

13          A     Growing up, me and my sister were raised by my  
14          parents, my dad and my mom. We were --- well, my  
15          parents were in the Air Force. We lived in like - I  
16          was adopted, first of all at age three and a half  
17          months. My biological mother was a crack addict and  
18          drugs and she put me up for adoption and at age  
19          three and a half months, a military family adopted  
20          me. Stan Kaminski.

21          Q     That was your father?

22          A     My adopted dad.

23          Q     Okay and what was that name?

24          A     Stan.

25          Q     Okay.

1 A From there, this was still in Germany, a few years  
2 later, my sister was adopted, Shannon. And we lived  
3 in Germany. We went to the Air Force Base. From  
4 there, we went to Arizona, New Jersey. That's where  
5 my grandfather would start sexually assaulting me  
6 and my sister. He would touch me and my sister when  
7 we were taking baths and all that.

8 Q Which grandfather was that? Your mother's?

9 A My mom's.

10 Q Your mom's father?

11 A Yes sir.

12 Q Was he also in the service?

13 A No.

14 Q And about how old were you at this time?

15 Probably about six or seven at the time. Me and my --- I  
16 was trying to tell my parents that. At that age, parents  
17 always say that the grandparents ain't doing nothing.  
18 After that, we moved to Myrtle Beach where my dad was  
19 stationed at the Myrtle Beach Air Force Base. That was  
20 in 1984. My mom, at that time, worked for Peterson  
21 Outdoor Advertising in Myrtle Beach. I would be at ---  
22 well I went to Myrtle Beach Elementary School where I had  
23 a few disciplinaries because of my disability.

24 Q Were you in a special education class?

25 A Yes sir.

- 1 Q Okay. And was that one on one or was there other  
2 children?
- 3 A There was other children in there. They put me in  
4 there after having some problems and the principle  
5 was telling my parents "Oh he needs to be paddled."  
6 My parents was like you don't do that to him. You  
7 need to put him in special education if you don't  
8 understand him. So that's when I started going to a  
9 special education. I started --- it was like self-  
10 contained classes.
- 11 Q What do you mean by that?
- 12 A Self-contained is where you're in one class all day  
13 and ...
- 14 Q Okay.
- 15 A You see even in school, they have therapists and all  
16 that. Psychologists and I would see them.
- 17 Q What kind of grades were you getting?
- 18 A Low C's and D's.
- 19 Q But you got passed along? Did you ever fail a  
20 grade?
- 21 A Yes sir, that was fourth grade.
- 22 Q Was that at Myrtle Beach?
- 23 A Yes, sir. My fifth and sixth grade year, I was at  
24 Socastee Middle.
- 25 Q Socastee?

- 1 A Yes, sir.
- 2 Q And how did your parents react to your grades?
- 3 A They really didn't understand. I mean, there was a  
4 lot of parent teacher conferences. They were always  
5 downing me. They'd say my sister's doing better,  
6 they never understood me.
- 7 Q When you say downing you, what -
- 8 A Saying I could do better, my sister's doing more  
9 better than you, you're worth nothing. And that  
10 hurt. I mean when parents do that, you feel like  
11 you don't have nothing to achieve. I went into  
12 sports and all that, during my sixth seventh grade  
13 year, I started in band, tried to be a little bit  
14 more active. I was in band, I was in karate, t-  
15 ball, stuff like that.
- 16 Q Okay.
- 17 A My eight ninth grade year, I was --- well the end of  
18 eighth grade year, excuse me, let me back up. The  
19 end of my sixth grade year, I got hit by a vehicle.
- 20 Q Where were you?
- 21 A In ...
- 22 Q Were you crossing the street or were you ...
- 23 A Me and a friend were playing ball. I was on texaco  
24 side of the gas station. My friend was on the other  
25 side. We were playing ball and the ball went out in

1 the street. I went after it. I broke my pelvic in  
2 three different places. During that time, when that  
3 happened, me and my parents were having a lot of  
4 arguments. And I spent the whole summer in the  
5 hospital. During my seventh and eighth grade year  
6 ...

7 Q Let me just back up to that automobile accident or  
8 that accident when you got hit by a car. Obviously,  
9 your one eye sort of ...

10 A Right.

11 Q ... doesn't focus the same. Is that from the  
12 accident?

13 A Yes sir.

14 Q So what - how does that leave you? Can you see out  
15 of that eye?

16 A I can see, it's sometimes blurry. But I can see.

17 Q Okay. I'm sorry. You were talking about your  
18 seventh grade year.

19 A My seventh and eighth grade year, my seventh grade,  
20 they wanted to see if my special ed classes were  
21 doing good. I transitioned into remedial classes.

22 Q Remedial?

23 A Yes, sir. Which you're still having special ed but  
24 you're also in some regular classes. At that time,  
25 I was making C's and some B's but it's still low

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averages. It was a lot harder. During that time, I would be seeing the psychiatrist on the outside. I'd be having a lot of problems with my parents. They would, o and off, they would have me committed to Coastal Carolina for anger problems for they didn't understand me.

Q Going back, you said when you were seven, your grandfather molested you?

A Yes sir.

Q What kind of counseling did you get after that?

A Nothing.

Q Did your parents ever accept that it happened?

A When my grandfather was on his deathbed, that was in the middle of my seventh grade year, he told them. And they kind of had that hard to believe.

Q I'm sorry. So you've been in and out of Coastal you said?

A Yes sir. Coastal Carolina Hospital.

Q And the diagnosis there was for anger issues?

A Anger, depression, and I was hearing voices and all that.

Q When did you start taking any medications?

A That would be during when I was at Coastal Carolina Hospital. Between there and Waccamaw Mental Health is when they put me on, I'm trying to think,

- 1           Emfamil. They put me on Thorazine, stuff like that.
- 2           Q     And what was your understanding of why you were
- 3           taking those?
- 4           A     To try to get help to not act out.
- 5           Q     How was your general mood at this time?
- 6           A     It was --- well, like I said, I was still upset that
- 7           I was still having problems. But when I got on
- 8           Thorazine, it really helped. I was slowing down, I
- 9           started concentrating.
- 10          Q     When did you go off Thorazine?
- 11          A     They took me toward when I went to ... Oaks
- 12          Residential Treatment Center. That would be when I
- 13          was in high school. I want to say in ninth or tenth
- 14          grade.
- 15          Q     How long were you there?
- 16          A     For about two years.
- 17          Q     And when you left there, what medicines were you
- 18          taking?
- 19          A     They put me on Zoloft. I was on Zoloft, I was on --
- 20          - I was on, I can't think of the name of it. It's
- 21          for ADHD.
- 22          Q     Something like Ritalin?
- 23          A     Yes, sir, something like that.
- 24          Q     So, in addition to some of these anger issues that
- 25          you had, mood swings, what is the rest of your

1 physical health like?

2 A Well, I had my gallbladder taken out in SCDC while I  
3 was in SCDC. I had my tonsils taken out. I have  
4 mental health problems. Overall, I mean, besides  
5 having psychiatry help, seeing therapists and all  
6 that, I'm doing pretty good.

7 Q Do you have any urinary tract -

8 A Yes, sir. I wear depends for that. I have a  
9 prostate - it's called urinary consistency. But the  
10 doctor diagnosed me with enlarged prostate. I've  
11 seen medical here from when I came in in June until  
12 now. I've been to the hospital three different  
13 times since I've been here. They were going to do  
14 surgery once.

15 Q What was your understanding of what the surgery was  
16 going to be?

17 A It was going to be to try to help with the prostate  
18 and also with the bowel movements. They were going  
19 to open up my intestines to try to help to get them  
20 where they're a little bit larger.

21 Q I think there was some testimony earlier about, are  
22 you receiving any type of government, when you were  
23 not in custody, were you receiving any type of  
24 government subsidy?

25 A Yes, sir. I lived --- I was getting disability; SSI

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and SSD. SSD until it reached a certain percentage, then I was on SSI. I have FAMS helping me at first, which is a paid representative.

Q I'm sorry. FAMS?

A Yes, sir.

Q What is that?

A It's a state agency that oversees my money, paid representative.

Q So what's your understanding, is that F-A-M-S?

A Yes.

Q Is that an acronym?

A Yes, sir. I have problems with my money with trying to handle stuff and they would help me with that. They would help me with clothes shop and stuff like that.

Q So are you also, when you were not in custody, were you on Medicaid?

A Yes.

Q So you were able to get your medications?

A Right.

Q Were covered by Medicaid?

A Yes, sir.

Q Okay.

A I did see mental health. I went to Charleston Mental Health. I would see them from the time I

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lived in Charleston until I went to Moncks Corner.  
When I went to Moncks Corner, I moved in with Joy  
Cook.

Q Okay.

A And when her husband died is when she started to not  
want to take me to my mental health appointments.

Q There was some testimony earlier about a DSS  
investigation. Was that at that house?

A Yes sir.

Q Now without getting too much into details about  
that, Dr. Swan said that you were the one that  
reported that?

A Yes sir. It was on the way back from Myrtle Beach.  
The young kid was, young kid, toddler, whatever you  
want, he was screaming in his sleep. I woke him up,  
asked him what was wrong. He said his babysitter,  
Stephanie at the time, touched him. I told his mom.  
The next day we went to the Goose Creek Police  
Department ...

Q Okay.

A ... and filed a report.

Q Do you know anything about that child's biological  
father?

A Only what I read in the papers.

Q And what was that?

- 1 A That he was in prison for molesting.
- 2 Q So the Cooks were managing your money?
- 3 A Yes, sir.
- 4 Q Okay. So you've been --- you were arrested in 2007?
- 5 A Yes, sir.
- 6 Q And then eventually, you pled guilty to the two  
7 charges?
- 8 A Yes, sir.
- 9 Q That was in 2009?
- 10 A Yes, sir.
- 11 Q So did you ever make bail?
- 12 A No, sir.
- 13 Q So you got credit for time-served? For the - so you  
14 were in Hill-Finklea Detention Center for about two  
15 years?
- 16 A Correct.
- 17 Q And you got credit on that on your sentence?
- 18 A Yes sir.
- 19 Q Otherwise, your sentence, presumably, would have  
20 been two years longer.
- 21 A Right.
- 22 Q While you were in custody, what were you doing on a  
23 daily basis? You know, when you were - okay, let me  
24 back up. That is not a good question. You pled  
25 guilty but mentally ill?

- 1 A Right.
- 2 Q And so you went to Gilliam?
- 3 A When after they sentenced me, or after I got  
4 sentenced by the court in 2/13/09, they transported  
5 me to Kirkland R & E, which is an evaluation center.  
6 They do the processing and then, because I did plead  
7 guilty to but mentally ill, they transported me to  
8 Gilliam Psychiatric Hospital, which is on Kirkland  
9 yard. I was there, I seen a psychiatrist, I seen a  
10 caseworker. It was a group of people I seen. It  
11 was a treatment team. They, depending on the  
12 questions they ask me, they determined what level or  
13 if I need to be under suicide or homicidal watch.  
14 Whatever they decided. They put me on a level one  
15 status.
- 16 Q What's your understanding of level one status?
- 17 A Level one is where they try to gain information.  
18 They try to learn about you. They - you go to  
19 groups, they see how you participate in your  
20 therapy, one on one counseling, group therapy. They  
21 have you in recreation, they see how your hygiene is  
22 and all that.
- 23 Q Okay. Now you said you had a treatment team?
- 24 A Yes sir.
- 25 Q Were they aware what your charges were?

- 1 A Yes sir.
- 2 Q So they had - do you think that they had read your  
3 file? I mean, did they know the charges?
- 4 A Yes sir. They asked about my charges.
- 5 Q Okay. Now how long was it until you were more in  
6 sort of general population? Have you ever been in  
7 general population?
- 8 A Yes sir. On my - in my last sentence, I was in ICS  
9 program, which is sort of like general population.
- 10 Q So I guess I'm asking when were you done with ---  
11 when did they take you to Gilliam?
- 12 A Okay. That would be, I'm not sure if it was March,  
13 I'm not sure what the date would've been, to be  
14 honest.
- 15 Q Which year?
- 16 A Sir?
- 17 Q Which year?
- 18 A I'm not sure if it was March or I'm not sure when I  
19 completed over at Gilliam.
- 20 Q Okay.
- 21 A I was a level three status at that time. I was  
22 attending anger management, stress management. They  
23 had me in where I would write in journals. They  
24 wanted me to write my ...
- 25 Q Let me ask you, let me back you up a little bit.

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When you were in prison, did you have any opportunities to take any classes?

A Yes, sir, I did.

Q Okay. May I approach the witness?

The Court: Yes.

Q I'm going to show you thirty-three diplomas. Or basically diplomas, which is State's exhibit --- which is, excuse me, defense exhibit number one.

A Okay.

Q Can you identify that?

A Yes sir. That is Bondage to Freedom Seminar. There we learn how to do forgiveness, we learn to people that we hurt, we have to forgive them and not hold grudges.

Q So what year did you do that?

A That was 2/18/10.

Q 2/18/10. Is that when you completed it?

A Yes, sir.

Q Okay. Do you have an under --- how long, what's the duration of one of those programs? Or that program?

A That class was two weeks long.

Q And how many days a week?

A They did it two days a week.

Q Okay. And did you have stuff to read? Did you have any ...

