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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Alison Renee Lee, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT OF
CHRISTOPHER TAFT,

APPELLANT

APPELLATE CASE NO. 2011-199986

RECORD ON APPEAL

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SC Court of Appeals

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
(SEALED EXHIBITS C & D OF RETURN TO MOTION FOR SUMMARY JUDGMENT)
(SEALED COURT EXHIBIT #1)

1 State of South Carolina) In the Court
2 County of Richland) Of Common Pleas

DOCKET NO.: 2010CP4004923

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7 In the matter of)
8 the care and treatment of) Transcript of Record
9 Christopher Taft)

10
11 March 2, 2011
12 Columbia, South Carolina

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14
15 B E F O R E:

16 The Honorable Alison R. Lee, Judge.

17
18 A P P E A R A N C E S:

19 Lloyd V. Flores, Jr., Assistant Attorney General
Attorney for the State

20 Rowland P. Alston, III, Esquire
21 Attorney for the Defendant

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24 Brenda J. Sigwald, Circuit Court
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14 (REPORTER'S NOTE: There were not exhibits

15 entered during this hearing.)

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MOTION HEARING

1
2 THE COURT: This is Docket No. 2010CP404923, State
3 versus Christopher Taft -- In the care and treatment of
4 Christopher Taft. The State is represented by Lloyd Flores
5 and Christopher Taft is represented by Rowland Alston, III.

6 We are here on a request, I believe it was made by
7 the State, to continue any proceedings related to the care
8 and treatment of Mr. Taft, pending additional evaluation
9 and that was objected to by Mr. Taft through his counsel;
10 and so I set a hearing for us to be able to discuss this
11 matter.

12 So let's start off with Mr. Flores. If you will go
13 ahead and present information about this particular matter
14 and your request.

15 MR. FLORES: Yes, Your Honor. This case was filed
16 July 27th, 2010, here at Richland County pursuant to the
17 Sexually Violent Predator Act. An initial probable cause
18 order was signed by Your Honor August 13th, and
19 subsequently filed with the clerk's office August 17, 2010.

20 Mr. Alston was appointed counsel for Mr. Taft on
21 September 21st of 2010. Mr. Taft maxed -- completed his
22 sentence with the Department of Corrections on October 1st
23 of last year, and a probable cause hearing was held in this
24 matter on October 6, ordering that an evaluation be
25 performed by a court appointed evaluator, Dr. Rebecca

1 Jackson with the Department of Mental Health.

2 THE COURT: Let me ask, is Dr. Jackson a forensic
3 psychiatrist or psychologist.

4 MR. FLORES: She is a forensic psychologist. Her
5 official title with Department of Mental Health is Chief
6 Psychologist, and she has been qualified by the Courts of
7 this State to be an expert in forensic psychology.
8 Following the receipt of Dr. Jackson's report on November
9 19th of last year, that report was viewed by the Office of
10 the Attorney General, and it was determined that the office
11 would retain Dr. Dwire, then of the University of South
12 Carolina School of Medicine in Columbia, to perform a
13 subsequent evaluation as permitted by Code Section
14 44-48-90(c) of the amended sexually violate predator act
15 from last May, which permits either the State or the person
16 being evaluated to retain a qualified expert to perform a
17 subsequent evaluation.

18 Following his retention in this case on November
19 30th, Dr. Dwire's employment situation changed such that he
20 was no longer employed by the University of South Carolina
21 School of Medicine. He is currently employed now by the
22 Medical University of South Carolina in Charleston. As a
23 result of his change of employment and the holiday season,
24 Dr. Dwire has been unable to finish arranging and
25 finalizing his laboratory situation there in Charleston.

1 As a result, he has informed me -- he has had to
2 seek out other laboratories with testing equipment and
3 other locations for evaluations during that time. However,
4 in a telephone conversation that I had with Dr. Dwire
5 earlier today, he is finalizing the setting up of his
6 laboratory this week and a week of quality control testing
7 will go on next week for insuring that the equipment is
8 functioning within his laboratory.

9 He's also informed me that he can begin conducting
10 initial records review of Mr. Taft's case by the week of
11 March 13th. I'd like to place on the record that the State
12 has retained Dr. Dwire in eight cases currently. Mr. Taft
13 was the sixth on that list as of last November. In cases
14 prior to this, In the matter of Dennis Gibbs and In the
15 matter of William Green, Dr. Dwire agreed with Department
16 of Mental Health's diagnosis or the opinion and those cases
17 were dismissed.

18 The third case, In the care and treatment of Allen
19 Burns, was sent back to the Department of Mental Health
20 based on a subsequent conviction of Mr. Burns. In the
21 matter of the care and treatment of Matthew Cox, and In the
22 matter of the care and treatment of Shane Taylor are
23 currently being reviewed by Dr. Dwire and a second
24 individual who is associated with his lab, Dr. Bill
25 Millbury, who will be a member of Dr. Dwire's lab.

1 He's currently working with him on conducting
2 evaluations pursuant to this act. He is a licensed
3 forensic psychologist and he will also continue to do -- he
4 will begin to do evaluations through Dr. Dwire, such that
5 Mr. Taft's evaluation is now the third or the next up in
6 line for Dr. Dwire in this situation.

7 I'd also like to bring to the Court's attention --
8 I mentioned in the matter of the care and treatment of
9 Dennis Gibbs, it was a case out of Florence County,
10 2010CP21725. A hearing was conducted recently under
11 similar circumstances as this one seeking a continuance or
12 seeking to close the case. On January 7th of this year.
13 In that case, the State filed it's petition on March 11th,
14 2011, and an ordered evaluation was obtained following a
15 hearing on May 13th of 2010. Dr. Jackson was again the
16 Court appointed evaluator in that case and she completed
17 her report on July 13th.

18 Subsequent to that, Mr. Gibbs was released from the
19 Department of Corrections on August 1st, and remained in
20 custody with the Florence County Detention Center pursuant
21 to the act. Dr. Dwire was also retained in that matter. A
22 continuance was issued on October 1st because Dr. Dwire had
23 not completed the evaluation within the 90 day limit. That
24 was issued without a hearing. Subsequent to that,
25 Mr. Gibbs did file a motion for summary judgment or in the

1 alternative for a speedy trial in November 2010. That
2 hearing on January 7th of this year, Judge Nettles
3 ordered -- he did not deny or address the summary judgment
4 motion, but he did set a timeline for Dr. Dwire to complete
5 the evaluation. From that hearing he completed -- ordered
6 Dr. Dwire to have an evaluation completed within 45 days of
7 the hearing. I would report that Dr. Dwire did complete
8 that. That case as I mentioned was subsequently dismissed.

9 I bring that to the Court's attention, not as
10 precedent, but as something that has happened in a case
11 similar to this one. The State -- we would contend we are
12 not seeking an open-ended continuance in this matter. In
13 the past, the office has -- in the past there have been
14 continuances that have not set strict deadlines. It is not
15 the practice of this office to continue that and we would
16 entertain at least a time-limited continuance if a
17 continuance is granted in this case.

18 THE COURT: So when do you claim that Dr. Dwire
19 would be able to complete this evaluation?

20 MR. FLORES: I would submit that Dr. Dwire should
21 be able to complete his evaluation no later than May 15th
22 of this year, yes, ma'am.

23 THE COURT: And when, again, was Mr. Taft released
24 from the Department of Corrections?

25 MR. FLORES: On October 1st of 2010. He was

1 released into the custody of the Richland County Detention
2 Center, and that was on the initial probable cause order.

3 THE COURT: Okay. Yes, sir, Mr. Alston?

4 DEFENSE ATTORNEY: Yes, Your Honor, may it please
5 the Court. I handed up before the hearing began, a memo
6 with my return and they're both very thorough and I stand
7 by all positions on them and to the extent they're not
8 expressed by me today, I'm not waiving them.

9 I think it's probably best that I just cut to the
10 chase on this. I think this is really inexcusable. My
11 client has remained incarcerated at Alvin S. Glenn since
12 the beginning of October. I was sent, after the initial
13 evaluation was issued declaring my client was not an SVP
14 under the statute, I received correspondence from the
15 Attorney General informing they had retained Dr. Dwire.

16 Nothing else was done. It's my position, Your
17 Honor, that if they had problems with their expert getting
18 situated in a laboratory or whatever then they should have
19 retained another expert to have the thing done. I think
20 the statute is clear that the trial must occur within 90
21 days of the release of the initial report. That hasn't
22 happened. I do not think that the reasons that Mr. Flores
23 has given Your Honor today constituted good cause in this
24 context.

25 Again, my client has remained incarcerated. He --

1 I cannot think of any greater prejudice to a civil litigant
2 than to remain incarcerated and have his liberty deprived
3 without the opportunity to finally clear his name of these
4 allegations. I just don't think there's any excuse to
5 continue the case and there is case law that says where the
6 statutory timelines expire and a continuance has not been
7 granted, the proper thing for a civil litigant to do is to
8 move to dismiss and that's what I've done in this case.

9 And for that reason, Your Honor, and for all the
10 reasons I've contained in my memo and my return, I ask you
11 respectfully deny their motion and dismiss this cause of
12 action against my client so he can return home to his
13 family.

14 THE COURT: Mr. Flores, given the fact that
15 Mr. Taft has been examined in some form or fashion by two
16 other forensic psychologists, why is there a need to have
17 yet a fourth person to evaluate it to make a determination
18 or conducting an evaluation given that there are two others
19 who examined him before Dr. Jackson; and why is that not
20 enough to at least create a jury issue, and therefore, for
21 him to be able to have a trial on the issue and ultimately
22 have the jury make the decision as to whether or not he
23 needs more treatment.

24 MR. FLORES: Yes, Your Honor. I agree that there
25 is, as my return does point out, there are the two

1 evaluations performed by Mr. -- by Dr. McKee and Dr. Risers
2 prior to Mr. Taft's guilty plea. The State has followed
3 the statutory guidelines in that once the Court appointed
4 evaluator came back with a recommendation that he should
5 not be committed to the program, we then just follow the
6 statutory guideline to get a subsequent evaluation.

7 We would submit that there is a genuine issue of
8 material fact based on those two evaluations and we would
9 be -- would go to trial based on the presence of those two
10 evaluations.

11 THE COURT: So in light of that then, is the fourth
12 evaluation necessary or can I just set it for a trial?

13 MR. FLORES: Your Honor, we would like the fourth
14 evaluation only to follow the procedure as dictated by the
15 act. However, we would be -- if Your Honor would like to
16 set a trial date for this matter, then we would be more
17 than happy to try this case.

18 THE COURT: Under 44-48-90, it discusses the time
19 period for the scheduling of a trial and it also talks
20 about the appointment of an additional expert to be able to
21 evaluate the person pursuant to the act. I've read the --
22 and I've briefly read the motion for summary judgment that
23 was filed by Mr. Alston, along with his memorandum in
24 support and I believe that there was a response by the
25 State if I'm not incorrect, that I read very briefly.

1 The statute clearly says under 44-48-90, it
2 provides a timeline for when the trial should be conducted
3 and talks about that it must be done within 90 days of the
4 date of the evaluation. The expert issues the evaluation
5 as to whether the person is a sexually violent predator.
6 But in the very next section, subsection C, it talks about
7 the fact that once the Court-appointed expert issues an
8 opinion and I guess a report, then either the person or the
9 attorney general has the opportunity to retain a
10 subsequent -- another expert to perform a subsequent
11 evaluation.

12 While giving the individual that particular
13 opportunity, one of two things is envisioned by the
14 statute: Either that that evaluation would be conducted
15 within the 90 days, and therefore, a trial could be
16 scheduled or that it's foreseeable that the 90 days -- the
17 evaluation could not be done within the 90 days and it
18 would be continued on. For example, if the attorney
19 general wishes to retain another expert and the person
20 wishes to retain another expert, that can mean that the
21 time period, the 90 days would prolong.

22 Of course, the statute also provides that an
23 exception to the 90 days can be -- or that 90 days can be
24 extended by order of the Court so long as it does not
25 prejudice the person who's being evaluated.

1 I understand in this case Mr. Alston is claiming
2 that there is prejudice to Mr. Taft. I'm taking --
3 assuming that the prejudice is the fact that he has been
4 released from the Department of Corrections and that he has
5 served the sentence that was imposed upon him, that he has
6 been incarcerated in the county detention center since
7 October 1st of 2010, that there has been adequate time for
8 an evaluation to be done. It has been time for a
9 subsequent evaluation to be done. And I would agree that
10 certainly there has been sufficient time that would allow a
11 subsequent evaluation to be done.

12 I do note that the day before the 90 days was to
13 run or the 90 days for the scheduling of a trial, there was
14 a motion to continue by the State on the basis that Dr.
15 Dwire would not be able to complete the examination. And
16 that particular motion was an open-ended motion. It did
17 not provide for a time when the evaluation would be
18 conducted or completed; and of course, obviously, Mr.
19 Alston objected to that on behalf of his client.

20 I'm not necessarily convinced that a subsequent
21 evaluation would shed any additional light, given the fact
22 that now Mr. Taft has been evaluated by at least three
23 forensic psychologists, two of whom have come to the same
24 conclusions and with one psychologist who's sole
25 determination was to determine whether in her opinion

1 Mr. Taft met the definitions of a sexually violent predator
2 under the act. She has opined that he does not meet that
3 criteria.

4 I do note that the two other forensic psychologists
5 who have examined Mr. Taft, it appears prior to trial or
6 prior to plea or prior to any adjudication of guilt to the
7 underlying charges and so I'm not sure of the scope -- the
8 complete scope of their psychological evaluations, but they
9 did in their reports give some opinions as to whether
10 Mr. Taft's conduct is consistent with that of someone who
11 would have a mental abnormality or a personality disorder
12 that would make it such that he would be like unable to
13 control his urges or impulses, and would make it likely
14 that he would commit acts of violence against individuals
15 of a sexual nature.

16 I think that an evaluation -- I will allow the
17 fourth evaluation, but I'm going to set time limits on it
18 and if it cannot be completed in that time period, I will
19 also -- at this time set a trial date. If I believe that
20 certainly -- I agree with Mr. Alston that Dr. Dwire has had
21 ample opportunity to be able to evaluate Mr. Taft from the
22 records in the file. It looks like he was retained at the
23 end of November and here it is some -- more than 90 days
24 later or about 90 days later and Mr. Taft still has not
25 been evaluated.

