

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

Honorable John C. Hayes, III, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF GARY LEE BURRIS,

APPELLANT

APPELLATE CASE NO. 2017-002497

RECEIVED
JUL 31 2018
SC Court of Appeals

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

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

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (NOVEMBER 4-5, 2017).....	1
JURY SELECTION.....	4
PRE-TRIAL MOTIONS.....	28
OPENING STATEMENT BY MR. BOGLE	39
OPENING STATEMENT BY MS. BROWDER.....	44
TESTIMONY	
DOCTOR DONNA MADDOX.....	47
MOTION FOR DIRECTED VERDICT.....	113
RULING BY THE COURT.....	114
CLOSING ARGUMENT BY MR. BOGLE	120
CLOSING ARGUMENT BY MS. BROWDER	126
CHARGE ON THE LAW	135
VERDICT	148
MOTION FOR A NEW TRIAL	149
RULING BY THE COURT.....	149
CERTIFICATE OF COUNSEL	152

1 STATE OF SOUTH CAROLINA
2 -----x In the Court of Common
3 In the Matter of the Care and Pleas of York County
4 Treatment of Gary Lee Burris, Case No.
5 Applicant 2017-CP-46-01793
6 -vs-
7 STATE of South Carolina,
8 Respondent.

9 -----x
10 December 4, 2017
11 York, S.C.

12
13 B E F O R E:

14 HONORABLE LEE S. ALFORD
15

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

17 JAMES G. BOGLE
18 S.C. Attorney General's Office
19 Attorney for Applicant
20

21 Anna Rawl Browder
22 Attorney for the Respondent
23

24 Aileen Butler
25 Official Court Reporter

RECEIVED
JAN 22 2018
APPELLATE DEFENSE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
------------	--------------------	-------------	-------------

(No Exhibits received)

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3					
4		NO WITNESSES INTRODUCED			
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 THE COURT: Ladies and gentleman of the jury panel
2 give me your attention now please. We are about to
3 draw a jury in the case of -- in the matter and care
4 and treatment of Gary Lee Burris.

5 The State has brought this case under the sexual
6 violent predator law of South Carolina. The State
7 seeks the civil commitment of Gary Lee Burris, the
8 respondent, for long term control, care and treatment
9 in a secured facility. This is not a criminal
10 proceeding seeking incarceration but rather it's a
11 proceeding seeking civil commitment of Mr. Burris.

12 Now the State is represented in this matter by
13 Senior Assistant Attorney General James Bogle.
14 Counsel if you please stand up for the jury to see
15 exactly who you are. Now has anyone on the jury panel
16 related by blood or marriage, friends with or have any
17 other type of social, business or professional
18 relationship with either James G. Bogle, Jr.,
19 Assistant Attorney General or anyone who works in the
20 Attorney General's office, if so please stand. Thank
21 you Mr. Bogle.

22 And the defendant Gary Lee Burris is represented
23 by attorney Anna R. Browder. If you please stand and
24 ask Mr. Burris to stand so the jury can see who he is
25 in person. Thank you. You may be seated. Is anyone

1 on the jury panel related by blood or marriage,
2 friends with or have any type of social, business or
3 professional relationship with Gary Lee Burris, if so
4 please stand.

5 Anyone on the jury panel related by blood or
6 marriage, friend with or have any other type social,
7 business or professional relationship with that is to
8 say currently or formerly represented by or any other
9 relationship to Anna R. Browder, if so please stand.

10 Is anyone a potential witness in this case -- is
11 anyone in the jury panel related by blood or marriage
12 friends with or have any other type social, business
13 or professional relationship with, Doctor Donna
14 Schwartz, Maddox, M-a-d-d-o-x who is a forensic
15 psychiatrist, I believe, if so please stand.

16 Any member the jury panel related by blood or
17 marriage to, or a friend or acquaintance of a member
18 of a law enforcement agency, if so please stand.

19 Any member of the the jury panel employed by,
20 related by blood or marriage to or a friend or
21 acquaintance -- I think I asked you this already, but
22 is anyone employed by the attorney general, the
23 solicitor or any prosecuting attorney's office, if so
24 please stand.

25 Has any member the jury panel ever been employed by

1 any civilian or military law enforcement agency, if so
2 please stand. Is any member the jury panel a member
3 of or contribute to any group which has as its primary
4 concern the promotion of law enforcement or victim
5 rights? These groups would include but not be limited
6 to; CABE, C-A-B-E; CADRE, C-A-D-R-E; MADD, M-A-D-D;
7 SADD, S-A-D-D, or sister care or any other similar
8 organization? If so please stand.

9 Any member the jury panel employed by, related by
10 blood or marriage to or friend or acquaintance to the
11 perspective witness in this case, which would be as I
12 said Doctor Schwartz Maddox?

13 Is any member of the jury panel or member of your
14 immediate family ever been charged with a sex offense?
15 If so please stand.

16 Has any member of the jury panel or member of your
17 immediate family ever been the victim of a sexual
18 assault? If so please stand.

19 MR. BOGAL: May we approach Your Honor?

20 THE COURT: Yes, sir.

21 (WHEREUPON, there was an off the record
22 discussion.)

23 THE COURT: Okay, if you will come to the center
24 isle I take your responses down front next the court
25 reporter here.

1 Give me your name and number.

2 JUROR: My name is Oatis Perkins, number 135.

3 THE COURT: Yes, sir.

4 JUROR: My 11-year old daughter was molested.

5 THE COURT: Okay.

6 JUROR: There was Court proceedings and he was put
7 in jail.

8 THE COURT: Okay. All right. Is is there
9 anything about your experiences in that regard that
10 would interfere in your ability to give both State --

11 JUROR: Probably so.

12 THE COURT: I appreciate your honesty. I will
13 excuse from you this case. Thank you. You can turn
14 your badge in. You are free to go.

15 All right. What is your name and number?

16 JUROR: Ronald Brockhaus, number 21--29. I'm
17 sorry.

18 THE COURT: Yes, sir.

19 JUROR: I'm a victim of child abuse and sexual
20 abuse as a child. Ongoing for years.

21 THE COURT: Okay. Let me ask you this then, is
22 there anything about your experiences that would
23 interfere in any way with your ability to give both
24 the State and the defendant in this case a fair and
25 impartial --

1 JUROR: I can not be impartial.

2 THE COURT: You could not be impartial?

3 JUROR: No, sir.

4 THE COURT: All right. I appreciate your honesty.
5 I will excuse for this case.

6 THE COURT: Thank you.

7 Ma'am, yes, ma'am.

8 JUROR: Hi.

9 THE COURT: Give us your name and number.

10 JUROR: Caroline Christian, 42.

11 THE COURT: Yes, ma'am.

12 JUROR: Number one, I was victim of sexual assault
13 many years ago. And also my brother's son, my nephew
14 is a registered sex offender.

15 THE COURT: Okay. Let me ask you whether given
16 the nature of this case is there anything about your
17 experiences in that regard that would interfere in any
18 way with your ability to give both the State and the
19 defendant a fair and impartial trial in this case?

20 JUROR: No.

21 THE COURT: It would not interfere.

22 JUROR: No, sir.

23 THE COURT: Thank you ma'am. You may return to
24 your seat.

25 Give us your name and number.

1 JUROR: Justin French, number 68.

2 THE COURT: Yes, sir.

3 JUROR: It was my wife two years after we were
4 married.

5 THE COURT: Was she a victim sexual assault?

6 JUROR: Yes.

7 THE COURT: Let me ask you what happened with that
8 case. Was it prosecuted?

9 JUROR: No. She didn't want to pursue it.

10 THE COURT: Let me ask you if there is anything
11 about your experiences in that regard that would
12 interfere in any way to give both the State and the
13 defendant a fair and impartial trial in this case?

14 JUROR: I think it would interfere.

15 THE COURT: You think it would interfere?

16 JUROR: Yes.

17 THE COURT: I am not going to require to you serve
18 on this jury. You are free to go.

19 JUROR: Thank you, Your Honor.

20 THE COURT: Yes, sir. Give us your name and
21 number for the record.

22 JUROR: Charles Van.

23 THE COURT: And you number?

24 JUROR: 185. My mother was raped when she was a
25 little girl by an uncle but it never got reported.

1 Never went to trial.

2 THE COURT: Let me ask you sir whether there was
3 anything about your experience in that regard that
4 would interfere in any way with your ability to give
5 both the State and the defendant a fair and impartial
6 trial in this case?

7 JUROR: Probably.

8 THE COURT: Thank you. It would interfere?

9 JUROR: Uh-huh.

10 THE COURT: All right. I will excuse you. I will
11 not require to you sit on this jury. Thank you.

12 Has any member of the jury panel had the prior
13 knowledge about this case from any source before
14 coming to court today? You read about it in newspaper
15 or read anything about Mr. Burris if so please stand.

16 Is there any member the jury who does not
17 understand if there is uncertainty as to whether
18 reasonable doubt exists that benefit of the doubt
19 should be given to the defendant? Is there anybody
20 who doesn't understand that?

21 Does any member the jury panel know anything about
22 the sexual offenses Gary Lee Burris was convicted of?
23 If so please stand.

24 Would the fact that Gary Lee Burris has been
25 convicted of sexual offenses and completed his

1 criminal sentence related to that conviction would
2 that in any way prevent you from being able to be fair
3 and impartial juror in the trial in this case? If so
4 please stand.

5 Yes, sir. I will get you to come forward and get
6 your answer down front.

7 Can I get your name and number.

8 JUROR: Carnell Minor, 124.

9 THE COURT: Yes, sir.

10 JUROR: I know the defendant.

11 THE COURT: You know him?

12 JUROR: Yes, I know him. He's in my neighborhood.
13 I just know.

14 THE COURT: You know what?

15 JUROR: What he's charged with.

16 THE COURT: Let me ask you whether that would
17 interfere with your ability to be fair and impartial?

18 JUROR: Yes.

19 THE COURT: All right. I will excuse you from
20 this case. All right. Thank you sir. You are free
21 to go.

22 Do we have another juror.

23 (WHEREUPON, another juror steps down.)

24 THE COURT: Give us your name and number.

25 JUROR: Amanda Cude, number 49.

1 THE COURT: Yes, ma'am.

2 JUROR: If somebody has been convicted of something
3 I don't know if I can fair.

4 THE COURT: Let me explain it to you. This is
5 kind of complicated, but he has been convicted of
6 sexual offense. He served his time. The question is
7 whether he is a sexual violent predator which is a
8 mental abnormality which would make he more likely to
9 commit an offense like that if he is released. That's
10 the question usually determine by professional people
11 who handle that. So that's what you will hear about.
12 So just the fact that he had been convicted, people
13 are convicted but they are not sexual violent
14 predators. Do you understand what I'm saying. So,
15 does that make a difference to you.

16 JUROR: I don't know if I can clearly be unbiased
17 since he has already been convicted.

18 THE COURT: He's not being tried on the sexual
19 offense.

20 JUROR: Yes.

21 THE COURT: The question is different. What he is
22 charge with is sexually violent predator. There is a
23 different definition which will be explained in the
24 trial. It is not a criminal proceeding. It's a civil
25 thing to determine if he has any mental issue. Do you

1 understand?

2 JUROR: Yes, sir.

3 THE COURT: Does that still bother you? Could you
4 listen to the testimony and evidence presented during
5 the trial and the judge's instruction on the law and
6 make decision that is fair and impartial? Could you
7 do that or not do that?

8 JUROR: I could certainly try.

9 THE COURT: That's not what I am asking. I'm asking
10 if you can do it or not? Be honest as you can.

11 JUROR: I'm not sure I could.

12 THE COURT: Okay. I will excuse from this case
13 since you are not sure you could.

14 Give us you name and number sir.

15 JUROR: Chris Wheat, 195. This really help doesn't
16 involve this right now, but during the break we had I
17 seen a old lady in the parking lot she had car
18 trouble. Is this not any way I could be excused to go
19 help her.

20 THE COURT: You are part of the jury at the moment.
21 You are going be excused shortly either to go to lunch
22 or all together for the week. One or the other. If
23 you are not selected for the jury you will be done for
24 the week. If you are selected you will still get a
25 lunch break. It will take a few more minutes. Okay.

1 JUROR: I just wanted to help her because she don't
2 know what she is doing.

3 THE COURT: I understand. We will get you out
4 there in a minute. (Juror returns to seat.)

5 Give us your name and number, ma'am.

6 JUROR: Terry Trull, 184.

7 THE COURT: Yes, ma'am.

8 JUROR: I just have a question about the case. I
9 didn't hear real good, what did he do?

10 THE COURT: Let me explain this to you. Under our
11 laws Mr. Burris had been convicted of a sexual
12 offense. He served his time. He's time is up. The
13 question is whether he has a mental abnormality which
14 would be more explained to you later that makes him
15 most likely to re-offend again if he is released from
16 treatment.

17 JUROR: Okay.

18 THE COURT: That is the question and the State has
19 got to prove that beyond a reasonable doubt.

20 JUROR: I understand that a lot better now.

21 THE COURT: Do you think you can be fair and
22 impartial in the case?

23 JUROR: Yes.

24 THE COURT: Okay, thank you.

25 THE COURT: Has any member of the jury panel or a

1 close personal friend or relative ever been charged
2 with or convicted of sexual offense? If so please
3 stand.

4 All right. Again, if you come to the center isle
5 I will take your responses down fronts.

6 Give us your name and number.

7 JUROR: Sylvia Hawkins, 85.

8 THE COURT: Yes, ma'am.

9 JUROR: I don't go around my real dad. I haven't
10 been since I was three or four years old. But my real
11 dad was convicted of child molesting, I guess. It's
12 all been told through my family.

13 THE COURT: Let me ask you ma'am, is there anything
14 about your experience in that regard that would
15 interfere in any way with your ability to give both
16 the State and the defendant a fair and impartial
17 trial?

18 JUROR: No, I don't think so.

19 THE COURT: All right, thank you, ma'am.

20 Your name and number?

21 JUROR: Forty-two, Caroline Christian.

22 THE COURT: Yes, ma'am.

23 JUROR: My nephew was convicted. Spent ten years
24 in jail.

25 THE COURT: Is there anything about your

1 experience that would interfere with ability to give
2 both the State and the defendant a fair and impartial
3 trial in this case?

4 JUROR: No.

5 THE COURT: All right. Thank you.

6 Your name and number.

7 JUROR: Ryan Maynard, 112.

8 THE COURT: Yes, sir.

9 JUROR: My brother-in-law was convicted of having
10 sex with an underage girl and my cousin's husband was
11 convicted of being a serial rapist.

12 THE COURT: Is there anything about your
13 experience with regard to that, that would interfere
14 in any way with your ability to give both the State
15 and the defendant a fair and impartial trial in this
16 case?

17 JUROR: No.

18 THE COURT: Thank you sir.

19 Give us your name and number.

20 JUROR: Itania Shinn, 163.

21 THE COURT: Yes, ma'am.

22 JUROR: Okay, I have two friends that was
23 convicted of a sexual crime. One got out. He is
24 doing good. The other one he is still doing it so I
25 don't know want to be bias but from a previous

1 experience, I don't know, and I just want to be fair.

2 THE COURT: All right, let me explain this to you.
3 In this case there is a determination to be made in
4 this case. The State has to prove beyond a reasonable
5 doubt whether Mr. Burris is a risk if he is released
6 or not due to a mental abnormality, and the Court can
7 explain that to you better once the trial begins. But
8 does that explain it better to you.

9 This is what the the determination is whether he,
10 Mr. Burris, is likely to re-offend if he is released
11 or not. But that's something that has to be
12 determined at trial. The State has to prove beyond a
13 reasonable doubt. Do you understand that. All right
14 does that clear it up.

15 JUROR: It does.

16 THE COURT: Could you, given your experiences
17 would that interfere in any way with your ability to
18 give both the State and the defendant a fair and
19 impartial trial?

20 JUROR: I am trying to be honest, but I think it
21 would because again I experienced it, so I am just
22 want to be honest.

23 THE COURT: Okay. All right. Well, I appreciate
24 your honesty. I am not going require you to sit on
25 this jury. You are free to go.

1 JUROR: Thank you.

2 THE COURT: Does any member of the jury panel have
3 any training or experience in the field of psychiatry
4 psychology or the law? If so please stand.

5 Ma'am, give us your name and number.

6 JUROR: Brooke Malley, 109. That's my college
7 education, psychology.

8 THE COURT: Okay. And what was your number again?
9 I'm sorry.

10 JUROR: 109.

11 THE COURT: Okay. All right. Thank you ma'am.

12 Yes, sir.

13 JUROR: 119, Timothy McMichael. Only as it applies
14 to operating as a paramedic in the county.

15 THE COURT: That is our occupation. Okay, thank
16 you sir.

17 Any member of the jury panel who is related by
18 blood or marriage to any other member the jury panel?
19 If so please stand. This does happen. I had a
20 husband and wife on the same jury before.

21 All right. A couple more questions ladies and
22 gentlemen. Any member the jury panel have any prior
23 knowledge about this case from any source before
24 coming to court today? If so please stand. Read,
25 listened to or talked to anybody about the case?

1 Has any member of the jury panel formed or
2 expressed an opinion about any issue in this case?

3 Is any member of the jury panel aware of any bias
4 or prejudice towards either the State or the
5 defendant, or respondent in this case, if so please
6 stand.

7 Can each member of the jury panel give both the
8 state and the respondent in this case, Gary Lee
9 Burris, a fair and impartial trial? If not please
10 stand.

11 Does any member of the jury panel know of any
12 reason whatsoever why he or she should not serve as
13 juror in this particular case? If so please stand.

14 Any additional questions requested by the State?

15 MR: BOGLE: No, Your Honor. Thank you.

16 THE COURT: Any additional questions requested by
17 the respondent.

18 MS. BROWDER: No, sir.

19 THE COURT: Thank you.

20 Madame clerk, please gives a jury.

21 (WHEREUPON, the attorneys review the jury list).

22 THE COURT: Do you need more time.

23 MS. BROWDER: I am ready.

24 MR. BOGLE: Ready Your Honor.

25 THE COURT: All right. Let's proceed with the

1 strikes. State will strike first.

2 MR. BOGLE: State will strike number one.

3 MS. BROWDER: The respondent strikes number 15.

4 MR. BOGLE: State strikes number three.

5 MS. BROWDER: The respondent strikes number 19.

6 MR. BOGLE: The State strikes number five.

7 MS. BROWDER: The respondent strikes number ten.

8 MR. BOGLE: The state strikes number 16.

9 MS. BROWDER: The respondent strikes number two.

10 MR. BOGLE: From the alternate the State will
11 strike number 23.

12 MS. BROWDER: The respondent strikes number 21.

13 THE COURT: I will just confirm the strikes from
14 both sides. From the State I have the following
15 strikes; one, three, five, 16, and as your alternate
16 number 23.

17 MR. BOGLE: Correct. For the respondent I have the
18 following strikes; number 15, 19, ten, number two and
19 as your alternate number 21. Is that correct?

20 MS. BROWDER: That's correct.

21 THE CLERK: Ladies and gentlemen, when I call your
22 name --

23 THE COURT: Hold on just one second. Any
24 questions concerning the selection process from the
25 State?

1 MR. BOGLE: No, Your Honor.

2 THE COURT: From the respondent?

3 MS. BROWDER: No, sir.

4 THE COURT: Okay, please call.

5 THE CLERK: When you hear your name called please
6 get your personal belonging and have a seat to my
7 right at the direction of the bailiff.

8 Juror number 55, Marilyn C. Drake; juror 57, Steven
9 P. Dzikowski; juror, 182, Crawford R. Totherow; juror
10 79, Karen D. Hagler; juror 160, Donna M. Sellers;
11 juror 130, Sharon C. Newton; juror 142, Daniel J.
12 Reilly; juror 184, Terry B. Trull; juror 56, Michelle
13 P. Dyer; juror 95, Moleisa A. Jordan; juror 190,
14 Suzanne K. Warren; Juror 105, Leonard M. Lind.
15 Serving as alternate 161, Alexandra V. Senter.