- 1 A We had homework and they would also after homework,  
2 we would discussion groups about it.
- 3 Q So you would talk with your peers?
- 4 A Yes, sir.
- 5 Q I'm going to show you another document. Can you  
6 identify that?
- 7 A Yes sir. It's work ready South Carolina. It's work  
8 keys.
- 9 Q You said work keys?
- 10 A Yes sir.
- 11 Q Can you explain what work keys are?
- 12 A Work keys is where you take applied mathematics,  
13 locating information and reading information.  
14 You're studying for about, I don't know, say about  
15 three maybe four months. You're --- there's a  
16 teacher that's in front of the class in different  
17 information like different numbers up on the  
18 mathematic problems, reading out of the book, asking  
19 us questions, and then they have us on a computer to  
20 do assimilated tests. Once they feel we're ready,  
21 then we go to take the test on paper and then they  
22 score it. If the score is higher than seventy-four  
23 or seventy-five or seventy-six, then you get a  
24 silver. If it's lower, it's a bronze. It's just  
25 like bronze, silver, gold, and platinum.

1 Q And what's your understanding of what the purpose of  
2 the work keys program is?  
3 A It's to help you when you get out for jobs. Now a  
4 days, they --- a lot of jobs are asking for work  
5 keys for high school diplomas or GED's.  
6 Q I'm going to show you another document. Can you  
7 identify that?  
8 A Yes, sir. Anger Resolution Seminar. I took that at  
9 McCormick Correctional Institution. We would watch  
10 a movie on Thursdays and depending on if there was  
11 like holidays, we would watch it two times a week.  
12 We would discuss the movie.  
13 Q What type of movie is it?  
14 A It was -  
15 Q Is it something I would go see at the movie theater?  
16 A No.  
17 Q Okay.  
18 A Pastor, the guy's name was Pastor Bill.  
19 Q Okay.  
20 A He would talk about different anger problems. He  
21 would talk about scenarios where people have anger  
22 problems, how they get mad with people, and he would  
23 say how the best way to handle it.  
24 Q Now the SC, the work keys isn't an SCDC program, is  
25 that right?

- 1 A No, sir. It was, we had it in SCDC but it's a  
2 national....
- 3 Q Okay. Who's the sponsor of this anger management  
4 program?
- 5 A The anger resolution that is by the institute of  
6 like basic principles. It's based out of I want to  
7 say, I'm not sure where it's based out of but they  
8 go to different prisons and they have different  
9 prisons sign up for it.
- 10 Q And so how long, what was the duration of this  
11 class?
- 12 A That was about a year long.
- 13 Q Okay. And was there homework in this class?
- 14 A Yes, sir. We would have a workbook. We had to do  
15 the workbook complete it and it would be like a  
16 chapter we would have to do for homework and when we  
17 come back the following Thursday, we would have to  
18 discuss it.
- 19 Q And so somebody was evaluating your homework?
- 20 A Yes, sir.
- 21 Q And does that certificate mean that you completed  
22 the program?
- 23 A Yes, sir.
- 24 Q Another document. Can you identify that document?
- 25 A Yes, sir. McCormick Adult Education certificate of

1 completion.

2 Q You say McCormick. Does it mean that's at McCormick  
3 Correctional?

4 A Yes, sir. It's at McCormick Correctional but they  
5 have adult education there.

6 Q Oh I see. And so what was that class?

7 A It was work course certificate. That was sort of  
8 like work keys but on the work core ...

9 Q Sort of like work keys?

10 A Yes sir. But on the work core, they deal with  
11 communication. They deal with how to do job  
12 scenarios. They help you with the, how to fill out  
13 the application. And they ...

14 Q Helps you fill out employment applications?

15 A Yes, sir.

16 Q Are all these courses required?

17 A It's for people that want to better themselves. I  
18 mean, they have them where people could sign up to  
19 take - people that are in different programs like  
20 the PTS, building character base or mental health  
21 programs, they can take them.

22 Q But they're not required to take?

23 A No, sir.

24 Q I'm going to show you another document to identify  
25 please.

- 1 . A South Carolina Department of Corrections Division of  
2 Mental Health.
- 3 Q Now what is that?
- 4 A That right there would be the class I took  
5 medication management.
- 6 Q And does that indicate that you completed the class?
- 7 A Yes sir. We would have where we took tests on  
8 certain days, she would ask us about our medication.  
9 She asked us if we understood why we were taking the  
10 medication. The reason why I was in that class, I  
11 OD'ed over at Allendale. I was a little bit  
12 depressed and she felt it would be better for me.
- 13 Q What did you OD on?
- 14 A That was anxiety - I mean, not anxiety. Heartburn  
15 pills.
- 16 Q And when you said Allendale, that was Allendale  
17 Correctional?
- 18 A Yes sir.
- 19 Q It was one of the places that you went in the seven  
20 years?
- 21 A Yes sir.
- 22 Q Okay. How long did that class - how many times a  
23 week did that class make?
- 24 A We would go on it twice a week.
- 25 Q And for how many weeks?

1 A For about eight.

2 Q Okay. I have one more.

3 A That right there was the horticulture program over  
4 at McCormick Correctional Institution. It was by  
5 Clemson Exchange. We would - I worked as a yard  
6 detail cutter and I was able to learn about  
7 blueprints. I was able to learn about irrigation.  
8 I learned how to do planning and there would be  
9 classwork too.

10 Q And you completed that class?

11 A Yes sir.

12 Q Now prior to your arrest, where were you working?

13 A Prior to my arrest, I was working - well, sometimes  
14 watched Joy's grandkids. Other than that, I worked  
15 at McDonalds, I - as maintenance. And I worked with  
16 the Post and Courier. I would hand out papers.

17 Q So then why were you taking the work keys and the  
18 other - McCormick Adult Education class and this  
19 horticulture class?

20 A I don't have my GED. I tried getting my GED. Math  
21 is the hardest problem I have. It seems like other  
22 areas I do good in, I'm able - I can do good in  
23 other stuff but the math is my biggest problem.

24 Q You tried to acquire some job skills?

25 A Yes sir.

1 Q Okay. Another document. Can you identify that?

2 A Victims Impact, yes sir.

3 Q There's actually a couple of them that look similar.  
4 There's one that says renewing the mind and one says  
5 leadership skills, level one position of leadership.

6 A Right.

7 Q So that was the next three. Are they all by the  
8 same - why don't you tell me about that? Who's the  
9 sponsor of that program?

10 A That was faith and character based over at  
11 McCormick.

12 Q I'm sorry. Faith and character?

13 A Yes sir.

14 Q Okay.

15 A Different instructors teach them.

16 Q Okay.

17 A The victim's impact was by probably a volunteer  
18 instructor. He had videotapes from the victim's  
19 impact society, where he would show different films  
20 from scenarios where like people got victimized from  
21 having their house broken in or assaulted. We also  
22 would have visitors come in to talk about how they  
23 have been assaulted, how they were a victim of  
24 different crimes. And I learned how I victimized my  
25 person. How I victimized my ...

1 Q Wyatt?

2 A ... Fam --- people.

3 Q And what is --- how many times a week, like for  
4 example, on the victim impact, how many times a week  
5 would that meet?

6 A That would be twice a week. It would be for six  
7 months.

8 Q Okay. Now what is - there's another one right  
9 there?

10 A Renewing the mind. That right there was by Casey  
11 Treat. That's the author. We would be reading from  
12 the book and he would, the instructor would put  
13 stuff up on the board and he would ask us how we  
14 could renew our minds, how we could think positive  
15 instead of negative in a Christian way on that one.

16 Q Is that again for about the same period of time?

17 A Yes, sir.

18 Q And are these going on somewhat simultaneously?

19 A Yes.

20 Q Okay. And the last one there?

21 A It's leadership skills class level one, position of  
22 leadership. I wanted to try that. That was, God, a  
23 little bit before I left McCormick. I took the  
24 class there. I wanted to see from everything I  
25 learned if I could do it and I was able to complete

1 leadership position level one. They had us run the  
2 business, well a mock business. They wanted to see  
3 how our leadership skills were. If we could do  
4 stuff.

5 Q You had said earlier about you learned how the  
6 victim impact class had some effect on you, as far  
7 as your victims.

8 A Yes, sir.

9 Q Now, so were you --- and you kept saying "we". Are  
10 there group of people in this class at the same  
11 time?

12 A Yes sir. There is a, we sit in a sometimes table,  
13 sometimes we sit in a big circle and we would talk  
14 about our crimes. We would talk about the victims  
15 and that had to stay in the class.

16 Q And were you getting feedback from the other ...

17 A Yes, sir. We were getting feedback from - I was  
18 getting feedback from inmates and also from the  
19 instructor.

20 Q And you were giving feedback as well?

21 A Yes sir.

22 Q Okay. Thank you. I'm going to skip this next one.  
23 So I'm going to show you ...

24 A Substance education. That was also by the Division  
25 of Mental Health Services for South Carolina

1 Department of Corrections. The reason why I took  
2 that is, like I said, I had a problem with drugs -  
3 or with my medication when I OD'ed. Also on the  
4 downside, I drank alcohol and I was diagnosed - when  
5 I was born, I was diagnosed with fetal alcohol  
6 syndrome. So I wanted to better understand what  
7 that has with the substance.

8 Q Again, how many days a week?

9 A That would be one, sometimes two days a week.

10 Q For what period of time?

11 A It would be for about maybe three or four months.

12 Q The course from the Department of Mental Health,  
13 this is the second one you've talked about. Did  
14 they have any reading materials?

15 A Yes sir. They go by some kind of book they have  
16 that says Department of Mental Health. They have a  
17 curriculum they lay out.

18 Q And there were assignments?

19 A Yes, sir.

20 Q And did you get feedback from your instructors on  
21 the assignments?

22 A Yes sir. I have ...

23 Q That's what I mean, but you got feedback?

24 A Yes, sir.

25 Q Let me show you another one. Can you identify that?

1 A Yes, sir. That's the alpha course ...

2 Q What's the date of that one?

3 A That is the 27<sup>th</sup> day of December 2012.

4 Q Okay. I should've been asking you the date each  
5 time. But is it your recollection that these were  
6 sort of in some type of chronological order?

7 A Not - I mean -

8 Q No I mean the ones that we've already gone through?

9 A Yeah, I see that now.

10 Q Okay. So now, what is alpha?

11 A Alpha course is you learn about --- they walk you  
12 through the book of Christ. They, you understand  
13 how Christ lived on the --- as a human. You  
14 understand what he went through, how he was human,  
15 how he --- understand that he also sinned and  
16 everything. It was really emotional. I put myself  
17 through what he did. He got picked on and  
18 everything and at that time, I learned he died for  
19 us and that was real emotional to me.

20 Q Now is this the alpha course where it's like the  
21 Bear Grylls(sp)?

22 A Yes, sir.

23 Q In the videos?

24 A Yes sir.

25 Q So it's your understanding those are the same ones

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that a lot of churches outside of corrections use?

A Correct.

Q Okay. And that's how many times a week?

A We would do that sometimes twice a week. That lasted, if it began in June, it would last until like maybe December or January.

Q Did that alpha course help you understand anything about yourself?

A Yeah it - when I took the alpha course, I learned a lot about myself.

Q What was --- can you ...-

A ...

Q You talked about earlier that you were really angry.

A I learned that God loves me. I learned to love people. I learned not to get upset, to be more self-confident and not to be stressed out or hurt people.

Q You talked earlier about you had a lot of anger issues at the time you were directing those towards your parents - your step-parents, is that correct?

A Correct.

Q Did you ever change your opinion on that or -

A Yes sir I went through prison to society over at Kershaw Correction -

Q Is this another one here?

1 A Yes sir.

2 Q Alright, well then we'll get to that. Again, so  
3 that was the alpha course and you completed it?

4 A Yes sir.

5 Q Okay. I'm going to show you another document. Can  
6 you identify that one?

7 A Yes sir. That's enterprise creation fundamental of  
8 business creation.

9 Q Okay. What is that about?

10 A There you learn how to earn your own - own your own  
11 company one day. We had mock situations where we  
12 would like my group, me and the people I was in a  
13 group with, we had a car detailing business. We  
14 would go to people's houses and ask them if they  
15 wanted their car detailed.

16 Q And this is in a mock environment though right?

17 A Right.

18 Q I mean, you weren't ...

19 A No.

20 Q Leaving the prison and going to people's houses?

21 A We would have scenarios, we would have crisis set up  
22 and we would write down what they wanted feedback  
23 and everything. Also we would see different videos  
24 and we would have tests. There was maybe three page  
25 test, like a final exam, we took.

1 Q And did you complete the test?

2 A Yes sir.

3 Q And did you pass the course?

4 A Yes sir, I passed it with a --- well, I got a C in  
5 it but I mean I still passed.

6 Q And what was - what year was that?

7 A That was - I know it was 11/2013, I can't remember  
8 the first.

9 Q Yeah I couldn't either. Did you learn any of this  
10 at Socastee's?

11 A No sir. All this was in prison this time.

12 Q Can you identify that one?

13 A Yes sir. That was anger management. That was by  
14 the Division of Mental Health South Carolina  
15 Department of Corrections. That was on - I got it  
16 on June 24, 2013. Ms. Gardener over Kershaw  
17 Correctional was my therapist. We would have  
18 classes two times a week. She would have stuff -  
19 curriculum made out. She would talk about different  
20 anger situations, how they could effect us today.  
21 And also she would give us scenarios on what we do  
22 in situations.