1 Certainly, I'm sure that Dr. Dwire could have
2 conducted an evaluation at some other location, and he
3 could have done so within the appropriate parameters for
4 appropriate forensic psychological examinations and been
5 able to meet those standards within the 90 days that he's
6 been given so far. I think an additional 60 days at the
7 most -- in essence up until May 2nd should be adequate for
8 him to be able to complete the evaluation, even if he's not
9 had the opportunity to be able to have a lab up and
10 operating that he's certainly had the opportunity to review
11 the documentation in the file and the reports on Mr. Taft.

12 He's had ample opportunity to do that, to the
13 extent that he needed to conduct testing and I understand
14 the need for a lab to do that, but certainly he could have
15 reviewed all of the labs and reports up to this point and
16 be ready to conduct testing once his lab is available or he
17 could have used another lab as I stated earlier. I think
18 it would be appropriate for a trial to be set and I would
19 ask that -- of course, these cases have priority on the
20 civil roster because of the nature of the fact that the
21 individual generally remains incarcerated until such time
22 as a date for a trial or until there's a report or an
23 agreement otherwise that he does not meet the standards.
24 What I'm hearing from the State is that -- strike that.

25 I'll set a hearing date for -- I'm just trying to

1 make sure there's not a conflict with the date certain
2 schedule. It can be scheduled May 23rd. Which means it
3 will already be on the trial roster, which will mean it
4 will be the first case up on May 23rd.

5 To recap, that's the evaluation has to be conducted
6 by May 2nd. The report needs to be issued and presented to
7 opposing counsel no later than May 9th and trial on May
8 23rd. I'll ask the State to prepare the order to that
9 effect and that Mr. Taft will remain in the custody of the
10 Alvin S. Glenn Detention Center pending the issuance of
11 that report and trial or until further order of the Court.

12 Is there anything else we need to take up at this
13 time? Yes, sir?

14 MR. ALSTON: Yes, ma'am, just So the record is
15 clear, I just want to make sure -- technically we're here
16 first for the motion for continuance, which I understand
17 you have granted. It's my understanding that a basis for
18 the granting of a motion for continuance has to be good
19 cause and that my client is not substantially prejudiced.
20 And I just want the Court to please tell me again, what is
21 the basis and lack of substantial prejudice for this
22 motion?

23 THE COURT: I think the good cause is that because
24 the statutory scheme allows that there can be a subsequent
25 evaluation, the statute is not clear that in light of the

1 request for subsequent evaluation that the trial has to
2 take place, whether or not it's mandatory within the 90
3 days as you've previously argued, that under subsection B
4 it says shall or must and so because of that, in my view
5 it's not clear that it's a requirement that the subsequent
6 evaluation be done within the 90-day time period and I
7 still think that that leaves open the opportunity, for
8 example, you know, that there could be a request made by --
9 the statute refers to them as a person.

10 I hate to call them person, but the person who's --
11 the respondent in the petition, that is the person who is
12 being evaluated. That gives opportunity for that person to
13 subsequently ask for the evaluation as well. In terms of
14 the lack of prejudice, I understand certainly -- I'm very
15 cognizant of the fact that Mr. Taft has been incarcerated
16 for an additional six months and I'm very sympathetic to
17 that. And basically what I've heard the State say is that
18 they would intend to ask for a jury trial in light of the
19 information that we have at this particular point.

20 I also include the information from Dr. McKee,
21 Jeffrey McKee, as well as Dr. Risers. I think it would be
22 appropriate to have a trial on this matter to address those
23 issues, but in doing that as well, I'm also giving them the
24 opportunity as well to have the evaluation completed by Dr.
25 Dwire, and I think the statute allows for me to do that.

1 And I'm setting a time period on that to reduce any
2 further prejudice to Mr. Taft. I do agree with you, Mr.
3 Alston, that once it was known that Dr. Dwire could not
4 perform it within a short period of time, there should have
5 been some steps taken by the State in order to either
6 change to another evaluation -- to have another person
7 conduct the evaluation or to move sooner. And upon my
8 receipt that you had objected to that request for
9 continuance is when I scheduled this hearing, and I think
10 that was within a week's time or maybe a little bit longer
11 than a week.

12 As soon as I became aware that there was obviously
13 some dissension I felt it was appropriate to have a hearing
14 on it. And so currently, that's where I stand.

15 MR. ALSTON: Okay. Just two more things for the
16 record.

17 THE COURT: Yes, sir.

18 MR. ALSTON: First, I believe you indicated earlier
19 that it was your position that the motion for continuance
20 was timely. I respectfully disagree. Mr. Boone sent me a
21 letter, it was filed on December 9th stating that the
22 date -- the 90 day clock of disposing of this trial or
23 otherwise begins November 19th.

24 Your Honor, I'm no mathematician, but I counted the
25 calendar dates.

1 THE COURT: Yes, sir.

2 MR. ALSTON: And that was February the --

3 THE COURT: What I have is a clocked copy on
4 February 18th. It was clocked in the clerk's office.

5 MR. ALSTON: Yes, ma'am, and I've got a -- in my
6 memo, I state that the deadline, the 90th day is February
7 16th. And I would contend that the State has to have
8 moved -- well, first of all I contend that the State has to
9 have a continuance granted within the 90 days.

10 If the Court doesn't agree with that, I have to
11 contend that they at least have the obligation to file the
12 motion within 90 days. That hasn't been done here and I --
13 I respectfully disagree.

14 I think the statute is clear and, Your Honor, I'd
15 also like to note -- I take exception to your consideration
16 of the prior reports by psychologists to his criminal case.
17 This is an entirely separate civil action. The burdens are
18 totally on the State against my client and I don't think
19 you can rely on things that happened years past to defeat
20 that burden or skimp their obligation under the statute.

21 There's a reason for the 90 day -- there's
22 reason -- there's a requirement for an initial examination
23 and a 90 day time period and that's precisely for this
24 circumstance so that these cases will not languish and it
25 my position this case needs to be dismissed for that very

1 reason.

2 THE COURT: Yes, sir. Any response to that
3 Mr. Flores?

4 MR. FLORES: Your Honor, we feel this motion is
5 timely. In the case In the matter of the care and
6 treatment of James Miller, where the motion for continuance
7 did not have to be granted within the 90 days. We feel
8 that we filed it in a timely fashion such that it can be
9 granted at this hearing today. We would submit that the
10 evaluations that are contained from Dr. McKee and Dr.
11 Risers are very specific, although perhaps not in the scope
12 defined to be under this act.

13 I would point out Dr. McKee's statement from his
14 evaluation, It is my opinion that he, Mr. Taft in this
15 case, does meet SC's statutory definition of a sexually
16 violent predator, and I would submit that that's adequate
17 enough at this point to go to trial -- for a jury trial.

18 THE COURT: And as I stated, I considered -- that
19 information as to the two previous evaluations, I
20 understand that it was not specifically an evaluation for
21 the purposes of determining whether Mr. Taft met the
22 criteria under the act. To the extent that it provided
23 opinions that would be consistent, I think that gives rise
24 to at least an arguable question and certainly to the
25 extent that those individuals had the opportunity to meet

1 with Mr. Taft and to discuss his history and psychological
2 treatment and that they in fact performed psychological
3 tests which would be the same or similar tests which would
4 have been performed for purposes of determining whether he
5 meets the criteria under the Sexually Violent Predator Act,
6 I think it's relevant information and certainly to the
7 extent that if they were called in a trial, you would have
8 the opportunity to cross-examine them on their findings,
9 but I think that I can consider those findings with respect
10 to probable cause, which has already been determined; and
11 going forward with questions of fact that are for a jury to
12 make the decision as to whether or not he meets the
13 criteria under the act.

14 That's the only question that the jury will have to
15 decide. So I think that they were properly considered and
16 from my reading of when the application, when the request
17 for continuance was filed, while it may have been on the
18 last day of the period, I think it was in a timely manner
19 and I think under the rules, if a motion is filed it does
20 not require an order directly at the time that it was filed
21 in order to be able to extend the time period.

22 Is there anything further?

23 MR. ALSTON: No, Your Honor.

24 MR. FLORES: No, ma'am.

25 THE COURT: Again, Mr. Flores, I'll ask that you

1 draft the order. Of course, sent it to Mr. Alston for
2 review. If I can get it by Friday, please.

3 Or I tell you what, if you send it to me and send
4 it to Mr. Alston, I will wait until Friday. You can
5 provide me with comments directly, as well as a copy to
6 Mr. Flores and I'll consider those in connection with -- so
7 that it's not unduly delayed.

8 MR. ALSTON: Yes, ma'am.

9 THE COURT: Is there anything else we need to take
10 up on this matter?

11 MR. FLORES: No, Your Honor.

12 THE COURT: Thank you.

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14 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 2nd day of March, 2011.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 3 through 21 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 20th day of December, 2011.

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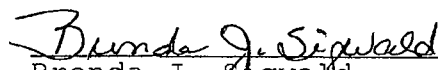
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Brenda J. Sigwald,

Court Reporter and Notary Public

For the State of South Carolina

My commission expires

January 4, 2020.

State of South Carolina.,)	In the Common Pleas
)	Court of Columbia
)	
)	Case No.: 2010-CP-40-04923
)	
County of Richland.,)	
Christopher Taft.,)	
)	
Plaintiff,)	
)	
VS.)	Transcript of Record
)	
State of South Carolina.,)	
)	
Defendant.)	
)	

May 23, 2011
Columbia, South Carolina

B E F O R E:

Honorable Allison Renee Lee., Judge, and a jury.

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

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Wanda Nelson
Circuit Court Reporter
Sixteenth Judicial Circuit

1 (ON THE RECORD MONDAY, MAY 23, 2011, AT 02:50 PM.)

2 THE COURT: This is Docket Number 2010-CP-40-0-4-9-2-
3 3, State of South Carolina versus Christopher Taft, in the
4 matter of the care and treatment of Christopher Taft.
5 Plaintiff is represented by James Bogle and Lloyd Flores.
6 Christopher Taft is represented by Roland Alston, III.

7 I understand that we have some pretrial motions that
8 we need to take up. Let's start with the motions by the
9 State.

10 MR. FLORES: Yes, Your Honor. We have two; we have
11 submitted two motions in limine. The first addresses --
12 the State move the Court prohibiting any reference to the
13 location or residence where respondent would received sex
14 offender treatment should he be committed. As the Court
15 knows the sexual violent predator treatment program is
16 located at the Broad River Road facility, Correctional
17 Institute. It's by an agreement between the Department of
18 Corrections and the Department of Mental Health. It is
19 fully staffed and run by the Department of Mental Health.
20 The Unit was formally known as "Death Row" before the death
21 row was off of the Broad River facility. The State would
22 prohibit or prevent any testimony being heard about what --
23 that this facility used to be death row or the type of
24 other, you know, other inmates, you know, inmates who were
25 -- I'm sorry, residents who are housed at that facility as

1 well as paid the general conditions of that location
2 because we feel it's nor relevant under Rule 401. And it
3 also, the approbative value of that evidence is
4 substantially outweighed by the prejudice to the State
5 under Rule 403.

6 THE COURT: Mr. Alston.

7 MR. ALSTON: Yes, ma'am, may it please the Court.
8 Roland Alston for Christopher Taft. Our objection to that
9 is, Your Honor, we don't necessarily have an objection to
10 not referring to it as "Death Row". But to the extent the
11 jury cannot hear where he's going to be meaning Broad River
12 or a facility administered by the Department of
13 Corrections. We think that's very relevant to their
14 assessment of guilt or innocence in this case because the
15 definition of a sexually violent predator calls for someone
16 who has a condition that needs treatment in a secure
17 facility.

18 And I don't know how a jury can objectively determine
19 if such a secure facility is necessary for my client if
20 they do not hear some sort of evidence about the nature of
21 that secure facility.

22 THE COURT: Specifically what kind of testimony do you
23 intend to elicit?

24 MR. ALSTON: Well, Your Honor, the only testimony I
25 intend to elicit is where does someone like Mr. Taft, or

1 where would a sexually violent predator go to in terms of
2 confinement for treatment. And of course I can't control
3 how the witness is going to testify, but I think a simple
4 question like that is relevant to make for the jury to
5 determine whether or not my client needs to go to a secure
6 facility as called by the statute.

7 THE COURT: Any response, Mr. Flores?

8 MR. FLORES: Yes, Your Honor, just briefly.

9 As far as a secure facility, the only real question
10 before the jury is whether or not Mr. Taft fits that
11 definition of a sexually violent predator. Whether he's
12 committed a sexually violent offenses and if he suffers
13 from a mental abnormality that makes him more likely to
14 commit sexually violent offenses.

15 The where location the State feels is not relevant to
16 the issues in this case. I think there will be mention
17 that he will be at the, if he were to be committed, at the
18 Sexually Violent Predator treatment program but it is a
19 facility which may be housed at the Department of
20 Corrections but its completely and entirely run by the
21 Department of Mental Health. And if that distinction is
22 not made then it would be prejudicial to the State in the
23 sense that it would appear that corrections has
24 incarcerated him again and that is not the purpose of this
25 act. It is a civil commitment in it's entirety.

1 THE COURT: I think that there can be some testimony
2 about the type of facility but I would limit it to the fact
3 that it is a locked facility in that the residents are not
4 -- they are not free to come and go as they see fit; that
5 they are within a locked facility that's run by the
6 Department of Mental Health. I don't think that beyond
7 that to mean, I guess a description of their, the
8 description that there are bars on the windows if that's
9 appropriate or though its behind a locked fence with barbed
10 wire, I don't find that, that's objectionable. But
11 considering that it's not run by the Department of
12 Corrections and even though it may be housed on the grounds
13 of the Department of Corrections, I don't think that,
14 that's appropriate, that the facility would be run by the
15 Department of Mental -- is run by the Department of Mental
16 Health. And the statute provides that a person is
17 committed because they need long term care and treatment in
18 a secure facility and that's part of what's required for
19 them to determine if they need -- that they meet the
20 definition of a sexually violent predator under the act.
21 So I think there can be testimony that it is a locked
22 facility, that they are not free to come and go, and that
23 it's run by the Department of Mental Health, but beyond
24 that I would limit any testimony.

25 MR. FLORES: Your Honor, I understand your ruling, so

1 no reference to the Department of Corrections?

2 THE COURT: Exactly.

3 MR. FLORES: Thank you, Your Honor, please note my
4 exception to your ruling for the record.

5 THE COURT: Certainly. And that's because it's not
6 the Department of Corrections. I understand your position
7 that it may be on the grounds of the Department of
8 Corrections, but the whatever agreement between the State
9 it is still a facility that's run by the Department of
10 Mental Health and it is a secure facility under the
11 Department of Mental Health's responsibility. That's all
12 my ruling on that. Your next motion.