16 THE COURT: All right, those who are not selected
17 for this case and were not selected for the other case
18 the good news is you will not be selected because we
19 are only trying two cases. I appreciate your
20 patience. We just tried to get two juries drawn so we
21 can free you up and let you go if you were not needed
22 here. And so that's the reason we spent a good bit of
23 time getting those drawn. But you are free to go at
24 this time. This will complete your service for this
25 week. You are not required to sit on Circuit Court

1 jury again for three years. A check will be put in
2 the mail for your service today. Thank you so much.

3 All right. Ladies and gentlemen of the jury
4 panel, we are obviously not starting a trial right at
5 this moment. I am going to excuse you and let you get
6 some lunch and again I appreciate your patience.

7 I will give you the same instruction I gave the
8 previous jury and that is it's very important that you
9 not discuss this case among yourselves with anyone
10 else during a recess. I'm sure Judge Hayes who will
11 be trying this case, presiding over the trial, I'm
12 sure he will explain all this to you as well. Very
13 important that you not do that. If you see anybody
14 stand around and talk about the case outside the
15 courtroom please avoid having any kind of
16 communication with anybody about the case or listen to
17 any communication. I'm going to go ahead and excuse
18 you at this time. Get some lunch and I will ask you
19 to be back -- the bailiff will show you where to go.
20 I guess they will be in other courtroom so wherever
21 they need you to be back, jury assembly room or
22 wherever. I am going to ask you be back at 2:50.
23 It's now 1:45 so that will give you about an hour or
24 so for lunch. You are free to go at this time and
25 again, you will be in the other courtroom and Judge

1 Hayes will be presiding when you come back. Thank
2 you.

3 (END OF TRANSCRIPT)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 4th day of December, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 17, 2018

Aileen Butler

RECEIVED
JAN 22 2018
APPELLATE DEFENSE

State of South Carolina.,)	In the Court of Common
)	Pleas of York
)	
)	
County of York.)	Case No.: 2017-CP-46-01793
_____)	

In the Matter of the Care)	
and Treatment of.,)	
Gary Lee Burris.,)	
)	
Applicant.,)	
-vs-)	Transcript of Record
)	Volume II
State of South Carolina.,)	
)	
Respondent.)	
_____)	

December 4, 5, 2017
York, South Carolina

B E F O R E:

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

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

Mr. James G. Bogle, Jr.
South Carolina Attorney General's Office
PO Box 11549
Columbia, South Carolina 29211
jbogle@scag.gov
(803) 734-3970
Attorney for the Applicant

Mrs. Anna Rawl Browder
Law Office of Anna Browder, LLC
PO Box 7284
Columbia, SC 29202
annabrowderlaw@gmail.com
(803) 661-6758
Attorney for the Respondent

Wanda S. Nelson, CVR-M
Official Court Reporter
To the Honorable John C. Hayes, III
Sixteenth Judicial Circuit
Union and York Counties

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-NWITNESSBY:PAGE NO.

Opening Statement

Mr. Bogle p.39-43

Mrs. Browder P.44-46

Doctor Donna Schwartz-Maddox

Mr. Bogle P.47-86

. P.109-112

Mrs. Browder. P.86-108

Closing Argument Mr. Bogle P.120-126

. MRS. Browder. P.126-135

Charge to the Jury P.135-146

Verdict P.148

Court Reporter's Certificate P.151

Clerk of Court's Random Strike Sheet

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

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
St.1	Indictment No. 2010GS4601527		
	CSC with Minor, 3rd		P. 56-57
Ct.1	Jury Note at 04:28 p.m.		P. 119

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

1 (COURT IN SESSION IN THE MATTER OF THE CARE AND
2 TREATMENT OF GARY LEE BURRIS, MONDAY, DECEMBER 4, 2017 AT
3 10:20 A.M..)

4 (DEFENDANT, GARY LEE BURRIS, WHITE MALE, ENTERS
5 COURTROOM.)

6 THE COURT: All right.

7 MR. BOGLE: Thank you, your Honor. May it please the
8 Court.

9 THE COURT: Yes, sir.

10 MR. BOGLE: This is the case of *In the Matter of the*
11 *Care and Treatment of Gary Lee Burris*, York County, Case
12 Number 2017-CP-46-1793.

13 For the record my name is Jim Bogle, I represent the
14 State in this matter and we have filed a, first *Motion in*
15 *Limine*. Basically what that motion is asking for that
16 there not to be any reference to the where Mr. Burris might
17 be committed, the location where he might go.

18 There are several locations where these people are
19 confined. Two of them are old unused wings on the Broad
20 River Department of Corrections campus. One of 'em is the
21 Edisto Unit which was in the past the old Death Row.

22 MRS. BROWDER: Your Honor, I can stop him. We agree
23 to that, your Honor.

24 MR. BOGLE: Okay.

25 THE COURT: Okay. All right.

1 MR. BOGLE: Okay, thank you. The other motion, the
2 second *Motion in Limine* is basically to prohibit any cross-
3 examination or testimony about the type of treatment he
4 might get. It's not one of the elements the State has to
5 prove and we don't know what kind of treatment he will
6 require until he gets there.

7 MRS. BROWDER: And, your Honor, we would agree with
8 that as well. We would just ask -- and I don't even know
9 if I agree to this or not at this point -- but just that
10 there is a difference between inpatient versus outpatient
11 treatment.

12 MR. BOGLE: And that's fine, your Honor.

13 MRS. BROWDER: And, your Honor, I do have two quick
14 motions as well.

15 THE COURT: All right.

16 MRS. BROWDER: The first is a motion regarding -- I've
17 done several of these trials with Mr. Bogle, your Honor. I
18 do know that his normal practice to in his opening as well
19 as sometimes his closings when describing the SVP action
20 quote Section 44-48-20 which is the legislative findings,
21 your Honor. Essentially the part that he quotes is that
22 "the legislature finds there is an extremely dangerous
23 group of sexually violent predators that -- who exist and
24 that if -- that the likelihood that they will reengage in
25 acts of sexual violence if not treated is significant."

1 We would ask that he not be able to go into the
2 legislative finding as Mr. Burris has not been found to be
3 a sexually violent predator at this point. That's for the
4 jury to determine if he is one. We believe that would
5 prejudice the jury into thinking that he could potentially
6 be extremely dangerous based on what the legislature says
7 when the legislature has not facts as to Mr. Burris' case.

8 THE COURT: All right. Mr. Bogle.

9 MR. BOGLE: Thank you, your Honor. If I may propose,
10 I'm not sure if you have a copy in front of you, but
11 Section 44-48-20 of the legislative findings on the SVP
12 Act, I bracketed out the two paragraphs. And what I'll do
13 in opening arguments I'll sometimes explain to the jury
14 what kind of case this is and what they have to find out,
15 what they have to do. Because, you know, they came here
16 expecting an auto wreck or a med mal or something like
17 that, I will sometimes read all or parts of those two
18 sections just to orient them as to the type of case it is.

19 And since it is part of the act passed by the
20 legislature, I would think it would be appropriate to do
21 so. It's their language not mine.

22 THE COURT: Well it's their language but it's the --
23 its prepratory to what they are were trying to enact.

24 I'm gonna grant Mrs. Browder's request.

25 MR. BOGLE: Thank you, your Honor.

1 MRS. BROWDER: Thank you, your Honor.

2 And the last one I have, your Honor, is Mr. Burris has
3 a lengthy criminal history. I'm only asking there is one
4 on there that is a 1990 assault and battery with intent to
5 kill that was nol proded. We would just ask that Doctor
6 Maddox not be able to testify regarding that arrest as it
7 was nol proded and dismissed.

8 MR. BOGLE: What Doctor Maddox will do in order to get
9 to her diagnoses and the case law is pretty good on this as
10 far as prior crimes that didn't result in convictions being
11 important, that is also covered in the Memorandum of Law
12 which is submitted to the court earlier, your law clerk has
13 a copy. Basically she's gonna look at the sexually violent
14 crime and explain how she got to her diagnoses, tell the
15 jury what happened, what Mr. Burris did.

16 At the same time she has to go through his criminal
17 record to show whether or not he has difficulty controlling
18 his behavior and this would include cases that are --
19 whether or not are convictions as well as cases that there
20 are convictions. And certainly she can be cross-examined
21 extensively on the fact that some did not result in a
22 conviction.

23 The *Ettel* case and the *Corley* case talked about
24 testimony on prior nonsexual murder conviction. There was
25 testimony about that, some of the offenses that had not

1 resulted in convictions, and the Supreme Court said in the
2 *Ettel* case that Doctor Pamela Crawford could do that
3 because she was evaluating Ettel's need for and likelihood
4 of success in treatment and his ability to control his
5 behavior.

6 Then in the *Corley* case Doctor Donna Schwartz Watts,
7 now Doctor Maddox, the expert here, also testified about
8 previous convictions and matters that did not result in
9 convictions. The *White* case is more on point, and this is
10 on page 4 of my Memoranda, *In the Matter of the Care and*
11 *Treatment of White*, Court of Appeals 2007, determined that
12 the meaning of the word offense as set forth in the Act
13 commonly defined as a violation of law, by crime even a
14 minor one, and so, because they're using them inner
15 changeably the court held that since the legislature was
16 silent on whether or not only convictions could be used the
17 court held the legislature had intended both convictions
18 and offenses not involving convictions to be used in these
19 types of cases.

20 And then they go to some Kansas cases because our law
21 was drawn a lot from the Kansas statute. So I would submit
22 that Doctor Maddox could be allowed to testify about these.
23 Certainly she can be cross-examined about the fact that
24 they didn't result in convictions and she'll explain to the
25 jury why that's still important for her to look at.

-33-

1 THE COURT: Well, if it was nol prossed then where is
2 Mr. Burris' due process? He never -- He didn't have a
3 right to require the state to go to the burden of proving
4 his guilt beyond a reasonable doubt. The State made a
5 choice. It could have been for any reason. It could have
6 been that they -- no cooperation of the victim or.

7 You hadn't addressed it but it was an exchange for a
8 plea for something else. But I'm inclined to grant Mrs.
9 Browders' request.

10 MR. BOGLE: Well, that's part of the problem is we
11 don't know why the case went away. It could have been for
12 any number of reasons.

13 THE COURT: Well it could have been they had the wrong
14 person. I mean this -- I'm just -- I'm very uncomfortable
15 with that, so I'm gonna grant her motion.

16 MR. BOGLE: And this is the ---

17 MRS. BROWDER: Thank you, your Honor.

18 MR. BOGLE: --- the ABWIK?

19 MRS. BROWDER: The 1990.

20 THE COURT: 1990 or something.

21 MR. BOGLE: ABWIK. Okay.

22 THE COURT: All right. Anything else?

23 MRS. BROWDER: That's it, yoru Honor.

24 THE COURT: All right. Well we'll let you know
25 whenever we got the availability of a jury back.

1 MR. BOGLE: All right. Thank you, your Honor.

2 MR. BOGLE: Thank you, your Honor.

3 (COURT AT EASE AT 10:40 A.M./BACK IN SESSION AT 02:57
4 P.M..)

5 THE COURT: Thank you, you may take your seats.

6 Is the State ready to proceed?

7 MR. BOGLE: Yes, your Honor.

8 THE COURT: Defense ready to proceed?

9 MRS. BROWDER: Yes, sir.

10 THE COURT: All right. We'll bring the jury in and
11 they have not been sworn. I'm not gonna appoint a
12 foreperson until I get a chance to kind of see who we got
13 since Judge Alford did the qualifications and drew the jury
14 so we'll get to that.

15 And Mrs. Foster will swear them in when we get 'em in
16 here, so, anything else before the jury comes in?

17 MR. BOGLE: Not from the State, your Honor.

18 MRS. BROWDER: No, sir.

19 THE COURT: All right. Bring in the jury.

20 (JURY ENTERS COURTROOM AT 02:58 P.M..)

21 THE COURT: Now that all of you are seated comfortably
22 I'm going to ask you to stand and the clerk will administer
23 the oath.

24 MADAM CLERK: Ladies and gentlemen of the jury, would
25 you raise your right hand to be sworn.

1 (WHEREUPON, PETIT JURY BEING
2 DRAWN AND DULY SWORN AT 02:59 P.M..)

3 THE COURT: You can be seated.

4 Members of the jury panel, I'm John Hayes; along with
5 Judge Alford I am holding court here this week. I only
6 have one case to try this week and that is the *State versus*
7 *Mr. Burris, Gary Lee Burris* who is seated here with Mrs.
8 Browder his attorney.

9 The State is represented by Mr. Bogle. I believe you
10 probably met them next door. The State is alleging that
11 Mr. Burris falls into a category, in our state, a category
12 called a sexually violent offender, and that would be the
13 issue that you will be resolving.

14 Mr. Bogle will tell you a little bit more about that
15 when he makes his opening statements and Ms. Browder will
16 have a chance to make an opening statement. They are not
17 required to make opening statements but they have a right
18 to. These opening statements are not evidence, they are
19 simply outlines or blue prints of the trial. At the end of
20 the trial I will give you a concise and comprehensive
21 charge on the law that you are to apply in this case.

22 I have three primary jobs. One is the mechanical part
23 of a trial to make sure one person speaks at a time, make
24 sure we take breaks, those sort of things. One is I just
25 mentioned, I rule on questions -- I'm sorry, the second one

1 would be that I rule on questions of the admissibility of
2 evidence. If one side believes that certain evidence
3 should be allowed in the record for your consideration and
4 the other, based on some law or statute or rule, believes
5 the evidence is inadmissible. I have to rule on that.

6 My third job is that I am the sole judge on the law in
7 this case. You must take accept and apply the law as I
8 charge it, even if you think I charge the law in error, or
9 even if you think the law should be different you must take
10 accept and apply the law as I charge it.

11 Mr. Burris as I said is represented by Mrs. Browder.
12 And the State would have to prove their case as we will
13 talk about later when I charge you the law that you are to
14 apply to the facts in this case.

15 You are not to infer from anything I say or do as
16 being an opinion of mine on the facts. I am not allowed as
17 a trial judge to formulate or express to you any opinion on
18 the facts. That is solely your job. It is solely your job
19 to examine the evidence and give to the evidence the effect
20 the value the weight and the truth you believe it should
21 have.

22 In doing this you may believe one witness as opposed
23 to several. Several as opposed to one and you may believe
24 all, part, or none of a witness's testimony. Use your
25 commons sense, your sense of logic, and your sense of

1 reason in determining the facts in this case. And you
2 determine the facts, apply the law, and you will be in a
3 position to return a verdict.

4 In this case there will be testimony from someone who
5 would be qualified, possibly qualified, as an expert. An
6 expert is someone who has certain knowledge, training, and
7 experience in a certain area that gives them the ability to
8 take facts and from those facts render an opinion.

9 Generally an individual can only testify to something
10 they've observed with one of their five senses. This
11 usually is something that somebody has seen or heard but it
12 could be taste touch or smell. However where an expert
13 testifies -- is allowed to testify -- that person can give
14 an opinion based on facts.

15 Now the testimony of an expert is allowed into
16 evidence to assist you as a jury in this case. Their
17 testimony is not, and their opinion is not, binding on you.
18 You can accept or reject the expert's testimony in whole or
19 in part. And in addition to looking at those things that I
20 talked to you about a minute ago about looking at all
21 witnesses, look at their credibility, their believability,
22 as to an expert even though I qualify them as an expert you
23 determine whether you think that individual has the
24 requisite experience, training, and knowledge and education
25 to reach the opinions they reached.

1 And also, you can consider the reasons that the expert
2 gives for reaching the opinion they reached. All these
3 things you consider and you'll be able to return a verdict
4 in this case.

5 Do not discuss the case among yourselves or try to
6 make up your own mind until we reach the point in the trial
7 where I instruct you to jointly deliberate and return a
8 unanimous verdict. Prior to that time you are not equipped
9 with all the tools you need to make a fair and reasonable
10 decision.

11 You are not to discuss the case outside the courtroom.
12 If anyone tries to discuss the case with you tell them you
13 cannot as you are serving as a juror. And report back to
14 me if anyone tries to discuss this case with you. Do not
15 let yourself be exposed to any news coverage. If there is
16 any, I don't think there would be, but if there is any
17 don't let yourself be exposed to it. If your eye or ear
18 catches anything that could remotely deal with this trial,
19 do not let yourself be exposed to it.

20 Do not do any independent research in any fashion
21 whatsoever. Particularly do not use any Google or any kind
22 of search engine, or any kind of mobile device to do any
23 research about this case. Your verdict must be based
24 solely on the law and the evidence as it's developed in
25 this trial.

1 Do not even go on social networks such as Facebook or
2 Twitter and tweet or put on Facebook guess what, I'm
3 serving on a jury. As a juror that sounds pretty innocent
4 but someone may respond with something that wouldn't be
5 healthy for you serving as a juror.

6 If you can't see or hear let me know. If you need a
7 break, we take breaks about every hour and a half, but
8 we'll take a break at any time if anyone needs one and I
9 extend that to Mr. Bogle and Mrs. Browder and Mr. Burris.

10 We want to move the case along but we are not in such
11 a hurry that we won't take a break if we need to take a
12 break.

13 Mr. Bogle.

14 MR. BOGLE: Thank you, your Honor. May it please the
15 court.

16 Mrs. Browder.

17 OPENING STATEMENT BY MR. BOGLE

18 MR. BOGLE: Okay, my name is Jim Bogle, I'm with the
19 Attorney General's Office. I represent the State in this
20 case. People sometimes wonder when they hear that we're
21 involved, why isn't the case being presented by a your
22 county attorney or your solicitor. The reason is when the
23 General Assembly passed this law back in 1998 they gave the
24 job to our office to do these cases statewide. So, me and
25 a guy named Christopher Marrow, we have the state divided

1 up, I've got the Sixteenth Circuit and that's why I'm here
2 today.

3 Now, the judge talked about, he give you a little bit
4 of an idea what the type of case it is, let me explain a
5 little bit more if I can. Some of you when you heard you
6 were on jury duty, or this morning when we were picking the
7 jury for that wreck case down the hall, you might have been
8 thinking that's the kind of case I'll do. It'll be a wreck
9 case, a medical mal prac case, it's a legal case; something
10 like that, and that's not what this is.

11 What happened is, back in 1998 our legislature passed
12 a law called the *Sexually Violent Predator Act*. And what
13 that says is there are certain people, if they get
14 convicted of what's called a sexually violent crime, and
15 there are sixteen of 'em listed in the statute, if they're
16 convicted of that kind of crime, and they go to prison,
17 their case can get reviewed once they're nearing the end of
18 their prison release, and that's what happened here.

19 Mr. Burris was convicted of criminal sexual conduct in
20 the third degree back in 2010 or so. He was originally
21 indicted for criminal sexual conduct with a minor in the
22 first degree which means the victim was under eleven years
23 of age. He pleaded no contest plea which has the effect of
24 a conviction to criminal sexual conduct in the third degree
25 and that is classified in our law as a sexually violent

1 crime.

2 Now, at a prior hearing Doctor Donna Maddox, sitting
3 back there in the grey coat, she was appointed by the court
4 here in York County to evaluate Mr. Burris to see what the
5 problem is; see what's with this guy. Because here's what
6 the law says: A sexually violent predator is someone who
7 is number one, been convicted of a sexually violent crime.
8 We got that.

9 The number two is your job. Does he have a mental
10 abnormality, or a personality disorder, that makes him
11 likely to commit sexually violent crimes and he can't
12 control it. And if that's the case we try to civilly
13 commit him to a secure facility run by the Department of
14 Mental Health in what they call long term control, care and
15 sex offender treatment, and that's what this is.

16 This is a civil commitment case. Doctor Maddox
17 evaluated him; she diagnosed him with a mental abnormality
18 related to pedophilic disorder. That means he is sexually
19 attracted to underage prepubescent children. That's the
20 crime. That's the mental abnormality. And she'll explain
21 later how she got to that; what she meant by that and the
22 details she had to look at.

23 And that takes me to another issue. It may be
24 necessary for Doctor Maddox to explain the underlying
25 details of the crime to show to you how she got to the

1 diagnoses she did and why he has this sexual urge and
2 whether or not he can be controlled.