23 Q When you said that she was your counselor, did you  
24 have any one on one time?

25 A Yes sir. She would talk to me about my attitude,

- 1           how I feel. She would see if I have any problems.  
2           She - if I had any problems or if there was any  
3           other situations that I needed help with.
- 4           Q     And she knew what your charges were?
- 5           A     Yes, sir.
- 6           Q     Or what your convictions were?
- 7           A     Yes, sir.
- 8           Q     And again, this is the Department of Mental Health?
- 9           A     Yes, sir.
- 10          Q     You testified earlier that those courses had books  
11          and homework?
- 12          A     Yes, sir.
- 13          Q     Was that similar with that?
- 14          A     Correct.
- 15          Q     And you got feedback on the homework?
- 16          A     Yes sir. They - when we would bring the homework  
17          in, we would go over the homework. She would - if  
18          we had any questions we didn't understand, she would  
19          give us feedback on it.
- 20          Q     And you had group discussions?
- 21          A     Correct.
- 22          Q     So you were getting input from ...
- 23          A     From other group members.
- 24          Q     And if I may say, when we started anger management,  
25          she gave us a journal to write. The journal we

- 1 would write our thoughts in and everything, which  
2 helped a lot.
- 3 Q Okay, so again, you were angry. Did this help -
- 4 A Correct.
- 5 Q Resolve?
- 6 A Yes sir.
- 7 Q In which way? In what way?
- 8 A By - I look back at what I wrote in my journal and  
9 see how I bettered myself. See how my anger level  
10 went down.
- 11 Q Here's another document.
- 12 A That was the baptism. I got that over at Kershaw  
13 Correctional by Transformation Church.
- 14 Q While you were in -
- 15 A Prison, yes sir.
- 16 Q Okay. What is the Christian Identity class?
- 17 A Christian Identity class is where you learn about  
18 identity of Christ. How - just a basic walkthrough  
19 all the way from Genesis to Revelation - or  
20 Revelation.
- 21 Q How long was that class?
- 22 A That was from - let's see, October I got the  
23 certificate. I'm going to say that was for about  
24 three months.
- 25 Q And reading and ...

- 1 A Yes sir. Reading and there was a few homework  
2 assignments.
- 3 Q What did you learn from that?
- 4 A I learned that we're all people. We all go through  
5 different trials and tribulations.
- 6 Q And who sponsors that?
- 7 A That was Kershaw Bible Institution.
- 8 Q Okay. Is that Kershaw Corrections or is that  
9 separate?
- 10 A It's Kershaw Corrections but Kershaw Bible Institute  
11 is Calvary Church out of North Carolina sponsors it.  
12 That's why it's called Kershaw Bible Institute.
- 13 Q I see. What is guardrails?
- 14 A Guardrails is by Andy Stanley. In life we have,  
15 when we've gone down a highway, there's going to be  
16 guardrails to avoid us going in ditches and all  
17 that. I learned to put guardrails up in my life.  
18 To not, like for instance, when I did the crimes I  
19 did, if I would have avoided them, if I would've put  
20 barriers up, I would have did different stuff.
- 21 Q Now who is, who did you say ...
- 22 A Andy Stanley. He's a pastor out of Harvest Church.
- 23 Q And where's Harvest Church? In the state or  
24 somewhere else?
- 25 A In another state.

- 1 Q Okay. What kind of interaction did you have with  
2 the instructors?
- 3 A We had stuff from guardrails --- they have a manual.  
4 They would run off the homework assignments for us  
5 to do. We would have to write essays on how we had  
6 regrets in our life, how we changed, how we want to  
7 do better.
- 8 Q And when did you complete that?
- 9 A I completed that on the 27<sup>th</sup> day of March 2014.
- 10 Q And maybe I've asked but I can't remember. How long  
11 was this course?
- 12 A That was for about a year.
- 13 Q A year and about how many days a week?
- 14 A It was two days a week.
- 15 Q Okay. I'm going to show you five here that they say  
16 Calvary certificate of completion.
- 17 A Yes, sir.
- 18 Q And they all seem to be signed by somebody named Guy  
19 Sorrell.
- 20 A Yes sir. He was one of the head teachers at -
- 21 Q Just tell me what Calvary is?
- 22 A Calvary is a church out of North Carolina,  
23 Charlotte, North Carolina. They help with prison  
24 programs and they try to help people to not re-  
25 offend. The programs, like they have alter ego

- 1           changing your mind in a chaotic world. They -
- 2           Q     So what specific ones did you participate in?
- 3           A     I participated in alter ego.
- 4           Q     And that is actually A-L-T-A-R right?
- 5           A     Yes sir.
- 6           Q     Altar like a church altar?
- 7           A     Right.
- 8           Q     Okay, just before, generally, how many days a week
- 9                 would they meet?
- 10          A     This was on Mondays. We would ...
- 11          Q     So once a week?
- 12          A     Yes, sir.
- 13          Q     And over what period of time?
- 14          A     This would be like over maybe three months, four
- 15                 months time.
- 16          Q     Okay. And these had workbooks?
- 17          A     No, we would watch a movie or like watch a video.
- 18          Q     Like a little story?
- 19          A     Yes sir. And then after that, we would do group
- 20                 discussions.
- 21          Q     Okay. How long would the group discussions last?
- 22          A     That would be about an hour tops.
- 23          Q     Alright and so there's about five of them up there.
- 24                 Is that, as far as the duration and the length of
- 25                 time, is that all about the same?

1 A Yes, sir.

2 Q And were they all video-type courses?

3 A Yes, sir.

4 Q Okay. So then that one in your hand, that's an  
5 Alter ego?

6 A Yes sir.

7 Q Specifically, what do they mean by altar -  
8 Alter ego, you learn how to, I mean, when I took that  
9 class, I seen my ego, I mean, I always thought I was  
10 better than people sometimes. But when I took it, I'm  
11 just like everyone else. And I backed down and during  
12 that time that's when I was in the PTS, Prison to  
13 Society, I found out that my parents were --- I shouldn't  
14 have been angry towards my parents. I started realizing,  
15 I mean, I was blaming my parents, blaming everyone else,  
16 trying to make them the victims and everything. And they  
17 just were trying to help me. I mean, yeah they were  
18 victims, but I mean they weren't victims of me trying to  
19 do, of, I was trying to make them a victim.

20 Q So altarego. What's another one that's there?

21 A Another one that's there is living in confidence in  
22 a chaotic world. Living with confidence in a  
23 chaotic world.

24 Q And what do they mean by living with confidence?

25 A You have to have confidence every day, the way you

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walk, you have to hold your head up high, you have to know what you're doing, you have to feel you can do it.

Q What's the next one?

A The end of times. That was Revelation revealed. It talked about when God's going to come back, what he's going to do.

Q Okay. The next one?

A That was Lord, change my attitude. Now that one helped.

Q What's that one about?

A Lord, change my attitude. I, when I took that one, I really, I told my roommate that night that I definitely needed an attitude adjustment and that during that time is probably when, like I said, when I started having the realization that my parents weren't at fault. I was the one that was making them all victims and everything.

Q So far we've talked about a lot of faith-based Christian programs. Did you grow up in a very Christian household?

A We went to church but I was forced into going. At that - when I was young and forced into going and everything, if we didn't go, we would get in trouble.

- 1 Q Because a lot of this is what you might learn in  
2 Sunday school. You would've get some basis for this  
3 in Sunday School?
- 4 A Right.
- 5 Q But why did you start taking these when you went to  
6 prison?
- 7 A I seen a way to better myself so when I get out, I  
8 could apply what I learned and do good, go ahead - I  
9 could hold down a job, I could attend groups, I  
10 could talk to people about not doing what I did.
- 11 Q Alright then the next - so what one was meaningful  
12 you said?
- 13 A Lord, change my attitude.
- 14 Q Okay.
- 15 A The next one is the family project that was just  
16 showing the different Christian families; from Jesus  
17 to John the Baptist to Moses.
- 18 Q More of a historical?
- 19 A Yes sir.
- 20 Q Okay. And the next one? Or was that the last one?
- 21 A That's the last one.
- 22 Q Okay. Thank you. Now here's a certificate from  
23 November 19, 2014 a lamp of light Bible course:  
24 What is that course about?
- 25 A That right there takes you through the book of John.

1           You find out through the book of John that Jesus was  
2           with God. It talks how - in John 3:16 how God gave  
3           his beloved son to die on the cross for us. He gave  
4           his son. There was just taken through the entire  
5           book of John.

6           Q     Okay. Again, more historical?

7           A     Yes sir. But it was more of a private study.

8           Q     Now here's a document here that has PTS on the  
9           bottom of it. What is PTS?

10          A     PTS is Prison to Society.

11          Q     And who sponsors that?

12          A     It's sponsored by Kershaw Correctional and also by  
13          Calvary Church.

14          Q     What did you learn in Prison to Society?

15          A     I learned how to do applications, how to fill out  
16          job applications, how to do resumes. I learned how  
17          to also go for interviews.

18          Q     About how frequent were those classes?

19          A     Those were held every Friday.

20          Q     For how long?

21          A     For - it was, let's see - that started back in -  
22          let's see, December's when I got it. That was back  
23          in May when that started.

24          Q     Okay. What is the hurt Bible correspondence course?

25          A     That's another independent Bible. It takes you from

1 Genesis all the way through Revelations and they ask  
2 you questions, true or false sometimes, multiple  
3 choice sometimes, different - we had to fill in the  
4 answers. We had to look in the Bible.

5 Q And so it was graded?

6 A Yes sir.

7 Q You went back to Alpha in 2015?

8 A Yes sir.

9 Q Why did you go back?

10 A They asked me to be one of the assistant  
11 instructors.

12 Q Okay.

13 A And PTS Alpha is a little bit different from ...  
14 alpha. You have a little bit more one on one with  
15 the teacher. She has a big group of PTS and spice  
16 participants.

17 Q Spice?

18 A Yes sir. Self-paced in class education.

19 Q Okay.

20 A Which is also national recognized. In that class,  
21 we do the same thing that we do in yard alpha, but  
22 it's just a little bit more one on one. She asks us  
23 more questions, more - we get into groups, we  
24 discuss them and we bring up how we could do better.

25 Q What did you learn?

- 1 A I learned a lot. I learned that I need to apply  
2 more good behaviors.
- 3 Q Christian principals?
- 4 A Christian and non-christian.
- 5 Q Two documents here that seem to be related. Another  
6 Bible correspondence course?
- 7 A Yes sir.
- 8 Q Can you explain what that is?
- 9 A That was from - that was the Bible correspondence  
10 course getting to know Jesus. It was from the  
11 Church of Christ in Lancaster, South Carolina.
- 12 Q How long was that course?
- 13 A That was - I took that, started it on January 24 -  
14 well ended it on January 24 - that was about a year.
- 15 Q Okay. Course work?
- 16 A Yes sir. It was course work and I had a teacher  
17 that graded. I learned a lot. I didn't know - like  
18 I said, I didn't know Jesus that good. And when I  
19 got to know him, it's different.
- 20 Q How's it different?
- 21 A He's just like us and we are supposed to strive to  
22 be like him. I mean, he died for us, he tried to  
23 set a way to do good and with everything I learned,  
24 that's what I'm trying to do, even though I had some  
25 problems.

1 Q Bondage to freedom seminar.

2 A Yes sir.

3 Q What is that about?

4 A Bondage to freedom is about forgiveness. That's  
5 where ...

6 Q Is that the bondage they're talking about?

7 A Yes sir. You have to break the bondage. You have  
8 to learn how to forgive people. You have to learn  
9 not to hold grudges. We would go through that, we  
10 would go through there was one called being secure.  
11 We would learn how to have confidence and all that  
12 security.

13 Q Did it help you with any -

14 A Yes sir.

15 Q Grudges that you had? Who did you have grudges  
16 with?

17 A I had grudges towards my parents. I had grudges  
18 towards - I had grudges towards a lot of people.  
19 And I learned not to hold grudges no more. I mean,  
20 I hold grudges, that's just got me uptight and  
21 angry. And that's some of the things I did in the  
22 past - I mean when I was outside. Grudges ain't  
23 good to hold. I mean I'm glad I took these.

24 Q What is this TC group member? What is that?

25 A That right there - TC group is transformation group.

- 1 We would meet on Thursdays. We would watch Pastor  
2 Jerome Gray give a message. After the videotape was  
3 over, we would discuss about what he talked about.  
4 It would be on different scriptures.
- 5 Q Okay. What, again, you successfully completed  
6 guardrails, avoiding regrets in your life?
- 7 A Yes sir.
- 8 Q When was that?
- 9 A That was on the second day of April 2015.
- 10 Q Again, Kershaw Bible Institute?
- 11 A Yes - that was PTS.
- 12 Q And PTS is what?
- 13 A Prison to Society.
- 14 Q Okay.
- 15 A I wanted to retake guardrails. They say sometimes  
16 it's better to take it twice if you want to get more  
17 knowledge. And I picked up a few stuff I missed the  
18 first time. And I just need to remember when  
19 putting guardrails around - my guardrails around  
20 where I have problems at.
- 21 Q Guardrails on your path?
- 22 A Right.
- 23 Q And a vocational certificate from Palmetto Unified  
24 School District?
- 25 A Yes sir. That was for upholstery. That right there

1 they have two different places they deal with. One  
2 in North Carolina and one in South Carolina where  
3 upholstery groups would come down and talk to us,  
4 bring us chairs for us to reupholsterize. And I  
5 enjoyed it. I learned a trade, which will better  
6 help me when I get out. That's one thing that I  
7 wanted to do.

8 Q You didn't really have any vocational education?

9 A No sir.

10 Q Because you were just working at McDonald's?

11 A Right.

12 Q Now, there was no sex offender treatment in those?

13 A No sir.

14 Q Did you ever ask for it?

15 A Yes sir. When I was at McCormick Correctional, I  
16 asked, I wrote on a staff request to see if they  
17 could get me help.