13 MR. FLORES: Yes, Your Honor. The second motion is
14 based on, obviously we don't know that Mr. Taft will or
15 won't testify at this point, but the State would move in
16 the case that Mr. Taft does decide to testify at trial
17 today that he be prohibited from invoking his right against
18 self incrimination regarding any prior convictions to which
19 he has pled guilty. The convictions themselves are
20 completed, those acts can be testified to in this capacity,
21 he's not incriminating himself because he's already pled
22 guilty with regards to those crimes.

23 In the alternative, if Mr. Taft would seek a jury
24 instruction that would infer he has a constitutional right
25 not to testify at this proceeding we would oppose that jury

1 instruction if it were to occur at that time.

2 THE COURT: Mr. Alston.

3 MR. ALSTON: Yes, ma'am. First I want to -- I know
4 I've gotten a proposed witness list from the State, and I
5 just wanted to know the State's position; are they not
6 wanting to call my client or attempt to call my client in
7 their case in chief?

8 MR. FLORES: We will not call Mr. Taft in our case in
9 chief.

10 MR. ALSTON: Okay. Well as to their motions, it's my
11 understanding that if someone in Mr. Taft's situation is
12 going to testify on something that could incriminate him he
13 may be required to have some sort of immunity. I don't
14 know what he's going to testify to but if they are going to
15 probe on prior bad acts or prior convictions I don't want
16 his testimony in this trial to be used against him or
17 potentially be used against him in a future criminal
18 proceeding.

19 And as to the adverse inference charge, Mr. Taft is
20 currently, and I'll get into this later, I believe a
21 probationer. He's technically a criminal defendant. So I
22 think the adverse inference charge is not applicable to
23 this case. And I submit it's not applicable in this case
24 in any event.

25 THE COURT: And I may very well disagree with you

1 relating to his current status. I understand from reading
2 some of the documents that if Mr. Taft were not being held
3 pursuant to the provisions of the Sexual Violent Predator
4 Act that he would in fact be on probation, and I gather
5 that from reading your materials, but given the fact that
6 this is a civil proceeding not a criminal proceeding, I
7 don't believe that treating him as a probationer would be
8 proper. I understand these are not proceedings that relate
9 to his status as a probationer, these are not proceedings
10 that seek to revoke his probation that he may be under. It
11 is not -- We're not having any hearings relating to his
12 status as a probationer, so I don't think that while there
13 is a higher burden of proof in this matter than in most
14 civil cases, I don't view this as being a criminal case or
15 those that would deprive his liberty pursuant to criminal
16 provisions. And so, I'm not sure exactly what Fifth
17 Amendment, what claims could be raised or could be
18 addressed that would violate of any Fifth Amendment right
19 against self incrimination.

20 And it sounded like that, Mr. Alston, you believe that
21 he could make some statements that you're afraid that the
22 State would be able to use against him to create additional
23 criminal charges against him separate and apart from those
24 that - -

25 MR. ALSTON: Yes, ma'am. I mean if -- Yes, ma'am. I

1 mean the rules of evidence I believe state that for
2 criminal sexual conduct, prior criminal sexual conduct acts
3 can come in against him and I don't know what he's going to
4 testify to but as his attorney I don't want the risk of
5 anything him saying at this trial be it on cross or direct,
6 or especially cross, to incriminate him for some criminal
7 charge in the future. And I just want to make sure that,
8 that was ruled on.

9 THE COURT: What's the State's position on that?

10 MR. FLORES: We are clear that Mr. Taft does have a
11 right, a Fifth Amendment right, if he were to take the
12 stand to not answer anything that would incriminate him of
13 future events and that's not, specifically not what we were
14 addressing in this motion. We specifically wanted to
15 address any questions or any line of questioning that may
16 come up where we are talking about his past convicted
17 behavior. He has no Fifth Amendment right to -- no Fifth
18 Amendment right or privilege not to testify about those
19 events. And so that's what the motion sought to insure
20 that, that was where the barrier was.

21 THE COURT: No matter whether it's conduct arising out
22 of either of those arrest warrants or indictments or
23 proceedings relating to those charges; the factual
24 allegations surrounding those charges?

25 MR. FLORES: That's correct, Your Honor.

1 THE COURT: What say you, Mr. Alston?

2 MR. ALSTON: I'm sorry, ma'am.

3 THE COURT: Anything in response to - -

4 MR. ALSTON: Well I just, I guess I'll address again
5 the adverse inference. I think my client is entitled to
6 that. I can't recall exactly how we worded it in the
7 motion, I don't have it in front of me, but to the extent
8 the adverse inference charge, any charge that would be
9 adverse to my client for not taking the stand to the extent
10 the State is seeking that I don't think that's appropriate.
11 I know this is a civil action but again I stand by the
12 position that he was sentenced as a criminal defendant, and
13 taking respectful exception to the Court's ruling, I don't
14 think his probationary status is lifted merely because a
15 sexually violent predator action as been commenced against
16 him. And so to that extent I would not like to have that
17 charged or I object to the State's request.

18 THE COURT: Maybe I'm confused as to how his
19 probationary status, his status as a probationer effects
20 any of the proceedings. Because I don't think that there
21 are relevant and I don't think they would affect it one way
22 or the other and so I don't understand how it comes into
23 play that he could very well be on probation.

24 MR. ALSTON: Well, Your Honor, this argument about his
25 status of whether or not he's a probationer really, for me

1 really comes into play in my motion in limine to the extent
2 its applicable here that's why I wanted to raise it and not
3 wait.

4 THE COURT: I think we'll take up any issues relating
5 to instructions as to whether or not...

6 I'm not sure at this particular point he's entitled to
7 an inference and I'll just reserve making the decision on
8 that for the time being.

9 MR. FLORES: Thank you, Your Honor.

10 MR. ALSTON: Thank you, Your Honor.

11 THE COURT: Anything further from the State on it's
12 motions?

13 MR. FLORES: Nothing further, Your Honor.

14 THE COURT: On behalf of the respondent, Mr. Alston.

15 MR. ALSTON: Yes, ma'am. Your Honor, as you may know
16 I filed a total of three motions in limine.

17 THE COURT: Yes, sir.

18 MR. ALSTON: The second and third are really kind of
19 under the first. I just want to do a house keeping
20 measure. I did not address in my memorandum prior wrongs
21 or acts under Rule of Evidence 404 or the undue prejudice
22 under 403 but I'm not waiving it, I'm still standing by
23 them.

24 THE COURT: Okay. I would prefer to take up your
25 motion relating to Doctor's Mulbry and Dwyer first.

1 MR. ALSTON: Yes, ma'am, very good. That's what I
2 wanted to do yes, ma'am.

3 THE COURT: Okay.

4 MR. ALSTON: Your Honor, I will go ahead and give my
5 understanding of what happened and we may want to call
6 Doctor Mulbry, I believe is here, to testify but I'll just
7 give you my understanding of the events as they happened.

8 As you know, Your Honor, we ordered on March the 7th
9 to have Doctor Dwyer, specifically, evaluate my client and
10 prepare a report or have him evaluated no later than May
11 2nd of this year. As in the first dead line the court
12 levied, if you're familiar with the history of the case we
13 had a hearing on that.

14 THE COURT: Yes, sir.

15 MR. ALSTON: I waited until, you know, for
16 notification from the Attorney General. On May the 2nd, or
17 on May the 9th rather, I was forwarded a report from the
18 Attorney General's Office. And the report was authored by
19 a Doctor Dwyer and a Doctor Mulbry, L. William Mulbry,
20 Junior.

21 The report was very extensive, at least one of the
22 test I specifically mentioned as not being admissible,
23 which we'll get into that later on whenever you want to,
24 but along those same lines I looked at what he was
25 subjected to. He was transported, he was evaluated for two

1 days. On at least one day he was transported down to
2 Charleston. And on one of the test which was a PPG test he
3 had an instrument attached to his genitalia that measures
4 stimuli, to measure responses to stimuli. And I didn't
5 receive any notification that any of this stuff was going
6 to happen. Of course I knew he was going to be evaluated
7 but I was never notified when, where, and under what
8 circumstances. And I didn't know and didn't expect that a
9 second professional was going to be involved in the
10 evaluation.

11 Now the State has listed Doctor Mulbry as their expert
12 contrary to what was ordered by the Court. And the
13 signatures on the report, that I got that I was told was
14 the final report, has the signatures from both Doctor Dwyer
15 and Doctor Mulbry; so their either doing one thing, they're
16 either trying to introduce the testimony of an expert who
17 wasn't authorized by the Court, or, Two: They're trying to
18 have two experts for the subsequent evaluation. And those
19 are all really separate, the methods and the people are all
20 really separate objections I have had.

21 THE COURT: Sure.

22 MR. ALSTON: The first one primarily is the fact that
23 I was not notified of any of this. Now I anticipate the
24 State is going to say well he didn't say anything about
25 when Doctor Jackson was going to do it. Well, that's true

1 but it's my position that my client does not have to pick
2 and choose when he wants to invoke his constitutional
3 rights. If he wants to invoke his rights as a litigant to
4 have or wants all his rights afforded to him as a litigant
5 and as a defendant in a sexual violent predator action it
6 can be applied to whatever he wants to. And Doctor
7 Jackson's evaluation certainly didn't involve attaching any
8 instruments to him, to his genitalia, or transporting him
9 to Charleston. So the nature of all this is part of the
10 bigger picture here.

11 Now I've already argued and I don't know if the court
12 is, I believe the Court has ruled on it, but I'll get
13 clarification if needed. But it's my position that not
14 only is he a litigant and a defendant in a sexually violent
15 predatory action, he's also a criminal defendant because of
16 the sentence imposed on him by Judge Childs. And at the
17 very least he has the statutory right to counsel at his
18 evaluation. And if he doesn't have that then I think he's
19 got a due process right to counsel. And in Washington
20 versus Washington, which I believe I gave you, and
21 Washington versus Washington referred to the fact that a
22 due process right to counsel is implicated whenever there
23 is a liberty interest involved. Well, this case is all
24 about my client's liberty interest. I mean it's the number
25 one thing that's at stake here..

1 So, it's my position, Your Honor, that not only given
2 who evaluated him, contrary to what the court ordered,
3 where he was evaluated, now many times he was evaluated,
4 how he was evaluated, as severe as that may be I was never
5 told about it. And I just don't understand how under the
6 Statute, under the Constitution, that can be tolerated or
7 permissible. He did sign a consent form, which I believe
8 I've given you a copy of. The consent form is very
9 extensive but in it no where does the consent form say that
10 he has a right to have an attorney present. It says
11 interestingly enough at the bottom of Page One, and I'll
12 read, "If you are a minor or have a legally assigned
13 guardian and power to give consent in your behalf your
14 parents or guardian may review the testing which is before
15 signing or authorizing their use as part of your
16 evaluation." No mention of an attorney. And he signed, my
17 client initialed all this stuff, a twenty-year-old young
18 man who's probably in shackles and in a jump suit, being
19 strapped to all these devices. And on Page 5, the legal
20 implications of what he initialed are astounding. "This
21 means that the evaluation physician has my permission to
22 talk with people involved in my legal case."

23 I don't understand how this can be allowed. And so, I
24 know I went into great detail in my memorandum but I'm
25 trying to make it as simple for the Court as possible for

1 the sake of time and for what really needs to be said. I
2 think my clients rights under the statute of the
3 constitution were grossly violated for having all this
4 subjected to him without me being notified or him being
5 informed of his right to have a counsel present. And for
6 that reason I'm asking to strike the report and any
7 testimony that Doctor Mulbry or Doctor Dwyer may offer for
8 all the reasons I've just stated.

9 THE COURT: I kind of view them as two separate issues
10 so let's take up what I consider to be the easier of the
11 two and that's whether Doctor Mulbry should be allowed to
12 give testimony relating to the evaluation.

13 Mr. Flores.

14 MR. FLORES: Yes, Your Honor, may it please the Court.

15 In the State's return, petitioners return to Mr.
16 Alston's motions in limine, at point -- I beg the Court's
17 indulgence.

18 At Point C, the State has laid out the situation that
19 arose following the issuance of your order of continuance
20 filed on March 7th. It's a very -- to basically summarize
21 it for the Court, at the continuance hearing the State was
22 under the impression as we are in these cases that Doctor
23 Dwyer was going to do this evaluation. He gave us his --
24 At that point in time there was no time deadline prior to
25 that hearing in which he would have had to have met.

1 deadlines. When the Court issued your order and he
2 received that order he informed our office that he could
3 not meet the deadlines imposed by that order. That order
4 was very specific that this day, May 23rd, would be the day
5 for this trial. If the State wished or desired to have an
6 independent evaluation conducted solely for this case it
7 had to have the evaluation finished by May 2nd and have
8 that report to Mr. Alston by May 9th in order that we might
9 have this trial on May 23rd.

10 The State when left with that option, Doctor Dwyer's
11 saying I can't do it within that time frame, we were left
12 with three options. The agreement that the State has for
13 Doctor Dwyer and his lab to conduct these evaluations is
14 solely through the University. We do not contract directly
15 with Doctor Dwyer, it's through, now it's through the
16 Medial University of South Carolina and we as his other
17 clients who want evaluations to be done are put on that
18 list that he has to complete. So we had three options. We
19 could -- he informed us that Doctor Mulbry, who is a
20 forensic psychiatrist with his lab, qualified to do these
21 type of sexual evaluations, and could meet the court's
22 deadlines, he could do that if we chose to go with Doctor
23 Mulbry.

24 The second option of the State was to immediately come
25 back to Your Honor asking for more time for Doctor Dwyer,

1 explaining that Doctor Dwyer has given us a new time frame
2 and that the report would not be ready until after the May
3 23rd hearing. Or we could have declined to use Doctor
4 Dwyer or the laboratory at the Medical University and
5 approach another independent evaluator in hopes that, that
6 would be completed by May 23rd. Our best option the State
7 felt was to use the services of Doctor Mulbry. We went
8 ahead and addressed that with him, he was able to meet
9 those time deadlines and to do the evaluations and produce
10 the report since that we are here today.

11 THE COURT: So, you don't view the order as saying
12 that only one specific person could conduct the
13 examination?

14 MR. FLORES: The order does specifically say I order
15 Doctor Greg Dwyer to complete an evaluation in this matter
16 by May 2nd. It does say that on I believe Page 3 of this
17 court's order granting the State's continuance. It says
18 "to avoid resonants continued detention from reaching a
19 level of substantial prejudice I order Doctor Dwyer to
20 complete his entire evaluation and respond by May 22, 2011.
21 A final report of that evaluation shall be delivered to
22 resonant's counsel by May 9th, 2011, and this matter shall
23 come to trial on May 23rd, 2011."