3 Because there is another thing you have to decide is,
4 even if he's got this mental abnormality, even if he's been
5 convicted of the right kind of crime, can he control
6 himself and the state is saying through Doctor Maddox he
7 cannot.

8 Now, like the judge said, normally witnesses can't
9 give opinions. They can talk about what they saw, what
10 they heard. I saw the light turn red. I heard the gun go
11 off. I saw him hold the knife. They can't give opinions.
12 But when a witness has the education and the training and
13 experience, and Doctor Maddox does, she's been qualified as
14 an expert in this state many many times particularly under
15 this particular law, she's allowed to give an opinion.

16 Now, she's not here to control your decision. You can
17 give whatever weight you want to to her testimony. I would
18 submit she's here to guide you and give you a resource in
19 making the ultimate conclusion as to whether or not Mr.
20 Burris is indeed a sexually violent predator.

21 The judge said earlier we have to prove this case to
22 you beyond a reasonable doubt. Now normally the wreck case
23 down the hall, the sides there, one of 'em has to prove
24 their case by what's called a preponderance of the
25 evidence. Think of a scale shifting fifty-one percent

-43-

1 versus forty-nine percent. Just barely proving it. That's
2 what they have to do.

3 Not here. When the legislature passed this law they
4 gave us the higher burden of proof. So we have to prove to
5 you all these things I've been talking about beyond a
6 reasonable doubt. And I would suggest to you what that
7 means is, once you've heard all the testimony in the case,
8 and heard the law charged to you by the judge, if you're
9 firmly convinced that Mr. Burris is indeed a sexually
10 violent predator then you render a verdict for the State.,

11 On the other hand, if you find that we have not proven
12 one or both of the things I talked about, the crime or the
13 mental abnormality, or the lack of control, you are
14 obligated to return a verdict for Mr. Burris and say he's
15 not a sexually violent predator.

16 So that's the kind of case it is. Your job is to
17 decide what the facts are. The judge does the law, we
18 present the case to you, Mrs. Browder and I, but your job,
19 and nobody else in this courtroom can do it, your job is to
20 decide what the facts are. That's the kind of case it is.
21 I'd like to thank you again for your service.

22 Mrs. Browder.

23 THE COURT: Mrs. Browder.

24 MRS. BROWDER: Thank you, your Honor.

25 OPENING STATEMENT BY MRS. BROWDER:

1 MRS. BROWDER: This past weekend and I don't know if
2 it was the same way in your household or not, but it was in
3 mind due to my son and my husband, it was a big football
4 weekend. We had the ACC championship, you had the SCC
5 championship, and a lot of people when going to a football
6 game they like to bet. They like to look at the odds.
7 They look at Vegas, they look at wherever else, and they
8 look at those odds and the information that they have about
9 certain teams to determine whether they want to place money
10 on that team or not. And those statistics, those odds, are
11 usually for the most part right. The majority of the time
12 those odds are gonna show you exactly what the over and
13 under is. They're gonna show you which team is gonna win
14 and which team is gonna lose; which team's gonna go to the
15 championship; which team's gonna be at the bottom of the
16 conference each year.

17 It's like that in pretty much every sport. Its like
18 that in baseball. If you've ever heard of the Oakland A's
19 Billy Beane created a huge championship with the Oakland
20 A's back in the '80s. He did that by drafting players
21 looking at their statistics and the probability. And he
22 made a home movie about it, it's called Money Ball. And to
23 get it right, he said this, the math works. Over the
24 course of a season there's some predictability. There is
25 so much data you can predict. Individual player's

1 performances, and also the odds that certain strategies
2 will pay off.

3 You need to look at this case in the same way, ladies
4 and gentlemen. You're gonna hear from Doctor Maddox,
5 Doctor Schwartz-Maddox. She's gonna give you statistics,
6 she's gonna give you lots of facts. You need to look at
7 what she's giving you. Look at those statistics, look at
8 the probabilities to determine whether Mr. Burris is likely
9 to reoffend.

10 Now Mr. Burris has pled in front of a judge to his
11 crime which we're not gonna say that he does not have a
12 prior sexual conviction. There's no doubt about that. You
13 heard Mr. Bogle tell you that there's two things that they
14 have to prove. That they have his prior conviction which,
15 yes, we agree he has that. And two: Whether he is likely
16 to reoffend. And that's essentially what you are here for
17 today.

18 You're gonna hear details about the crimes he
19 committed. You're not here to determine whether those
20 crimes were bad or not. That's already been determined by
21 a judge, and the government, and they gave him what
22 sentence they felt was appropriate for his case. We're now
23 here to determine whether the future holds him reoffending
24 in some way.

25 Now Mr. Bogle told you that they have to prove to you

1 beyond a reasonable doubt that this occurred. Firmly
2 convinced. And you heard him give you the statistics fifty
3 one forty nine is a preponderance of the evidence like
4 fifty one maybe he did forty nine maybe he didn't. But
5 that's not the case here. They have to prove to you that
6 you're firmly convinced that he will commit a crime if he
7 is not put into long term care, control and treatment.

8 Ladies and gentlemen, when you hear Doctor Maddox
9 testify she's gonna be the only witness that they give you.
10 Pay attention to the statistics that they give. You're
11 gonna hear her testify that ninety-six percent of the
12 people in Mr. Burris' shoes the way the test come out do
13 not reoffend. Only four percent do.

14 Ladies and gentlemen, at the end we're gonna come back
15 and ask you when you hear all of the evidence, when you
16 hear the test that he was assessed with, not the past
17 crimes, not the details of those because that's already
18 been done, but those statistics, the future, predicting
19 that future just like you would when you're looking at odds
20 in anything else, will he reoffend that he is not a
21 sexually violent predator.

22 THE COURT: Mr. Bogle, you can call your first
23 witness.

24 MR. BOGLE: Thank you, your Honor. May it please the
25 court. The State would call Doctor Donna Maddox.

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-47-

1 (WHEREUPON, DONNA MADDOX, BEING
2 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 MADAM CLERK: Thank you. Please be seated.

4 DIRECT EXAMINATION

5 DOCTOR DONNA SCHWARTZCOFF-MADDOX BY MR. BOGLE:

6 Q. Would you please state your full name and county of
7 residence?

8 A. Sure. Donna, middle name Schwartz, S-c-h-w-a-r-t-z,
9 last name Maddox, M-a-d-d-o-x, and I live in Anderson
10 County.

11 Q. And Doctor Maddox, what is your current -- How are you
12 currently employed?

13 A. I am a forensic psychiatrist in private practice.

14 Q. Okay. And what professional educational degrees do
15 you possess? You said you were a forensic psychiatrist.

16 What degrees do you possess and where from?

17 A. Yes, sir. I'm a medical doctor. I'm licensed to
18 practice medicine in South Carolina and Georgia. I
19 obtained my medical degree from the University of South
20 Carolina in 1989. And forensic psychiatrist I had to do
21 four years of residency after I finished medical school and
22 the first four years were in general psychiatry. And then
23 to become a forensic psychiatrist I had to take an extra
24 year of training, a fellowship in forensic psychiatry. So
25 five years after medical school I finished my training.

1 Q. Okay. Now when you use the word forensic along with
2 the word psychiatry, what are we talking about there? What
3 does forensic mean in that context?

4 A. Basically what forensic psychiatry is its where
5 there's a legal issue at stake and it has something to do
6 with someone's mental state. So whenever there is a
7 question about how someone thinks, how they act, how they
8 feel, and it has some kind of legal context. that would be
9 an area where a forensic psychiatrist is consulted.

10 Q. And what's a good way to tell what is the study of
11 psychiatry?

12 A. The study of psychiatry is the medical study of
13 mental illness behaviors and how they relate to people's
14 actions.

15 Q. Now, we're here on a case under the *Sexually Violent*
16 *Predator Act* here in South Carolina. Have you been
17 involved with that law and, if so, for how long?

18 A. Yes. Since 1999. Back in 1999 when this law was
19 first passed I worked at the University of South Carolina
20 in Columbia and the University had a contract with the
21 Department of Mental Health and I was one of the few
22 doctors at the time that had training. I have had
23 specialized training in sexual disorders so for the first
24 six years of that statute I performed evaluations similar
25 to the ones I did today.

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-49-

1 And then in the last seven years I've still remained
2 contracted with the Department of Mental Health and I
3 performed various evaluations for the *Sexually Violent*
4 *Predator Act* for the Department of Mental Health.

5 Q. So your situation right now is you're retired from
6 the University School of Medicine but you have a contract
7 with the Department of Mental Health to do cases like this
8 one?

9 A. Yes and no. I'm actually retired from the Department
10 of Mental Health. After I worked ---

11 Q. Okay.

12 A. --- at the University for seventeen years I went back
13 to mental health for my last eight years and I retired;
14 have my twenty-five year -- twenty-eight years in, and so
15 now I'm a contract physician for them when they need one.

16 Q. Okay. And have you been previously recognized by
17 the courts of South Carolina as an expert witness in the
18 field of forensic psychology -- psychiatry with regard to
19 sexually violent predator cases?

20 A. I have.

21 Q. About how many times possibly tell?

22 A. Probably for the *Sexually Violent Predator Act* I would
23 guess around -- probably around a hundred or so.

24 Q. Okay.

25 MR. BOGLE: Your Honor, at this time we'd like the

1 Court to recognize Doctor Donna Swart-Maddox as an expert
2 witness in the field of forensic psychiatry.

3 THE COURT: Any voir dire?

4 MRS. BROWDER: No. No objection. No, sir.

5 THE COURT: I find she is qualified in the area of
6 forensic psychology.

7 BY MR. BOGLE:

8 Q. Now, Doctor Maddox, how did you get involved in the
9 case involving Gary Lee Burris?

10 A. I was -- I evaluated him secondary to a court order.

11 Q. Okay. And what type of evaluation were you ask to
12 do in this case?

13 A. I was ask to do what's called a Sexually Violent
14 Predator evaluation. And what that means is when I
15 evaluated Mr. Burris I was looking for does he have a
16 mental illness, does he have a mental abnormality. Is
17 there something about his mental status; the way he thinks,
18 the way he acts, the way he feels, that would cause him to
19 reoffend against children if he were released from the
20 Department of Corrections without treatment.

21 Q. Now, as part of this, could you describe to the jury
22 your protocol, your step-by-step method in doing these
23 types of evaluations?

24 A. Sure. Psychiatry and forensic psychiatry are a little
25 different. If you went into a psychiatrist office for

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-51-

1 example, the psychiatrist would get a medical history from
2 you, they would get a psychiatric history from you. And
3 maybe they would even ask for some of your medical records.
4 Maybe if you had an internist or a family practitioner we
5 might get records to make sure that we have the correct
6 information, but then we would basically take your word for
7 it. If you came in and said you had a depression, we would
8 -- there would be no reason to doubt that.

9 Forensic psychiatry is a little different because
10 there is a legal issue at stake. Sometimes people aren't
11 always as motivated to tell the truth, or maybe to disclose
12 all of the things that they need to, so in forensic
13 psychiatry we'll commonly use records. It's very important
14 if there's records about somebody's mental state. If you
15 have medical records, in this case legal records, we also
16 review those to make sure that we're getting a complete
17 picture for the person.

18 So what I did in this case, I reviewed records, and
19 I'll be glad to go through the records I looked at, but
20 then I also evaluated Mr. Burris. And then I administered
21 an actuarial scale I'll talk about later, and then I
22 rendered a diagnoses and an opinion.

23 Q. Now, as part of this process you said you evaluated
24 Mr. Burris. Does that mean met with him face to face?

25 A. I did in Columbia.

1 Q. About when did that happen?

2 A. That would have been on July 21st of 2017.

3 Q. And about how long did you interview Mr. Burris at
4 that meeting?

5 A. I spent an hour and a half interviewing him.

6 Q. Was there anything that said to you, I need to talk
7 to this guy longer, or this is enough time? Was that
8 enough time to accomplish your task?

9 A. Oh, yes. And during that time I obtained a history.
10 I performed what's called a mental status exam which is
11 basically our physical exam of someone's brain, their
12 ability to think. And I also provided a neurological
13 screening exam to him because he has a history of a stroke
14 and that was enough time.

15 Q. And is the guy that you interviewed here in the
16 courtroom today?

17 A. Yes.

18 Q. And just for the record, would you identify him for
19 the court?

20 A. Sure. Mr. Burris is wearing a yellow, it looks like
21 an Oxford shirt sitting next to Mrs. Browder.

22 Q. Okay. Thank you, Doctor.

23 Now, did you explain the purpose of the evaluation of
24 Mr. Burris?

25 A. I did.

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-53-

1 Q. And did he agree to go along with it?

2 A. Yes. He was very cooperative. He answered all
3 questions and was cooperative.

4 Q. Now in addition to meeting with him, did you also
5 receive a bunch of documents and paperwork about Mr.
6 Burris?

7 A. I did.

8 Q. Okay. Without reading it all, could you give the
9 jury a rough idea of the list of the types of things you
10 looked at as far as documentary evidence about Mr. Burris?

11 A. Sure. I looked at, first of all, the court order. I
12 had to make sure that I understood what the court order was
13 asking. Sometimes there are special request in there and
14 it was the normal court order. I had some information that
15 was passed from the Attorney General's Office that he had
16 certain committees and reviews he went through before he
17 was petitioned to have an evaluation so I looked at that
18 data.

19 I had the history of his court appearances; the
20 outcomes of those. He's had two prior convictions so I
21 actually had the arrest warrants that went with those
22 convictions. I had the reports of the police of what
23 happened during those convictions. I had the actual
24 sentence that he would have received from the court and had
25 information about the victim's of those cases.

1 I also had interviews, the notes of interviews, from
2 one of the victim's mothers which was included in his past
3 conviction. And I also had his rap sheet. I have to also
4 as part of this statute I look at prior criminal charges if
5 there are any because those are important in doing
6 assessments. And I had his South Carolina Department of
7 Corrections records, so I also knew during his conviction
8 if he received treatments, looking for medical conditions
9 and those sorts of things.

10 Q. Is sex offender treatment offered at the Department of
11 Corrections?

12 A. It is.

13 Q. Okay. Now, the stuff you mentioned, the documents you
14 mentioned, did you -- is this the type of information that
15 is typically and reasonably relied upon by other experts in
16 your field?

17 A. It is.

18 Q. And did you consider and rely upon that documentary
19 information, along with the scoring of Mr. Burris' personal
20 interview, other examinations you did in reaching an
21 opinion about him?

22 A. I did.

23 Q. Can you explain to the jury how an individual's past
24 sexual offense behavior relates to future sexual offense
25 behavior?

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-55-

1 A. Sure. In medicine no one can predict the future
2 accurately, no one has a crystal ball. None of us are able
3 to do that. And in fact psychiatrist, we're very good
4 within seventy-two hours. We're very very good. If you're
5 in an emergency room and you're sick we're pretty good at
6 predicting dangerousness then. But in terms of long term
7 predictions we're no better than the public but you have to
8 look at different risk factors. But what we do know, and
9 this is true in all of psychiatry, is your past behavior is
10 sometimes is always the best predictor of future behavior
11 so you're past offenses are important.

12 Number one it predicts -- it has some value in
13 determining if you're going to do the same kind of
14 behavior. And the other thing is there's things about past
15 behaviors that we look at that will help us do a risk
16 assessment.

17 Q. In doing your research and the documents you have,
18 did you find that Mr. Burris had been convicted of a
19 sexually violent crime here in York County?

20 A. Yes.

21 MR. BOGLE: If I may approach the witness, your Honor?

22 THE COURT: You may.

23 BY MR. BOGLE:

24 Q. I'd like to show you a certified copy from the Clerk
25 of Court, here in York County, of an indictment and the

1 sentencing sheet, Indictment No. 2010-GS-46-1527 marked
2 State's Exhibit 1. Have you seen these documents?

3 A. I have.

4 Q. Okay. And what do they consist of? What is that a
5 certified copy of?

6 A. The first page is his sentencing sheet. The second
7 page is the indictment. And the back page is also part of
8 the indictment.

9 Q. And what was the crime that he was convicted of that's
10 shown on the sentencing sheet?

11 A. He -- It was a no-contest plea to criminal sexual
12 conduct third degree.

13 Q. And is criminal sexual conduct in the third degree a
14 sexually violent crime among the list of such crimes in our
15 statute?

16 A. It is.

17 Q. Okay. And that happened here in York County?

18 A. Yes, sir.

19 MR. BOGLE: Your Honor, at this time I'd move to
20 introduce into evidence as State's Exhibit 1 a certified
21 copy of the CSC in the third degree conviction here in York
22 County.

23 MRS. BROWDER: No objection.

24 THE COURT: In without objection.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER 1, IDENTIFIED AND

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-57-

1 MARKED, RECEIVED INTO EVIDENCE.)

2 BY MR. BOGLE:

3 Q. Now, Doctor, in looking at that conviction, what was
4 he originally indicted for?

5 A. Criminal sexual conduct first degree.

6 Q. Was it with a minor?

7 A. Yes, sir.

8 Q. And in a first degree with a minor, what is the age
9 range for the child victim has to be, under what?

10 A. Less than eleven years of age.

11 Q. Okay. Now in order to get a diagnoses of this guy,
12 find out what's going on with him, if you think anything
13 is, is it necessary for you to go through the underlying
14 details behind the crime?

15 A. Yes.

16 Q. Tell the jury, if you would please, what the
17 underlying details were behind this conviction that you
18 found significant in developing your analysis and your
19 diagnoses of Mr. Burris.

20 A. This information -- I'm glad to do that. This
21 information is gathered from a few sources. I certainly
22 looked at the indictment and looked at the charges. I also
23 looked at the reports of what people said, what the
24 behaviors were. And then I also ask Mr. Burris about it.
25 Basically the premise in this crime for the criminal sexual

1 conduct third degree, which he plead no contest to, he
2 allegedly was -- had a young girl who was seven years of
3 age, she was performing oral sex on him.

4 Her mother walked into the kitchen, or into one of the
5 rooms wherever this was happening, and actually caught her
6 daughter in the act of giving -- performing oral sex on Mr.
7 Burris.

8 The mother immediately began striking Mr. Burris,
9 called 911 immediately, and the police were called.

10 Q. Did the child indicate other evidence of any other
11 kind of touching besides the sex act you just discovered?

12 A. She did. The child cried upon getting caught and
13 thought that she was going to get in trouble. And then in
14 the interview with the child later it was determined that
15 she -- I'll give you her words if I can find them.

16 She stated that Mr. Burris had rubbed her between her
17 legs and genital area with his foot. She reported that he
18 then had pulled her pants down and touched her butt with
19 his hand and penis. She then stated that he made her touch
20 his penis with her hand and then forced his penis in her
21 mouth.

22 Q. Now, when did this crime take place? The date of the
23 crime, was that shown on the sentencing sheet?

24 A. It was 2009.

25 Q. 2009?

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-59-

1 A. Yes.

2 Q. Okay. So how old -- That would have been about nine
3 to eight years ago?

4 A. Yes.

5 Q. How old -- So the child was about, would you say
6 seven or so?

7 A. Yes.

8 Q. How old would Mr. Burris have been about that time?

9 A. In his fifties.

10 Q. Okay. Now, what -- In your course of your
11 investigation of the underlying facts, you discovered the
12 crime that happened, what the little girl said happened,
13 what did Mr. Burris say to the police at the time, or what
14 was his version to the police when he was arrested and
15 charged with these crimes?

16 A. I'm not sure that I had a statement from him but what
17 he told me, ---

18 Q. What did he tell you.

19 A. --- yes. What he told me this child, he was living
20 with his girlfriend named Sadie and he had had a long term
21 relationship with Sadie. He had taken care of Sadie. She
22 had some health problems and she's been -- they've been
23 close. This child was in Sadie's home. What he said is
24 that he was in the kitchen and that he was pulling up his
25 -- he had on sweat pants and that when the mother walked in

1 he was simply just adjusting his pants and that she
2 presumed those things had happened and he denied that he
3 performed that act.

4 Q. Okay. So he denied it to you?

5 A. Yes.

6 Q. But he plead no contest. He didn't contest the
7 conviction.

8 A. That is correct.

9 Q. What type of sentence did he get from the judge after
10 he was convicted?

11 A. He was sentenced to ten years and was given credit
12 for three hundred and thirty-seven days that he had already
13 served in jail waiting for his trial.