18 Q And let me just show you this document here. I made  
19 a copy of it since it's so fragile.

20 A Yes sir.

21 Q Is that the staff, you said a staff request?

22 A Yes, sir.

23 Q Okay. I'm afraid I can't read your handwriting as  
24 well. Can you read this?

25 A Yes, sir. It says request is to Mr. Diedrick

1 Williams, Mental Health Counselor. The date was  
2 2/10/12 is when I did it or did the staff request.  
3 The request says "Dear Mr. Williams, I'm looking for  
4 any program to further my rehabilitation regarding  
5 my charge for which I'm currently incarcerated. It  
6 is of knowledge and understanding that a program is  
7 offered by South Carolina Department of Corrections  
8 and is housed at Broad River Correctional that deals  
9 with specific - specifically with sexual predator  
10 behavior. Although I was sentenced under mental -  
11 sentenced under mentally ill guidelines, I recognize  
12 my problems dealing with sexual history. I would  
13 like some help. Thank you."

14 Q I don't think you realized what you're talking about  
15 there that the program is this program that we're  
16 talking about here today. But you asked for help.

17 A Yes sir.

18 Q You were looking for sexual offender treatment.

19 A Correct.

20 Q And when did you then, but you never enrolled in it?

21 A Every time I would ask, they would turn me down. I  
22 had the chaplain at Kershaw, I put in lots of  
23 requests. They said I wasn't eligible.

24 Q Did they ever give you an explanation?

25 A They said I didn't meet the criteria.

1 Q And did they ever tell you what the criteria was?

2 A No sir.

3 Q Okay. Are you aware of any kind of monitoring that  
4 would be on you once you were released from your  
5 prison sentence?

6 A Yes sir. It would be a GPS monitor. It would track  
7 the movements. If I was around, I mean, they track  
8 if you're around schools. Wherever you go; schools,  
9 daycare, stuff like that.

10 Q Now you talked to, you talked to Dr. Swan just a  
11 couple of months ago and said that you wanted some  
12 treatment. Is that correct?

13 A Yes sir.

14 Q Okay. And why do you want treatment?

15 A I feel that if I got treatment, it's going to help  
16 me. I know I could do the treatment. I - when I  
17 started off going back to the fires but after I did  
18 the fires, I was on the outside. I went to group  
19 therapy on the outside and I was able to do them.  
20 And I feel that I could do the - I feel I could do  
21 therapy and all that. I know I could gain a lot  
22 from it.

23 Q So after the arsons back in '98?

24 A Yes sir, '98, '99.

25 Q Once you served out and actually went to group

- 1 therapy?
- 2 A Yes sir.
- 3 Q And what type of group therapy was that?
- 4 A I would have individual and group therapy. My
- 5 counselor, my psychiatrist at the time, Dr. Murphy,
- 6 she would talk to me about how I feel, my anger.
- 7 She would talk to me about if I had an impulse
- 8 control on more urges to start more fires. If I had
- 9 anger control, if I was on my medication, how I
- 10 feel.
- 11 Q Did you start any fires after that?
- 12 A No sir.
- 13 Q Do you think it helped you?
- 14 A Yes sir.
- 15 Q Were you ordered to go to that?
- 16 A I was, by the courts, I was ordered intensive, one
- 17 year intensive program.
- 18 Q Okay.
- 19 A And even after that, I was still going. The mental
- 20 health helped.
- 21 Q So you continued it beyond the ordered period?
- 22 A Yes sir.
- 23 Q And where were you living when you were going to the
- 24 intensive therapy?
- 25 A In both times, well when I got out, matter of fact,

1 I was living in Charleston.

2 Q Okay.

3 A I couldn't live back at, I couldn't live in Myrtle  
4 Beach.

5 Q But my point is you were living in a house or  
6 apartment somewhere and voluntarily going to these?

7 A Right.

8 Q Okay. You didn't have to get a police escort to  
9 take you to them?

10 A No sir.

11 Q And there was nobody - and you weren't in a group  
12 home where people might have been supervising you?

13 A No sir.

14 Q And you went to the courses?

15 A Correct.

16 Q And you felt that they did some good?

17 A They did a lot of good.

18 Q Do you have any thoughts about where you would get  
19 sex offender treatment?

20 A I know that Dr. Burgess sex offender treatment at  
21 his office, I would be willing to go there. Also,  
22 there's a place up in Columbia called Well of Hope.  
23 They also offer that along with other programs they  
24 offer with GED and vocational.

25 Q Let me talk about the Well of Hope. What is your

1 plan when, if you are released, what is your plan?  
2 Where are you going to go? Where you going to sleep  
3 the first night?

4 A If I, my first night, if I was released, well, to  
5 see if Berkeley County could transport me to the  
6 Well of Hope.

7 Q Alright and what is that?

8 A It's the Well of Hope is a Christian and non-  
9 Christian program. They help you with groups  
10 dealing with anger, with sexual problems. They help  
11 you with financial, with if you don't have your GED,  
12 they help you with that. They help you with  
13 vocational rehabilitation. They also have where  
14 they have a mentor that's with you from six months  
15 to a year, from the day you get in to see your  
16 growth. And also they have group counseling, like  
17 if you need one on one counseling. Like for  
18 substance abuse, NAAA. They also have drug and  
19 alcohol counseling.

20 Q Have you ever contacted this facility?

21 A Yes, sir, I did.

22 Q Who did you speak with?

23 A Christopher Barber.

24 Q And what's your understanding?

25 A He said that I would be accepted when I got out.

- 1 Q Okay. Did he know what your charges were?
- 2 A Yes sir. I told him my charges.
- 3 Q And did you discuss the monitoring with him?
- 4 A Yes sir. He said he had no problems with people  
5 being on ankle monitors.
- 6 Q Okay. If you were released from custody, what's  
7 your understanding of your disability benefits?  
8 Would they come back?
- 9 A Hopefully. I mean ...
- 10 Q They were suspended while you were in?
- 11 A Yes sir.
- 12 Q Okay. Along with your medicaid?
- 13 A Correct.
- 14 Q Okay.
- 15 A But I mean, I would, I don't want to put a label on  
16 disability. I mean, yeah I know I have a disability  
17 and everything, but there's times I'd like to try to  
18 work, I try --- sometimes I try to be like other  
19 people. I try to, I try to do things where people  
20 say I can't do. And it shows me that I've made some  
21 improvements.
- 22 Q So, in 2012, you were asking for help?
- 23 A Yes sir.
- 24 Q And you've taken a lot of courses since 2012, but  
25 none of them have been sex offender courses?

- 1 A No sir.
- 2 Q Have any of them helped?
- 3 A Yes sir.
- 4 Q How?
- 5 A I'm a better person than what I went into prison  
6 for. I learned impulse control. I learned not to -  
7 -- I learned anger impulse control. I learned  
8 stress management. I learned not to judge people.  
9 Like victim's impact, from victim's impact alone, I  
10 learned that what I did to the victim wasn't right.  
11 In some of the cases in the victim's impact video,  
12 they were talking about assaults and all that and  
13 that paralleled to what I was in here for.
- 14 Q One moment. Do you have anything else you would  
15 like to add?
- 16 A I have the letter right here.
- 17 Mr. Falk: Your Honor, he has written a letter that I  
18 think he wanted to collect his thoughts better. Can he  
19 read that to the jury?
- 20 The Court: Any objections?
- 21 Mr. Bogle: Well I haven't seen it so I don't know if  
22 there's any, under the rules of evidence, I don't know  
23 if there's anything in there that might be ...
- 24 The Court: Okay. You're welcome to look at it.
- 25 Mr. Bogle: Thank you. Judge, we have no objections.

1 If this is a better way of collecting his thoughts to  
2 present to the jury, we have no objections.

3 Q Will you go ahead and read that please?

4 A Yes sir. I wrote this on February 2, 2016. Your  
5 Honor, Attorney General, the jury: when I first went  
6 in front of Judge Dennis on 2/13/09, he sentenced me  
7 to prison for a crime that I did. He was right in  
8 doing that. But today I can proudly say - proudly  
9 stand and tell - tell you all in the court and jury  
10 that I'm no longer the person I used to be. Today  
11 I'm seeking and seeing a positive morality and  
12 brighter future thanks to prison to society program.  
13 Vocational training, victim's impact, anger  
14 management, guardrails, avoiding regrets in your  
15 life, horticulture program, and a few other  
16 programs, courses I took to better myself. I'm  
17 asking today for you to please grant me the  
18 opportunity to attend the Well of Hope Christian  
19 program located in Columbia, South Carolina. If I'm  
20 allowed to take part in it, once completed, I'll  
21 come back in front of you and show you that you've  
22 made a good decision in letting me go to this  
23 Christian program. What is on paper about me - what  
24 is on paper about me is not me. I'm a changed  
25 person that you're seeing in your courtroom today.

1 So please in consideration when you make your  
2 decision. Thank you in advance for your time,  
3 support, and taking this into consideration on how I  
4 bettered myself.

5 Mr. Falk: I have no further questions.

6 The Court: Okay. Do you have any questions?

7 Mr. Bogle: Yes Your Honor. Thank you. May it  
8 please The Court?

9 **MR. KAMINSKI CROSS EXAM BY MR. BOGLE:**

10 Q So Mr. Kaminski, just so we're in agreement, I've  
11 been through this. There's thirty-three pages in  
12 front of you. These are the certificates for the  
13 courses you completed at the Department of  
14 Corrections?

15 A Yes sir.

16 Q There's a total of thirty-three of them and they're  
17 broken down by different years, right?

18 A Yes sir.

19 Q Okay. And none of them are for sex offender  
20 treatment specifically, right?

21 A No sir.

22 Q Okay. The letter, defense exhibit two, which you  
23 read on the record a minute ago, have you got the  
24 original there in front of you?

25 A Yes sir.

1 Q Okay. If I'm looking about four lines down, it says  
2 "it is of my knowledge and understanding that a  
3 program is offered by SCDC and housed at Broad River  
4 that deals specifically with sexual predatorial  
5 behavior", right?

6 A Yes sir.

7 Q Okay that's - you understand now that that's a  
8 program that The State is trying to commit you to in  
9 today this jury trial, right?

10 A Yes, sir.

11 Q So at one time, you wanted to go there and that's  
12 because you thought they would offer the type of  
13 treatment you needed?

14 A Right.

15 Q Okay. You go on to say about two lines down; you  
16 say "I recognize my problems dealing with my sexual  
17 history. I would like some help." Were these  
18 problems with your sexual history you were  
19 recognizing, things like your attraction to young  
20 boys?

21 A Not only that.

22 Q Not only that?

23 A Not only, well, not only that. I loved females and  
24 everything. What I did, I know I shouldn't have  
25 done and I just wanted more understanding so I know

1           what not to do.

2           Q    Okay. And down at the bottom of the letter, it says  
3           disposition by staff and somebody wrote "mental  
4           health doesn't refer inmates to a sexual predator  
5           program."

6           A    Correct.

7           Q    You mentioned being on a GPS or an ankle monitor,  
8           right? If you get released?

9           A    Yes sir.

10          Q    What the GPS is it tells whoever's reading it where  
11          a person goes. Right?

12          A    Correct.

13          Q    It doesn't prevent the person from going there,  
14          right?

15          A    No sir. Can I say something?

16          Q    Did --- in the report that Dr. Swan did, when she  
17          interviewed you and hear your version about what  
18          happened with this young boy, a boy who we refer to  
19          here as Wyatt, and a comment is that "Wyatt wanted  
20          me to do it." Were you referring to the wanting to  
21          watch a sexual movie with him or wanting you to  
22          touch him? By wanting me to do it, what did you  
23          mean?

24          A    That was - a lot of times, I would watch movies and  
25          everything and he looked up to me. And he just

- 1           wanted to watch the different movies I wanted to  
2           watch.
- 3           Q     Yeah, but these were porn flicks, right?
- 4           A     Yes sir.
- 5           Q     So an eight year old boy wanted to watch porn  
6           flicks?
- 7           A     He wanted to watch stuff like that. I - my  
8           judgement at that time was impaired.
- 9           Q     Okay. And you had done some time for the arson  
10          charges right?
- 11          A     Yes sir.
- 12          Q     Went to prison for a while on that.
- 13          A     Yes sir.
- 14          Q     And after that, you had the counseling you talked  
15          about a few minutes ago.
- 16          A     Yes sir.
- 17          Q     And despite that counseling, you got in trouble  
18          again with the young boy and went to prison again,  
19          right?
- 20          A     Yes sir.
- 21          Q     So is it safe to say that counseling didn't take, so  
22          to speak?
- 23          A     The counseling did help. This is all on a different  
24          - this is all on a different - different case. I  
25          mean, this wasn't dealing with arson. When I was in

1 counseling, during the counseling I learned how to  
2 better myself. I learned how to handle my emotions,  
3 how to not do the crime I did.

4 Q Right.

5 A People said I couldn't - people said I would set  
6 fire. I haven't set fire. I haven't did none of  
7 that.

8 Q Okay. No more fires but -

9 A No sir.

10 Q We have the young boy.

11 A I know beyond a doubt that I won't do that.

12 Q Okay.

13 A From everything I learned.

14 Q Thank you sir. Nothing further.

15 The Court: Anything?

16 Mr. Falk: May I approach? May we approach?

17 The Court: Yes sir.

18 Mr. Bogle: May we approach one more time?

19 The Court: Okay.

20 Mr. Kaminski: Can I say one -

21 **MR. KAMINSKI RE-EXAM BY MR. FALK:**

22 Q No. You can talk to your lawyer. But I have one  
23 question. You said you wanted to go to this  
24 program. You said you wanted to seek sex offender,  
25 predatory treatment. Is that correct?