24 So the expressed language of the order does two
25 things. First, it says to avoid continued detention such

1 that substantial prejudice would not be suffered by Mr.
2 Taft. That's placing the May 23rd date as a concrete
3 marker in time saying that this report, or any report for
4 that matter, must be done beforehand. It was the position
5 of the State and we honestly brought that to you during
6 that hearing that Doctor Dwyer was under our understanding
7 would be the evaluator for Mr. Taft's independent
8 evaluation. We did not at that time try to hide any
9 information from the Court, we did not -- We brought that
10 truthfully because we thought that was the case. Upon
11 learning afterwards that it was not we found ourselves in a
12 very difficult position because the order was so explicit
13 as to the deadlines.

14 The statute itself says that an independent expert can
15 be had, an independent evaluator of any choosing and I
16 could positive a situation where Doctor Dwyer for some
17 reason became unlicensed during this period of time, or had
18 some kind of criminal sanctions against him and the State
19 would not want to continue it's services with him. And we
20 would be again placed into a catch twenty-two position.

21 THE COURT: And so you don't think that any of that
22 required you to come back to the Court and inform the Court
23 of the circumstances? For example, using the example you
24 gave of Doctor Dwyer had suddenly lost his license for some
25 reason, you wouldn't have felt compelled to come back to

1 the Court to ask to at least inform that another -- that
2 someone else conducted the evaluation?

3 And the reason I ask is this. Your petition and the
4 request for a continuance states very specifically that
5 Doctor Dwyer had been retained to perform the independent
6 evaluation. It doesn't come and request that the State be
7 allowed to hire an independent evaluator to conduct the
8 evaluation. It specifically said that Doctor Dwyer had
9 been hired to do it; that one of the problems was is that
10 he had been because of his lab or whatever had been unable,
11 as I recall the argument, had been unable to complete the
12 evaluation within the time period because he had started a
13 new program and, or was at MUSC in a new program, new
14 facility, and needed some additional time in order to get
15 the lab up and operating properly and I assume properly
16 certified. But it was very specifically that Doctor Dwyer
17 would be conducting the evaluation and that additional time
18 was needed so that Doctor Dwyer could get things
19 functioning so that he would be able to conduct the
20 evaluation. And so, my view point is that having
21 specifically indicated that he had been hired, that the
22 reason you were requesting a continuance was to allow him
23 to be able to conduct the evaluation.

24 And you recall, Mr. Flores, that there was a heated
25 discussion in which Mr. Alston repeatedly asserted that his

1 client's -- that his client was being prejudiced by
2 allowing that additional time for the evaluation to be
3 conducted. And his argument as I recall had also been that
4 somebody else could have conducted the evaluation. That
5 you could have selected someone else to do it but that you
6 were, so, in my view you're kind of tied to Doctor Dwyer.
7 And at the very minimum, you know, while there would have
8 bene some consternation from the Court, and I'm sure from
9 Mr. Alston, it would have been better to know that Mr.
10 Dwyer, Doctor Dwyer's not going to be able to perform his
11 functions at all or certainly not within the Court's time
12 limits and I think at that time I could have been - I would
13 have been in a better position to say, well, despite Mr.
14 Alston's vehement objections I would allow you to have what
15 the statute provides, an independent evaluation to be
16 conducted. And that as long as you had the evaluation
17 conducted by a certain time we could go forward.

18 I kind of feel like Mr. Alston knows that by not
19 bringing that information to anyone's attention and then
20 coming up with an evaluation that's conducted by somebody
21 else who -- I don't like to make assumptions, but my
22 assumption at this particular point is that Doctor Mulbry
23 and Doctor Dwyer are equals. That Doctor Dwyer's not
24 supervising him because they are both medical doctors; they
25 both have some type of training in the evaluation, and if

1 I'm wrong just....

2 MR. FLORES: If I could. Doctor Dwyer is the director
3 of the laboratory. Doctor Mulbry works with the
4 laboratory. He has his own independent practice, he works
5 with the laboratory, they are both certified board
6 psychiatrist in forensic psychiatry, they both
7 independently can do forensic psychological evaluations.

8 THE COURT: And I understand that and I guess my
9 thought is, you know, this isn't someone who is an employee
10 of Doctor Dwyer who is subject to his review of his testing
11 procedures, review and control, who ultimately operates
12 under the control and at the direction of Doctor Dwyer in
13 conducting laboratory portion of any examination. I
14 understand that they may have signed the report together
15 which tells me that perhaps Doctor Dwyer did some aspects
16 of it.

17 MR. FLORES: To enlighten the Court. They are both in
18 the field of forensic psychiatry. Forensic psychiatrist
19 are trained to do psychosexual evaluations. There are some
20 test or testing material that Doctor Mulbry is not
21 certified on. And that's not uncommon either in this field
22 or within the medical field for other doctor's to preform
23 testing. And that is in this case why Doctor Dwyer is
24 mentioned in the report. He did testing for which Doctor
25 Mulbry is not currently certified. But that information

1 could be used by Doctor Mulbry because of his training as a
2 forensic psychiatrist.

3 THE COURT: Sure. Just like any other experts, you
4 know, information or testing results can be used as long as
5 somebody is otherwise qualified in the field.

6 I do, I do have a problem with the manner in which
7 this independent examination was conducted and I think --
8 And I understand that there were time constraints imposed.
9 But I don't -- Separate and apart from his other issues
10 about the right to counsel, I just do have a problem that
11 someone else other than the person who was presumably hired
12 and was presented as being the person who would evaluate
13 has provided testing and an opinion. And so, to that
14 degree I would have to agree with Mr. Alston that I don't
15 think that, that's appropriate and I will have to exclude,
16 I would have to at least exclude Doctor Mulbry from
17 testifying.

18 Now, if you can demonstrate that the report that
19 Doctor Dwyer is otherwise able to testify as to the report
20 and that he actually did the testing in it, and knew
21 exactly what role was played, I would be happy to consider
22 that in determining whether or not to allow the report.
23 I'm not willing at this particular point to completely
24 exclude the report absent some testimony that shows me
25 otherwise. And so I'll certainly hear from you on that

1 grounds or give you an opportunity to consult and determine
2 whether or not there can be a remedy to that particular
3 situation.

4 MR. FLORES: Beg the Court's indulgence.

5 MR. ALSTON: As well, Your Honor.

6 THE COURT: Sure.

7 (PAUSE AT 03:32 PM.)

8 MR. BOGLE: Your Honor, Mr. Bogle would like to
9 address the Court, if the Court would permit?

10 THE COURT: Sure.

11 MR. BOGLE: Do you mind if I jump in a little bit,
12 Your Honor.

13 THE COURT: Yeah if you can enlighten us.

14 MR. BOGLE: Again, I wasn't at the previous hearing
15 for a continuance. I'm in the office next door to Mr.
16 Flores and we discussed this at great length.

17 The impression I got, and he's already covered this in
18 what happened, was that the Court was very concerned about
19 setting a dead line and also about the prejudice to Mr.
20 Taft remaining in jail endlessly.

21 THE COURT: Yes.

22 MR. BOGLE: And so, when it came up to us, and I was
23 in on the discussions with Mr. Flores and Doctor Dwyer,
24 when it came up to us that Doctor Dwyer wouldn't make the
25 dead lines set by the Court, it was more important to us to

1 get the thing done than to come back and waste your time by
2 begging for more time. But that's the impression I got
3 from the interactions from the hearing. So since the guy
4 that would be doing it was the same lab operated by Doctor
5 Dwyer, that it didn't seem to us to be that much difference
6 because we're entitled to the evaluation under the statute,
7 we're getting it done by a qualified person.

8 Frankly when Mr. Flores communicated to me the
9 objection from opposing counsel, I think when opposing
10 counsel heard from his client that two doctors had seen him
11 Mr. Alston thought he was being double teamed. He would be
12 facing two witnesses today instead of just one. But no,
13 it's just one, it's just one and that's Doctor Mulbry
14 instead of Doctor Dwyer because Doctor Mulbry is the only
15 one available who can meet your dead lines, and the dead
16 lines imposed by the Court, which were reasonable and
17 important to both the State and to the Respondent. So
18 that's kind of why we did it the way we did it. I think it
19 would have been better to come back to you and get another
20 name, but frankly under the impression that we talked about
21 the case was that you were very concerned about dead lines
22 being met and this case moving on. And the best way we can
23 meet that was by having someone from the same lab working
24 with the same guy that we had put in our original request
25 for a continuance.

1 THE COURT: And unfortunately that doesn't change what
2 I've already stated.

3 MR. BOGLE: No it doesn't change anything. I just
4 want to put it in perspective, Your Honor.

5 THE COURT: I understand. And I fully understand, I
6 fully understand the perspective, I understand that you
7 felt, that the office felt that it was more critical that
8 the time lines be met and the time lines were extremely
9 important. And they still are very important. But I think
10 in addition had there been some communication that, you
11 know, Judge, I hate to tell you that, you know, Mr. Dwyer,
12 Doctor Dwyer can't meet the dead line and there is somebody
13 else in his office who can conduct it because I -- I mean I
14 didn't know and I'm sure Mr. Alston didn't know of anyone
15 else at that particular facility. Now I think the only
16 reason I have a vague understanding of Doctor Mulbry is
17 because I've been involved in hearing other cases in which
18 he's presented reports.

19 But at the time all this took place you know it was my
20 understanding that there was, that Doctor Dwyer was it,
21 that, that was all there was and he was the only one who
22 was available because if someone else had been available
23 the State would have utilized that individual in order to
24 get it done earlier. And I think that's the problem that I
25 have. I still have some concerns about allowing someone

1 else. And as I stated had it simply been we want to seek
2 an independent evaluation pursuant to the statute and not
3 been so focused on who was in fact to conduct the
4 investigation, I'm sorry, the evaluation, I certainly would
5 have been a lot more flexible than I am currently.

6 I think that he's got a right to know who it's gonna
7 be; that, that wasn't done until the report was prepared.
8 You know there wasn't even -- I feel confident that had you
9 contacted Mr. Alston and said Doctor Dwyer can't do the
10 report, we're gonna substitute Doctor Mulbry; I would have
11 heard from somebody. If you all didn't tell me he would
12 have told me. And he would have filed the motions and
13 said, you know, we would have been taking this up a lot
14 sooner than just now. And I think that's kind of the
15 problem is that there's been a lack of communication about
16 the particular issue. And it gives the impression that
17 there's not as much concern by the State with the formality
18 provided under the statute.

19 And while I understand that we shouldn't take form
20 over substance; I think that the statute is specifically
21 written because of the important nature of the statute and
22 what happens when someone is -- there is a petition to have
23 someone adjudicated to be a sexually violent predator, and
24 the legislature has set forth very specific time lines and
25 very specific steps as to what should happen and when it

1 should occur. If we play fast and loose with it then we
2 run the risk of depriving someone of their opportunity to
3 effectively challenge the petition that's been sought.

4 You know, let's face reality. The State has -- Well
5 the State has to prove certain things, you know, the State
6 kind of has the upper hand. The State is the entity that
7 initiates the petition, that has the multi-disciplinary
8 team so that it has the various layers that, you know, the
9 steps that have to be taken before you even get to the
10 probable cause stage. And once you get there and you get
11 the initial evaluation, and as I stated earlier in the
12 previous hearing, you know, not only does the State have
13 the right to an independent evaluator, but certainly the
14 Defense has one as well. And those are important steps,
15 and I've felt like I've given the State the opportunity to
16 have an independent evaluator and yet somewhere in the
17 middle of the stream we changed horses. And I think that
18 either while Mr. Alston may have been familiar with Doctor
19 Dwyer's background and education and his CV perhaps that
20 doesn't, that may not be the same with Doctor Mulbry. And
21 then having to come forward and have to defend against or
22 to be able to challenge a report that's prepared by
23 somebody that you didn't know was going to prepare it, it
24 creates a different playing field.

25 So at this particular point I'm still at the point

1 where I think that Doctor Mulbry's report to the extent
2 that he is -- to the extent that he is the one that's
3 participated in it and prepared it and it should be Doctor
4 Dwyer and not Doctor Mulbry. I'll leave that up to
5 whatever, whatever action the State feels it needs to take
6 or how it needs to regroup but that's currently the ruling.

7 MR. FLORES: Your Honor, just for the record, in
8 speaking with Doctor Dwyer about this particular situation
9 since we knew this might be a possibility, he did inform me
10 that he could not offer an opinion because he did not do
11 the evaluation as Doctor Mulbry had. And just so the State
12 understands the Court's ruling, that is all testimony from
13 Doctor Mulbry as well as anything from the report, is that
14 correct, Your Honor?

15 THE COURT: That's correct. If Doctor Dwyer
16 participated in any part of the evaluation, I think he can
17 testify as to what portions of the evaluation he did and
18 what conclusions he drew as a result of that. But if
19 Doctor Dwyer did not participate in that evaluation, did
20 not conduct the testing, did not, can draw no opinions or
21 conclusions based upon whatever he did with respect to the
22 evaluation then I think that testimony is limited.

23 MR. FLORES: Okay. Thank you, Your Honor.

24 MR. ALSTON: Your Honor, I'm sorry.

25 THE COURT: Yes, sir.

1 MR. ALSTON: I didn't mean to interrupt you.

2 THE COURT: So that takes us to the second part, which
3 is about whether or not counsel should have been present or
4 notified as to when the evaluation was going to take place.
5 I've heard Mr. Alston's argument.

6 Mr. Flores or Mr. Bogle, I'll hear from you.

7 MR. FLORES: Yes, Your Honor. This is, again this is
8 a civil proceeding and so no Constitutional -- The right to
9 counsel is a statutory right to counsel, not a
10 Constitutional right to counsel. The State has pointed out
11 in it's return at -- I believe it's Point D, the individuals
12 who are subject to the act do not have a Sixth or
13 Fourteenth Amendment right to counsel. If Mr. Alston
14 expresses a desire to be there we would have no problem in
15 that. Informing him when and where and likewise it had, if
16 he wished to be present during Doctor Jackson's evaluation
17 we would inform the Department of Mental Health that Mr.
18 Alston would like to have been present. We did not receive
19 that notification as to any desire to be present during the
20 subsequent evaluation.