14 Q. Okay. So the time you are setting in jail if you
15 can't make -- get out on bail, waiting for your trial, do
16 you get credit for that?

17 A. Yes.

18 Q. And that's pretty much statewide?

19 A. Yes. And the other part of the sentence was that he
20 go on the sex offender registry.

21 Q. Okay. I'd like to show you, in your research about
22 Mr. Burris did you also find -- Let me back up a second and
23 ask a different way. In doing these type of cases, is it
24 necessary to look at sexual crimes where there is a sexual
25 crime that might be a criminal sexually -- like a sexually

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-61-

1 violent crime is committed, but the guy is convicted of
2 something else?

3 A. Yes.

4 Q. Why is it necessary to look at those type of things
5 when they don't result in a conviction for what's called a
6 sexually violent crime?

7 A. Well there's lots of reasons. First of all, when
8 you're trying to diagnose someone in forensic psychiatry
9 there are certain conditions, and I'm not going to say
10 they're unique to legal situations, but they're more
11 prevalent in legal situations. There's some personality
12 disorders where people have lifelong patterns of not
13 obeying the law. That would be a point to consider.
14 Sometimes a person's only offenses are sexual offenses and
15 there's no other kinds of legal charges and that helps me
16 diagnostically as well. You can determine whether someone
17 is more likely to have a sexual disorder or not. So you
18 have to look at their past history.

19 Also we know -- One of the things we do in the
20 statute is we're looking at the risk just like when you go
21 to your doctor; if you're ask if you're a risk for a heart
22 attack the doctor is gonna say okay, do you have high blood
23 pressure, do you smoke, do you have high cholesterol. He's
24 doing the same thing. We do risk assessments in medicine
25 all the time. We're looking at risk and so those things

1 are helpful. We know that if you have prior convictions
2 for other things that that increases your risk.

3 Q. Did you find --

4 MR. BOGLE: If I may approach the witness, your Honor.

5 THE COURT: Yes, sir.

6 BY MR. BOGLE:

7 Q. I'd like to hand you a certified copy from the
8 Clerk of Court here in York County. A sentencing sheet
9 conviction for assault and battery first degree. Is this a
10 document you looked at in the course of your investigation?

11 A. It is.

12 Q. Okay. And what was the date of the sentencing sheet
13 when he was sentenced for assault and battery of the first
14 degree, or in the first degree? Lower right hand corner.

15 A. It's not there but I know it was 2017. I'm sorry,
16 February 27th, 2017.

17 Q. Okay. Now, is assault and battery in the first
18 degree a sexually violent crime?

19 A. I'm not sure if it is per your statute. I wouldn't
20 doubt you. It can be.

21 Q. But it's not is it?

22 A. I would take your word for it. I didn't think it is.

23 Q. Okay. What was he indicted for though?

24 A. He was indicted with criminal sexual conduct with a
25 minor third degree.

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-63-

1 Q. Okay. And how old was the alleged victim in this
2 particular conviction?

3 A. Eight.

4 Q. Eight years old. Now, Doctor, we've got him indicted
5 for criminal sexual conduct with a minor third degree which
6 is a sexually violent crime, right?

7 A. Yes.

8 Q. He got convicted of something that is not, the
9 assault and battery first degree, is it still necessary for
10 you to look behind the crime in a conviction like this?

11 A. Oh, absolutely.

12 Q. And why is that?

13 A. Again, if somebody has a past history of sexually
14 acting out and then they have another act, that's important
15 because when looking at the risk if someone's going to
16 repeat offend if you have two times that they've engaged in
17 similar actions of course that would raise their risk.

18 Q. Now, was this conviction for assault and battery in
19 first degree, and the one that's been introduced as State's
20 Exhibit 1 up there in front of you, were these part of the
21 basis of your opinion?

22 A. Yes.

23 Q. What were the underlying details behind the assault
24 and battery first degree on the child there that you found
25 significant?

1 A. Yes. In this case Mr. Burris pleaded guilty. He did
2 not plead no contest. And in this case the victim who was
3 eight, he said there was a mistake, that I think some
4 records said she was four, she was eight years old, that he
5 -- What happened was the incident report stated that the
6 mother of the child had been at work and she would work
7 until seven o'clock in the morning. On that day the mother
8 had to work over time and she didn't get home 'til twelve
9 o'clock. And at ten o'clock the child was being watched by
10 a friend of Mr. Burris', that person left at ten o'clock,
11 so between 10:00 am and twelve noon by the time the mother
12 got home from work the daughter had started crying as soon
13 as the mother picked her up and said that Mr. Burris had
14 touched her with his hand, pulled out his private part and
15 toucher her quote pocketbook end quote.

16 Q. Now, what is significant about this second conviction,
17 the assault and battery first degree, the indictment, the
18 underlying facts you just testified about, what is
19 significant about that conviction as it relates to your
20 opinion about Mr. Burris?

21 A. Well there are a number of things that are significant
22 about it. One of the things we do when you're looking at
23 risk you have to look at the age of the victim. You have
24 to look at the sex of the victim. You have to look at what
25 the nature of the relationship is between Mr. Burris and

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-65-

1 the victim. Sometimes they're family members. The fact
2 that this child was not a family member was significant
3 because those incest crimes are a little bit different when
4 we're doing these evaluations.

5 The other thing that's important, that was very
6 important in this case, is that he had not been out of
7 prison for a year. If this was about a year after he was
8 released from his first charge that this crime happened
9 again, and that's a grave concern, to me and that certainly
10 raises his risk.

11 The other thing that was significant is his age at the
12 time of the offense. He was in his sixties by then and
13 normally as you get older, the older you get age is
14 something that protects you from getting into trouble
15 again. Age is usually on your side but in this case it's
16 not.

17 Q. So usually when a person say passes sixty, I guess
18 their sex drive is gonna decrease?

19 A. That's correct.

20 Q. Their chance is they're an offender, of getting into
21 trouble again as a sex offender is gonna decrease?

22 A. That's correct.

23 Q. Did that happen here?

24 A. No.

25 Q. So, on State's Exhibit 1 you're looking at right

1 there, that showed a conviction date of when? Right down
2 here.

3 A. September 22, 2010.

4 Q. And he got ten years with credit for three or four
5 hundred days of time served?

6 A. Correct.

7 Q. He gets out of prison.

8 A. Yes.

9 Q. Goes to prison, serves his time, gets out, and how
10 long before he then commits the crime against the second
11 child?

12 A. He got out in October of 2015 -- 2014 and reoffended
13 the next November 2015 so, about a year.

14 Q. Okay.

15 A. A year and two weeks.

16 Q. Now shouldn't prison be a wake up call to somebody?
17 It can't be a fun place.

18 A. Well I've worked there. I certainly would not
19 characterize it as fun.

20 Q. Okay. Did Mr. Burris get the wake-up notice from
21 that first conviction so he wouldn't offend again?

22 MRS. BROWDER: Objection, your Honor, as to
23 speculation.

24 THE COURT: I sustain the objection.

25 MR. BOGLE: Let me rephrase.

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-67-

1 Q. Okay. You got the two convictions. What is it about
2 -- Now, is -- Did you rely solely upon his criminal history
3 in rendering a conclusion about Mr. Burris whether or not
4 he should be civilly committed?

5 A. Not at all.

6 Q. And would it be ethical even to do so?

7 A. No.

8 Q. What about his -- Now is it necessary also to look at
9 his other nonsexual criminal history?

10 A. Yes.

11 Q. Why is that?

12 A. Again as I mentioned if you've had crimes in other
13 areas of your life that's a risk factor to consider as
14 well. It goes to life style patterns. Maybe somebody's
15 impulsive if they get in trouble a lot of times of doing
16 things without thinking so those are all important. And it
17 raises your risk. If you got certain kinds of crimes,
18 usually the crimes against persons, that would raise your
19 risk of reoffending.

20 Q. In going back to the assault and battery first degree
21 conviction, if I may, what did he say to you about that?

22 A. He told me that he spanked the child; that he quote
23 whooped her, and that his hand may have accidentally touched
24 her vagina.

25 Q. What is it about his other nonsexual criminal history

1 did you find significant?

2 A. That there had been a variety of crimes but mainly
3 when looking at what raises your risk it would be crimes
4 against other people and he's had some -- there had been
5 some criminal domestic violence charges in his past that
6 were pertinent in this case.

7 Q. Okay. Why are they more pertinent say a shoplifting
8 or another type of crime?

9 A. Again, if you've had a crime that involves touching a
10 person or harming them in some way it raises your risk. In
11 fact he would be likely to touch a child again.

12 Q. Did you talk with Mr. Burris or ask him to tell you
13 about his sexual interest?

14 A. Yes.

15 Q. What did he say?

16 A. He denied that he has any interest in children. He's
17 had a long history of relationships with adult females. He
18 had five children by five different moms. And he's had
19 some long-term relationships. He's been married a number
20 of times. His first marriage lasted for three years. His
21 wife's name was Willie Mae. He stated they were very young
22 when they were together and they separated because quote I
23 was running. He was twenty years of age and she was
24 nineteen and they have one child from that union.

25 He married next in 1982 and he was married seven years

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-69-

1 to a lady named Betty. And he stated they had financial
2 problems and that her mom lived with them and he wasn't
3 making enough money so their relationship ended because of
4 financial problems.

5 He reports after he divorced Betty he stayed with the
6 lady Sadie. Now Sadie would be the woman that was
7 involved, her niece in the first offense. They were
8 together for ten years from 1999 to 2009 and this is when
9 he received his first charge. He states that he and Sadie
10 are still together; that they -- that she's fifty-six years
11 old, she has a weight problem, she's bed ridden and that he
12 would help take care of her once he's released from this
13 incarceration.

14 He has children from another lady named Sylvia Blake.
15 He stated he knew her all of his life and they had an
16 affair and that's how she became pregnant and they have a
17 thirty-five year old daughter.

18 And then he has two children by another woman, Pamela.
19 He as two sons. So he has five children from different
20 women in a number of past significant relationships.

21 Q. So what -- You've talked about the significance of the
22 prior criminal history, not the sexual stuff. What about
23 his attitude, his stories to you about whether or not he
24 committed the crimes; the sexually related crimes he was
25 convicted of, how does that factor in with your evaluation?

1 A. Well that's a treatment issue. What happened -- In
2 psychiatry we have a book called the DSN V and it's very
3 similar to your internist book. I don't know if you've
4 been to your regular doctor you will always see them write
5 down a code, on the billing they'll have these numbers.
6 Well we do the same thing in psychiatry. We have those
7 codes that you see in the books.

8 And the reason we have this is to make sure like if
9 I'm talking about a mental disorder, if I say patient Joe
10 has depression, I note because we use this book that a
11 psychiatrist in San Francisco is going to understand the
12 mental illness I'm talking about, so we have a book that
13 defines all these diagnoses so it's very helpful. Too, in
14 the past you would have to rely on someone saying yes I did
15 this. Well Mr. Burris doesn't admit to offending against
16 either one of the children, but in our book because he's
17 had those two behaviors, because he's been convicted twice
18 of those two behaviors, it allows me to diagnose him with
19 pedophilia.

20 And what that means is he's had two separate acts so
21 he had a act in 2009 and then he had a act in 2015, so he's
22 had an act over six years of time but showed that he had
23 sexual behaviors against children, so that's enough for me
24 to be able to diagnose him.

25 So the fact that he doesn't admit to those factors

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-71-

1 that is more a treatment issue for me. That's something
2 that means he's in denial. He pleaded guilty to the second
3 one so at some level he admitted he did the assault of a
4 child. So that looks at insight whether they're gonna
5 benefit from treatment, whether they need treatment so they
6 can take responsibility for what they did.

7 So in this case, the fact that he denies despite the
8 convictions, is more a treatment issue for me and it lets
9 me know that he needs treatment.

10 Q. Now, Doctor, is it necessary also in what you do to
11 look at whether or not a person has received sex offender
12 treatment?

13 A. Yes.

14 Q. And you said earlier the sex offender treatment is
15 offered at the Department of Corrections; is that correct?

16 A. It is.

17 Q. Did -- Is that something done by other experts in
18 your field?

19 A. If they're usually not done by physicians, but they
20 are done, the Department of Corrections has an inpatient
21 program where they use counselors who usually have master's
22 degree training and sometimes psychologist with Ph.D. level
23 training but they're mental health providers that do have
24 classes there.

25 Q. And the fact that you look for whether or not it

1 existed, is the looking for the existence of sex offender
2 treatment something common to experts in cases like this?

3 A. Sure.

4 Q. Okay. What did you find out? Did he get any while
5 he was in prison?

6 A. No, he did not receive sex offender treatment.

7 Q. Does he think he needs sex offender treatment?

8 A. Well he denies his offenses so. I don't know if I
9 specifically ask him if he needed sex offender treatment
10 but he certainly is denying he offended.

11 Q. Now, based upon your examination of Mr. Burris, the
12 documents you looked at, the convictions we've talked about
13 today, were you able to diagnose him with a mental
14 abnormality that relates to this type of case?

15 A. I was.

16 Q. What did you find?

17 A. I diagnosed him with -- it's called pedophelic
18 disorder sexually attracted to females nonexclusive. And
19 what nonexclusive means is that he's also attracted to
20 adult women. It's not just children that he's sexually
21 attracted to. He also has a sexual attraction to adult
22 females.

23 Q. What is pedophilic disorder?

24 A. Pedophilia: In our book, the DSN-5 a paraphilic
25 disorder means sexually deviant and so it's one of the

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-73-

1 disorders. There's nine different disorders of sexual
2 deviance. And pedophilic disorder means that he's
3 attracted to children who have not reached puberty. In our
4 book we usually cut the age off around twelve because
5 twelve is usually the age that males or females begin to
6 mature sexually and physically. And so that means that he
7 has -- He's had two behaviors so the behaviors are enough
8 to meet the diagnosis. You have to have a six month period
9 of time. He's got a six year period of time where you show
10 sexual interest or arousal to children less than the age of
11 twelve so he clearly meets that criteria.

12 Q. And the children were females so that's why it says
13 attracted to female?

14 A. That's correct.

15 Q. Okay. What are the -- So the criteria are the six
16 month and then the sexual attraction?

17 A. That's correct.

18 Q. You described a minute ago?

19 A. Yes. And then the person who commits the act has to
20 be over the age of -- I think it's fifteen or sixteen. You
21 have to -- The point is there has to be different sexual
22 development. It needs to be an adult and a child.

23 Q. And in this particular case he was in his fifties and
24 sixties when these things happened?

25 A. That's correct.

1 Q. Okay. Now, Doctor, a couple of times you referred to
2 a book called the DSM-5. Is that the Diagnostic and
3 Statistical Manual, 5th Addition?

4 A. Yes, sir.

5 Q. And for short we call it DSM-5. Right?

6 A. Yes.

7 Q. And is that the book that contains all the criteria
8 for diagnosing mental abnormalities?

9 A. That's correct.

10 Q. And did you follow the criteria in that book to
11 diagnose Mr. Burris with pedophilic disorder?

12 A. I did.

13 Q. This is a guideline for psychiatrist and psychologist
14 all over the world. Right?

15 A. Correct.

16 Q. Okay. Now, was he diagnosed with -- Now what is this
17 diagnosis of pedophilic disorder mean as far as risk go?
18 What does it mean with regard to Mr. Burris?

19 A. Well it meets the criteria for our sexually violent
20 predators statute. That qualifies it's a mental
21 abnormality, so part of my opinion then he does have a
22 mental abnormality. And the mental abnormality is
23 pedophilic disorder. In my opinion he is attracted --
24 sexually attracted to females who are latency age, meaning
25 they don't have sexual development, elementary school aged.

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-75-

1 Q. Okay. Did you diagnose him with any other disorders?

2 A. I did.

3 Q. What disorders were they and could you explain what
4 they are?

5 A. Sure. Well as being a physician I'm certainly going
6 to check a medical history on him and it was important.
7 Mr. Burris is sixty-three years old and so I was -- His
8 medical history is very important because sometimes in
9 psychiatry medical conditions can cause behaviors like that
10 so its very important especially in some of the -- not that
11 he's old -- but certainly older persons in their sixties.
12 And sure enough Mr. Burris had a stroke. He reported that
13 he had a stroke in 2014 so that's very important.

14 So he has a -- I diagnosed him with hypertension.
15 He's got a history of high blood pressure. I diagnosed him
16 hyper lipodemia which means his cholesterol and his
17 triglicerites are elevated. And then I diagnosed him wtih
18 a stroke by history. He reported that he had had a stroke
19 in 2014.

20 Q. Now when you do these evaluations, we talked about the
21 crime, the interview, all the things you found so far, do
22 you also use a risk assessment tool to evaluate a person's
23 risk?

24 A. I do.

25 Q. What's it called?

1 A. It's called the Static 99-R.

2 Q. Now, what are the two different types of risk factors
3 you look for in a person doing an evaluation of this type?
4 Is one of 'em static risk factors?

5 A. Yes. There's two kinds of things that we look at.
6 When I'm doing these sorts of evaluations there's some
7 things about people that don't change. Those are called
8 static factors. So using the analogy that I just gave you
9 before with risk factors for heart attacks or heart
10 disease, the static factor would be your sex. Men are at a
11 higher risk for a heart attack just because you're a man.
12 You can't change that, okay. If you have high blood
13 pressure that's a static factor. That's a condition that
14 you have, it doesn't change. You can control it with
15 medications but a static factor is something about the
16 person that's not going to change. You can maybe treat it,
17 you can affect it, but you're not going to change that
18 condition.

19 A dynamic factor are things that are unique to the
20 person that you can change. So for example if you have
21 high cholesterol well, you can change that, right? If
22 you're smoking you can change that, so those are dynamic
23 things. So in medicine there's static things that put you
24 at risk for disease and there's nothing you can do about
25 it. It's the cards you were dealt. But there's also

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-77-

1 dynamic things, things that you can do to change.

2 Q. In these types of cases how are static risk factors
3 measured?

4 A. Well you look at the -- The static factors that we
5 look at, or the characteristics of the person who's
6 allegedly committing these offenses, you look at the
7 demographics of the victim as well and then you look at
8 their prior corrections history, so those are the things we
9 look at. Things about Mr. Burris specifically, things
10 about his victims specifically and things about his past
11 history.

12 Q. As part of this evaluation then, did you score Mr.
13 Burris on something called the Static 99-R?

14 A. I did.

15 Q. And what is the Static 99-R?

16 A. It's basically an actuarial scale. What this test is
17 is they've compared, they had eight thousand men and they
18 looked at these eight thousand men that got in trouble
19 again. These were eight thousand men with charges similar
20 to Mr. Burris' in the past. These eight thousand men got
21 in trouble again, and they were looking at what all did
22 they have in common. What puts these guys in a group? How
23 do we know, how can we identify what puts them at risk to
24 get in trouble again? That's what this test is. And so
25 it's comparison to other men who have gotten into trouble

1 again. And this test it has a coding form that you use.

2 Q. Is that why its called actuarial because it scores
3 relative risk or risk for people that people have in
4 common?

5 A. That's correct.

6 Q. Okay. Is this a test that's commonly used by
7 experts in your field?

8 A. It is.

9 Q. Is it been around for many years?

10 A. Yes. It's been revised but it used to be called the
11 Static 99 and that was around early in 2000 and it's had a
12 number of revisions.

13 Q. What did the scoring of Mr. Burris reveal when he was
14 scored by you on the Static 99-R?

15 A. It revealed a number of things. First of all you
16 have to look at the variables of it. There's some things
17 that are protective. There are some factors -- When you're
18 doing a risk assessment there's some things that protect
19 you, so one of the protective factors when scoring this
20 test for him was his age. If your age is over sixty at the
21 time of your release that helps you so you get points for
22 that. So he got points towards his credit for being over
23 the age of sixty.

24 But then there's other variables that you get points
25 added. So he got points added for having a prior

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-79-

1 convictions. He's had points added for having a prior sex
2 offense. He got points added for having prior sentencing
3 dates in prison. He got points added because his victims
4 were not related to him. And so his total score was what's
5 called a plus one which puts him a below risk, below
6 average risk to reoffend again.