- 1 A Yes sir.
- 2 Q Okay. All the other programs that you took were
- 3 voluntary attendance.
- 4 A Yes sir.
- 5 Q When you wrote this letter, did you realize that
- 6 your attendance would not be voluntary?
- 7 A No sir. I thought it was voluntary.
- 8 Q Okay. Did you have any understanding how long this
- 9 program would last?
- 10 A Just until - from what my mental health counselor
- 11 told me, it would - if I got into it, they would - I
- 12 would be in it until I got released from prison.
- 13 Q Until you got released from the program or released
- 14 from ...
- 15 A From prison.
- 16 Q So you thought that you could go to it while you
- 17 were still serving your sentence?
- 18 A Right. Yes sir.
- 19 Q You're not asking now to go to it are you?
- 20 A No sir.
- 21 Q Why not?
- 22 A I feel with all the programs I did, the victim's
- 23 impact with the mental health classes I took and
- 24 with the vocational training I took, I bettered
- 25 myself.

- 1 Q Thank you.
- 2 Mr. Falk: Your Honor, may I approach the witness?
- 3 The Court: Okay.
- 4 Q Did you attend any other classes that did not have
- 5 these certificates?
- 6 A Yes, sir. It was over at McCormick Correctional.
- 7 It was called Breaking Free Ministry. It was based
- 8 off a book called Sexual Idol -
- 9 Q Idiolatry?
- 10 A Yes, sir. In there, we had stuff from the book, we
- 11 would have group assignments, and we would have to
- 12 write a journal and write an essay on how it
- 13 pertained to us and what we did to our victim.
- 14 Q How long did that last?
- 15 A That lasted a year and it would continue if we
- 16 wanted to continue. There was three different
- 17 cycles.
- 18 Q Did you continue any?
- 19 A I continued it until I got my gallbladder taken out.
- 20 Then they transported me to over to Kershaw.
- 21 Q There were two documents that were in my original
- 22 exhibit. One was for the Hickory Unit Drill Team
- 23 and another one was for Blood Borne Pathogens
- 24 training.
- 25 A Correct.

1 Q Okay. I just wanted to --- you did complete ...

2 A Yes sir.

3 Q And you did complete the ...

4 A Yes sir.

5 Mr. Falk: I have no further questions.

6 **MR. KAMINSKI RE CROSS-EXAM BY MR. BOGLE:**

7 Q This thing you were just talking about that you took  
8 for a year; now I've got a certificate here:  
9 Palmetto Unified School District. It's a vocational  
10 certificate to you for ninety hours of instruction  
11 in upholstery level one.

12 A Yes, sir.

13 Q So for ninety hours of instruction, they gave you a  
14 certificate of achievement?

15 A Yes, sir.

16 Q And yet for a course you now claim you took that  
17 lasted a whole year, you've got no piece of paper to  
18 show for it?

19 A If I would've been there, I would've got a  
20 certificate. I was asking for it and everything -

21 Q One year and no certificate ...

22 A Because you're ...

23 Q But ninety hours, they give you one.

24 A Yes sir. Because you're at another institution,  
25 sometimes they don't give certificates.

1 Q Nothing further Your Honor.

2 The Court: Okay. Thank you sir. You can step down.

3 Mr. Kaminski: Okay.

4 The Court: Ladies and gentlemen, we're going to take  
5 a break. I don't know if y'all need one but I do. I'll  
6 remind you: don't talk about the case... Thank you.

7 (Jury exits courtroom)

8 The Court: Alright, are we in a position now where  
9 we could do closing arguments with charges?

10 Mr. Bogle: Yes sir.

11 Mr. Falk: We would rest.

12 The Court: Okay. Alright, then we'll take a five,  
13 ten minute break, come back and argue and charge.

14 Mr. Falk: Thank you.

15 Mr. Bogle: To protect the record, so we assume  
16 motions .. verdict renewed and -

17 The Court: Yeah, ... the record?

18 Mr. Falk: Renew my motion ... I think we now have  
19 ample proof that he has taken abundant amount of courses  
20 related to impulse control, victim impact, and victim  
21 empathy. And he completed everything that was in the  
22 sheet from Gilliam that he was supposed to do. And they  
23 evaluated him. He talked to numerous counselors in there  
24 who knew his charges and were talking with him. And he  
25 got the treatment that was offered to him.

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The Court: I commend him for at least spending his time in prison trying to get as much improvement and education that he did. But there's still a question if in fact this jury wants to determine whether he's a sexual violent predator and needs additional treatment, as far as that's concerned. So I respectfully deny your motion.

Mr. Falk: Thank you.

The Court: Alright, I'll see y'all in a few minutes.

Mr. Bogle: Yes sir.

(Break)

The Court: It seems in this case we all want to finish it unless y'all disagree. How long you think your closing arguments will be?

Mr. Falk: Five minutes.

The Court: ...

Mr. Bogle: I've got a bunch to say.

The Court: I understand that and if you do it two hours, you're going to lose this case....many lawyers who will get up there and talk two hours and -

Mr. Bogle: As I understand the rule, I open in full, he closes in full. Only if he brings up something new do I reply. In civil court. And I think they just changed the rules in criminal.

(Jury enters courtroom 3:39)

1           The Court: Okay. It's my understanding that both  
2 sides have rested. Is that correct?

3           Mr. Bogle & Mr. Falk: Yes Your Honor.

4           The Court: Ladies and gentlemen, you have heard all  
5 of the evidence that you're going to hear in this case.  
6 Now it's time for the attorneys to make their closing  
7 argument to you. I will charge you on the law and give  
8 you this case for you to decide. Mr. Bogle?

9           Mr. Bogle: Thank you Your Honor. May it please the  
10 Court?

11          The Court: Yes sir.

12          Mr. Bogle: Ladies and gentlemen, we're done. We're  
13 at the point right now where you've heard all of the  
14 evidence in the case. You've heard all of the testimony.  
15 You've got some documents here to consider when you go  
16 back in the jury room. So what this means is you've  
17 heard everything you're supposed to hear, as far as  
18 deciding what the facts are. Your job is to decide what  
19 the facts are in this case and apply them to the law as  
20 the judge explains to you. Now if I was to say something  
21 in my closing arguments that differs from what the judge  
22 says the law is, please, rely on him because that's his  
23 job. His job is to explain the law to the jury. Now the  
24 law that we talked about yesterday, the law we're hearing  
25 about today, as I said and as you know by now, is called

1 the Sexually Violent Predator Act. What the law says is  
2 it talked about that dangerous group of sexually violent  
3 predators exist out there who need to be put into a  
4 secure place for long-term control, care, and treatment.  
5 And if they don't go there, the likelihood of them  
6 committing acts like that once they get out of prison,  
7 despite the fact that they served their time, is great.  
8 And that's who we're focused on today. The law went on  
9 to say put a higher burden on me, as the State. We have  
10 to prove to you beyond a reasonable doubt as to whether  
11 or not Mr. Kaminski is a sexually violent predator. And  
12 the judge will explain to you what that means. I would  
13 suggest to you what it means is if you're firmly  
14 convinced that the matter of burden, prove what we have  
15 to prove, that you have to deliver a verdict for The  
16 State. If you have some kind of doubt that leaves you  
17 not firmly convinced about the State's case, then you're  
18 obligated to return a verdict for the defense and Mr.  
19 Kaminski goes free.

20 Two things we have to prove; first: has he been  
21 convicted of a sexually violent crime and the answer is  
22 yes. We have them right here. Two convictions, two  
23 indictments for lewd act on a child, which is a sexually  
24 violent crime in South Carolina. I can also tell you  
25 that he was allowed to plea what they call guilty but

1       mentally ill to these charges. Guilty but mentally ill  
2       in South Carolina constitutes a conviction for the  
3       purpose of this act. Same thing as if he'd gone to trial  
4       and the jury going back and a verdict of guilty or if he  
5       just plain pled guilty without that mental ill  
6       attachment. It's a conviction no matter how you look at  
7       it. So that part we're here on. We're home on that.  
8       He's been convicted of the right kind of crime.

9       The next question is, and this is kind of gone  
10      unchallenged here, does he have a mental defect, a mental  
11      illness, a mental abnormality that makes him likely to  
12      reoffend in a sexually violent manner if he's not  
13      confined for treatment? Now you heard yesterday or heard  
14      today rather, were almost got through yesterday but  
15      happened today, Dr. Amy Swan. On contract with the  
16      Department of Mental Health because she's licensed here  
17      in South Carolina to do these types of cases. She was  
18      declared an expert witness by the Court based upon her  
19      training and her experience. She has the type of  
20      training to explain these kind of things to people that  
21      have to make the factual findings and that's why she was  
22      allowed to give an opinion. Remember I talked yesterday  
23      about how normally in court, witnesses can only testify  
24      about things that they see, or what they hear, or what  
25      they smell and not give opinions. An expert witness,

1 when qualified before The Court and the judge's  
2 satisfactions, he has given permission to give opinions  
3 about people and that's what she did. And I believe in  
4 many respects her conclusions and her opinions have  
5 really gone unchallenged. No question she has the  
6 expertise and there seems to be no question that she  
7 diagnosed him with this: pedophilic disorder. That is  
8 sexually attracted to children. Sexually attracted to  
9 both, that means boys and girls. Non-exclusive type,  
10 that means he's also attracted to age appropriate women.  
11 But the sexually attracted to females, pedophilia means  
12 pre-puberty, young boys. Also what she called other  
13 specified perophilic disorder, non-consent. That's the  
14 non-consent factor of doing something against the will of  
15 the victim. And also pyrophelia. The fact that this man  
16 gets sexually turned on by the fires that he set. Also,  
17 a mental disorder of pyromania. The act of setting all  
18 these fires. And the big problem there is having more  
19 than one of these perophilic or deviant-type sexual  
20 behaviors really increases the risk the person is going  
21 to do it again. It increases the level of their  
22 inability to control themselves in the community. And  
23 look at the common sense here. That's where you use your  
24 common sense. He commits these arsons that has a sexual  
25 component to them because they turn him on. Okay? He

1 goes to prison, he gets counseling afterwards but  
2 apparently that doesn't take. Because just a little  
3 while later, he's in trouble, he's investigated in one  
4 case but then convicted for crimes committed a few months  
5 later in the cases you have before you. Crimes with an  
6 eight year old boy that he says, he said the boy liked  
7 seeing the pornographic movies. An eight year old child.  
8 I think that's a bit of a stretch with all due respect to  
9 that type of comment. So we have that type of conduct.  
10 When he wrote the letter to the Department of  
11 Corrections, he said in here that he's heard of some  
12 treatment offered at Broad River that deals specifically  
13 with sexual predatorial behavior. And "I recognize my  
14 problems dealing with my sexual history." Now, no  
15 question he wasn't right in his thinking about the  
16 program that we're talking about today. Or was he? I  
17 don't know. His words, not mine. But the question is  
18 he's got the mental abnormality. He's been convicted of  
19 the right kind of crime. The question now is he likely  
20 to offend again? Now what did Dr. Swan do? Did she stop  
21 with just one test or two tests? No she had about three  
22 or four done. The PPG where she talked about that he  
23 showed arousal to certain devious scenarios. The static  
24 99 used by experts in her field to predict recidivism.  
25 Will he commit it again? And he scored a high range on

1 that. Worse than ninety-two percent of the people in the  
2 sampling. Think of you - think of going to see a doctor,  
3 you might be having chest pains. You go to the doctor.  
4 Now the doctor relies on his diagnosis of you, is relying  
5 upon years of experience by that doctor, and also studies  
6 thousands of other people having the same type of  
7 symptoms. And he'll use that to make a decision. That's  
8 what the static 99 is. They study thousands of sex  
9 offenders in multiple countries to come up with a certain  
10 list of things, and if you have these and score high, you  
11 have a very high reliability of offending again. And  
12 that's what he has.

13 Today on direct examination, in talking about the  
14 courses that he took, and this is wonderful stuff. I  
15 wish that every guy that I've gone to court on like this  
16 had did even half of these things. This is wonderful  
17 stuff. It really is. But as good as it is, is it really  
18 what we're looking for? Is there anything involving  
19 sexual treatment in there or sex offender treatment? And  
20 the answer is no. He was in prison for almost nine years  
21 and never found his way into sex offender treatment,  
22 which is offered at the Department of Corrections. Dr.  
23 Swan said there is nothing in the records to show that he  
24 took the course that is offered there. He did say in one  
25 of the courses, and this is a direct quote I wrote down

1 from his testimony today. It was "I learned how I would  
2 victimize people." Well that's good but was it enough?  
3 So burden of proof beyond a reasonable doubt. Do you  
4 have a doubt that would leave you not firmly convinced  
5 that he's been convicted of the right kind of crimes, has  
6 the mental abnormality, more than one, as well as a  
7 personality disorder, and do these things make him likely  
8 to commit an act of sexual violence? That's what's  
9 before you. Dr. Swan's testimony is expert testimony on  
10 a specific field. She helped me understand just like  
11 helping you understand exactly what is wrong with this  
12 guy. What his problems are and how they can be solved at  
13 a low risk to the community and that requires civil  
14 commitment to the program run by the Department of Mental  
15 Health.

16 I'd like to thank you for taking two days out of  
17 your time. It's a lot of work. I'm sure there's places  
18 that you'd all rather be, but you've done a good job for  
19 the State and for the citizens of Berkeley County. I  
20 appreciate your assistance here. I would ask you for a  
21 verdict that determines this man is a sexually violent  
22 predator. Your Honor?