21 THE COURT: Well let me ask you this. Is it the
22 policy of the State not to notify unless counsel request
23 it? Or is it just a matter of formality to say to any
24 counsel currently the evaluation is scheduled for this date
25 and this place?

1 MR. FLORES: Typically when I preside, and this is
2 common practice in the office, either if a, if Mr. Taft
3 requested an independent evaluation we, the State would
4 just await whatever report or word came from the
5 respondent's counsel as to the results of that evaluation.
6 And so without a subsequent word from Mr. Taft's attorney
7 general practice is to have the evaluation conducted and
8 the results is then passed on. And that would have been in
9 either case if the State got an independent evaluation or
10 opposing counsel.

11 MR. BOGLE: Judge, in just speaking, I've done it a
12 little bit longer than Mr. Flores, there's no policy per
13 se. The evaluators are appointed by the Court and
14 sometimes - -

15 THE COURT: Only, only one is appointed - - -

16 MR. BOGLE: Correct.

17 THE COURT: - - - as the Court's evaluator.

18 MR. BOGLE: Correct. And sometimes I have attorneys
19 ask me you tell me when Doctor Jackson or Doctor Miller or
20 whoever it's going to be is going to evaluate my guy
21 because I want to be there. And if that's the case we put
22 them in touch with the paralegal in Mental Health who makes
23 the necessary arrangements. So if ask we do it. And
24 there's no policy one way or the other. Sometimes it comes
25 up, it's rare, but sometimes it comes up, most of the time

1 it doesn't.

2 THE COURT: So with respect to independent evaluations
3 you don't -- There's - -

4 MR. BOGLE: There's no policy. I mean if counsel is
5 aware there's going to be an independent evaluation, in
6 this case he was aware it was going to be Doctor Dwyer, we
7 had to change horses, as we know we covered that here.
8 They know who it is, if they ask to be present then we'll
9 make it available and I've had that happen. In the
10 Holbrook case down in Charleston it was an independent
11 evaluation done by Doctor Dwyer and counsel expressly ask
12 to be present for that independent evaluation, and so we
13 called Doctor Dwyer's office and said this is the lawyer's
14 name, tell him when you're gonna do it so he can be there.
15 It's no policy to it. It's just - -

16 THE COURT: I understand.

17 MR. BOGLE: It's an as needed or as requested type
18 thing.

19 THE COURT: I understand.

20 MR. BOGLE: And again, so that's the policy issue.

21 THE COURT: Yes.

22 MR. BOGLE: Mr. Flores has covered the constitutional
23 question.

24 THE COURT: Well, is the argument that because it's a
25 statutory requirement that counsel be appointed that there

1 is less of a reason to have counsel present than if it were
2 a constitutional issue?

3 MR. FLORES: In these particular cases the evaluation
4 whether it be the Court appointed additional evaluation or
5 an independent evaluation it's critical to the way this act
6 functions. In previous cases as Mr. Bogle has informed me
7 since I've only been with the Court, or the Attorney
8 General's office a short time, if a individual refuses to
9 even submit to the court appointed evaluation the court
10 would order that individual to do so.

11 The importance of the evaluation is, seems paramount
12 to the conduct of the act. The right to counsel to be
13 present during those evaluation could in fact hinder or
14 subsequently delay an evaluation causing the time limits
15 imposed by that act to be further skewed in some
16 situations. But we would submit that those evaluations are
17 conducted specifically through the statute in specific
18 perimeters such that the knowledge of the individual that
19 they are undergoing this particular type of evaluation
20 that's already present.

21 THE COURT: I will say that I don't believe that to my
22 knowledge the Court's ever been called upon to make a
23 specific determination or ruling as to whether or not the
24 right to counsel provided by the statute would extend
25 specifically to the evaluation process. I understand that

1 in the course of criminal proceedings of course there are
2 in fact, there is in fact that right for counsel to be
3 present during the course of any evaluation, mental health
4 evaluation, and I'm sure that, that is done also because
5 anything that's stated during the course of those
6 evaluations can be used against that particular defendant
7 in court. And it appears to be a waiver of the right
8 against self incrimination during the course of those
9 examinations and typically counsel chooses to be present
10 when a defendant is undergoing a mental health evaluation.
11 Although, you know, they can certainly waive their right to
12 counsel.

13 The statute provides Section 44-48-90, talks about
14 trial, talks about the trial has to be done within a
15 certain period of time, that it should be a jury trial,
16 that upon request by either the State or by the Respondent
17 that upon a request for a jury trial the Court shall
18 conduct a jury trial and it provides a time period for
19 that. It also says that, "at all stages of the proceedings
20 under this chapter a person subject to this chapter is
21 entitled to the assistance of counsel, and if the person is
22 indigent the Court wants to appoint counsel to assist the
23 person." It says that if a person is subjected to an
24 examination under this chapter the person may retain a
25 qualified expert of his own choosing to perform the

1 evaluation. And all examiners are permitted to have
2 reasonable access to the person for the purpose of the
3 examination as well as access to all relevant medical,
4 psychological, criminal offense and disciplinary records
5 and reports." It also goes on to say that "if an indigent
6 person would like an expert of his own choosing the Court
7 must determine whether the services are necessary, and if
8 the Court determines the services are necessary the experts
9 request for compensation, and the experts request for
10 compensation for services is reasonable the Court must
11 assist the person in obtaining the expert to perform the
12 evaluation. Or to participate in the trial on the person's
13 behalf."

14 That, and that implies to me that it says, where it
15 says, "at all stages of the proceedings under this chapter"
16 and that chapter being the chapter relating to Sexually
17 Violent Predator Act. Which seems to imply that there is a
18 right to have an attorney at the time that the testing
19 takes place whether it's the Court's expert or whether it's
20 the independent expert that's appointed under the various
21 statutory provisions.

22 As I stated earlier I don't think there's been a court
23 that's been called upon to address that particular issue.
24 It's apparently one that has not surfaced previously. It
25 certainly has surfaced today, and so I would rule that

1 pursuant to the statutory provisions, in which there is a
2 right to counsel, and I would agree with you that the case
3 law says that it is not the right to counsel pursuant to
4 the state or federal constitution, but that it is a
5 statutory right to counsel, and the statutory right says
6 that in all stages of the proceedings under this chapter.
7 So in given the plain and ordinary meaning of those words,
8 it says that there should be the right to have an attorney
9 at every stage of proceedings whether the proceedings
10 include the evaluation, or whether the proceedings are in
11 court at the probable cause hearing or at the trial. Or at
12 some other particular stage that's provided under Chapter
13 48 of Title 44.

14 And so with that I'd have to say that he does have the
15 right to have an attorney to be present. And particularly
16 if for no other reason than to provide, to at least have a
17 conversation with him even if he's not present during the
18 actual examination to have a conversation with counsel
19 beforehand, with his client beforehand to explain what
20 could possibly occur, explain about documents that he may
21 be required to sign, and explain that there will be an
22 evaluation taking place so that it doesn't catch the
23 respondent off guard either. You know just to have some
24 notice that he will be going for an evaluation. So I think
25 that's a critical stage. Unless there is an argument that

1 he waived it, and I can't say that under these particular
2 circumstances in the manner in which this particular case
3 occurred, I can't say that there was the opportunity to
4 waive it since there was no opportunity to know when the
5 evaluation is taking place or under what circumstances it
6 was taking place. So I'd have to agree with Mr. Alston. I
7 think he had the right to at least to be aware of it and
8 know when it was taking place.

9 Whether it occurred in Charleston or Columbia is
10 really of no consequence other than to be able to inform
11 his client that he would be transported. But I don't find
12 the fact that he was transported to Charleston for the
13 evaluation would have been unusual or extraordinary or
14 would some how invalidate what could have been a valid
15 evaluation. But I do think that he had the right to be
16 present or at least to be aware of what he was going for.
17 And so, I grant his motion on that basis.

18 MR. FLORES: Thank you, Your Honor.

19 MR. ALSTON: Your Honor, thank you.

20 THE COURT: Yes, sir.

21 MR. ALSTON: I just want to respectfully ask the court
22 what are the ramifications of your ruling; does it make all
23 my other arguments moot? It seems to me that, that would
24 mean that the report in total is not admissible.

25 THE COURT: It looks like I've gotten to that point.

1 MR. ALSTON: Thank you, Your Honor.

2 MR. BOGLE: Since it's not likely the testimony would
3 begin this afternoon, we may wish the Court, or maybe it
4 would be time for us to go back to the office and regroup
5 and see where we are and advise the Court first thing in
6 the morning whether or not we would go forward. Or do you
7 want to finish their outstanding motion? I'm just trying
8 to think of where we are in regard to what to do next given
9 the hour. It's too late to start testimony if we were done
10 with motions.

11 THE COURT: Yeah.

12 MR. BOGEL: Because you've got to pick the jury and do
13 opening arguments and all that.

14 THE COURT: I understand. Yeah. These are the
15 options. We can attempt to select the jury and I just
16 won't swear them and then we can continue on. I think we
17 need to continue on at least with the remaining motions.
18 I'd like to be able -- Well, actually the remaining motions
19 may not be, may not be necessary in light of the ruling
20 about the report.

21 So I think, as I understand your remaining motion, Mr.
22 Alston, relating to the report was that you had intended to
23 object to the use of the PPG test?

24 MR. ALSTON: Yes, ma'am. It's just -- I'm sorry.

25 THE COURT: And since the report by Doctor's Dwyer and

1 Mulbry would not be allowed in, the testimony would not be
2 utilized then that may mean that, that motion may be moot
3 at this particular point. Is that your, is that your
4 thought process at this time?

5 MR. ALSTON: Yes, ma'am.

6 THE COURT: - I mean the jury's down stairs; I'm happy
7 to go ahead and select the jury today and then have each of
8 you regroup or - -

9 MR. ALSTON: I'm sorry, Your Honor. There's one more
10 issue I wanted to address with the Court.

11 THE COURT: Yes, sir.

12 MR. ALSTON: The other thing I brought up is that they
13 intend to call examiners during his criminal prosecution as
14 witnesses.

15 THE COURT: Yeah.

16 MR. ALSTON: I move to exclude that. And I'm just
17 going to go ahead and state on the record before we
18 adjourn, that since their evaluation is called for by the
19 statute, the only evidence that they procured that shows my
20 client is at in any way a sexually violent predator, the
21 only evidence procured during this civil action has been
22 thrown out, I'm moving for summary judgment, again, on the
23 basis that there is no genuine issue of material fact and
24 he's entitled to judgment in his favor as a matter of law.
25 We have Doctor Jackson, the Court appointed expert; she did

1 everything the Court has ask her to do. She's subjected
2 him to all the standard test in her discipline, she opined
3 that he was not a sexually violent predator, all of the
4 experts; her and Doctor Dwyer to the extent you still want
5 to consider it, both opine that his behavior is limited to
6 incest. There's just no meat on the State's bone now and I
7 don't see the reason why my client has to go through this
8 process at this point.

9 THE COURT: And just to be clear, what I understand is
10 that Doctor Rebecca Jackson was the Court appointed expert
11 who evaluated Mr. Taft and she determined, or diagnosed him
12 with a mental abnormality or personality disorder. The
13 question is whether or not that personality disorder, or
14 mental abnormality -- Let me flip to the language in the
15 statute.

16 In, the statute provides "that a sexually violent
17 predator is a person who has been convicted of a sexually
18 violent offense and suffers from a mental abnormality or
19 personality disorder that makes the person likely to engage
20 in acts of sexual violence if not confined in a secure
21 facility for long term, controlled care and treatment."

22 It's my understanding and one of the basis for finding
23 probable cause is that Mr. Taft has been convicted of a
24 sexually violent offense as defined by the statute. And
25 it's my understanding that Doctor Jackson has determined

1 that he does have a mental abnormality or personality
2 disorder. However, it's also my understanding that her
3 opinion is that he is not likely to engage in acts of
4 sexual violence if he's not confined. In other words, that
5 his risk of reoffending and committing future acts of
6 sexual violence is he's at low risk or -- I don't want to
7 call it minimal, but that he is at low risk and therefore
8 in her opinion he did not meet the statutory definition of
9 a sexually violent predator. Is that...

10 MR. ALSTON: Yes, ma'am. If I may read from her
11 report, the last sentence. "Therefore it is the opinion of
12 this evaluator that Mr. Taft does not meet the criteria as
13 outlined in the SVP Act."

14 And, Your Honor, to the extent he's been diagnosed
15 with a mental abnormality, I respectfully submit that's not
16 enough. This isn't a preponderance of the evidence
17 standards - - -

18 THE COURT: Exactly.

19 MR. ALSTON: - - - of beyond a reasonable doubt.

20 THE COURT: It has to be a mental abnormality or
21 personality disorder and likely to engage in future acts of
22 sexual violence if not confined for treatment. And while
23 he may have some mental health issues, or the cause of a
24 diagnoses to be formulated, that is not sufficient in and
25 of itself to say that he would commit acts of sexual

1 violence.

2 Anything from the State on that basis?

3 MR. FLORES: Yes, Your Honor. We would oppose any
4 motion for summary judgment. As we have stated at the
5 hearing on our motion for a continuance, there are at least
6 two other evaluations which make reference to Mr. Taft
7 being a sexually violent predator. Doctor McKee's
8 testimony and his evaluation in 2009, in his evaluation he
9 opined that Mr. Taft did meet that definition based on his
10 evaluation. I think that Doctor Jackson's report while it
11 does opine that she believes he is unlikely to reoffend, I
12 believe not only does Doctor McKee's testimony provide
13 that, that avenue; it also provides the factual basis for
14 which the jury can determine whether or not Mr. Taft is
15 likely to reoffend.

16 THE COURT: And tell me again the circumstances under
17 which Doctor McKee evaluated him.

18 MR. FLORES: Doctor McKee was ask to evaluate Mr.
19 Taft, to conduct a psychosexual evaluation, a kind of
20 evaluation that was conducted by Doctor Mulbry and he was
21 asked in, he was asked by Mr. Taft's public defender at the
22 time. Doctor McKee is also involved in the sexually
23 violent predator process, he's a member of the multi-
24 disciplinary team, and while he might not be able to opine
25 the likelihood he would lay out all the information needed

1 so that the jury could determine whether or not Mr. Taft is
2 likely to reoffend in a sexually violent manner.

3 THE COURT: Say that again. So Doctor McKee didn't
4 make a determination - -

5 MR. FLORES: If we read his report, let me pull his,
6 he actually states in his letter that was attached, it was
7 part of the probable cause order in this case. I beg the
8 Court's indulgence for one moment..