7 Q. Okay let's talk about that for a minute. The static
8 score is ranged from what, a minus three to a plus twelve?

9 A. That's correct.

10 Q. So the average score for a person on the static for
11 the average sex offender is about what, about a two or a
12 three?

13 A. Yes, I think that's fair.

14 Q. Now, are there certain percentages to reoffend that
15 come along with a score on the Static?

16 A. Yes.

17 Q. Okay. Based on the research that they've done for
18 this thing, used by you and other experts in your field,
19 what are the percentages attached to a score of one of him
20 reoffending sexually?

21 A. It would be less than five percent. About four point
22 seven percent.

23 Q. Now, does the Static 99-R underestimate or accurately
24 estimate the risk to reoffend?

25 A. No. It typically underestimates because this is

1 people who got caught so out of those eight thousand men
2 that this test is done on those are the eight thousand that
3 got caught.

4 Q. So is there people that don't get caught? I don't
5 quite understand what you mean.

6 Q. Yes, that's not gonna be representative of the
7 entire population. Many, many people, many sex crimes go
8 undetected.

9 Q. Okay.

10 A. Not reported.

11 Q. So, he's got a score of one. That seems pretty low.
12 Did you rely on that score of one and nothing else?

13 A. No.

14 Q. Tell me about how that score of one fits into the
15 comprehensive evaluation you've been talking about today.

16 A. Sure. What we do in medicine, as you can imagine, if
17 you have an abnormal EKG which is one test your doctor is
18 not gonna perform open heart surgery on you. They're gonna
19 use clinical judgment, they're going to look at other
20 factors that are unique to you. And what I did, this test
21 I do not think its indicative of all of what his risk is,
22 age is supposed to be a protective factor. He gets minus
23 three points for being over sixty. The problem is he
24 offended again in his sixties, so in my opinion age does
25 not protect him. So his risk in my opinion is much higher

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-81-

1 than what this test shows. That's why you don't just rely
2 on a test. If you have a high potassium your doctor is not
3 going to put you on medication. They're gonna repeat the
4 test, they're going to look at other variables.

5 So in medicine we don't just make a medical decision
6 based on one variable. We look at the factors that are
7 involved in that. And I think that's very important. His
8 age does not protect him although on this test it does.
9 And that's why it's an actuarial scale. That's why we
10 don't -- you don't just make medical decisions based on the
11 results of a actuarial test.

12 Q. So a minute ago when you were talking about the
13 things he got a point for, he'll get one point for this,
14 one point for this, one point for this, and then a minus
15 three points because he's over sixty?

16 A. Correct.

17 Q. And that's how he came up with the eventual score of
18 one?

19 A. Yes.

20 Q. Doctor, you also mentioned a minute ago there's
21 dynamic risk factors that you look at.

22 A. Yes.

23 Q. What dynamic risk factors apply to Mr. Burris?

24 A. He had some. He did have -- Dynamic things are things
25 that he can change. Those are the things we address in

1 treatment. As you can imagine that static risk is never
2 going to change. The only thing that changes on the
3 static, that test that I talked about, is your age and he's
4 already gotten the most number of points you can get off.
5 The only thing that sometimes changes on that risk
6 assessment is as people get older their risk should go
7 down.

8 Dynamic things are things that he can change and
9 things that are addressed in treatment. And in my opinion
10 he did have some dynamic factors. One of them is called an
11 offense supported attitude. The fact that he denies what
12 he'd done and he -- doesn't think he's done anything wrong.
13 Perhaps he says he spanked a girl and maybe his hand
14 touched her vagina. And then the first conviction he said
15 he didn't do anything, that he was just adjusting his pants
16 when the mother came in. Those are facts that those are
17 supporting his offending behavior. He's using excuses to
18 justify why he's done what he's done.

19 The other thing that really bothers me that I consider
20 a dynamic factor is the fact that he was out only a year and
21 he reoffended again. That was a very short time from being
22 released from the Department of Corrections. Now we know
23 people with sexual disorders normally after conviction it
24 takes about a year before one would reoffend. That's the
25 norm. If you study people that they're released from

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-83-

1 prison without treatment, within a year they will usually
2 reoffend and so that was a very important dynamic factor.

3 The other issue that I saw that I think is a dynamic
4 factor is his lack of concern for others. He expresses no
5 remorse about these victims. He's had affairs in the past.
6 He's done some things that showed that he is not
7 necessarily concerned about the welfare of other people
8 that he's involved with and that's an offense supported
9 attitude. So those are some of the general factors that I
10 think would be treatment issues for him for him to work on.

11 Q. So, to wrap this thing up, Doctor Maddox, do you have
12 an opinion -- Now you talked about it but I got to put it
13 this way. Do you have an opinion based upon examining Mr.
14 Burris, the scoring of Mr. Burris, the documents you looked
15 at, all the factors you mentioned both static and dynamic,
16 do you have an opinion as to whether or not Gary Lee Burris
17 suffers from a mental abnormality?

18 A. I do.

19 Q. And is that opinion to a reasonable degree of
20 medical certainty?

21 A. It is.

22 Q. And what is that mental abnormality?

23 A. Pedophilic disorder sexually attracted to females
24 nonexclusive type.

25 Q. Okay. Does this pedophilic disorder, again, to a

1 reasonable degree of medical certainty, do you have an
2 opinion as to whether or not this makes him likely to
3 engage in acts of sexual violence, other sexually violent
4 crimes, unless he's confined for long-term control, care
5 and treatment?

6 A. I do.

7 Q. You think it does?

8 A. Yes, I do.

9 Q. Okay.

10 A. And that's based on a number of things. That what
11 the statute further defines is does he have propensity. In
12 my opinion does he have a propensity to offend against
13 other females in the community who are prepubescent and my
14 opinion would be yes. And does he need treatment, yes.

15 Q. Do you also have an opinion, again to a reasonable
16 degree of medical certainty, as to whether or not Mr.
17 Burris' sexual abnormality we talked about so far, does
18 that cause him serious difficulty in controlling his
19 behavior?

20 A. In my opinion yes, as mentioned by his past history.
21 He was out for one year and he reoffended again.

22 Q. And does this pedophilic disorder, again to a
23 reasonable degree of medical certainty, does this -- his
24 having this affect his emotional or volitional capacity so
25 that he is predisposed to commit future sexually violent

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE

-85-

1 crimes?

2 A. In my opinion yes it does.

3 Q. And does this pedophilic disorder that he has does he
4 have the propensity to be dangerous and commit future
5 sexually violent offenses? Again, to a reasonable degree
6 of medical certainty.

7 A. Yes.

8 Q. And does his propensity, again to a reasonable degree
9 of medical certainty, they all got to be to that standard,
10 does this rise to the level where there's a menace to the
11 health and safety of others?

12 A. In my opinion he, without treatment and without
13 a commitment, he is at risk for females that are young in
14 age, elementary school age females that he may be in
15 contact with. And I say that certainly in thinking about
16 the second offense. He was with that child for two hours.
17 The mother left -- the grandmother left at ten. The mother
18 came home by twelve and within that two hour period the
19 only time he was alone with that child, one year after his
20 first conviction, he offended.

21 Q. One year after getting out of prison?

22 A. Yes.

23 Q. So to conclude, do you also have an opinion, again
24 to a reasonable degree of medical certainty, as to whether
25 or not Gary Lee Burris meets the criteria, the legal

DOCTOR DONNA MADDOX: DIRECT BY MR. BOGLE
CROSS BY MRS. BROWDER

-86-

1 criteria, to be found by this jury to be a sexually violent
2 predator?

3 A. Yes. And in my opinion he does.

4 MR. BOGLE: Thank you, Doctor. Please answer any
5 questions counsel may have or the court may have.

6 THE COURT: Ms. Browder.

7 CROSS EXAMINATION

8 DOCTOR DONNA MADDOX BY MRS. BROWDER:

9 Q. Doctor Maddox, you're currently in private practice;
10 is that correct?

11 A. Yes.

12 Q. Okay. And you have a contract with the Department
13 of Mental Health?

14 A. Yes.

15 Q. And for your contract with the Department of Mental
16 Health, the Department of Mental Health is the one that's
17 ask you to do this evaluation, correct?

18 A. That's correct.

19 Q. How much do they pay you for this evaluation?

20 A. Four thousand dollars.

21 Q. Okay. So for each SVP evaluation you receive Four
22 thousand dollars from the State of South Carolina?

23 A. That's correct.

24 Q. Okay. And the State of South Carolina is who is
25 trying to civilly commit Mr. Burris here today, correct?

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-87-

1 A. Yes. But my check is from the Department of Mental
2 Health.

3 Q. Which is a part of the State of South Carolina?

4 A. Yes.

5 Q. You stated at the beginning of your evaluation you do
6 several different test. You interview Mr. Burris, correct?

7 A. Yes, and I performed a neurological evaluation on him
8 as well.

9 Q. Okay. And you said that was due to his stroke?

10 A. Yes.

11 Q. Okay.

12 A. And the reason -- if I may, the reason being for
13 that, sometimes elderly people don't have a history of
14 offending at all and as they get older they may have
15 dementia, or they can have an organic condition with their
16 brain that makes them impulsive, and so because he had that
17 history of stroke I wanted to be sure that the area where
18 he had the stroke was not what was causing this instead of
19 a sexual disorder.

20 Q. Okay. You stated he was cooperative with you,
21 correct?

22 A. Absolutely.

23 Q. And approximately how many of these evaluations have
24 you done?

25 A. A thousand.

1 Q. And for the most part are all of them cooperative with
2 you or do you have ones who are very much very
3 uncooperative?

4 A. Oh, I definitely have uncooperative patients
5 sometimes.

6 Q. All right. And after you do your evaluation and you
7 access everything you do this report, correct?

8 A. Yes.

9 Q. And that's in order to make sure like say this is
10 months down the road you have to come testify like today it
11 helps you to remember everything that you did during your
12 evaluation?

13 A. Sure.

14 Q. And it's important to make sure that that report is
15 correct?

16 A. Certainly.

17 Q. And do you review your reports when you do them?

18 A. I do.

19 Q. And it is important for them to be correct so that you
20 can make sure you're as accurate as possible.

21 A. You certainly try but everyone's human and certainly
22 mistakes can be made.

23 Q. Well in Mr. Burris' report regarding his family
24 history, you have it he stated that his mother is Eunice
25 Scott, however that is not his mother, correct?

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-89-

1 A. I only write down what he told me. I'll be glad to
2 look at it. There's a number of inconsistencies in my
3 report and I don't know if those are because Mr. Burris
4 gave me inconsistent information or if it was a mistake.
5 If I wrote it down it would have been based on my notes and
6 I'm glad to look at that for you.

7 I would certainly not argue if that is not his name
8 but -- her name -- but what I do is I'm basically writing
9 as I'm interviewing Mr. Burris and writing this information
10 down. But I certainly would not argue. If you tell me
11 that that's not the name of his mother I would not argue.

12 Q. So if his mother's name is Odessa Burris Fincher that
13 isn't -- remotely sound like Eunice Scott ---

14 A. Not at all.

15 Q. --- does it.

16 A. No, not at all.

17 Q. And regarding his children, in fact you stated he has
18 five different children, correct?

19 A. Yes.

20 Q. And you have one of them written down as Charanda
21 except her name was Melissa, correct, and she's forty-five
22 not thirty-five?

23 A. I'm gonna beg to differ with you. I certainly didn't
24 make these things up and if I'm writing them in my report
25 it will be in the way that he delivered them to me.

1 Q. So you're indicating that he would lie about his
2 children's name?

3 A. No. He could be confused or maybe he didn't
4 understand the question.

5 Q. So if he was confused could that potentially come back
6 to his stroke?

7 A. Sure. Sure, and there certainly were. While you
8 point that out there were some inconsistencies in things he
9 told me and I was aware of that during his evaluation.

10 Q. Okay.

11 A. For example he told me that, I went through the names
12 of each of his siblings, and he told me they lived in
13 different places but then when I ask him where would he go
14 upon discharge he said he would live with his brother in
15 Rock Hill. Yet when I ask him about where his siblings
16 were he stated that they were in different states. I think
17 a sister in New York that he was close to. I know that his
18 mother was in a nursing home in California. So, yes,
19 that's certainly something to consider.

20 Q. Okay. So it is something to consider that
21 neurologically he could be in decline?

22 A. Sure.

23 Q. Okay.

24 A. Sure, absolutely. That's why I did - that's why I
25 did a neuro-psych testing and that's why I did a

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-91-

1 neurological exam of him because that's certainly ---

2 Q. Right.

3 A. --- something you would worry about given his age and
4 the impulsivity of his psychic crime.

5 Q. And based on what you were just talking about, let's
6 go ahead and hit on that, you stated if he was released he
7 stated to you he would live with his brother.

8 A. That's correct, in Rock Hill.

9 Q. Okay. And that's his brother Cleveland?

10 A. Yes.

11 Q. Which you stated he had several siblings?

12 A. Yes.

13 Q. Okay. And he has a platform for income as well,
14 correct?

15 A. That's correct. He's on disability.

16 Q. So he would receive a social security check?

17 A. That's correct.

18 Q. And he's previously worked in the past, correct?

19 A. Yes, he has.

20 Q. To move to his legal history, start with the criminal
21 sexual conduct third degree, the charge that we're here on
22 for that's considered a sexually violent crime.

23 A. Yes.

24 Q. You testified earlier that he was originally charged
25 with criminal sexual conduct with a minor first degree,

1 correct?

2 A. Yes.

3 Q. And he pled to the criminal sexual conduct third
4 degree, correct?

5 A. That's correct.

6 Q. And the third degree he received, based on the report,
7 ten years, ---

8 A. Correct.

9 Q. --- correct?

10 A. With credit for three hundred and thirty-seven days.

11 Q. And that's considered a nonviolent crime, correct?

12 A. Yes.

13 Q. Okay. Are you aware of what the penalty is for
14 criminal sexual conduct with a minor in the first degree?

15 A. I believe it's twenty years but I stand corrected.

16 Q. It would be up to thirty years or life potentially?

17 A. Okay.

18 Q. Okay. But yet in -- And let me show you State's 1.

19 Is it marked there that this is a negotiated sentence?

20 A. Yes.

21 Q. And a negotiated sentence means that the state
22 negotiated that sentence as that was the only thing the
23 judge could give him, correct?

24 A. Yes.

25 Q. Okay.

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-93-

1 A. That doesn't mean that's what the judge does but
2 that's correct. They went into that agreement. What that
3 means is they meet ahead of time and they say, okay, we
4 agree this would be the sentence and we'll propose that to
5 the court, correct.

6 Q. So he could have potentially gotten thirty years but
7 the state decided that ten years was best for him?

8 A. That's correct.

9 Q. Okay. And so you stated earlier that's a nonviolent
10 crime, he did almost five years on that, correct?

11 A. Yes.

12 Q. And that's when he got out in 2014?

13 A. Yes.

14 Q. So then the second one, the assault and battery first
15 degree was originally a CSC criminal sexual conduct third
16 degree, correct?

17 A. Correct.

18 Q. So this second charge, despite the fact the state had
19 already agreed on that one for ten years, and he gets out
20 and gets a second charge, the state then agreed for him to
21 have only a two year sentence on a lesser charge, correct?

22 A. That's correct. And also credit for over two hundred
23 days.

24 Q. Okay. So essentially he was a turn around at SCDC
25 when he went?

1 A. That's fair to say.

2 Q. And that was also, like I said, the state worked out a
3 lesser sentence for him despite the fact he had a previous
4 one?

5 A. Yes.

6 Q. And he could have gotten up to ten years on that one,
7 correct?

8 A. Yes.

9 Q. Now you focused a little bit on his past nonsexual
10 offenses.

11 A. Yes.

12 Q. Other than the two domestic violence charges which
13 were in the 2000s, the rest of his charges were thirty,
14 forty and fifty years ago, correct?

15 A. Give me a minute and I'll look. I don't have no
16 reason to doubt you.

17 Q. All right. In the 70s, 80s and 90s.

18 A. I would not object to that.

19 Q. Okay. So the only thing he has other than these two
20 more recent charge -- recently -- would be the criminal
21 domestic violence charges because the rest are essentially
22 thirty years in the past?

23 A. Yes.

24 Q. Now when you do these evaluations is it important to
25 you to look at whoever you're evaluating as to whether they

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-95-

1 have any disciplinaries while they're in the Department of
2 Corrections or any incarceration?

3 A. Absolutely. Many times inmates in the Department of
4 Corrections they actually get -- they have a system within
5 the Department of Corrections to deal with it, but they can
6 actually get charges that would be charges on the street
7 and sometimes that would raise their risk. It depends on
8 what the nature of that is so that's very important.

9 Q. And do you see that often in these sexual offense
10 cases?

11 A. Oh, yes. There's many times that people with sex
12 offenses they may expose themselves to the guards or those
13 sorts of things. Or they may get accused of sexual
14 misconduct with other inmates, so those are important.

15 Q. Or just trouble in general. Not even necessarily
16 sexual?

17 A. Sure. Just to show that they're impulsive, yes.

18 Q. Okay. But Mr. Burris had no disciplinaries, correct?

19 A. That's correct.

20 Q. Whether he was in York County Detention Center or the
21 Department of Corrections?

22 A. I didn't see the York records but I certainly know
23 that during the period of time that he was at the
24 Department of Corrections he had no disciplinaries.

25 Q. So that makes him a little bit different than some of

1 the other ones that you evaluate?

2 A. Sure.

3 Q. Okay. Regarding the sex offender treatment, you
4 stated that on the second time that he went in he received
5 two years and got a essentially time served almost on it,
6 correct?

7 A. Yes. With credit for two hundred and --

8 Q. So he wouldn't have even been at South Carolina
9 Department of Corrections long enough to participate in any
10 type of treatment?

11 A. That's very fair to say certainly.

12 Q. And you're not even aware if he was even offered it
13 while he was there?

14 A. I don't. I worked at the Department of Corrections.
15 I had a contract there for a number years. I -- The second
16 time that he was convicted he would not have been offered
17 that.

18 Q. Okay.

19 A. It has time limits. It usually is based on sentences
20 that have to be more than a few years so the person has
21 time. I believe their program takes a little bit longer
22 than a year to complete so they usually base that on the
23 length of sentence, so I don't think he would have been
24 eligible for any treatment on the second conviction.

25 Q. Okay. And that's based on the time that the state

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-97-

1 worked out with him for two years?

2 A. That's -- that's correct.

3 Q. Now regarding your testing, you stated that you do
4 this Static 99, correct?

5 A. Yes.

6 Q. And I'll go ahead and start with that. With the
7 Static 99 that's based -- that's considered the best tool
8 in the scientific field regarding recidivism rates,
9 correct?

10 A. For psychologist it's considered a tool. I'm not
11 going to say it's the best tool but it's one of the tools
12 used.

13 Q. And it's the one that's most relied upon ---

14 A. Yes. I think it's the most ---

15 Q. --- in these types of cases?

16 A. --- commonly used, yes. I think that's fair to say.

17 Q. Okay. And in order to get the statistics regarding
18 this you stated earlier eight thousand men were --

19 A. Yes.

20 Q. Okay. And recently as of last year it was
21 re-calibrated; is that correct?

22 A. Yes. They looked at -- What -- They have rates.

23 Basically if you get a score you can look and they'll
24 have a scale that tells you what their percentages are,
25 their chance that they would reoffend and so those rates

1 were actually readjusted in think in 2016.

2 Q. Okay. And you stated in your report that its
3 intended to position offenders in terms of their relative
4 degree of risk for sexual recidivism based on commonly
5 geographic and criminal history information that has been
6 found to correlate with sexual recidivism in adult male sex
7 offenders.

8 A. Correct.

9 Q. So this test is the best to correlate regarding other
10 offenders to other norms?

11 A. Well the way I describe it it's the best test that
12 compares him to other offenders who have gotten in trouble
13 again.