23 The Court: Thank you sir. Mr. Falk?

24 Mr. Falk: May it please The Court?

25 The Court: Yes sir.

1 Mr. Falk: Dr. Swan testified that he freely admitted  
2 that he had a diagnosis of pedophilia, pedophilia  
3 disorder. Dr. Swan testified that the issue is whether  
4 or not it is likely he would recommit an offense. That's  
5 what is the issue here today is whether or not Mr.  
6 Kaminski is going to recommit an offense. Nobody knows  
7 that. The solicitor, I mean the attorney general  
8 suggested that well he went to a doctor and like when you  
9 go to a doctor and you've got chest pains, the doctor can  
10 say yes this is going on. Dr. Swan is not that kind of  
11 doctor. She has a PhD in psychology. The thing about  
12 when you go to your doctor with chest pains is that he  
13 can take your blood, he can take a blood test and can  
14 look at something in your blood and can see if something  
15 there that means that you're going towards having a heart  
16 attack or he can look at, he can take an x-ray and he can  
17 see if there are any arteries that are blocked. And he  
18 can take that x-ray and anybody in the country's probably  
19 going to agree with that because that's there. You can  
20 see it, you can touch it, you can say that's where he's  
21 got a blockage right there, you can open him up, and you  
22 can fix the blockage. We don't have that in this  
23 situation. Nobody knows what my client's going to do.  
24 The only one who know's what my client's going to do is  
25 my client. He knows deep in his heart where he is. You

1 have to appreciate how much time he has taken trying to  
2 better himself. He realizes where the issues have been  
3 in his life. And I think what is most important is that  
4 when he was seventeen, and the arsons were committed when  
5 he was seventeen, and he had a lot of problems at that  
6 time. There's no question that he's had a tough life.  
7 He hasn't gotten one break. He's in his mid-forties and  
8 yet hasn't gotten a single break. But he realized, I  
9 mean he had difficulties growing up and his parents were  
10 hard on him. They couldn't understand why he wasn't as  
11 smart as his sister. He gets assaulted, he gets sexually  
12 assaulted by his grandfather and they don't believe him.  
13 He had a lot of anger. And if you have that kind of  
14 pent-up anger that somebody who's supposed to rely on  
15 you, I mean if it's somebody who you're supposed to be  
16 able to rely on to protect you and take care of you, if  
17 they're not doing that, that is going to have an effect  
18 that I don't think many people can appreciate how hard  
19 that's going to hurt. And how you're not even going to  
20 be able to tell where that's going to bubble up, where  
21 that evil is going to bubble up. But what I think's  
22 important is that a lot of the courses that he took, he  
23 had an opportunity to look at the anger, look at the  
24 grudges, and realize that his parents did the best that  
25 they could. I think he, once he came to terms with the

1 anger that he had with his parents, and that's what he  
2 was able to do, in all those courses that he took, he was  
3 able to see, you know, once you get to that root cause of  
4 why you maybe have some of these behaviors and you get a  
5 chance to look at that, that's when he realized that he  
6 has his behavior in the past, angry at his parents, he  
7 had no control over what was happening to him. But now  
8 he knows, now he's able to address that because he can  
9 associate the hurt that he had when his grandfather  
10 assaulted him and his mother didn't protect him til now.  
11 He can go to counseling. He readily admits that he wants  
12 to go to counseling and wants to go up to Wells Springs,  
13 which is a Christian-based program or has a Christian-  
14 based component to it and I believe the expression being  
15 born again will apply to him as some of the work that he  
16 has done as far as trying to look at and trying to heal  
17 his soul. He was baptized, he was re-baptized while he  
18 was in prison. He went through the alpha course twice.  
19 I don't know if any of y'all have gone through that alpha  
20 course but it is helpful, sort of reflective. Dr. Swan  
21 said that he needs --- the only place that he can get the  
22 treatment that he needs is at the program because she  
23 said because it's just more intense there. But I'm not  
24 sure she ever really fully explained why it is more  
25 intense there and why outpatient can't be just as

1 intense. He will go to the outpatient, he is wearing an  
2 ankle monitor. So he is under some kind of twenty-four  
3 hour a day monitoring. He would go to the classes. He  
4 would either go to Dr. Burke or he would get counseling.  
5 He would get sex offender counseling up in Wells Springs  
6 up in Columbia. He's had a tough life. The last nine  
7 years he has been in prison and he finally realized that,  
8 you know, what was leading to some of his bad behavior.  
9 You just have to look at him and decide whether or not  
10 you think that he's going to recommit because nobody  
11 really knows that. My client says that he isn't and he's  
12 given us some reason to believe so because he sort of  
13 found what the problem is. There's no reason why he has  
14 to go to that program. He has been in custody long  
15 enough. He's used the time while he was in custody to  
16 better himself through programs that are going to be very  
17 similar to what it's going to be at the SVP where you've  
18 got group dynamics and you are sharing stuff and you are  
19 getting input from other people and you learn what the  
20 consequences of your actions have been on other people.  
21 He truly is apathetic towards his victim. I'm just  
22 asking you to please give him one break. His father  
23 didn't give him a break, his mother didn't give him a  
24 break, his grandfather didn't give him a break. Just  
25 give him one break. I think he has proven that he has

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sought to better himself. He has come to terms with some of the stuff that has led him astray. And he's going to be on monitoring. There will be some way to keep tabs on him and he'll go to sex offender treatment, outpatient. Thank you.

The Court: Okay. Mr. Foreman and ladies and gentlemen of the jury, it is now my duty as trial judge under the constitution of this state to charge you and instruct you on the law that you're to apply in this case. And it your duty as jurors to accept and apply the law that I'm now stating to you. The State has brought this case under the sexual violent predator law of South Carolina. The State seeks a civil commitment of Michael J. Kaminski, respondent for long-term control, care, and treatment in a secure facility. This is not a criminal proceeding that seeks incarceration. But it is a proceeding seeking civil commitment. The State of South Carolina alleges or claims that the respondent, Michael J. Kaminski, is a sexual violent predator under the law. The respondent denies that he's a sexual violent predator and the burden of proof is therefore upon the State to prove by evidence sufficient to satisfy each of you beyond a reasonable doubt that Mr. Kaminski is a sexual violent predator. If The State is unable to meet its burden of proof as to one or more of the elements of this

1 claim, the respondent is entitled to a finding that he is  
2 not a sexual violent predator. Ladies and gentlemen, I  
3 want to make sure that you understand that Mr. Kaminski  
4 is not accused of committing a crime in this proceeding  
5 and as you've heard from the testimony, he did have a  
6 previous charge for which he was sentenced by the Court.  
7 The respondent has now completed his sentence for those  
8 charges and the State is now alleging that Mr. Kaminiski  
9 is a sexual violent predator. The State has the burden  
10 of proof in this case and must prove this case beyond a  
11 reasonable doubt. If you find that the State has not met  
12 it's burden, the respondent will be released. If you  
13 find that the State has met its burden and find that the  
14 respondent is a sexually violent predator, he will not be  
15 released but will be committed to a secure facility in  
16 Columbia operated by the Department of Mental Health.

17 During this trial I have certain duties to perform.  
18 As the trial judge, it is my responsibility to preside  
19 over the trial of this case and determine what the  
20 admissibility of the evidence that you are to hear under  
21 our rules. And it's also my job to rule upon the law in  
22 this case or to give you the law in this case. I'm not  
23 allowed to have an opinion about the facts of this case  
24 so if I've said anything or done anything in this case  
25 that you think I have an opinion about the facts, you are

Charges by The Court

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to disregard that because you and only you can determine what the true facts are. The same law and constitution that makes you the sole judge of the facts makes me the sole judge of the law. If you have an idea what you think the law is or what the law should be and it's different from what I now tell you the law is, you're to disregard your prior ideas and accept the law exactly as I give it to you.

Now, in most civil trials in the court of common pleas, and technically this is under the civil court, the court of common pleas, the burden of proof is a claim by the preponderance or greater weight of the evidence. However, in this type case under this particular statute, the State's burden is greater than that. It must be beyond a reasonable doubt. As I've already stated to you, the State has the burden of proof under our law according to the sexual violent predator act, the State must prove its case beyond a reasonable doubt and if it fails to do so, he would be entitled to a verdict that he's not a sexually violent predator. A reasonable doubt is proof beyond a reasonable doubt that leaves you firmly convinced that the respondent is a sexual violent predator. It is proof that you would use in the most important of your day to day decisions, you know, it's proof that leaves you firmly convinced. There are very

1 few things in this world that we know with absolute  
2 certain. In this case, the law does not require a proof  
3 that overcomes every possible doubt. If based of your  
4 consideration of the evidence you are firmly convinced  
5 that Mr. Kaminski is a sexually violent predator, you  
6 must return a verdict for the State. If on the other  
7 hand you think there is a real possibility that he is not  
8 a sexually violent predator, you must give to him the  
9 benefit of that doubt and return a verdict for the  
10 respondent. Reasonable doubt may arise from the evidence  
11 that is in this case or the lack of evidence that is in  
12 this case. It is up to you the jury to determine whether  
13 or not reasonable doubt exist in this case.

14 There are two types of evidence which are normally  
15 presented to a trial. Direct evidence and circumstantial  
16 evidence. Direct evidence is the testimony of a person  
17 who claims to have actual knowledge of a fact such as an  
18 eye witness. It is evidence which immediately  
19 establishes the main fact to be proved. Circumstantial  
20 evidence is proof of a chain of facts and circumstances  
21 indicating the existence of a fact. It is evidence which  
22 immediately establishes collateral facts from which the  
23 main fact may be inferred. Circumstantial evidence is  
24 based on an inference and not on personal knowledge or  
25 observation. The law makes absolutely no distinguish

**Charges by The Court**

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between the weight or value to be given either to direct or circumstantial evidence. Nor is there a degree of certainty required for circumstantial evidence then that of direct evidence.

Now, in determining what the facts are in the case, you must judge the credibility, which simply means the believability of the witnesses and give whatever weight and value you determine is appropriate for their testimony. And you alone must decide the force and affect, the truth of that testimony. In making these decisions there are many things that you may and should take into consideration. Such as the appearance, the manner of the witness on the stand, the character often referred to as the demeanor of the witness. Was the witness forthright or hesitate. Was the witnesses testimony consistent or did it contain discrepancies. What was the ability of a witness to know the facts about which he or she testified. Was the reason a witness wanted to give their testimony, would it help or hurt the other side. In other words, was the witness biased or prejudiced? Was the testimony of a witness reasonable when considered in light of all the evidence in this case and in the light of your own experience and common sense. Was the testimony of a witness corroborated or made stronger by other evidence and testimony or was it made

1 weaker or impeached by such other evidence and testimony.  
2 As jurors, please understand you have a right to believe  
3 a small portion of the witnesses testimony and disregard  
4 the larger portion. You may believe all the witnesses  
5 testimony or none. You may believe the testimony of a  
6 single witness against that of many or the other way  
7 around. And, of course, you do not determine the truth  
8 merely by counting the number of witnesses presented by  
9 each side. The fact that the testimony is not  
10 controverted does not mean that you must accept it as  
11 true and undisputed, you still must gage the credibility  
12 of the witness to determine the believability and truth  
13 of the facts offered through their testimony. In  
14 exercising your mental process in attempting to decide  
15 the truth, the law simply requires you to exercise good  
16 judgment and common sense. Your sense of logic and  
17 reason and your experiences in life. You then apply these  
18 attributes to the evidence and the law as I now state it  
19 to you and you should reach a verdict that speaks the  
20 truth in this case.

21 During the course of a trial you also hear testimony  
22 from experts. You've heard testimony in this case from  
23 an expert witness. The Rules of Evidence do not  
24 ordinarily permit a witness to testify to opinions or  
25 conclusions. Instead they can testify as to the facts

1 that they perceive such as what they saw, smell, heard or  
2 touch. However, an exception to that rule exist for  
3 witnesses we call expert witnesses. A witness who by  
4 special knowledge, skill, experience, training or  
5 education in a particular field may state an opinion as  
6 to relevant and material matters in which the witness  
7 claims to be an expert. In determining the weight to be  
8 given in such an opinion you should likewise consider the  
9 qualifications and credibility of the expert and the  
10 reasons given for their opinion. You are not bound by  
11 such opinions rather you should give it its weight, if  
12 any, that you think it deserves. The value and affect of  
13 experts testimony is a matter to be solely estimated by  
14 you, the jury. No opinion of an expert can be accepted  
15 in and of itself as truthful or reliable but must be  
16 weighed by you and convince your judgment beyond a  
17 reasonable doubt the same force and affect and facts to  
18 be proven in this case that you can rely on as in any  
19 other evidence. You must consider expert testimony in  
20 the same manner as you do any other testimony and give it  
21 such weight you believe it is entitled to in considering  
22 all the evidence in this case. Such testimony is given  
23 for the purpose of helping you not for the purpose of  
24 controlling your judgement.

25 Now, the elements which the State must prove to you

1 beyond a reasonable type are two. One: That the  
2 respondent has been convicted of a sexually violent  
3 offense. And I charge you that the crime of lewd act on  
4 a child under the age of sixteen is a sexually violent  
5 offense in South Carolina. And that a person who has  
6 been found guilty or pled guilty but mentally ill is the  
7 same as being found guilty of a sexually violent offense.  
8 And, number two: The respondent suffers from a mental  
9 abnormality or personality disorder that makes him likely  
10 to engage in acts of sexual violence if not confined in a  
11 secure facility or long term treatment care and control.  
12 Inherent in these two elements is the State must prove  
13 the requirements that the respondents mental abnormality  
14 or personality disorder causes him serious difficult in  
15 controlling his behavior. In other words, the State must  
16 prove, beyond a reasonable doubt, that the individual it  
17 seeks to commit suffers from a mental illness which he  
18 cannot sufficiently control without the structure and  
19 care provided by a mental health facility rendering him  
20 otherwise likely to commit a dangerous act.