9 To his letter to Dion O'Neill who was Mr. Taft's
10 public defender, on Page 2 of that letter he says and I
11 quote, "based on my thirty years experience of evaluating
12 persons charged with sex offenses as well as peer review
13 published research I conducted on such defendants, it is my
14 opinion that he does meet the South Carolina statutory
15 definition of a sexually violent predator."

16 And as we stated at the motion -- I'm sorry, the
17 hearing on the motion for a continuance, this does create
18 that issue of genuine material fact that should be
19 presented for a jury's determination.

20 THE COURT: And, Mr. Alston, you want to exclude his
21 testimony. Why is that?

22 MR. ALSTON: Yes, ma'am. Three things. I don't want
23 to sound like a broken record, this was done and in his
24 report I believe it's September 27th of 2009 when he was
25 being indicted as a criminal offense, as Mr. Flores says,

1 it's a letter, it's not -- he didn't refer to it as a
2 report, it's a letter to Mr. O'Neill. And the statute was
3 amended in May of last year. This is really old evidence
4 that is standard procedure on criminal sexual conduct cases
5 and I think it's inappropriate for it to be considered by a
6 jury. I don't think it's enough.

7 The State has the burden of proof in this case from
8 the time they filed the action and they failed to meet that
9 burden of proof. I don't think it should be allowed for
10 the State to go back and do archival research in order to
11 make their case. It would render summary judgment
12 completely moot in a sexually violent predator action if
13 the State were allowed to do this.

14 MR. FLORES: In response, Your Honor.

15 THE COURT: Yes, sir.

16 MR. FLORES: We would argue that Mr. Alston's argument
17 goes towards the weight of the evidence. We are cognizant
18 that Doctor McKee did not evaluate Mr. Taft within the last
19 year. However, we would submit that his expertise and his
20 experience in placing his imprimatur on the -- on saying
21 that Mr. Taft is a sexually violent predator as of this
22 point in time does create the genuine issue of material
23 fact and it would be for the jury to decide whether or not
24 that opinion would still hold true today based on testimony
25 or anything else that might be brought up. Thank you,

1 ma'am.

2 THE COURT: At this particular point based on -- I'll
3 deny that motion, I think the amendments in 2010 did not
4 substantively change the statute other than to change must
5 for shall. All of the definitional portions and those
6 portions relating to the examination and the reports, those
7 all remain the same. I think that certainly to the extent
8 that there is the existence of evidence which could create
9 a factual question and that, that's enough to get past
10 summary judgment, you know, as to whether or not it
11 ultimately meets the sufficient evidence, it would be a
12 jury question given with the burden of proof is, I think
13 I'll have to deny the motion on that basis.

14 MR. ALSTON: Thank you, Your Honor. Please note my
15 exception to your ruling for the record.

16 THE COURT: Yes, sir.

17 MR. ALSTON: Oh, and, Your Honor.

18 THE COURT: Yes, sir.

19 MR. ALSTON: Just to make sure we are thorough for the
20 same reason the State has listed Doctor Jack Lazras's, and
21 I renew my arguments based on the same things I just
22 mentioned. The State has the burden of proof, it's beyond
23 a reasonable doubt, and they are using archives to assail
24 my client with a trial and I don't think it should be
25 allowed in. And I also don't think with the burden of

1 proof in this case it's enough to meet genuine issue of
2 material fact.

3 THE COURT: Doctor Luadzers's report is back in 2006;
4 is that correct?

5 MR. ALSTON: November 25th, 2009, Your Honor.

6 THE COURT: It's also 2009?

7 MR. FLORES: That's correct, Your Honor, November
8 2009.

9 THE COURT: And it's a full report?

10 MR. ALSTON: No, ma'am, it's a -- well I call it a
11 letter. I have a copy if I may hold it up, or hand it up,
12 or do you have it?

13 MR. FLORES: It's a letter similar to what Doctor
14 McKee did and after an evaluation informing Dion O'Neill
15 what the results of that evaluation were.

16 THE COURT: If I can take a look at it. I've probably
17 seen it someplace but I can't seem to put my hands on it.

18 MR. FLORES: Your Honor, may I approach?

19 THE COURT: Yes, sir.

20 (DOCUMENT RECEIVED UP BY THE COURT.)

21 MR. ALSTON: And I have an additional as to it as
22 well.

23 THE COURT: And of course in reviewing Doctor
24 Luadzers's letter, he was not providing an opinion under
25 the Sexually Violent Predator Act and certainly his

1 opinions related to what would be an appropriate course of
2 a period of incarceration and treatment as a result of the
3 charges in 2009.

4 What are your additional arguments, Mr. Alston?

5 MR. ALSTON: Your Honor, I think you might have just
6 hit the nail on the head. This does not to be one to
7 appear to be an opinion that is compliant with the act.
8 And he doesn't say he meets the criteria, he just says his
9 pattern of behavior is consistent. I just don't think this
10 is admissible because it doesn't meet the requirements or
11 the demands of the act itself. If something like this can
12 be admitted then it just kind of opens up the flood gates
13 for anything in the future to be admitted for defendant's
14 like Mr. Taft who's finding himself in this situation. I
15 think what you just stated, Your Honor, is precisely,
16 primarily what I was going to argue.

17 Your Honor, if I may add one more thing. I think the
18 point of the act having experts to be appointed by the
19 Court provided it is to give the State and the Defendant
20 notice of who's going to be testifying at trial. And on
21 that ground I think its not admissible.

22 MR. FLORES: Your Honor, in response?

23 THE COURT: Yes, sir.

24 MR. FLORES: While I'm recognizent that the act does
25 specifically do appoint an expert and that the independent

1 expert is sometimes used, those are not the only witnesses
2 that can be called in this case. Other cases have had
3 victims who have been called, counselors who have been
4 around these individuals who are subject to the acts, and
5 so the act itself doesn't limit the type of witness that
6 can be called. We would submit Doctor Luadzers's letter
7 and his evaluation of Mr. Taft again paints a picture in
8 time about what he felt he saw with Mr. Taft in November of
9 2009. His opinion while not stating that he's a sexually
10 violent predator would go to the weight of that opinion and
11 not whether or not Mr. - that Doctor Luadzers's opinion is
12 admissible.

13 THE COURT: I think he can give, because he has in
14 fact examined Mr. Taft, I think he can testify as to what
15 he observed and whether he has opinions. Now whether or
16 not those opinions falls, whether he's able, whether or not
17 he's able to opine specifically that he meets the criteria
18 of the sexually violent predator as specified in the act, I
19 think we'd have to hear his testimony on that. But I think
20 certainly to the extent that he evaluated and examined him
21 and can talk about what he observed and what his opinions
22 were at the time would certainly be of aid to the jury in
23 making the ultimate decision. I don't think he's
24 necessarily required to say that he's definitely a sexually
25 violent predator under the act, to provide testimony that

1 the jury may want to consider. Certainly I think his
2 testimony would aid the jury in making a determination and
3 provide additional evidence about what was observed at the
4 time that he was examined. And in the time frame in which
5 he was examined and subsequently examined by Doctor
6 Jackson. So I think his testimony should be allowed so I
7 over rule that.

8 MR. FLORES: Thank you, Your Honor.

9 MR. ALSTON: Thank you, Your Honor.

10 THE COURT: So I deny that motion. Anything further?

11 MR. ALSTON: Your Honor, I think that about does it.

12 I guess we'll wait until to the extent they are going to
13 offer, they're going to have Doctor Luadzers's -- I'm
14 sorry, can't pronounce his name. To the extent either of
15 their witnesses from back in 2009 are going to offer
16 anything different or in addition to what they printed I
17 guess you've indicated we're going to hear that in camera
18 so I'll know what they're gonna testify to?

19 THE COURT: I mean I have no problem with you, to the
20 extent that you haven't had access to the witness because
21 they weren't disclosed before the last couple of days, I
22 have no problem with you having conversations with him in
23 the presence of counsel or even outside the presence of
24 State's counsel wanting to talk about what their testimony
25 or. I think that's reasonable under the circumstances and

1 State of South Carolina) In the Court
2 County of RICHLAND) Of Common Pleas

3
4 Docket No.: 2010CP4004923

5
6 In the matter of the care)
7 and Treatment of)
8 Christopher Taft)

9
10 May 23-24, 2011
11 Columbia, South Carolina

12 B E F O R E:

13 The Honorable Alison R. Lee, Judge and a jury.
14

15
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1 THE COURT: Good morning, everyone.

2 MR. FLORES: Good morning, Your Honor.

3 THE COURT: Our foreperson is Carla Reed.

4 Is there anything we need to take up this morning
5 before we bring the jury in?

6 PRETRIAL MOTIONS

7 MR. FLORES: Yes, Your Honor. We have this one
8 matter. We would like to proffer the report done by Dr.
9 Mulbry, of his evaluation of Mr. Taft as a Court's Exhibit
10 for the purposes of the record -- sealed in this matter.

11 THE COURT: Well, the entire file is sealed, so
12 anything that comes in will be part of the file and will be
13 sealed as well.

14 MR. FLORES: I've shown a copy to opposing counsel
15 and I don't believe he objects to that.

16 MR. ALSTON: Yes, Your Honor.

17 THE COURT: No objection?

18 MR. ALSTON: No, ma'am.

19 THE COURT: Okay. Well, we'll make that Court's
20 Exhibit No. 1.

21 (WHEREUPON Court's Exhibit No. 1 was marked for the
22 record.)

23 MR. ALSTON: Your Honor, I just want to add,
24 subject to all the objections I had in my motion in limine.
25 I don't want to waive those.

1 THE COURT: Sure.

2 MR. ALSTON: I wanted to put that on the record.

3 THE COURT: And that's -- I guess just for
4 preserving the information since we discussed it at length
5 yesterday and discussed what was in it. We'll make it a
6 Court's Exhibit as a proffer by the State, subject to all
7 your objections.

8 MR. ALSTON: Okay.

9 MR. FLORES: That's all from the State, Your Honor.

10 MR. ALSTON: Your Honor, just a few housekeeping
11 matters. I spoke with the Attorney General, Mr. Flores, I
12 believe, and he says they do not intend to offer -- I can't
13 remember who it was -- they said they do not intend to
14 offer the reports of their two experts as -- into evidence
15 as exhibits. If they do intend to, there's portions I want
16 to be redacted, but I just wanted to make sure on the
17 record that we're clear as to what they intend to do with
18 those reports.

19 MR. FLORES: The State has no intention of offering
20 the reports into evidence.

21 THE COURT: Okay.

22 MR. ALSTON: And the only thing I have to offer,
23 Your Honor, is I just wanted to renew my motion for summary
24 judgment and dismissal. I believe the act calls for the
25 State to produce evidence indicating that my client is a

1 sexually violent predator during -- after and during the
2 commencement of the action. I don't think they've done
3 that. I think if they're allowed to go forward, given the
4 evaluations that occurred during their criminal
5 prosecution, then the requirement that they -- procuring
6 anything during the civil action is superfluous and a
7 requirement of the statute, and I think it renders the
8 statute superfluous in that regard. And to that extent I
9 renew my motion for summary judgment or dismissal.

10 THE COURT: And for the reasons I gave yesterday,
11 I'll continue to deny that motion. I think it presents
12 some evidence for the jury to consider, and ultimately they
13 will have to make a factual determination as to whether or
14 not Mr. Taft meets the definitions required by the act; and
15 also whether the State would meet their burden beyond a
16 reasonable doubt that he meets that definition. And so I
17 think that any evidence relating to any mental evaluation
18 and subsequent determination as to whether or not he falls
19 into that category, even if it was done prior to the
20 petition, I think that there is evidence of a mental
21 condition, and that certainly would be relevant for the
22 consideration; and of course, you have the opportunity to
23 challenge that when the witnesses testify.

24 So I'll continue to deny that at this particular
25 time.

1 | please let me know so that I can accommodate you in that
2 | regard. I think that this will be a relatively
3 | straightforward case in that the evidence will be presented
4 | in the form that you'll be able to keep up with and follow
5 | throughout the course of the trial. But if you need some
6 | assistance with taking notes, please let me know and I'll
7 | be happy to accommodate you.

8 | I believe at this time, we're ready to hear the
9 | opening statements.

10 | MR. Flores.

11 | MR. FLORES: Thank you, Your Honor. May it please
12 | the Court?

13 | THE COURT: Yes, sir.

14 | **OPENING STATEMENTS**

15 | MR. FLORES: Good morning, ladies and gentlemen.

16 | THE JURY: Good morning.

17 | MR. FLORES: My name is Lloyd Flores, and I work
18 | for the Attorney General's Office. With me today is
19 | Assistant Attorney General Jim Bogle, and we're responsible
20 | for conducting civil commitments under the sexually violent
21 | predator act. Between the two of us, we cover the entire
22 | state, and we each have half of a judicial circuit -- half
23 | of the sixteen judicial circuits and we do this everywhere.

24 | This case is about protection of the citizens of
25 | Richland County and South Carolina and specifically young

1 females. We're here today because the State believes that
2 Mr. Taft is a sexually violent predator. What is a
3 sexually violent predator? At the close of the case, when
4 all of the evidence has been presented, the judge will
5 instruct you on the law of the case. If I say something
6 that's different from what Her Honor says at the end,
7 please listen to what Her Honor says. A sexually violent
8 predator is an individual who has been -- excuse me --
9 who's been convicted of a sexually violent offense as
10 defined by our statute. It's also an individual who
11 suffers from a mental abnormality or a personality disorder
12 that makes them more likely to commit acts of sexual
13 violence.

14 That is what this case is about. When all of the
15 evidence is presented, you will be asked to decide whether
16 or not Mr. Taft has committed a sexually violent offense
17 and been convicted for it and whether or not he suffers
18 from a mental abnormality or a personality disorder that
19 makes him more likely to commit those types of offenses.

20 How did we get here today? About thirteen years
21 ago, our general assembly passed the sexually violent
22 predator act. It was a law that had two thoughts in mind.
23 There are certain individuals -- one, there are certain
24 individuals in our state that suffer from mental
25 abnormalities and personality disorders that make them

1 likely to commit acts of sexual violence; and two, that
2 these individuals need treatment in a secure setting to
3 protect the citizens of this state during the treatment
4 process because they are extremely dangerous people.

5 The State contends that Mr. Taft is one of those
6 individuals you will hear about Mr. Taft's previous
7 conviction of a sexually violent offense. In 2010, last
8 year, he pled guilty to two counts of committing a lewd act
9 upon a child under the age of 16. His victims were his two
10 sisters, age 8 and 9 at the time. I don't believe Mr.
11 Alston will contest that those convictions have occurred.