14 Q. Correct. Okay. In this test you can get up to a
15 twelve on, correct?

16 A. That's correct.

17 Q. And in this case Mr. Burris got a one?

18 A. Yes.

19 Q. And I want to go through a little bit ---

20 A. Sure.

21 Q. --- exactly how he got the one.

22 A. Sure.

23 Q. The first category is age. Can you explain the age
24 a little bit?

25 A. Sure, and as I did. Age is a protective factor. The

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-99-

1 younger you are the more likely you are to -- and when
2 compared to other offenders -- the more likely you are to
3 get in trouble. And that equate you have higher
4 testosterone levels. Also, people that have a history of
5 offending, just any kind of offenses, after the age of
6 forty-five those decrease as well. So generally even
7 amongst all criminals you'll see a decrease in the rate of
8 reoffending with age for regular offenders and people with
9 sexual disorders.

10 Q. Okay. And so what was his point value on that one?

11 A. Minus three.

12 Q. Minus --

13 A. And that was a big one.

14 Q. And what's the next category he could have potentially
15 gotten points on?

16 A. Certainly.

17 Q. I want to go through every category.

18 A. And I'll be glad to do that.

19 Q. What's the next category?

20 A. He actually -- This was a protective factor for him.

21 If he's ever lived with a lover for two years and he got --
22 If you have it you get scored a point. He has obviously so
23 that's a protective factor so he doesn't get a point added.
24 You would get -- This is a category where they would add a
25 point if he had not lived with someone but he's had a

1 number of long-term relationships. And that plays into his
2 diagnosis also. That's why he's not just attracted to
3 children. He's certainly he's had a long history of being
4 in relationships and having children.

5 Q. Okay. So he got a zero on that, correct?

6 A. That's correct.

7 Q. Okay. And what's the next category?

8 A. This one's called index of nonsexual violence if he's
9 had any convictions and he did not.

10 Q. Okay. So he gets how many points for that?

11 A. You don't get -- He didn't get any added. You get a
12 zero.

13 Q. Okay. So he got a zero?

14 A. Yes. And what that means is, sometimes when you have
15 a sexual offense the person does other things to the victim
16 or, and he did not meet that criteria.

17 Q. Is that common to see in your evaluations that you do
18 that people get a point on that one?

19 A. Yes and no. It's probably fifty percent.

20 Q. Okay. And what's the next category?

21 A. The next was prior nonsexual violence any convictions
22 and that means that's a past history if they had other
23 crimes that had involved maybe crimes against people and he
24 got a point for that.

25 Q. Okay. And what did you use for that?

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-101-

1 A. His criminal domestic violence charges and some other
2 charges.

3 Q. And those are convictions?

4 A. Yes. Well, yes, or -- yes.

5 Q. Okay. And so you used the CDV on the convictions for
6 those?

7 A. And the other charges.

8 Q. Okay. From his past out ---

9 A. Yes.

10 Q. --- thirty, forty, fifty years ago?

11 A. Yes.

12 Q. Okay. All right, what's the next one?

13 A. Prior sentence -- prior sex offenses.

14 Q. And how many --

15 A. You can get up to three points on that. That one
16 goes from zero to three and he got one point on that
17 because he's had a prior conviction and a prior charge, so
18 he gets a one out of a possible three. You could get a
19 zero, one, two, or three.

20 Q. Okay. And which conviction did you use for that?

21 A. The criminal sexual conduct third degree from 2010.

22 Q. And was that counted as one of the prior or -- No,
23 because that was nonsexual. So these are just sex
24 convictions?

25 A. Correct.

1 Q. So he could have gotten three but he only got one?

2 A. That's correct.

3 Q. Okay. What's the next one?

4 A. Prior sentencing dates.

5 Q. And explain that one.

6 A. Yes. If you've had three or less you get zero points.

7 If you had more than four you get one point and I gave
8 him one point.

9 Q. And some of those prior sentencing dates were they
10 also counted as part of the prior nonsexual violent
11 charges?

12 A. Yes, they are. That's correct.

13 Q. All right. What's the next one?

14 A. Any convictions for non-contact sex offenses and I
15 scored him a zero for no.

16 Q. Okay. How many points can you get on that one?

17 A. One.

18 Q. What's the next one?

19 A. And that would be things like exposing yourself. That
20 means you did sexual crimes but they didn't involve
21 touching someone, exposing yourself, peeping tom, those
22 sort of things. And he didn't have -- Many inmates, again,
23 will have those kinds of charges so they would get scored
24 for that.

25 Q. Okay. And what's his other one, the next category?

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-103-

1 A. Any unrelated victims.

2 Q. Okay. And he got a point for that one, correct?

3 A. Yes.

4 Q. All right. All right, what's the next one?

5 A. Any stranger victims.

6 Q. Okay. And did he --

7 A. And no points. No. He knew. He was in the house so
8 he knew these children. He didn't abduct children from the
9 street that he didn't know or do things to them.

10 Q. And that's considered one because a lot of offenders
11 if you have stranger victims they're more random, I guess,
12 or they're not as --

13 A. Well it's just a higher risk because you -- you're
14 basically you would maybe -- you're going outside of an
15 environment to find them and whether you're grabbing them
16 or hiding them or doing -- offending against them, sure.

17 Q. But in this case it was essentially within household?

18 A. Correct.

19 Q. All right. What's the next one?

20 A. Any male victims.

21 Q. Okay. And he gets a zero for that one?

22 A. That's correct.

23 Q. And why is that a significant category? Why did you
24 get points for having a male victim?

25 A. Sure. The rates -- If you look at the rates of

1 reoffense amongst sex offenders they usually range from
2 five to fifteen percent and we just know that based on the
3 studies that men that offend against little boys they're in
4 a higher risk to reoffend. Just like high blood pressure.
5 You know if your high blood pressure comes from your
6 kidneys it's a little bit more difficult to treat, so,
7 people with sexual disorders when you're attracted to the
8 same sex it's a little bit more difficult to treat.

9 Q. Okay. And that's all the categories ---

10 A. Yes, ma'am.

11 Q. --- correct? Okay. So that gets him to a one on
12 this scale of twelve, correct?

13 A. Yes.

14 Q. All right. Now what are the different -- You stated
15 he's in the below average risk range. What are the
16 different ranges you could potentially be in?

17 A. I think it's well below average, below average,
18 average, above average, well above average.

19 Q. So there's only one category below him and four above
20 him?

21 A. I believe, yes.

22 Q. And in this category that he is in the below average
23 range, you stated in your report that the five years sexual
24 recidivism rate was three point nine percent, correct?

25 You testified earlier four point seven however your

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-105-

1 report says three point nine is the average, correct?

2 A. Yes. I'm sorry, you're correct. I was looking at
3 the error -- margin of error. Yes.

4 Q. Okay. And I guess when you said the word margin
5 there it could have gone up to four point seven but it
6 could also go down to three point three?

7 A. That's right.

8 Q. Okay.

9 A. That's right.

10 Q. So they take essentially the average and it's three
11 point nine?

12 A. That's right.

13 Q. And so that -- So you say approximately four. That
14 would mean ninety-six percent in the same category do not
15 reoffend within five year, correct?

16 A. That's correct.

17 Q. Okay. And you essentially stated or testified that
18 you really didn't look at this test because you were
19 looking at the dynamic factors, correct?

20 A. No, I absolutely relied upon the test, but based on
21 the totality of things in looking at his offenses and when
22 they occurred that I felt it was an underestimate of what
23 his risk would be.

24 Q. So you're essentially saying that you don't believe
25 he is in the ninety-six percentile?

1 A. Absolutely not.

2 Q. Did you do any other test to determine his sexual
3 recidivism rate?

4 A. Yes, I performed my mental status examination of him.
5 I performed a neurological evaluation of him and reviewed
6 his medical history. Again, because I was concerned about
7 his history of stroke. We've had many people with those
8 kinds of conditions that it would raise his risk to
9 reoffend but it may not necessarily be a sexual disorder.

10 Q. Did you do any other psychological test on him such
11 as the MMPI or anything of that nature?

12 A. No, I'm not a psychologist and there was no need to
13 do that.

14 Q. Are you aware of what a penile plethysmograph is?

15 A. I sure am.

16 Q. And can you explain to the jury what that is?

17 A. Sure. Back in medicine, this test is derived from
18 an original medical test, a man that was suffering from
19 impotence. They would go and do a sleep study in the
20 hospital and so originally this test came it's a measure of
21 blood flow to the genitals. And so traditionally what
22 would happen is if a male had impotence he would go in, he
23 would do a sleep study, he would have a gauge attached to
24 his genitals and the test would measure blood flow.

25 And so one would find that whether the equipment

DOCTOR DONNA MADDOX: CROSS BY MRS. BROWDER

-107-

1 worked or not or whether their source of impotence maybe
2 was from other causes, so that's how this test originally
3 was developed.

4 And what's happened over the years it's been used in
5 various sex offenders, so what you do is you put them in a
6 lab, they can have this gauge on their penis, and they look
7 at pictures of kids that are dressed, they will look at
8 situations -- they have to listen to scenario's that depict
9 sex with children and you can measure their increase in
10 blood flow to the various criteria.

11 Q. And it gives a gauge of whether -- what types of
12 people or whether they're attracted or have some sort of
13 arousal to certain types of --

14 A. That's correct. It measures arousal to all different
15 stimuli. Adult males, adult females, children of different
16 ages to different scenarios. Forced sex, consensual sex,
17 those sorts of things.

18 Q. And you did not have one of those conducted on him
19 did you?

20 A. No.

21 Q. Okay. Is there any reason you didn't want as much
22 information as possible by getting one of those?

23 A. No. Both of his offenses involved touching so
24 whether he had arousal or an attraction I did feel it
25 wasn't necessary because he demonstrated that in 2015.

1 Q. Okay. And just to get to that point you said not
2 to discount it in any way. Or you said both of his were
3 just touching?

4 A. Except for the fellatio back in 2009.

5 Q. Right. With these evaluations that you do, do you
6 find that there is a lot of intercourse between
7 individuals?

8 A. Some. In some. Some just involved fondling. But I
9 think that's fair to say there is a good majority that do
10 involve penile vaginal penetration, sure.

11 Q. But that, or penile or vaginal, or anal, correct?

12 A. Correct.

13 Q. And that is not the case in Mr. Burris's case?

14 A. That's correct. There has been no reports. I saw no
15 evidence, no history of charges or anything that have ever
16 alleged that he had full intercourse with a child.

17 Q. Okay. And you stated earlier that no one can predict
18 the future, correct?

19 A. That's correct.

20 Q. You can't guarantee that he's gonna reoffend can you?

21 A. Not at all.

22 Q. Okay.

23 MRS. BROWDER: No further questions, your Honor.

24 THE COURT: Redirect?

25 MR. BOGLE: Yeah, very briefly.

DOCTOR DONNA MADDOX: REDIRECT BY MR. BOGLE

-109-

REDIRECT EXAMINATION

DOCTOR DONNA MADDOX BY MR. BOGLE:

Q. When you're looking at these sentence sheets, do you have Exhibit 1 right there in front of you?

A. I do.

Q. Okay. Counsel referred to that crime, a box being checked on the sentencing sheet for criminal sexual conduct third degree as a nonviolent crime.

A. Yes.

Q. Okay. But these nonviolent, violent serious and most serious, that all has to do with sentencing and parole eligibility does it not?

A. Yes.

Q. Okay.

A. Nothing to do with psychiatry.

Q. Nothing to do with *Sexually Violent Predator Act* either does it?

A. No.

Q. Because right here if I may show you a copy of Section 44-48-30 of the *Code of Laws* where it defines what sexually violent crimes are, does it not list a criminal sexual conduct in third degree?

A. Yes, sir.

Q. Okay. So, different reasons, right?

A. Yes.

1 Q. Counsel ask you about there being a plea bargain, a
2 plea arrangement in some sort of negotiated sentence in one
3 or more of his convictions?

4 A. Yes.

5 Q. Plea agreements happen for a number of reasons do
6 they not?

7 A. Sure.

8 Q. Does it matter, in this perspective we're here about
9 today, what he was convicted of does it matter if there was
10 a plea or a negotiated sentence, plea agreement, or
11 something like that in the underlying conviction?

12 A. No.

13 Q. Why not?

14 A. Again, because the issues are have you offended
15 before, what was the age of the victims, how old were you
16 when you offended, have you gotten into further trouble, so
17 those things don't depend upon whether -- what the length
18 of the sentence is. It's prior sentencing dates, how many
19 convictions you've had; not the length of time that you
20 were sentenced. That's not a variable that's been shown to
21 have any factor into whether somebody would repeat offend
22 or not.

23 Q. And there could be all kinds of reasons for a plea
24 agreement can there not?

25 A. Sure.

DOCTOR DONNA MADDOX: REDIRECT BY MR. BOGLE

-111-

1 Q. A victim won't cooperate?

2 A. Sure.

3 Q. Can't find the victim?

4 A. Sure.

5 Q. Guy want's to plead to a lesser offense or anything,
6 right?

7 A. Sure.

8 Q. Now, also you mentioned the neurological decline that
9 he might possibly have. Does that effect give him any
10 benefit as far as his risk to be a sex offender?

11 A. I'm sorry, repeat that.

12 Q. I'm sorry if I got it -- I was writing this thing
13 down as fast as I could, is he -- Does your neurological
14 examination of him, is he in any kind of neurological
15 condition that would prevent him or lessen his risk to be a
16 repeat sex offender?

17 A. No. Indeed what I found when I examined him
18 cognitively he's intact. The side of the stroke that he
19 had is not the part of his brain that involves language
20 functions and things like that. And I did specifically a
21 test that measures his frontal lobe, the part of your brain
22 that makes decisions, and he did average on that test. He
23 did not have impairment there. I also gave him a
24 neurological exam because I was very concerned about the
25 stroke that he described. And all the signs that would

1 show that he has significant brain damage, they were not
2 present.

3 Q. Okay. And now that you are retired from the
4 Department of Mental Health, is that the right place?

5 A. Yes.

6 Q. But you have a contract with them to do certain types
7 of cases like this one?

8 A. Yes.

9 Q. You were paid in this case, or appointed by the
10 court to do it, they paid you pursuant to your contract
11 Four thousand dollars?

12 A. Correct.

13 Q. Would they have paid you any less or any more had
14 your evaluation gone the other way, had you said he was not
15 a sexually violent predator?

16 A. No. Actually I would get the same pay so I would
17 get that pay whether I went to court or not.

18 MR. BOGLE: Thank you, Doctor.

19 Nothing further, your Honor.

20 MRS. BROWDER: No further questions.

21 THE COURT: All right. You can step down and be
22 excused.

23 DOCTOR MADDOX: Thank you, your Honor.

24 THE COURT: We appreciate your time.

25 (WITNESS LEAVES WITNESS STAND.)

1 THE COURT: All right, I'm gonna let the jury go to
2 the jury room just for a few minutes while I take up some
3 matters with the attorneys.

4 (JURY EXITS COURTROOM AT 04:23 P.M..)

5 THE COURT: And that's gonna be the State's only
6 witness?

7 MR. BOGLE: Yes, your Honor. And the State would rest
8 at this time. I would like to do it later in front of the
9 jury.

10 THE COURT: I will.

11 MR. BOGLE: But we are resting.

12 THE COURT: All right.

13 MRS. BROWDER: At this time, your Honor, we do have a
14 motion for a directed verdict. Based on the testimony of
15 Doctor Maddox even in the light most favorable to the State
16 its our submission that on the Static 99 she found him to
17 be a one which is in the three point nine percent to
18 reoffend which essentially ninety-six percent do not
19 reoffend.

20 We submit, your Honor, that that does not rise to the
21 level to get it to the jury and we ask for a directed
22 verdict.

23 THE COURT: Mr. Bogle.

24 MR. BOGLE: Your Honor, the Static 99-R score was one
25 part of a comprehensive evaluation, and if anything his age

1 lowered the score significantly and should have been a
2 benefit to him, yet, he offended after he was sixty years
3 of age, so, we would submit there's sufficient evidence in
4 looking at all the aspects of Doctor Maddox --

5 (PAUSE/COURTROOM DOOR CLOSING.)

6 THE COURT: You can go ahead.

7 MR. BOGLE: We submit there's sufficient evidence in
8 looking at all the aspects of Doctor Maddox's comprehensive
9 evaluation to support the conclusion that he does fit the
10 criteria under the statute and the case should go to the
11 jury.

12 THE COURT: Well I'm gonna deny the motion. I believe
13 the evidence rises at least to the level from which a jury
14 could -- And I'm not gonna say they are -- conclude that
15 the State has carried it's burden of proof and that there
16 is enough evidence from which the jury could find Mr.
17 Burris a sexually violent predator.

18 Now, you gonna have any witnesses, Mrs. Browder?

19 MRS. BROWDER: No, sir.

20 THE COURT: All right. Well it's almost four thirty
21 so I'm not gonna argue and charge today. I'm gonna get the
22 jury back in and let you rest and then we'll be ready for
23 arguments and charge in the morning.

24 I have the request to charge from the State. If you
25 haven't had a chance but I'm sure you've seen it a thousand

-115-

1 times, but if you'll look over it and see if you have any
2 issues.

3 MRS. BROWDER: I have already, your Honor. The only
4 issue I have with it is on the bottom of 2 to top of 3
5 where it states if you find that the State has not met it's
6 burden respondent will be released. If you find that the
7 State has met it's burden of proof and find that he's a SVP
8 he will not be released but will be committed to a secure
9 treatment facility in Columbia operated by the South
10 Carolina Department of Mental Health.

11 I ask that that be struck, your Honor. It's -- They
12 don't need to know what's gonna happen or not to happen
13 based upon their verdict. It's essentially the same kind
14 of compare it to a criminal trial. They don't need to know
15 exactly what his potential sentence could be if they were
16 to convict him. Its just the elements as to whether he is
17 a sexually violent predator, your Honor, so I would ask
18 that that be kept out.

19 THE COURT: What do you have to say about that, Mr.
20 Bogle?

21 MR. BOGLE: Which part? The part, the entire
22 sentence?

23 THE COURT: Fifth line up from the bottom of 2.

24 MR. BOGLE: May I read it? I'm reading it.

25 We submit that its just general charge information we

1 have. It's the truth, its what will happen to him. If
2 he's found not to be a predator he will be released. If he
3 is, he'll be committed to a secure facility and that's
4 what's in the statute, secure facility for long term
5 control, care and treatment.

6 THE COURT: Well I find that's -- I hate to call it
7 after the fact -- but that only comes to play if the
8 State's proven him to be a sexually violent predator so I'm
9 gonna grant the request to leave that part out.

10 That's not exactly like telling a jury what someone's
11 sentence will be but it's pretty close. In fact, well it's
12 not a sentence, it's a civil commitment, it's as close to a
13 sentence as you get in these.

14 MR. BOGLE: In looking at the entire bottom are you
15 taking out the entire part --

16 THE COURT: Well, bottom of 2 to all the way over to
17 the top two sentences on 3.

18 MR. BOGLE: Okay. So beginning with if you find that,
19 bottom lines at the bottom of 2?

20 THE COURT: Right.

21 MR. BOGLE: All the way to the end of that paragraph
22 on page 3.

23 THE COURT: Yeah. And then we go to the rights and
24 duties of judge and jury.

25 All right. Well I'm gonna get the jury in and release

1 them so let me look at my little schedule here and see.

2 We've got kind of a choppy week. You want to start
3 back at ten. I've got a 9:15, I don't know how long it
4 will take.

5 MR. BOGLE: That's good.

6 THE COURT: All right. Bring in the jury.

7 MR. BOGLE: Before you bring you 'em in.

8 THE COURT: Wait just a minute.

9 MR. BOGLE: Can we for the record just reflect that in
10 addition to the directed verdict being denied then she's
11 then gonna rest and make us repeat the same motion and it
12 be denied?

13 I assume you would?

14 MRS. BROWDER: Yes, your Honor, after they rest or I
15 would rest I would have another motion for a directed
16 verdict.

17 THE COURT: All right. Okay.

18 MRS. BROWDER: But it would be based on the same
19 arguments, your Honor.

20 (NOTE RECEIVED UP BY THE COURT AT 04:28 PM.)