21 In order for you to better understand the elements  
22 of the State's cause of action, I am going to define for  
23 you some of the terms which I have just used. Mental  
24 abnormality means a mental condition affecting a persons  
25 emotional or volitional capacity that predisposes the

1 person to commit sexual violent offenses. This mental  
2 abnormality, personality disorder must cause Mr.  
3 Kaminiski serious difficulty in controlling his behavior.  
4 Two: Likely to engage in acts of sexual violence means  
5 the person's propensity to commit acts of sexual violence  
6 is of such a degree as to pose a menace to the health and  
7 safety of others so that he is dangerous to others. And  
8 I again remind you that the burden of proof is upon the  
9 State to satisfy you of these elements beyond a  
10 reasonable doubt. And if the State has met that burden,  
11 if you find that they have proven those elements beyond a  
12 reasonable doubt, you must render a verdict in favor of  
13 the State. If you find that they have not carried forth  
14 their burden, then you must render a verdict in favor of  
15 the respondent that he is not a sexually violent  
16 predator.

17 Now, ladies and gentlemen, you are not here to  
18 reward your friends or punish your enemies. That system  
19 of justice simply would not be tolerated. You are here  
20 as fair, open minded, honest, conscientious jurors to  
21 determine what the true facts are to this case and based  
22 on saying that I need your verdict will basically  
23 determine or speak the truth to this case. That you will  
24 apply the law that I've given you and you've determined  
25 what the true facts are to this case. Now, Mr. Foreman, I

1 have a possible verdict form that my law clerk has drawn  
2 up. It basically is the caption of the case and the  
3 findings are, "We the jury unanimously answer the  
4 question as follows: Yes. Michael J. Kaminiski is a  
5 sexually violent predator or No. Michael J. Kaminiski is  
6 not a sexually violent predator. The order that I put  
7 them in you should draw no conclusion from what so ever,  
8 we just had to put them in some order. And your verdict  
9 must be unanimous. All twelve of you must decide this  
10 verdict and you must all be in agreement. Once you have  
11 done that, you will check the appropriate box, you sign  
12 your name to it and date it and knock on the door and we  
13 will bring you back out and receive your verdict.

14 Now, before I send this in to you, I've got to go  
15 over with the attorneys and be sure I haven't left out  
16 anything. If I have, I'll bring you back out and charge  
17 you further on the law. If I've covered everything when I  
18 send the verdict form in along with the evidence in this  
19 case and that will be your indication to begin your  
20 deliberations and when you have reached a verdict just  
21 simply knock on the door. If, for any reason, one of you  
22 needs to be excused while you are deliberating you need  
23 to stop because you can't stop about the case until all  
24 twelve of you are present in the room so if somebody went  
25 to the restroom stop talking about it until they come

1 back and continue to talk. Okay. So, if you'll go to  
2 your jury room.

3 Juror: Sir, I do have one question. Are we allowed  
4 to have a copy of the law or the Act?

5 The Court: Probably not in that I just read it to  
6 you and some judges send it back, the Court of Appeals  
7 kind of discourages us from doing that. If you have a  
8 question of the law, if you have any question, you can  
9 write it down on a piece of paper and send it to the  
10 bailiff and I will come back out and answer that  
11 question. Having said that, I can only answer questions  
12 of law. If you have a question of fact, I can't answer  
13 that because you've heard all the evidence you are going  
14 to hear so I can't answer a question of fact. If you  
15 misunderstood my charge or you have any question of law,  
16 I can answer that. So, you get back there and you have a  
17 issue about what you think the law is I can bring you  
18 back out and answer that. You are the alternate. I need  
19 you stay with me. The only reason I needed you was if  
20 someone got sick and it looks like all twelve are going  
21 to make it. So, if you'll just stay seated. It looks  
22 like I'm not going to need you. I'll either send this in  
23 or bring you back out, okay. Thank you.

24 (Jury exits courtroom 4:12)

25 The Court: Any exception on behalf of the State?

1 Mr. Bogle: No, Your Honor. Thank you.

2 The Court: On behalf of the Defense?

3 Mr. Falk: No, Your Honor.

4 The Court: Okay. If you all will get the exhibits  
5 together with the court reporter and give them to the  
6 bailiff.

7 (Jury Deliberations begin 4:15 p.m.)

8 The Court: Gentlemen, I appreciate y'all. You were  
9 both prepared. You tried a great case and I appreciate  
10 it. I enjoyed presiding with you.

11 Mr. Falk: Thank you.

12 Mr. Bogle: Thank you, Your Honor.

13 (Jury enters courtroom)

14 (Court Exhibit 3 was marked)

15 The Court: Okay.

16 Mr. Bogle: They've got a question?

17 The Court: Yes. Do y'all want to read it? It says  
18 Exhibits One and Two, the non-violent box is checked.  
19 How does the court conclude that these qualify as a  
20 violent acts? This must be the sentence sheet y'all sent  
21 back.

22 Mr. Bogle: It is.

23 The Court: He is not checked to be placed on the  
24 central registry of child abuse and neglect.

25 (Off the record discussion)

## Jury Deliberations Begin

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1           The Court: The only thing I can do is bring them in  
2 here and explain that to them.

3           Mr. Bogle: How do you want to do it?

4           The Court: Exactly like that. In fact, under the  
5 sentencing guidelines Lewd Act is a non violent crime but  
6 it is listed in the statute as a sexually violent crime.  
7 How else can I explain that?

8           Mr. Bogle: I think just that and nothing else, what  
9 do you think?

10          The Court: And the fact that he was not checked to  
11 be placed on the central registry for child abuse and  
12 neglect.

13          Mr. Bogle: Where is that, is that on the sentencing

14          ...

15          The Court: It's on the sentence sheet that has  
16 nothing to do with us ever. Whoever filled out that  
17 sentence sheet, you know, normally when I check somebody  
18 being on the sexual registry I have to write it in  
19 because there is no block for that. That's a DSS check.  
20 The fact that child abuse and neglect I have never had a  
21 case in the ten years that I've been on the bench that  
22 that ever got checked. It has nothing to do with the  
23 plea sheet and I don't know what it's on there.

24          Mr. Bogle: Well, let's separate these into two  
25 things. The first one is a violent, non violent thing.

1 If that's for sentencing purposes on the sentencing sheet  
2 but lewd acts of sexually violent crime and sexually  
3 violent predator act. The second issue is checking the  
4 box about registry?

5 The Court: Yes. And see, Lewd Act is a mandatory  
6 sexual registry?

7 Mr. Bogle: Right.

8 The Court: But ...

9 Mr. Bogle: The second one, are you commenting on the  
10 evidence? I'm just thinking out loud here.

11 The Court: No, lewd act, I'm not commenting on the  
12 evidence, everybody agrees he committed a lewd act.

13 Mr. Bogle: Right.

14 The Court: And lewd act ...

15 Mr. Bogle: The think about the registry part ...

16 The Court: I understand that but lewd act requires  
17 registration, that's the law, it's not discretionary.  
18 Y'all both agree with that, right. So, lewd act requires  
19 being registered on the sexual registry. But they've got  
20 on the sentencing sheet is this block to see, they only  
21 registered for child abuse or neglect. Well, we rarely,  
22 I've never checked that block. I've never had a case  
23 that that was an issue, but most of the time I have to  
24 write in, you know, if it's discretionary, I write in  
25 must register sex abuser. If it's non discretionary I'll

1 leave it blank because the statue puts it on there  
2 because it is a crime that's listed there. Lewd Act is  
3 one of those crimes. But that particular block has  
4 nothing to do with this crime. I don't know how to  
5 explain it to them other than that.

6 Mr. Bogle: I'm thinking you ought to leave that part  
7 alone.

8 The Court: You don't want me to answer it?

9 Mr. Bogle: No. I think you have to answer for the  
10 part about the violent crime or the sexually violent  
11 crime. Answering the second thing about the registering  
12 that goes into practices and procedures and kind of adds  
13 testimony to the record or does it?

14 Mr. Falk: That's my concern is that it adds  
15 testimony to the record.

16 Mr. Bogle: Yeah. I think the second part of the  
17 question ...

18 The Court: ... so he was not checked to be put on  
19 the sexual registry for child abuse and neglect. How do  
20 you want me to respond to that?

21 Mr. Bogle: Just that you heard the record and you  
22 have to apply the evidence that you heard to the law that  
23 I gave you or something - anything else sounds like  
24 you're adding evidence to the record. By commenting on  
25 practices and procedures. The law is one thing but what

1 you're saying seems to be dealing more with practices and  
2 procedure in another state agency and that's just ---  
3 you're adding facts to the record. I just say the second  
4 part. They've heard all the evidence in the case and they  
5 have to decide on what they've heard.

6 The Court: So, how is that different than the first  
7 one. He's checked non-violent on the first one and not  
8 checked register on the other one. So, how is that not  
9 the exact same thing? If I can't answer the second half,  
10 how can I answer the first half?

11 Mr. Bogle: In a way --- what you have already told  
12 them is what the law is. Sexually violent crime - a lewd  
13 act on a child is a sexually violent crime. That's the  
14 law. The facts are that sentencing sheet and the law is  
15 not going to change whatever is on that sentencing sheet.

16 Mr. Falk: I think I would object to responding to  
17 the question because I think anything you say is going to  
18 expand the testimony. I mean, the State had the  
19 opportunity to explain the sentencing sheet, it's their  
20 exhibit.

21 The Court: Okay. Then I'll bring them in here and  
22 tell them that's questions of fact and the evidence has  
23 been introduced and I can't answer it.

24 Mr. Bogle: Dr. Swan testified that lewd act on a  
25 child is a sexually violent crime under our law and you

## Jury Deliberations Begin

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1 charged them that is it and I don't, you know, they've  
2 got to resolve it. I'm inclined to agree with Mr. Falk.

3 (Off the record discussion)

4 (Court's Exhibit Number 4 - jury note)

5 The Court: I've got another question. It says can  
6 we please have the two criteria that meets sexually  
7 violent predator under South Carolina law. I proposed to  
8 bring them back in and charge them under this new  
9 criteria.

10 Mr. Bogle: Yes, sir.

11 (Off the record discussion)

12 (Jury enters courtroom 5:23)

13 The Court: Mr. Foreman, ladies and gentlemen, I  
14 got a note back that you want to know what the two  
15 criteria are that meets sexually violent predator act, is  
16 that correct?

17 Mr. Foreman: Yes, sir.

18 The Court: All right. These are the two elements  
19 that the State must prove to you beyond a reasonable  
20 doubt. One, that the respondent has been convicted of a  
21 sexually violent offense and I charge you that lewd act  
22 on a child under sixteen is a sexually violent offense in  
23 South Carolina law and that a person who has been found  
24 guilty but mental ill is the same as being convicted or  
25 found guilty of a sexually violent offense. And the

1 second is that the respondent suffers from a mental  
2 abnormality or personality disorder that makes him likely  
3 to engage in acts of sexual violence if not confined in a  
4 secure facility or a long term control care and  
5 treatment. Inherent in these two elements is that the  
6 State must prove that the requirement that the  
7 respondent's mental abnormality or personality disorder  
8 causes him serious difficulty in controlling his  
9 behavior.

10 Do you all need anything else. Those are the two  
11 criteria.

12 Mr. Foreperson: I don't believe so. Everybody okay.  
13 We're good.

14 The Court: Okay. If y'all go back to the jury room  
15 and let me know when you've reached a verdict. Thank  
16 you.

17 (Jury continues deliberations)

18 (Court Exhibit Number 5)

19 The Court: Okay. Is part of our charge in  
20 determining him a sexually violent predator include the  
21 mental abnormality that requires confinement and long  
22 term care as to the question. We are in disagreement on  
23 more State confinement control for care. It sounds like  
24 they don't want to lock him up anymore they just want him  
25 to get his own care.

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Mr. Bogle: Yes. Read the first sentence again.

The Court: Is part of our charge in determining him a sexually violent predator include the mental abnormality that requires confinement and long term care.

Mr. Bogle: That goes back to the elements.

The Court: Right. The answer to that is yes.

Mr. Bogle: You've already charged the elements. The State has to prove them, unless you want to hear it again. They've got to find it exist of mental abnormality that does those things to him.

Mr. Falk: To find in all likelihood that he would re-offend.

The Court: Right.

Mr. Falk: I mean, that's been obviously my whole argument.

The Court: It sounds like they want to find him a sexually violent predator but they don't want him confined anymore.

Mr. Falk: Or they just agree that he is a pedophile but they don't want to confine him anymore, which is what ...

Mr. Bogle: It sounds like they want to be charged on the elements again and you've already charged him on that.

The Court: They want to know whether part of that is

1 long term care.

2 Mr. Bogle: Mental abnormality, whatever the statute  
3 says, the mental abnormality have to be such that it  
4 requires ... I'd quote directly from the charge of the  
5 statute.

6 Mr. Falk: It's that he is likely to re-offend if he  
7 is not put some place. It's not the care, it's that he  
8 would likely to re-offend ... a secure facility for long  
9 term care.

10 Mr. Bogle: I'm looking for my charge.

11 The Court: I've got it here in front of me.

12 Mr. Bogle: I know, I just want to ... what paragraph  
13 are you looking at?

14 The Court: I just charged them that Inherent in  
15 these two elements is that the State must prove that the  
16 requirement that the respondent's mental abnormality or  
17 personality disorder causes him serious difficulty in  
18 controlling his behavior. In other words, the State must  
19 prove, beyond a reasonable doubt, that the individual it  
20 seeks to commit suffers from a mental illness which he  
21 cannot sufficiently control without the structure and  
22 care provided by a mental health facility rendering him  
23 otherwise likely to commit a dangerous act. I did not  
24 charge them that ...