12 You will also hear testimony concerning other
13 sexual offenses involving Mr. Taft for which he'd been
14 adjudicated. The sexually violent predator act, as I
15 stated, requires a person suffering from a mental
16 abnormality or personality disorder that makes it likely
17 for him to commit future acts of sexual violence if not
18 committed for treatment. You will hear testimony today
19 from psychologists who have evaluated Mr. Taft and have
20 rendered professional opinions that he suffers from
21 pedophilia, a mental abnormality which causes a person to
22 be sexually attracted to young children. You will also
23 hear testimony from which you can decide whether Mr. Taft
24 lacks control over this pedophilia and whether he is likely
25 to commit future acts of sexual violence.

1 Now, these cases by their very nature tend to
2 contain very disturbing facts. We'll learn facts about
3 Mr. Taft's offenses. You're going to learn facts about
4 Mr. Taft -- about how he was sexually abused when he was
5 young and how that has made him the person he is today.
6 But the State would ask you to do one thing: Listen
7 carefully to the evidence that's presented from the
8 testimony of the experts in this case. Listen carefully,
9 not just to our evidence but to any evidence that Mr.
10 Alston would put up on behalf of Mr. Taft. We believe that
11 as you listen to the evidence, the verdict you must render
12 in this case will become clear and that verdict will be
13 that Christopher Taft is a sexually violent predator who
14 must be put into the Department of Mental Health to get the
15 treatment he desperately needs and to get that treatment in
16 a secure facility to protect the young girls of this state
17 from him. Thank you.

18 THE COURT: Mr. Alston.

19 MR. ALSTON: Thank you, may it please the Court.

20 THE COURT: Yes, sir.

21 MR. ALSTON: MR. Flores. Good morning.

22 THE JURY: Good morning.

23 MR. ALSTON: Christopher Taft is a 20-year-old man,
24 seated right over there. And he has had probably the most
25 disturbing childhood you can imagine. I believe you may

1 | hear testimony about how he was abused by his own family,
2 | mentally, emotionally, physically and sexually. But he
3 | just wasn't the victim. I'm not going to sugar coat it.
4 | He was the victimizer. He did some terrible things with
5 | his family; things involving incest with children. And he
6 | pled guilty, twice, to those offenses. And he was
7 | unfortunately between the second and first offense or the
8 | first and second plea, sent right back to the same house,
9 | environment, that nurtured that disturbing behavior. But
10 | the second time he pled guilty in General Sessions Court,
11 | and he was given a criminal sentence, and he was
12 | incarcerated for it, and he was given probation for it; and
13 | I believe you'll hear testimony that probation called for
14 | treatment, registering as a sex offender, reporting to a
15 | probation officer once a month.

16 | And during the service of his criminal sentence,
17 | before he had a chance to start probation, the State filed
18 | this sexually violent predator action against him. Their
19 | burden is to prove to you that he is a predator beyond a
20 | reasonable doubt, and as in most criminal trials and this
21 | civil trial, the beyond a reasonable doubt, in my opinion
22 | and to my knowledge, is the highest burden of proof that
23 | the State that has to prove someone is guilty or not
24 | guilty. So when the judge charges you on what beyond a
25 | reasonable doubt means, I just want to tell you at the

1 commencement of this trial to please keep that in mind as
2 to what that means when you evaluate the evidence.

3 So they commence this action against my client
4 before he had a chance to complete his probation because
5 they want to lock him up in a secure facility administered
6 by the Department of Mental Health before he's had a chance
7 to prove himself, that he's a safe citizen. So what
8 happened then? Well, pursuant to the statute, you're going
9 to hear testimony that a court appointed psychologist,
10 forensic psychologist, Dr. Rebecca Jackson gave him an
11 extensive evaluation, subject to all the standard tests in
12 her field and she concluded that while Christopher does
13 have serious problems, he is not a sexually violent
14 predator under the statute.

15 That wasn't good enough for the State. So what
16 have they done? I believe the evidence will show that
17 they've gone back to his criminal conviction, before he
18 pled guilty, when they were prosecuting him for it and they
19 pulled reports from years ago to prove that he's a sexually
20 violent predator. Nothing current. The only current
21 evidence you will see is by Dr. Jackson, who says he does
22 not meet the definition for a predator under the statute.

23 Now, as I said, beyond a reasonable doubt is the
24 standard, and doubt abounds in this case. And what is more
25 telling than the evidence is the lack of evidence against

Geoffrey McKee - Direct Examination by Mr. Flores

1 my client. And I am confident that when you evaluate the
2 lack of evidence, you will find that the State has not come
3 close to proving their case against my client beyond a
4 reasonable doubt. They have not proved that he is a
5 predator. And I'm confident that you'll let my client go
6 forward with his life so he can prove himself to be a
7 responsible member of society because it's the right thing
8 to do, because it's justice, and because no one is beyond
9 redemption. Thank you.

10 THE COURT: You may call your first witness.

11 MR. FLORES: Thank you, Your Honor. The State
12 would call Dr. Geoffrey McKee.

13 THEREUPON,

14 DR. GEOFFREY MCKEE,
15 after being duly sworn, testified as follows:

16 THE CLERK: Please have a seat. State your full
17 name for the record.

18 THE WITNESS: My name is Geoffrey R. McKee. First
19 name is spelled G-e-o-f-f-r-e-y last name the spelled
20 M-c-k -- capital K-e-e.

21 **DIRECT EXAMINATION**

22 By Mr. Flores:

23 Q Good morning Dr. McKee.

24 A Good morning.

25 Q Thank you for stating your name and spelling that

Geoffrey McKee - Direct Examination by Mr. Flores

1 for the court reporter. That sometimes can be a difficult
2 thing for court reporters to have to identify afterward.

3 Would you state for the jury how you are currently
4 employed.

5 A I'm currently a chief psychologist in the Forensic
6 Evaluation Services of the Department of Mental Health. I
7 also have a private practice in forensic psychology and
8 have had that for some thirty-five years now.

9 I also hold the rank of clinical professor in the
10 Department of Neuropsychiatry and Behavioral Sciences at
11 the University of South Carolina School of Medicine.

12 Q And what professional degrees do you possess,
13 Doctor?

14 A I received a bachelor's degree from Coe College in
15 Cedar Rapids, Iowa in 1965; a Master's Degree in Counseling
16 Psychology from the University of Illinois, Champaign
17 Urbana 1967; PhD in Counseling Psychology from the
18 University of Missouri at Columbia in 1969; in 1984 I
19 earned the Diplomate in Forensic Psychology of the American
20 Board of Forensic Psychology and American Board of
21 Professional Psychology.

22 Q And would you describe for the jury what exactly
23 that last distinction that you earned was?

24 A Diplomate status in Forensic Psychology at the
25 American Board of Forensic Psychology is a three stage

Geoffrey McKee - Direct Examination by Mr. Flores

1 process. The first stage is when a psychologist, duly
2 licensed, submits his or her academic and work credentials.
3 Those credentials are then reviewed by the American Board
4 of Forensic Psychology and the -- their decision is whether
5 that psychologist then can be an applicant for the second
6 stage.

7 The second stage of the diplomate process is the
8 applicant submitting two work samples of his or her work as
9 a forensic psychologist. They could be journal articles
10 that he or she has published. They could be evaluation
11 reports of either criminal defendants or civil plaintiffs,
12 depending on the particular subspecialty of the forensic
13 psychologist. Those two reports -- and they have to be in
14 two different areas of forensic psychology -- are then
15 reviewed by a panel of two board certified forensic
16 psychologists.

17 If those two agree that the applicant -- that the
18 work samples are sufficient, then the applicant becomes a
19 candidate and is then allowed to sit for a three-hour-oral
20 examination that's conducted by three board certified
21 forensic psychologists. That oral examination involves not
22 only questions about the two work samples that the forensic
23 psychologist has done, but also about other areas of
24 forensic psychology. If the candidate then passes that
25 oral examination, they are deemed to have diplomate status

Geoffrey McKee - Direct Examination by Mr. Flores

1 in forensic psychology at the American Board of Forensic
2 Psychology.

3 Q And that's -- is that the board certification
4 process?

5 A That is the board certification process.

6 Q All right. Now, Doctor, you referred during your
7 discussion of becoming board certified in forensic
8 psychology; would you describe for the jury what the field
9 of forensic psychology is?

10 A Forensic psychology is the application of the
11 theories, methods, and research of psychology to the Courts
12 and to legal issues of one sort or another. Whether
13 someone might be competent to stand trial and if they're
14 not competent to stand trial is it because they have
15 psychiatric impairment or psychiatric illness that keeps
16 them from being competent to stand trial.

17 Was it possible -- another legal issue might be,
18 was it possible at the time of the offense for which
19 they're charged, they suffered from a severe mental illness
20 that impaired their ability to know right from wrong or to
21 control their behavior. That's another area. There are
22 other areas such as child custody evaluations, personal
23 injury evaluations, and so forth.

24 Q And, Doctor, have you previously been recognized
25 and testified as an expert witness in the field of forensic

Geoffrey McKee - Direct Examination by Mr. Flores

1 psychology in the Courts of law of this state?

2 A I have.

3 Q And about how many times have you been so
4 recognized?

5 A One hundred, fifty times, something like that.

6 MR. FLORES: Your Honor, at this time, we'd ask
7 that Dr. McKee be recognized as an expert in the field of
8 forensic psychology.

9 THE COURT: Is there any voir dire by the
10 respondent?

11 MR. ALSTON: No, Your Honor.

12 THE COURT: Then I'll find him so qualified as an
13 expert in forensic psychology.

14 MR. FLORES: Thank you, Your Honor.

15 By Mr. Flores:

16 Q Now, Dr. McKee, in your practice as a forensic
17 psychologist, does that allow you to conduct forensic
18 psychological evaluations of individuals?

19 A It allows me to conduct certain kinds of
20 evaluations, forensic evaluations.

21 Q And what types of evaluations are those?

22 A Well, I am able to conduct, for example, a variety
23 of different family court and domestic evaluations such as
24 child custody evaluations. In the criminal arena, I am --
25 I conduct aid in sentencing evaluations. These are

Geoffrey McKee - Direct Examination by Mr. Flores

1 | evaluations of defendants that have been charged with a
2 | crime or crimes. And typically the defense attorney
3 | representing them asks me to do an evaluation to aid that
4 | defense attorney in making arguments, making statements in
5 | aid of sentencing and mitigation of sentencing.

6 | Q And, Doctor, about how many of these types of aid
7 | in sentencing evaluations have you conducted?

8 | A I've been doing it for some thirty years. It --
9 | it's a high number. I would say probably close to six,
10 | seven hundred, something like that.

11 | Q Now, what is involved in these aid in sentencing
12 | evaluations? How do you conduct these evaluations?

13 | A Well, the way in which I conduct them -- and there
14 | is no specific formula that the profession has mandated for
15 | these kinds of evaluations, but the way in which I do them,
16 | is I review the records that the attorney has regarding his
17 | or her client. I then conduct an evaluation, a personal
18 | interview, sometimes one, sometimes two interviews and
19 | during that interview, I collect a personal history
20 | involving the family history, their alcohol and drug
21 | history, their educational/vocational history, medical,
22 | psychiatric history and so forth.

23 | I then administer a number of different
24 | psychological tests. And typically those are the
25 | personality assessment screener, which is a paper, pencil

Geoffrey McKee - Direct Examination by Mr. Flores

1 | instrument; the trauma symptom inventory, which is, again,
2 | another paper and pencil instrument; and the information
3 | and orientation skill, drawing from the Wexlar scale, which
4 | is a test, kind of a working memory, short-term memory.

5 | I also will calculate, based on certain risk guides
6 | whether the defendant has a fair to poor, good or excellent
7 | chance of being successful in probation is the decision by
8 | the Court in the case. That is the general format that I
9 | use. If, however, the charges involve sexual offenses,
10 | then in addition to my interview about the medical
11 | psychiatric history, educational/vocational history,
12 | alcohol and drug history, I will also collect a sexual
13 | history from the defendant; and I will administer,
14 | calculate certain risk guides to assess their likelihood of
15 | re-offending sexually, not just in general criminal
16 | offense, but re-offending sexually and that is the
17 | procedure I followed in this case.

18 | Q That is the -- as you said, that is the procedure
19 | you followed in this case?

20 | A Yes.

21 | Q So you have indeed performed an aid in sentencing
22 | evaluation of Mr. Taft; is that correct?

23 | A That's correct.

24 | Q And how did you come to perform this evaluation?

25 | A I was contacted by Deon O'Neill who at the time was

Geoffrey McKee - Direct Examination by Mr. Flores

1 an assistant public defender in the Richland County Public
2 Defender's Office. He asked if I would do an evaluation of
3 Mr. Taft for these purposes as an aid in sentencing
4 evaluation, and he was particularly interested in any
5 assistance I could provide to him or any opinions that I
6 might have about this likelihood of sexual recidivism as
7 well as the -- whether --

8 MR. ALSTON: Your Honor, I'm going to object to
9 this as hearsay.

10 THE COURT: Overruled at this point. He can
11 testify as to what he was required to perform -- what test
12 he -- what he tested.

13 THE WITNESS: He asked me to do an evaluation
14 regarding the likelihood of sexual recidivism, necessity or
15 likelihood of being put on the sex offender registry and
16 likelihood of success on probation for the offenses.

17 Q Is the man you met with here in the courtroom
18 today?

19 A He is.

20 Q And would you identify him for the jury.

21 A He's the gentleman sitting next to his attorney.

22 Q All right.

23 MR. FLORES: Your Honor, we would like the record
24 to reflect that Dr. McKee did identify Mr. Taft.

25 THE COURT: Noted.

Geoffrey McKee - Direct Examination by Mr. Flores

1 MR. FLORES: Thank you, Your Honor.

2 By Mr. Flores:

3 Q Now, the information -- actually, Doctor, in
4 addition to meeting with and interviewing Mr. Taft, what
5 information did you receive to aid you in conducting your
6 evaluation?

7 A I received from Mr. O'Neill a Richland County
8 Sheriff's Department incident report dated 11/12/2008, I
9 received a case summary, a Richland County Sheriff's
10 Department case summary, a two page document; I received an
11 arrest warrant dated -- I don't see a date on here. It's
12 an arrest warrant regarding a Christopher Taft,
13 involving -- acts involving Minor 1

14 I received a second arrest warrant regarding
15 Mr. Taft involving Minor 2 Callaway. I received, as well, a
16 discharge summary dated 7/5/2007. It is unsigned, and it
17 is not clear where that is from. It is not on a letterhead
18 document, but it is a discharge summary and background
19 information from Generations, which is a treatment program.