21 THE COURT: Are jurors allowed to take notes?

22 I will just -- you don't put on here --

23 When they come in I'll just tell 'em you don't need
24 to take notes. All right, let's bring in the jury.

25 (JURY REENTERS COURTROOM AT 04:30 P.M.)

1 THE COURT: All right. Members of the jury panel, the
2 State has rested and the Defense has rested also.

3 The State, you want to rest?

4 MR. BOGLE: Your Honor, yes, with the completion of
5 Doctor Maddox's testimony the State would rest.

6 THE COURT: All right. Mrs. Browder.

7 MRS. BROWDER: Defendant rest, your Honor.

8 THE COURT: All right. So we're gonna stop for the
9 day. It's almost five and Ms. Newton, you sat in the right
10 seat. I'm gonna ask you to be the Forelady of this jury.

11 MS. NEWTON: Okay.

12 THE COURT: So you will sit in that seat and the
13 alternate will sit in the seat back behind you.

14 And the rest of you have no assigned seating.

15 Don't discuss the case. I don't think there is any
16 news coverage, if there is, don't let yourself be exposed
17 to it. And we'll -- And don't try to make up your mind yet
18 because you haven't heard the attorneys closing arguments
19 and I haven't charged you the law.

20 But have a pleasant evening and we'll see you back
21 at ten in the morning. I have something at 9:15 but I
22 think I'll be -- pretty sure I'll be through by ten, so
23 have a pleasant evening and see you back at ten in the
24 morning.

25 Yes, ma'am.

1 MS. NEWTON: Ten in here?

2 THE COURT: Ten. The bailiff's will tell you how to
3 negotiate the building.

4 (JURY EXITS COURTROOM ON EVENING RECESS AT 04:32 P.M.)

5 MR. BOGLE: Forelady juror number?

6 MADAM COURT REPORTER: I have no clue. I don't have a
7 list. I don't have nothing.

8 THE COURT: Let's see, One thirty.

9 MR. BOGLE: One thirty?

10 THE COURT: Yeah. Eleven on the list. I'll tell
11 'em about notes in the morning. I don't think they're
12 gonna take any over night. We'll see you back at ten in
13 the morning.

14 MR. BOGLE: Thank you, your Honor.

15 MRS. BROWDER: Thank you, your Honor.

16 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
17 MARKED, RECEIVED INTO EVIDENCE.)

18 (COURT IN EVENING RECESS AT 04:35 P.M..)

19 (COURT BACK IN SESSION TUESDAY, DECEMBER 5, 2017 AT
20 09:17 A.M. IN THE MATTER OF JASON TAYLOR VERSUS JAMES
21 STARLING WITH BRIAN MCCOY AND JAMES STARLING.)

22 (COURT AT EASE AT 09:21 A.M../BACK ON THE RECORD IN
23 THE MATTER OF THE STATE VERSUS GARY LEE BURRIS AT 10:02
24 A.M.)

25 THE COURT: All right. The State ready?

CLOSING ARGUMENT: BY MR. BOGLE

-120-

1 MR. BOGLE: Yes, your Honor.

2 THE COURT: Defense ready?

3 MRS. BROWDER: Yes, sir.

4 THE COURT: All right. Let's bring in the jury.

5 (JURY REENTERS COURTROOM AT 10:04 A.M..)

6 THE COURT: All right. Members of the jury panel, you
7 indicated by a note that you wanted to know if you could
8 take notes. Well the testimony has ended, both sides have
9 rested, so there will be no testimony so there is really no
10 reason to take notes. Where you are now is in a position
11 to hear the closing arguments of the attorneys, and then I
12 will charge you the law that you are to apply as you
13 determine the facts, so I will call on Mr. Bogle at this
14 time.

15 MR. BOGLE: Thank you, your Honor, may it please the
16 court.

17 Ms. Browder.

18 (CLOSING ARGUMENT BY MR. BOGLE)

19 MR. BOGLE: First off I'd like to thank you for doing
20 your job. Your duty as citizens and voters here in South
21 Carolina is from time to time you may be called upon to sit
22 as a jury. And one of the things that's always amazed me
23 is how twelve people who have no clue who each other are,
24 can come together, listen to the facts of the case and
25 reach a unified decision. I think it's a wonderful thing.

CLOSING ARGUMENT: BY MR. BOGLE

-121-

1 And it's very important not just for the state but
2 also for Mr. Burris because his liberty depends on what you
3 decide today.

4 Now, let's talk about where we are. All the testimony
5 is in, you've heard all the evidence, and your job is gonna
6 be to listen to the law as the judge explains it to you and
7 apply that law to the testimony you heard. You also have
8 before you the exhibit. State's Exhibit 1 is the copy of
9 the sexually violent crime that the respondent was
10 convicted of.

11 Now, what do we have to prove? First of all we have
12 to prove that he's been convicted of a sexually violent
13 crime. And there it is right there, criminal sexual
14 conduct in the third degree.

15 The next thing we have to prove, and again, our proof
16 has to be beyond a reasonable doubt, and the judge will
17 explain to you what that means when he talks to you about
18 the law. We have to prove that he has a -- Mr. Burris has
19 a mental abnormality that is such that it would leave him
20 to commit -- he is likely to commit crimes of sexual
21 violence unless he's confined for long term control, care
22 and treatment.

23 And the additional thing you have to decide is, does
24 that mental abnormality is it -- is his past conduct show
25 that it is of such a problem to him that he's a menace to

1 society, that he cannot control it, and is likely to
2 reoffend.

3 So, what do we have? We have the first crime right
4 here, the sexually violent crime. The victim was about
5 seven years old, he was fifty-six. The oral sex where her
6 mother caught, come in the room, and caught the two of
7 them, caught him with the little girl. And he pled guilty
8 to criminal sexual conduct in the third degree.

9 The second crime is not a sexually violent crime but
10 it was important to Doctor Maddox to examine. It started
11 out as a sexual crime as to what happened. It involved an
12 eight or four year old girl depending on how -- which
13 record you look at. The bottom line, a prepubescent girl,
14 and he was about sixty-two and this involved touching of
15 the child.

16 Now, Doctor Maddox looked at what's called -- that she
17 referred to as the DSM 5 and that's shorthand for the
18 Diagnostic and Statistical Manual Fifth Edition. This is
19 the book that sets forth the criteria for all types of
20 mental disorders including pedophilic disorder. That way
21 all the psychiatrist and psychologist around the country
22 are operating out of the same play book. If the criteria
23 there a person can be diagnosed a pedophile in South
24 Carolina, same thing in Oregon with the criteria there.
25 There's consistency in the profession.

CLOSING ARGUMENT: BY MR. BOGLE

-123-

1 And she diagnosed him based upon the criteria that he
2 met. Two young children at least six months of going on as
3 a pedophilic disorder and he's sexually attracted to
4 prepubescent children. That's what turns him on.
5 Nonexclusive which means he also is sexually attracted to
6 age appropriate partners and females. Its only girls have
7 been his victims.

8 Now sometimes cases have a theme. When I look at a
9 case and look at all the facts I try and think is there
10 some common theme to this. And to me the theme is his age
11 should have been. Doctor Maddox was qualified as an expert
12 witness. Normally a person can't talk about opinions.
13 They can talk on the witness stand about things they hear,
14 things they see, things they witness, you know, right in
15 front of 'em.

16 But if a person has the education and the experience
17 and the qualifications they can be qualified as an expert
18 witness, and she was. She's done hundreds of these
19 evaluations under the *Sexually Violent Predator Act* going
20 back to 1999 the year after it was first passed into law.
21 So she's one this a lot of times. And she was qualified to
22 give that diagnoses.

23 And you remember how she talked about his age should
24 have been an intervening factor. The science tells her
25 that as a person ages the sexual drive, the desire to

CLOSING ARGUMENT: BY MR. BOGLE

-124-

1 reoffend decreases, but here it did not on this guy. It
2 did not on Mr. Burris. He's over sixty. Sixty years of
3 age he gets a break on the score in that Static 99. Three
4 points gets knocked off his score yet at sixty-two he's
5 reoffending against an eight or four-year-old girl which
6 ever age she was.

7 So, we have the 2009 crime, he's fifty-six and it's
8 ten years. We have the 2015 crime. Barely a year or more
9 after he gets out of prison he offends again against a
10 child. And this is what I call a wake-up call. I think
11 we can all generally accept that going to prison is not a
12 fun place to be and not a place a person would want to go
13 back to. And yet, he's out just barely a year and he
14 reoffends the same way. I would suggest to you that this
15 reinforces Doctor Maddox's conclusion that the mental
16 abnormality he has he cannot control. So, that's what we
17 have right here.

18 Now, you'll hear a lot argument, and one thing that
19 may concern you is what about odds, what about statistics,
20 what about percentages? Doctor Maddox used an actuarial or
21 a scoring system called the Static 99-R. It's used by
22 psychologist and psychiatrist who do this kind of work.
23 It's based on studies of thousands of sex offenders who've
24 reoffended and they try to look at what all these people
25 have in common, what factors are there, and you go through

CLOSING ARGUMENT: BY MR. BOGLE

-125-

1 a list and you give them a point or you subtract points
2 depending on what it is. The lowest score is minus three,
3 the highest is twelve. He scores a one.

4 Now, by itself that would suggest a pretty low chance
5 of repeating his crimes. Five percent, four point seven
6 percent, something like that. So if the only thing a
7 psychiatrist was required to do is score the guy on the
8 Static and just walk away, we wouldn't be here. But Doctor
9 Maddox didn't do that. She did a comprehensive evaluation
10 of which the Static 99 score was one part.

11 But look at this. If we wind the clock back to 2010
12 when he was convicted right here, his score on the Static
13 99 would have probably been close to a zero and we all
14 wouldn't be here if that was the only conviction. And when
15 he turned sixty years old you subtract three points from
16 the Static score, as you get that kind of credit the way
17 the thing is built. So in 2015 before committing the crime
18 on the other little girl his score would have been way low
19 and yet, he still commits the crime.

20 So, its not just the numbers, it's also the overall
21 comprehensive evaluation because you got to remember this.
22 People are not statistics; people are not numbers. They
23 are human beings who exercise their judgments sometimes
24 good, sometimes bad, and they do bad things. They don't
25 follow mathematical rules.

CLOSING ARGUMENT: BY MR. BOGLE
BY MRS. BROWDER

-126-

1 So, what do we have here? Has the State proven it's
2 case beyond a reasonable doubt to you? I would suggest
3 that we have. He's got the criminal conviction, its right
4 there. He's got the mental abnormality, pedophilic
5 disorder limited to girls nonexclusive. And can he control
6 it? Apparently not because just barely a year or so after
7 getting out of prison he does it again.

8 I would suggest that the burden of proof has been met
9 by the State, that we have established to you beyond a
10 reasonable doubt that Mr. Burris is in fact a sexually
11 violent predator. Thank you.

12 Your Honor.

13 THE COURT: Ms. Browder.

14 MS. BROWDER: Thank you, your Honor.

15 CLOSING ARGUMENT BY MS. BROWDER:

16 MRS. BROWDER: Good morning. This past weekend I was
17 listening to a man named Steve Furr speak. It was at a
18 different context however he had a concept that I thought
19 works in a lot of different situations. It was regarding
20 perspective and he said that people have two different
21 perspectives on things. They have a perspective that's
22 called bottoms up and one that's called tops down. And the
23 bottom's up perspective is essentially when you don't know
24 something about a case, or any subject in life, and you use
25 your sensory and your perceptive details and essentially

CLOSING ARGUMENT: BY MRS. BROWDER

-127-

1 visual details as to what you think the results should be
2 on that.

3 So, for example, in this case if you're looking at it
4 from the bottom up, at the beginning when you know nothing
5 about this case; all you hear is eight year old, four year
6 old, sex crime, that's all you hear and you make your
7 decision.

8 But, ladies and gentlemen, if you look at it from the
9 top down, which I suggest to you at this point you have the
10 ability to do it because you've heard testimony about this
11 case, and you look at something from the top down it's when
12 you know about something. It's when you have the ability
13 to take what you know and apply it to make a decision and a
14 perspective.

15 And I believe that this case, this case is something
16 that you can do now, now that you've heard Doctor Maddox
17 testify, look at it from the top down perspective.

18 Now, Mr. Bogle discussed with you that it is their
19 burden to prove to you beyond a reasonable doubt that Mr.
20 Burris is a sexually violent predator. And there's nothing
21 in this case for Mr. Burris to do. He does not have to
22 lift one finger from this proof of beyond a reasonable
23 doubt. It's all on the State of South Carolina.

24 And the judge will give you instruction as to what
25 beyond a reasonable doubt is, but I like to kind of give an

CLOSING ARGUMENT: BY MRS. BROWDER

-128-

1 example, something in an everyday sense that might be
2 something you can understand because it is kind of a term
3 of art in a legal world.

4 But I like to use examples of milk. When my daughter
5 gets up in the morning she always likes to have her Fruit
6 Loops. And, she goes to the refrigerator and she pulls the
7 milk out and there's a date on the milk. Say it says today
8 December 5th, 2017. And she opens it and she smells it and
9 she's like, Mom, should I use this? So you smell it and
10 say, well, I'm not sure. Or you say, yeah, it's okay
11 today. But then the next day December 6th pull it out and
12 it smells a little and you're just like I'm not sure.

13 That's reasonable doubt. If you're playing it on the
14 safe side, that is reasonable doubt.

15 Now, the government has to prove to you two things and
16 the first thing which, as I told you in the opening, is
17 something we don't contest. He has a prior sexually
18 violent crime, the CSC with a minor third degree.

19 This right here.

20 (ATTORNEY BROWDER DISPLAYS TO JURY INDICTMENT.)

21 MRS. BROWDER: However, I do want you to look at it
22 from the top down. You heard about this other one, the
23 assault and battery that happened after this one. But if
24 you look at it the State of South Carolina, who the State
25 of South Carolina is here today trying to commit him, the

CLOSING ARGUMENT: BY MRS. BROWDER

-129-

1 State of South Carolina in this case, you heard Doctor
2 Maddox testify he could get thirty years potentially up to
3 life in prison. The State of South Carolina did a
4 negotiated sentence and said ten years was enough.

5 And the second case you heard Doctor Maddox testify
6 that he could have gotten up to ten years in prison. Yet
7 the State of South Carolina said, no, we think two is fine.
8 Essentially a time served because he had been in jail the
9 whole time.

10 So, when you take your common sense which the judge is
11 gonna tell you you're allowed to use your commons sense,
12 your life experience when you look at things, you take your
13 common sense and you think about it, and you heard
14 testimony there's all kinds of reasons for things to be
15 pled down. It could be the facts of the case were very bad.
16 It could be this isn't the worst of the worst of the sex
17 offenders out there.

18 You look at it from the top down to determine why the
19 State of South Carolina agreed to ten years when he could
20 have gotten life. Agreed to two years when he could have
21 gotten ten when he had already committed one, ladies and
22 gentlemen.

23 But you are not here to determine what his past was.
24 You're here to determine what his future is gonna be.
25 Whether he is likely to reoffend or not. And to do that

1 the State gave you one witness. And it's not could he, its
2 not maybe he will, it's not uh, he might, it's will he; is
3 he likely to reoffend. Will he reoffend?

4 And you heard Doctor Maddox say no one can predict the
5 future. That would include her, ladies and gentlemen. But
6 if you look at Doctor Maddox the first thing you look at it
7 from the top down perspective now that you have everything,
8 she testified she works for the Department of Mental
9 Health, the State of South Carolina. She gets paid Four
10 thousand dollars each time she has to do one of these
11 evaluations.

12 And if you get past that you then look at what she did
13 in this evaluation. And Mr. Bogle just argued to you that
14 she did a comprehensive evaluation. And if you look at it
15 from the top down and you think about it, think about what
16 she said. She wanted you to throw out all the things that
17 didn't work for her and only focus on the things that she
18 says is important.

19 So the Static 99 test. You heard her testify that
20 this was done of eight thousand men who reoffended, people
21 exactly in the same shoes as Mr. Burris, went through those
22 eight thousand men and that's where this norm and this test
23 came from and it's the best tool that they use when
24 determining in looking at statistics in whether someone
25 should reoffend.

CLOSING ARGUMENT: BY MRS. BROWDER

-131-

1 This goes from a negative three up to a twelve. He is
2 a one on that scale. She testified that there was four
3 different -- I think five different categories. She had a
4 well below, a below, a low average, high average, high
5 risk. So there were four categories above where Mr. Burris
6 was with these eight thousand other men that says where he
7 is on this scale which is a one. And if you look at those
8 statistics that is ninety-six percent do not reoffend.

9 They say you can't look at the odds. Well then what's
10 the point of the test if you can't look at the odds? If
11 you take a strep throat test when you go to the doctor and
12 the doctor says yeah, you got strep throat, or the test
13 says you got strep throat but the doctor looks at it and
14 says, nah, I'm not gonna pay attention to that. That's not
15 what I want you to have. I want you to have the flu
16 instead.

17 That makes zero sense to throw away the one test that
18 they use in the field when evaluating reoffenders to
19 determine whether they have the ability to reoffend. They
20 have to prove to you beyond a reasonable doubt that he will
21 reoffend. Three point nine percent reoffend. That is not
22 anywhere close to a reasonable doubt I submit to you.
23 Ninety-six percent is more beyond a reasonable doubt that
24 he will not offend.

25 And Mr. Bogle made a point about the age should have

1 been a factor. It should have been the protector. Or that
2 the test takes that into account. The test takes age,
3 whether it's old or whether it's young, into account so
4 that is taking account into the Static 99.

5 And if you look at it from the top down, this
6 comprehensive evaluation that she did, and you heard her
7 testify well most of the people that are the worst of the
8 worst, the sexually violent predators, have a lot of
9 disciplinaries while they're incarcerated. She didn't
10 mention that on her direct because it didn't work for her,
11 you know, work for what she was trying to tell you. She
12 only mentioned that when I cross-examined her about it and
13 said well he didn't have any did he. That kind of goes in
14 his favor.

15 She testified a lot of people that she evaluates don't
16 cooperate with her. She didn't testify about that on
17 direct. Only on cross when I said well in this case he did
18 cooperate with you, because that didn't work with what she
19 was trying to fit him into.

20 There was also the part about well a lot of the people
21 that you evaluate actually -- like I said, I'm not trying
22 to down play it one bit the details, okay. His cases were
23 touching and then the oral sex. I said well a lot of the
24 worst of the worst that you evaluate it's intercourse.
25 It's raping strangers, it's not people who are just

CLOSING ARGUMENT: BY MRS. BROWDER

-133-

1 opportunity friend. She said yeah that's true. She didn't
2 testify about that in her direct because it didn't fit into
3 what she was trying to say. Only on direct or cross-
4 examination did she say, yeah, well I guess he doesn't fit
5 into that as well.

6 And then this comprehensive evaluation. She didn't do
7 any other sexual test on Mr. Burris that could have helped
8 her. You heard her, again, only on cross-examination talk
9 about this penile plethysmograph test she could have given
10 him to show what the arousal rates are, if he's aroused at
11 certain types, if there's some kind of problem that he
12 could potentially have. But she didn't do that test
13 because she -- I don't know, she just said or I didn't
14 think I needed to do it. That's not comprehensive. That's
15 not trying to do everything possible to figure out beyond a
16 reasonable doubt that Mr. Burris is a sexually violent
17 predator.

18 The last thing that I want to touch on is, you heard
19 her testify, no one can predict the future. Even she said
20 I can't guarantee he's gonna do anything. But she made the
21 comment that past behavior is the best predictor of future
22 behavior.

23 Well if that's the truth, ladies and gentlemen, we'd
24 all be living in our past. We'd all look back when we were
25 younger, or even five years ago; think about it where were

CLOSING ARGUMENT: BY MRS. BROWDER

-134-

1 you five years ago, could you have predicted where you were
2 gonna be today? Could you have predicted if your house was
3 gonna burn down? Of if your mother or your father or your
4 spouse is gonna die? No one can predict the future.

5 And if we're gonna live in the past that would mean no
6 one could ever change. No one could ever be any different
7 and we would be judged on our past actions.