25 Mr. Bogle: That's right, you did not.

1           The Court: Maybe that's what I need to charge them  
2 on now.

3           Mr. Bogle: So you're starting with inherent and go  
4 all the way down ...

5           The Court: What I did before was stop at the end of  
6 the inherent paragraph ...

7           Mr. Bogle: Right, right.

8           The Court: In other words, I may need to charge the  
9 next paragraph

10          Mr. Bogle: You think to do the next paragraph, you  
11 also need to repeat the first two paragraphs?

12          The Court: What do y'all think? When I define  
13 mental abnormality means, we went through that and number  
14 two is likely to engage in acts of sexual violence. This  
15 means the person's propensity to commit acts of sexual  
16 violence is of such a degree as to pose a menace to the  
17 health and safety of others so that he is dangerous to  
18 others.

19          Mr. Bogle: I'm sorry which ...

20          The Court: That's down there under the two  
21 definitions, one is mental abnormality, I defined that.

22          Mr. Bogle: Yeah, I think you've got to define the  
23 terms again for them. So start with inherent and go all  
24 the way down to dangerous to others? Are do the elements  
25 again and ...

1           The Court: And I think I need to go on to the next  
2 paragraph too which reads makes him likely to engage in  
3 sexual violence if not confined in a secure and long term  
4 care.

5           Mr. Bogle: Yeah, you've got to go down there, too.  
6 So are you starting - are you going to read them the  
7 elements?

8           The Court: I think I need to do the whole elements  
9 again.

10          Mr. Bogle: I think you do.

11          The Court: Just do the whole thing. Bring them  
12 back.

13          (Jury enters courtroom 6:42 p.m.)

14          The Court: Okay. Mr. Foreman, I've gotten your  
15 request concerning your last inquiry. After conferring  
16 with the attorneys, I think the best thing I can do is  
17 just recharge you on the elements that you have to find.  
18 The entire elements. It's not the whole charge it's just  
19 two pages but I'll go back over the law with you. Maybe  
20 after you deliberate it will mean more. The elements  
21 which the State must prove beyond a reasonable doubt are  
22 One: That the respondent has been convicted of a sexually  
23 violent crime. And I charge you that the crime of lewd  
24 act on a child under the age of sixteen is a sexually  
25 violent crime and the fact that he's guilty but mentally

1 ill still makes that the same conviction. Two: That the  
2 respondent suffers from a mental abnormality or  
3 personality disorder that makes him likely to engage in  
4 acts of sexual violence if not confined in a secure  
5 facility or long term control, care and treatment.  
6 Inherent in these two elements is that the State must  
7 prove the requirements that the respondents mental  
8 abnormality or personality disorder causes him serious  
9 difficulty in controlling his behavior. In other words,  
10 the State must prove, beyond a reasonable doubt, that the  
11 individual it seeks to commit suffers from a mental  
12 illness which he cannot sufficiently control without the  
13 structure and care provided by a mental health facility  
14 rendering him otherwise likely to commit a dangerous act.

15 In order for you to better understand the elements  
16 of the State's cause of action, I am going to define for  
17 you the term. Mental abnormality means a mental  
18 condition affecting a persons emotional or volitional  
19 capacity that predisposes the person to commit sexually  
20 violent offenses. This mental abnormality or personality  
21 disorder must cause Mr. Kaminiski serious difficulty in  
22 controlling his behavior. The second definition is  
23 likely to engage in acts of sexual violence. This means  
24 the person's propensity to commit acts of sexual violence  
25 is of such a degree as to pose a menace to the health and

1 safety of others so that he is dangerous to others. And  
2 I again remind you that the State must prove these to you  
3 satisfaction beyond a reasonable doubt. The respondent  
4 has been convicted of criminally sexually violent offense  
5 and as I have instructed you, and he also suffers from a  
6 mental abnormality and personality disorder that makes  
7 him likely to engage in acts of sexual violence if not  
8 confined in a secure facility or long term control care  
9 and treatment. If the State carries its burden of proof  
10 and convinces you beyond a reasonable doubt as to each of  
11 the two elements in this cause of action it is entitled  
12 to a finding that Mr. Kaminski is a sexually violent  
13 predator. If the States does not meet the burden of  
14 proof as to one or both of these elements the respondent  
15 is entitled to a finding then he is not a sexually  
16 violent predator. Those are the elements that you've got  
17 to make your determination on. Okay. Do you have any  
18 other issues or questions?

19 Mr. Foreman: No. The only question would be if we  
20 could have a copy, but I understand.

21 The Court: I know and under the law I can't give you  
22 a copy unless I give you the whole thing and so that's  
23 why I went back and read it to you. I can read it to you  
24 ten times if I have to. Now, that I have you here it is  
25 ten minutes to seven. If you all think I need to order

1 you dinner, it's going to take about an hour to get it  
2 here, if y'all want to go back and discuss that and tell  
3 the bailiff that you want us to start ordering dinner we  
4 will. If not, we'll just sit and wait on you, okay?

5 Mr. Foreman: Thank you.

6 (Jury continue deliberations)

7 (Verdict reached at 7:32)

8 (Jury in 7:34)

9 The Court: Mr. Foreman, I understand y'all have  
10 reached a verdict?

11 Mr. Foreman: Yes sir.

12 The Court: Is it unanimous?

13 Mr. Foreman: Yes sir.

14 The Court: Okay. You can pass it up. Okay, we the  
15 jury unanimously answers as follows YES, Michael J.  
16 Kaminski is a sexual violent predator. Anything from the  
17 State or Defense before I dismiss the jury?

18 Mr. Bogle: No, Your Honor.

19 Mr. Falk: Can we just poll the jury?

20 The Court: Okay. Can you poll the jury?

21 Deputy Clerk: Beginning with the foreperson,  
22 Heatherdale, is this your verdict?

23 Mr. Heatherdale: Yes, it is.

24 Deputy Clerk: Is this still your verdict?

25 Mr. Heatherdale: Yes, it is.

1 Deputy Clerk: Juror number 45 Cathy Etheridge. Is  
2 this your verdict?

3 Ms. Etheridge: Yes.

4 Deputy Clerk: Is this still your verdict?

5 Ms. Etheridge: Yes.

6 Deputy Clerk: Juror number 84 Kenneth Jenkins. Is  
7 this your verdict?

8 Mr. Jenkins: Yes.

9 Deputy Clerk: Is this still your verdict?

10 Mr. Jenkins: Yes.

11 Deputy Clerk: Juror number 20 Paul Brownlee. Is  
12 this your verdict?

13 Mr. Brownlee: Yes.

14 Deputy Clerk: Is this still your verdict?

15 Mr. Brownlee: Yes.

16 Deputy Clerk: Juror number 18 Tara Browder. Is this  
17 your verdict?

18 Ms. Browder: Yes.

19 Deputy Clerk: Is this still your verdict?

20 Ms. Browder: Yes.

21 Deputy Clerk: Juror number 147 Peyton C. Stone. Is  
22 this your verdict?

23 Mr. Stone: Yes.

24 Deputy Clerk: Is this still your verdict?

25 Mr. Stone: Yes.

## Jury Verdict

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1 Deputy Clerk: Juror number 188 Melanie Mitchell. Is  
2 this your verdict?

3 Ms. Mitchell: Yes.

4 Deputy Clerk: Is this still your verdict?

5 Ms. Mitchell: Yes.

6 Deputy Clerk: Juror number 67 Coretta Hamilton. Is  
7 this your verdict?

8 Ms. Hamilton: Yes.

9 Deputy Clerk: Is this still your verdict?

10 Ms. Hamilton: Yes.

11 Deputy Clerk: Juror number 115 Robert Obrien, Jr.  
12 Is this your verdict?

13 Mr. Obrien: Yes.

14 Deputy Clerk: Is this still your verdict?

15 Mr. Obrien: Yes.

16 Deputy Clerk: Juror number 146 David Stockman. Is  
17 this your verdict?

18 Mr. Stockman: Yes.

19 Deputy Clerk: Is this still your verdict?

20 Mr. Stockman: Yes.

21 Deputy Clerk: Juror number 34 Stephen Corey. Is  
22 this your verdict?

23 Mr. Corey: Yes.

24 Deputy Clerk: Is this still your verdict?

25 Mr. Corey: Yes.

1 Deputy Clerk: Juror number 63 Bobbi-jo Grooms. Is  
2 this your verdict?

3 Ms. Grooms: Yes.

4 Deputy Clerk: Is this still your verdict?

5 Ms. Grooms: Yes.

6 Deputy Clerk: Thank you. Your Honor, the jury has  
7 been polled and the verdict stands.

8 The Court: Thank you. Ladies and gentlemen, I want  
9 to thank you for your service. You have been very  
10 conscientious and you've paid close attention throughout  
11 this trial and I appreciate your services for the  
12 citizens of Berkeley County. We don't have anything else  
13 for you to try this week so that means you can go. You  
14 don't have to do this again for three years. They will  
15 mail you a huge check for your service. And I've been  
16 telling you you couldn't talk about this case. Now you  
17 can talk about it to anybody you want to. You don't have  
18 to if you don't want to but you're certainly free to talk  
19 about it. You can go home and explain to your family  
20 what you've been doing for the last two days. I don't  
21 know if any of you have ever served on jury duty before,  
22 but I hope you at least have some appreciation of our  
23 judicial system and have at least a better understanding  
24 of what happens. Because what happens on TV is not  
25 always what happens here in this courtroom. But I

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appreciate your very conscientious and paying close attention and I thank you for your service. And if I run into you in a Wal-Mart somewhere, introduce yourself and tell me where you saw me. I know a lot of times we all dress alike and most of us all have gray hair and wear glasses so I don't know if you would recognize us or not but I thank you for your service. You are free to go. Y'all understand you don't have to call back. You're done for the week. You're done for three years.

(Jury exits courtroom 7:36 p.m.)

The Court: Okay. Thank y'all. I appreciate it. Y'all have done a very good job. Mr. Kaminski, I wish you the best and I hope you get through this program as fast as possible and can return to society.

Mr. Bogle: May I approach Your Honor?

The Court: Yes sir.

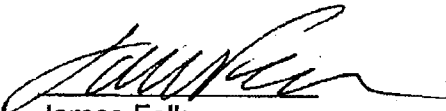
**(End of Trial)**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
SOUTH CAROLINA	)	CASE NO.: 2014-CP-08-2649
	)	
Plaintiff,	)	
vs.	)	
	)	
MICHAEL KAMINSKI	)	
	)	
Defendant,	)	
_____	)	

Respondent Michael Kaminski, by and through his undersigned counsel moves in limine for an order of this Court prohibiting the State of South Carolina making any reference to the following:

1. The report of Dr. William Burke, SouthEastern Assessments, Inc., regarding assessments performed of Respondent on October 24, 2008 & January 16, 2009.
2. Respondent's 04/04/2013 SCDC disciplinary action.
3. Respondent's 1999 2<sup>nd</sup> Degree Arson Convictions – 4 counts.
4. February 27, 2007 Berkeley County Sheriff's Office incident report 200702007882; and March 22, 2007 DSS investigation described as case ID 0001077723 regarding suspected lewd acts upon a 4 year old male victim.

Respectfully Submitted,

  
 James Falk  
 Counsel for Respondent

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 IN THE MATTER OF THE CARE )  
 AND TREATMENT OF )  
 MICHAEL J. KAMINSKI, )  
 RESPONDENT. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

**RECEIVED**

MAR 23 2016

CASE NO. 2014-CP-08-02649

**SC Court of Appeals**

**AMENDED ORDER OF COMMITMENT**

The trial of this case was held in the Berkeley County Court of Common Pleas the week of February 29, 2016. A jury of citizens from Berkeley 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 of South Carolina. James K. Falk, 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:

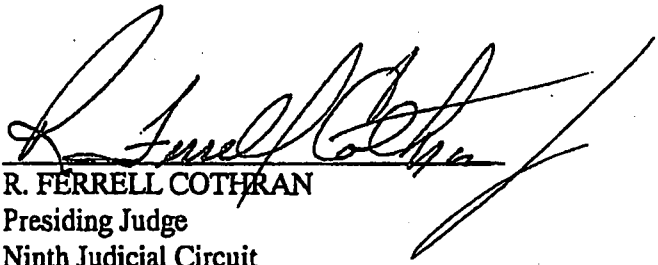
The State has proven beyond a reasonable doubt that Respondent, Michael J. Kaminski, is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

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

(a) Respondent Michael J. Kaminski is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent Michael J. Kaminski is to continue to be detained at the Berkeley 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.**

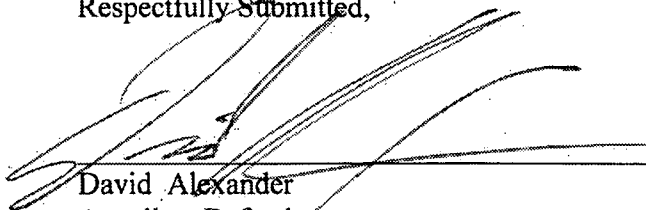
  
 R. FERRELL COTHRAN  
 Presiding Judge  
 Ninth Judicial Circuit  
 Court of Common Pleas

March 3, 2016  
 Moncks Corner, South Carolina

## 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,

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line. The signature is fluid and cursive.

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 18th day of August, 2017.

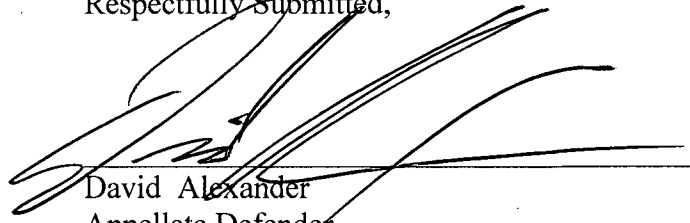
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AUG 18 2017

CERTIFICATE OF COUNSEL FOR APPELLANT  
SC Court of Appeals

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 18th day of August, 2017.