8 Someone once said trying to predict the future is like
9 trying to drive down a country road at night with no
10 headlights looking out the back window. It's impossible.
11 You just can't do it. The State and Doctor Maddox said
12 that they can't predict whether he will or he won't and
13 that he can't guarantee what's gonna happen.

14 I want to thank you for being here. I know this isn't
15 easy to sit here and listen to details of this sort. It's
16 the sort of thing you want to think doesn't happen in the
17 world. But its important to both as Mr. Bogle said the
18 State and Mr. Burris. But when you're back there making
19 decisions you're allowed to use your common sense. You're
20 allowed to use your life experience.

21 And one thing my daddy always said growing up was,
22 Anna, sometimes the right thing to do ain't always the
23 easiest thing to do. In looking at these facts it might
24 not be easy to look at the details of his past crimes of
25 what he did. But your job is not to look at that. Your

CHARGE TO THE JURY:

-135-

1 job is to look at the future on whether you think he will
2 reoffend beyond a reasonable doubt. In this case we submit
3 to you that the right thing to do is not the easiest
4 thing to do. But we believe you should come back with a
5 verdict that Mr. Burris is not a sexually violent predator.

6 Thank you.

7 MR. BOGLE: Nothing in reply, your Honor.

8 THE COURT: Okay.

9 CHARGE TO THE JURY

10 THE COURT: Members of the jury panel, thank you for
11 the attention that you have given to me and to the
12 attorneys and to the one witness. It is now my duty to
13 charge you the law that you are to apply to this case. It
14 is your duty to accept and apply the law as I charge it.

15 As I told you, and I will tell you again in a minute,
16 you are the sole judges of the facts in this case, I am the
17 sole judge of the law.

18 This case has been brought by the State under a
19 statute enacted by our legislature, it's called the
20 *Sexually Violent Predator Law*. Our state -- Here the State
21 of South Carolina seeks the civil commitment of Gary Lee
22 Burris, the respondent, for long-term control, care and
23 treatment in a secure facility. This is not a criminal
24 proceeding. It is not seeking incarceration but rather it
25 is a proceeding seeking civil commitment.

CHARGE TO THE JURY:

-136-

1 The State of South Carolina alleges or claims that Mr.
2 Burris is a sexually violent predator under our law. He
3 denies that he is a sexually violent predator, and the
4 burden is therefore on the state to prove by evidence
5 sufficient to satisfy each of you beyond a reasonable doubt
6 that Mr. Burris is a sexually violent predator.

7 If the State is unable to meet that burden of proof as
8 to one or more of the elements of this claim, Mr. Burris is
9 entitled to a finding that he is not a sexually violent
10 predator.

11 I want to makes sure that you understand that he is
12 not accused of committing a crime in this proceeding. As
13 you heard from testimony, he did have previous charges for
14 which he was sentenced by the court. He has now completed
15 his sentence on those charges and the state is alleging
16 that he is a sexually violent predator. Here the state has
17 the burden of proving their case and they must prove it
18 beyond a reasonable doubt.

19 Now, as I have told you as a trial judge in this case
20 it's my duty to preside over the case, to rule on questions
21 of evidence, and to charge you the law that you are to
22 apply to the facts as you determine them to be in this
23 case. That is, the testimony of the doctor and any
24 exhibits that have been placed into the record.

25 As to the charge, again, you must take accept and

CHARGE TO THE JURY:

-137-

1 apply the law as I charge it. This is true even if you
2 think I charge you the law in error or even if you think
3 the law should be different. You are the sole and
4 exclusive judges of the facts. You are not to infer from
5 anything I have said or done, or anything I now say or do,
6 as indicating an opinion of mine on the facts because our
7 law does not allow a trial judge to formulate or express to
8 a jury any opinion about the facts. It is solely up to you
9 to determine the effect, value, weight of the evidence
10 presented during the trial and determine the facts.

11 While arguments of counsel are a beneficial part of
12 every trial you should remember that these statements made
13 by counsel are not evidence. They are not witnesses. In
14 presenting their arguments counsel often refers to the
15 evidence, however, you should base your verdict on the
16 evidence as you recall it, as you remember it.

17 Therefore, if there are conflicts between the
18 recollection of counsel about evidence and your own
19 recollection, you should rely on your own understanding of
20 the evidence.

21 In most civil cases tried in court the burden of
22 proving a claim is by what is called the preponderance, or
23 greater weight of the evidence. In this particular case
24 the state's burden is greater than the preponderance of
25 evidence, greater weight of the evidence standard. Here

CHARGE TO THE JURY:

-138-

1 the burden of proof is proof beyond a reasonable doubt.

2 The state has to prove beyond a reasonable doubt that
3 Mr. Burris is a sexually violent predator under the
4 sexually violent predator statute. If the state fails to
5 meet this burden, then you must find Mr. Burris is not a
6 sexually violent predator.

7 Our courts have defined a reasonable doubt as the kind
8 of doubt that would cause a reasonable person to hesitate
9 to act. Proof beyond a reasonable doubt is proof that
10 leaves someone firmly convinced of a fact. That is, proof
11 beyond a reasonable doubt would leave you firmly convinced
12 that Mr. Burris is a sexually violent predator.

13 There are very few things in our world that we know
14 with absolute certainty and absolute certainty is not
15 required in a case such as this. The law does not require
16 proof that over comes every possible doubt. If based on
17 your consideration of the evidence, you are firmly
18 convinced that Mr. Burris is a sexually violent predator
19 you must return a verdict finding him so. That is a
20 verdict for the state.

21 If, on the other hand, you think there is a real
22 possibility that he is not a sexually violent predator, you
23 must give him the benefit of the doubt and return a verdict
24 on his behalf. Reasonable doubt may arise from evidence
25 that is in the case, or from the lack of evidence in the

CHARGE TO THE JURY:

-139-

1 case. It is up to you as the trial jury in this case to
2 determine whether or not a reasonable doubt exist in this
3 case.

4 In trials such as this there are generally two types
5 of evidence presented: Direct and Circumstantial evidence.
6 Direct evidence is the testimony of someone who claims to
7 have actual knowledge of a fact, such as an eye witness.
8 Direct evidence is evidence which immediately establishes
9 the main fact sought to be proven.

10 Circumstantial evidence is proof of a chain of facts
11 and circumstances indicating the existence of a fact.
12 Circumstantial evidence is evidence which immediately
13 establishes collateral facts from which the main fact may
14 be inferred.

15 Circumstantial evidence is based on inference and not
16 on personal knowledge or observation. It is proof that
17 does not actually establish the fact in question, but that
18 asserts or describes something else from which you may
19 reasonably infer the truth of the fact or at least
20 reasonably infer an increase in the probability that the
21 fact is true.

22 For circumstantial evidence to be sufficient to
23 warrant a finding of fact the circumstances must lead to
24 that fact with reasonable certainty. The facts and
25 circumstances should be considered in the light of ordinary

CHARGE TO THE JURY:

-140-

1 experience and common sense. The existence of a fact
2 cannot be based on speculation, surmise, or conjecture.

3 Our law makes absolutely no distinction between the
4 weight or value to be given either direct or circumstantial
5 evidence. Nor is a greater degree of certainty required of
6 circumstantial evidence than of direct evidence.

7 As judges of the facts it is up to you to judge the
8 credibility, that is, the believability of the witness who
9 have testified. You alone must decide force, effect and
10 validity of the testimony. In making this decision there
11 are many things you can take into consideration and this
12 list of course is not exhausted. You use your common
13 sense, your sense of logic, your sense of reason, and your
14 experiences in life as you analyze evidence.

15 You could look at the demeanor of a witness: How they
16 appeared on the stand, are they hesitant or straightforward
17 in answering questions. Was their testimony consistent or
18 inconsistent? Did they have the ability to know those
19 things to which the witness actually testified. Was there
20 any bias or prejudice on a witnesses' behalf? That is
21 whether a witness would wish to help or hurt one side or
22 the other.

23 In considering whether the witnesses' testimony was
24 reasonable in light of the other testimony in the case.
25 You also can look and see whether or not a witnesses'

CHARGE TO THE JURY:

-141-

1 testimony was corroborated or made stronger by other
2 evidence in the case. You have the right to believe in
3 whole or in part or all of a witnesses' testimony. That is
4 you can accept or reject such parts of a witness's
5 testimony as you determine should be accepted and such as
6 be rejected.

7 The fact that evidence by a witness is not
8 controverted does not mean you must accept it as valid.
9 Again, you just judge the credibility of the witnesses.

10 The law simply requires you to use your -- to exercise
11 your good judgment and common sense, your sense of logic
12 and reason and your experiences in life; apply those to the
13 facts, apply those to the evidence and you'll be able to
14 return a verdict that speaks the truth.

15 I told you before we started that we would have a
16 witness qualified as an expert and that was Doctor Maddox.
17 The rules of evidence ordinarily do not allow a witness to
18 testify about opinions. Usually a witness is restricted to
19 testifying to something they've observed with one of their
20 five senses. However, a witness who is qualified by the
21 court as a expert may render an opinion.

22 A witness who is qualified is someone who has special
23 knowledge, skill, experience, training, or education in a
24 particular field and because of that they can render
25 opinions. In determining the weight to be given the

CHARGE TO THE JURY:

-142-

1 opinion of Doctor Maddox you should consider the
2 qualifications and credibility of her and the reasons given
3 for her opinion. You are not bound by her opinion, rather
4 you should give it such weight, if any, you think it
5 deserves.

6 The value and effect of expert testimony is a matter
7 to be solely estimated by you. No opinion of an expert can
8 be accepted, in and of itself, as accurate or reliable, but
9 must be weighed by you and convince your judgment beyond a
10 reasonable doubt with the same force and effect as other
11 facts proven in this case before you can rely on it.

12 You consider the testimony of an expert witness just
13 as you consider the testimony of any witness in this case.
14 You may believe part or whole or believe it in part or in
15 whole. Such testimony, that is testimony of an expert
16 witness, is given to assist you, it is not binding on you.

17 As to this case there are certain elements the state
18 must prove beyond a reasonable doubt. First: The State
19 must prove beyond a reasonable doubt Mr. Burris has been
20 convicted of a sexually violent offense. I charge you that
21 criminal sexual conduct in the third degree is a sexually
22 violent offense.

23 Second: The respondent must prove -- The State must
24 prove beyond a reasonable doubt that Mr. Burris suffers
25 from mental abnormality or personality disorder that makes

CHARGE TO THE JURY:

-143-

1 him likely to engage in acts of sexual violence if not
2 confined in a secure facility for long-term control, care,
3 and treatment.

4 Inherent in these two elements is that the State must
5 prove the requirement that the respondent's mental
6 abnormality or personality disorder causes him quote
7 serious difficulty in controlling his behavior end quote.

8 In other words, the State must prove beyond a
9 reasonable doubt that Mr. Burris suffers from a mental
10 illness from which he cannot sufficiently control without
11 the structure and care provided by a mental health
12 facility, rendering him otherwise likely to commit a
13 dangerous act.

14 In order for you to better understand these elements I
15 am going to define some of the terms I have used.

16 The term mental abnormality: This means a mental
17 condition affecting a person's emotional or volitional
18 capacity that predisposes the person to commit sexually
19 violent offenses. This mental abnormality or personality
20 disorder must cause Mr. Burris serious difficulty in
21 controlling his behavior.

22 The second phrase that I'm going to define for you is,
23 likely to engage in acts of sexual violence. This phrase
24 means that the person's propensity to commit acts of sexual
25 violence is of such a degree as to pose a menace to the

CHARGE TO THE JURY:

-144-

1 health and safety of others so that he is dangerous to
2 others.

3 I remind you that the burden of proof is on the State
4 to prove to your satisfaction beyond a reasonable doubt
5 that Mr. Burris has been convicted of a sexually violent
6 offense, and, that he also suffers from a mental
7 abnormality or personality disorder that makes him likely
8 to engage in acts of sexually violent -- sexual violence if
9 not confined in a secure facility for long term control,
10 care, and treatment.

11 If the State carries it's burden and convinces you
12 that beyond a reasonable doubt as to these two elements, it
13 is entitled to a finding that Mr. Burris is a sexually
14 violent predator. If the State does not meet that burden
15 as to one or both of these elements, Mr. Burris is entitled
16 to a finding that he is not a sexually violent predator.

17 Now as members of the jury I'll let you retire in just
18 a moment to begin your deliberation. When you first go
19 into the jury room do not start discussing the case. I
20 have to go over my charge with the attorneys. If I have
21 made an error I'll have to bring you back in and correct
22 it.

23 If not, I will send in the exhibits and the verdict
24 form which I'll go over with you in a moment, Madam
25 Forelady, and the bailiff will tell you to start

CHARGE TO THE JURY:

-145-

1 deliberating but do not start deliberating until that time.

2 And Ms. Sentor, Ms. Senter, is that correct? You will
3 stay in here when I allow them to go in just a minute
4 because you're the alternate. We won't need you any
5 further.

6 Your verdict must be unanimous, all twelve jurors must
7 agree. Once all twelve jurors have agreed on the verdict,
8 the forelady who will preside over the deliberation will
9 write the verdict, or enroll it on the verdict form that
10 I'll explain to you in just a moment.

11 You are not to base your verdict on sympathy, passion,
12 public opinion or matters outside the record. And I ask
13 that you, and direct you to fairly and impartially weigh
14 all the evidence in this case before reaching your
15 unanimous verdict.

16 Now, there are on the verdict form, Madam Forelady,
17 that you will have in the jury room with you, there are two
18 options. You will put a check or an X in front of the one
19 the jury determines to be the correct verdict in this case.

20 The order they're in is of no importance. I have to
21 put 'em in some order so I always put 'em in this order.
22 They got to be in some order. The sentence proceeding the
23 two choices says, we the jury unanimously answer the
24 question as follows: The question being as Petitioner, the
25 State of South Carolina proven beyond a reasonable doubt

CHARGE TO THE JURY:

-146-

1 Gary Lee Burris is a sexually violent predator under the
2 *South Carolina Sexually Violent Predator Act*.

3 If the State has proven this, to your satisfaction
4 unanimously beyond a reasonable doubt, you will put a X in
5 front of the first -- X or check -- in front of the first
6 line that says yes, Gary Burris is a sexually violent
7 predator.

8 If the State has failed to prove Mr. Burris to be a
9 sexually violent predator, as I have defined that to you
10 beyond a reasonable doubt, you would put an X or a check on
11 the second line that says, no, Gary Lee Burris is not a
12 sexually violent predator.

13 There is a place for you to sign and a place to date.
14 Today's date is the 5th. Now I'm gonna let you go to the
15 jury room but do not start deliberating as I have to go
16 over my charge with the attorneys.

17 (JURY EXITS COURTROOM FOR DELIBERATIONS AT 10:40 AM.)

18 THE COURT: I'll be with you in just one minute.

19 Anything from the State regarding the charge?

20 MR. BOGLE: No, your Honor.

21 THE COURT: From Defense?

22 MRS. BROWDER: No, sir.

23 THE COURT: All right. Check the verdict form and the
24 exhibits and make sure they're correct and send them in.

25 And, Ms. Sinter, is that -- Am I getting it right?

1 MS. SINTER: That's right.

2 THE COURT: Okay. You're through for the week. You
3 can leave, or you can stay if you wish, but you'll be
4 mailed a check. Do you need an excuse to take to work or
5 anything?

6 MS. SINTER: I do.

7 THE COURT: All right. Would you go by the clerk's
8 office on the first floor and they'll give you -

9 Oh, Ms. Foster will give you one here. How about
10 that?

11 (ALTERNATE JUROR DISMISSED AT 10:41 A.M.)

12 THE COURT: All right. We'll be at ease.

13 MR. BOGLE: Judge, we've examined the exhibit and the
14 verdict form and they appear to be correct.

15 THE COURT: All right. Give 'em to Mr. Boyd and he'll
16 get 'em cranked up.

17 MR. BOGLE: Thank you.

18 (COURT AT EASE AT 10:41 A.M.)

19 (COURT BACK IN SESSION AT 11:21 A.M.)

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

21 I understand the jury has reached a verdict.

22 Is the State ready?

23 MR. BOGLE: Yes, your Honor.

24 THE COURT: Defense ready?

25 MRS. BROWDER: Yes, your Honor.

VERDICT:

-148-

1 THE COURT: All right. Bring in the jury.

2 (JURY REENTERS COURTROOM AT 11:23 A.M.)

3 THE COURT: Madam Forelady, I understand the jury has
4 reached a verdict.

5 MADAM FORELADY: Yes, we have.

6 THE COURT: If you'll hand it to the bailiff he'll
7 hand it up to me.

8 (VERDICT RECEIVED UP BY THE COURT.)

9 MADAM CLERK: In the *State of South Carolina, County*
10 *of York, in the Court of Common Pleas, Case No. 2017-CP-46-*
11 *01793 in the Matter of the Care and Treatment of Gary Lee*
12 *Burris*, we the jury unanimously answer the question as
13 follows:

14 Yes, Gary Lee Burris is a sexually violent predator,
15 signed by Foreperson Sharon C. Newton, on December 5th,
16 2017.

17 Ladies and gentlemen, if this is your verdict, please
18 indicate by raising your right hand?

19 Let the record reflect all jurors affirm the verdict.

20 (ALL JURORS AFFIRMED VERDICT BY RAISING THEIR RIGHT
21 HANDS.)

22 THE COURT: Anything from the State before the jury is
23 dismissed?

24 MR. BOGLE: No, your Honor. Thank you.

25 THE COURT: Anything from Defense?

1 MRS. BROWDER: No, sir.

2 THE COURT: Thank you for your help. This concludes
3 your work for the week. And I hope all of you have a good
4 holiday season. Thank you so much. You'll be mailed a
5 check. If you need -- Do any of you need an excuse to take
6 to work or anything?

7 (NO RESPONSE.)

8 THE COURT: Thank you.

9 (JURY DISMISSED AT 11:25 A.M.)

10 THE COURT: The jury is dismissed. Anything from the
11 State?

12 MR. BOGLE: May I approach, your Honor?

13 THE COURT: Yes, sir.

14 MR. BOGLE: This is an order of commitment.

15 THE COURT: Before I sign the order, anything from the
16 Defense?

17 MRS. BROWDER: Your Honor, at this time I would just
18 make a motion for a new trial based on the fact that we
19 don't believe the jury could have gotten that conclusion
20 based on the testimony of Doctor Maddox.

21 THE COURT: All right. I'll over rule the motion.

22 I believe it was a case where the -- Your closing
23 arguments made a lot of very good pointed points from which
24 a jury could reach the verdict other than what they did,
25 but I feel that the evidence supports the verdict so I deny

1 that motion.

2 And I signed the order.

3 MR. BOGLE: Thank you, your Honor.

4 THE COURT: Thank you both for your courtesies.

5 MR. BOGLE: What I will do, I will get it filed. I'll
6 take it down to the jail and give it to them. I'll also
7 give them the number for the contact person at the
8 Department of Mental Health because they have to call ahead
9 and set up a time to bring him down there.

10 It takes a couple days if that.

11 THE COURT: Okay.

12 MR. BOGLE: You got to call ahead of time.

13 THE COURT: Thank you. That's it for this issue.

14 We got annual reviews at two o'clock.

15 MR. BOGLE: Yes, sir.

16 THE COURT: Thank you.

17 (COURT IN RECESS AT 11:26 A.M..)

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 4th and 5th days of December, 2017.

I certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda S. Nelson

Wanda S. Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

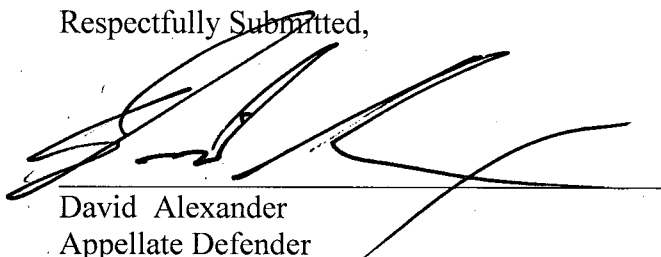
My Commission Expires: 1/21/2021

DATE: January 20, 2018

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 31st day of July, 2018.

RECEIVED
JUL 31 2018
SC Court of Appeals