20 I received, as well, a 11/18/2008 forensic
21 interview of Minor 2 Callaway, conducted by Heather M.
22 Smith, LPC, at the Dickerson Center for Children. I also
23 received an 11/18/2008 forensic interview of Minor 1
24 Minor 1 , conducted at the Dickerson Center for Children by
25 Ray Oslouski, LMSW. And I believe those are the documents

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1 that I reviewed.

2 Q Now, Doctor, are those the type of information that
3 is typically and reasonably relied upon by other experts in
4 your field?

5 A Yes.

6 Q And at the time you conducted your interview and
7 evaluation of Mr. Taft, is there any information you did
8 not obtain that you desired in conducting that evaluation?

9 A No, this would be the standard information that I
10 would receive.

11 Q And was all that information part of the basis of
12 your opinion?

13 A Yes.

14 Q Doctor, can you explain to the jury how an
15 individual's past sexual offense behavior relates to his
16 future sexual offense behavior?

17 MR. ALSTON: I'm going to object to that, Your
18 Honor, as being a question that asks for a narrative
19 response of an individual.

20 THE COURT: Overruled.

21 THE WITNESS: Could you repeat the question,
22 please?

23 By Mr. Flores:

24 Q Yes, Doctor, it's: Can you explain to the jury how
25 an individual's past sexual offense behavior relates to his

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1 future sexual offense behavior?

2 A Well, there is some indication that a prior sexual
3 offender can be related to future sexual offending. It's
4 not a clear, perfect correlation, but there are persons who
5 do re-offend sexually and the particular nature of the
6 sexually offending varies by -- in terms of the kind of
7 sexual offense or sexual behavior that might be involved.

8 Q Based on your interview with Mr. Taft and your
9 review of his file at the time you conducted your
10 evaluation, had he been convicted of a sexually violent
11 offense?

12 A He had.

13 Q At the time of your interview?

14 A At the time of my interview, he had -- he had pled
15 guilty to assault and battery of a high and aggravated
16 nature, a number of -- approximately three years prior to
17 the evaluation. He had not yet been convicted of the
18 offenses for which he had been charged at the time that I
19 saw him.

20 Q And you referred to in your documents that you
21 received as part of your evaluation arrest warrants?

22 A Yes.

23 Q And what were those -- what were those documents
24 that -- what were the charges that you've seen that he was
25 arrested in 2008?

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1 A The description of offense on Arrest Warrant 937514
2 is criminal sexual conduct with a minor, or attempt, victim
3 under eleven years of age, first-degree, involving
4 Minor 1 Second arrest warrant, which is
5 I937516, the description of the offense is criminal sexual
6 conduct with a minor or attempt, victim under eleven years
7 of age, first-degree, involving Minor 2 Callaway.

8 Q Based on your personal knowledge are you aware of
9 what happened to Mr. Taft following your evaluation in
10 regards to those specific charges?

11 A It's my understanding that he subsequently pled
12 guilty to two counts of lewd act on a minor.

13 Q Okay.

14 MR. FLORES: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes, sir.

17 By Mr. Flores:

18 Q Dr. McKee, I'm handing you what's been marked as
19 Plaintiff's Exhibit 1 and 2. Could you identify what these
20 documents are? I'm sorry Plaintiff's Exhibit 1 and 2.

21 A Plaintiff's 1 is a sentence sheet that is signed by
22 the presiding judge in the case, and this is a sentencing
23 sheet involving County of Richland versus Christopher Taft.
24 It is dated 3/18/10 and it specifies that the defendant,
25 Mr. Taft, pled to lewd act, and that he received a sentence

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1 of fifteen years suspended upon the service of three years
2 of confinement and five years of probation.

3 The second document is Plaintiff's Exhibit No. 2.
4 Again, it is a sentencing sheet. It is the State of South
5 Carolina, County of Richland versus Christopher Taft, and
6 it is signed by the presiding judge in the case on 3/18/10,
7 as best I can make out, and it indicates that Mr. Taft pled
8 guilty to lewd act and again received a sentence of fifteen
9 years suspended to three years of confinement and five
10 years of probation and that the sentences were to run
11 concurrently with one another.

12 Q Okay. And what else is included amongst those
13 exhibits beside the sentencing sheets?

14 A The Plaintiff's Exhibit 1 indicates that Mr. Taft
15 was given credit for time served for a pretrial confinement
16 since 2/24/09. It's unclear and -- okay. So there's that,
17 then there is other specifications in the lower right hand
18 column, sex offender counseling and treatment, anger
19 management, intensive probation, for the first ninety days,
20 no contact with siblings until they reach the age of
21 sixteen.

22 And the -- on Plaintiff's Exhibit 2 there are
23 similar designations of sex offender -- well, I'll take
24 that back. Plaintiff's Exhibit 2 indicates a sex offender
25 registry, counseling and treatment, anger management

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1 intensive probation for the first ninety days, no contact
2 with siblings until they reach sixteen.

3 MR. FLORES: At this time, Your Honor, we would
4 offer Plaintiff's Exhibit 1 and 2 into evidence.

5 THE COURT: Any objection?

6 MR. ALSTON: No objection, Your Honor.

7 THE COURT: They'll be admitted.

8 (WHEREUPON Plaintiff's Exhibit No.'s 1 and 2 were
9 admitted into evidence.)

10 By Mr. Flores:

11 Q Doctor, can you tell the jury about those sexually
12 violent offenses, what the facts were, who the victims
13 are -- were in that -- what took place in that.

14 A The victims in the case were Minor2 Callaway, who
15 at the time, I believe, was eight years old. Excuse me was
16 nine years old and Minor1 who at the time was
17 eight years old. And the acts which led to the charges
18 involved sexual contact between Mr. Taft and his two
19 sisters Minor2 and Minor1, acts involving intercourse
20 and fondling of each of the children.

21 Q Prior to pleading guilty to these acts that you
22 just described, are you aware of any sex offender treatment
23 that Mr. Taft may have received?

24 A I was aware that he had received treatment at
25 Generations, which is a juvenile sex offender specific

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1 treatment program. The discharge summary that I mentioned
2 earlier and that I had reviewed indicated that he was
3 admitted into the program on November 16, 2006, and he was
4 discharged from the program June 25th, 2007.

5 Q Now, did Mr. Taft successfully complete that
6 program according to the discharge summary that you
7 received?

8 A He -- well, he was discharged, yes, from the
9 program. It indicated that, I believe if I could have a
10 minute just to review.

11 Q Please refresh your memory.

12 A Their statements -- I think this summary is in the
13 section under new treatment, where it indicated that
14 Christopher had adjusted well to Generations and to living
15 in that facility, that he followed the rules rather well,
16 and that he was invested in his treatment, meaning that he
17 was motivated in his treatment, he cooperated and was
18 active. He put forth a positive effort to listen to staff.
19 These are descriptors from this discharge summary.

20 And that he progressed in treatment. He achieved
21 some leadership responsibilities during treatment and he
22 was able to accept and utilize the treatment that he did
23 receive. So in general I would say it's a positive report
24 of his participation progress in sex offender treatment.

25 Q Now, according to your information, the information

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1 that you learned about this case, about how much time
2 passed after Mr. Taft completed that program and when he
3 was charged with the most recent sexually violent offenses?

4 A Mr. Taft indicated to me that he had been released
5 from DJJ in July 7 of 2008 and --

6 MR. ALSTON: Your Honor, I'm going to object to
7 that as hearsay.

8 THE COURT: Overruled. They were statements by
9 Mr. Taft, so I'll -- I think they can be used.

10 By Mr. Flores:

11 Q Please continue, Doctor.

12 A And the arrest warrant involving Minor1 and
13 involving Minor2 indicated that the offenses began in
14 August of 2008.

15 Q Doctor, was it significant to you with regard to
16 your opinion -- the opinion that you rendered at that time
17 after you conducted your evaluation that Mr. Taft had
18 successfully completed a sex offender treatment program and
19 within six weeks committed sexually violent offenses?

20 MR. ALSTON: Objection, Your Honor, leading.

21 THE COURT: Rephrase the question.

22 By Mr. Flores:

23 Q Were the circumstances of the completion and
24 subsequent offenses, was that significant to your opinion?

25 A Yes.

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1 Q And was that the basis of your opinion -- I'm
2 sorry, what was your opinion about that particular set of
3 circumstances?

4 A Well, it indicated that he continued to struggle
5 with and have issues with his sexual urges and his
6 fantasies and his interactions involving his sisters.

7 Q And all that was the part of the basis of your
8 ultimate decision in this matter?

9 A That was part of it, yes.

10 Q Now, Doctor, why was Mr. Taft in the sex offender
11 treatment program at Generations?

12 A It's my understanding he was in the program because
13 his offenses when he was a juvenile were sexually related.

14 MR. FLORES: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes, sir.

17 By Mr. Flores:

18 Q Dr. McKee, I'm going to hand you what's been marked
19 as Plaintiff's Exhibit 3. Would you review all of the
20 documents in that, please?

21 A All right.

22 Q And what is -- what are those documents contained
23 within petitioners -- Plaintiff's Exhibit 3? Would you
24 describe those for the jury, please?

25 A Plaintiff's Exhibit 3 involves one, two, three,

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1 four, five, six pages. The first page is a Juvenile
2 Petition Docket No. 2006-JU, meaning Juvenile, 10-663, and
3 it is a juvenile petition for a charge of criminal sexual
4 conduct with a minor, first-degree. And it indicates that
5 on or about September 1, 2005 until January 30th, 2006,
6 that Christopher Taft did commit the offense of criminal
7 sexual conduct, first-degree, in that he attempted --
8 excuse me, that he did engage in sexual battery with Minor 2
9 Callaway, the victim, in violation of 16-3-652(1)b;
10 Juvenile.

11 The second page is a juvenile petition, Docket No.
12 2006-JU-10-664, juvenile petition for criminal sexual
13 conduct with a minor, first-degree and it indicates that
14 from September 1, 2005 until January 30th of 2006, that
15 Mr. Taft did commit the offense of criminal sexual conduct
16 in the first-degree engaging in sexual battery with Minor 3
17 Minor 3, who was his nine-year-old brother, I believe.

18 The third page is Docket No. 2006-JU-10-665, a --
19 and that again, this is a juvenile petition for a lewd act
20 on a minor and it indicates that on or about January 29,
21 2006, that Mr. Taft did commit the offense of lewd act on a
22 minor. He willfully and lewdly committed or attempted a
23 lewd act or lascivious act upon Minor 3 or his
24 parts, a person under the age of 14 years of age, with the
25 intent of arousing, appealing, or gratifying the lusts,

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1 | passions, sexual desire of the person or the child. And
2 | then we have --

3 | Q Let me stop you for a moment, Doctor. Now, those
4 | were the offenses that you referred to prior; is that
5 | correct? The 2006 offenses for which Mr. Taft pled guilty
6 | to assault and battery of a high and aggravated nature,
7 | correct?

8 | A Yes.

9 | Q Okay.

10 | A Page 5 -- excuse me, page 4 is a juvenile petition
11 | for the offense of lewd act on a minor, Docket No.
12 | 2006-JU-10-665 and it indicates that on or about January
13 | 29, 2006, that Christopher Taft did commit the offense of
14 | lewd act on a minor in that he did willfully and lewdly
15 | commit or attempt a lewd or lascivious act upon Minor 1
16 | Callaway or her parts, a child under the age of 14 with the
17 | intent of arousing, appealing or gratifying the sexual --
18 | excuse me, the lusts, passions or sexual desires of the
19 | person or of the child.

20 | The next page is a juvenile order for commitment
21 | for evaluation. The hearing judge was Billy A. Tunstall,
22 | involving, Christopher Taft and it indicates that an
23 | adjudicatory hearing was held on June 22, 2006, and that as
24 | a result of that hearing, the following disposition of the
25 | charges, the juvenile admitted his/her guilt to the charges

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1 of ABHAN, assault and battery of a high and aggravated
2 nature; and then there are additional indications of two
3 other ABHAN charges.

4 And the document further goes on to say, it is
5 further ordered that the charge of lewd act on a minor,
6 06-JU-10-662 shall be dismissed by the State. The juvenile
7 shall have a psychosexual evaluation while at the Coastal
8 Evaluation Center. And then the last page, which would be
9 six, is again, a commitment order on an adjudicatory
10 hearing on 8/8/06, where the juvenile -- it indicates the
11 juvenile entered a plea of guilty, nolo contendere, to the
12 charges of ABHAN: 06-663; ABHAN: 06-664; ABHAN: 06-665;
13 and it indicates that Mr. Taft was committed to the
14 Department of Juvenile Justice for a determinate period of
15 six months with no good time credit or time served.

16 The document further indicates that it was ordered
17 that the six month commitment is suspended upon placement
18 in a sex offender treatment facility with no good time
19 credit. A review hearing shall be scheduled in ninety days
20 if the juvenile has not been placed. The juvenile shall
21 continue on a term of indefinite probation after his
22 commitment, if the juvenile and codefendant, the juvenile's
23 brother, are placed together, the Department of Juvenile
24 Justice shall make an affirmative finding that it is in the
25 best interest of the juvenile and it is signed by the

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1 | presiding judge --

2 | Q And what's the date of that last one?

3 | A -- the date of that is August 8, 2006.

4 | Q Okay. Now, the information that you described from
5 | those juvenile petitions, was all of that information that
6 | you had during your evaluation of Mr. Taft?

7 | A Yes. Yes, I did not have these specific documents,
8 | but I had an understanding of the basis of the charges.

9 | Q And those are certified copies of those documents
10 | from the clerk; is that correct?

11 | MR. ALSTON: Your Honor, if he didn't have those
12 | documents when he evaluated, I would move to strike all his
13 | testimony regarding it, because it's not necessary and it's
14 | inflammatory. The documents are what they are:

15 | MR. FLORES: Your Honor, I think -- the document --
16 | he testified that he had all this information, this is
17 | merely a certified copy of his convictions.

18 | THE COURT: I'll overrule the objection as it
19 | relates to the testimony and the documents.

20 | MR. FLORES: We would move to place Plaintiff's
21 | Exhibit 3 into evidence, Your Honor.

22 | MR. ALSTON: Your Honor, I would renew my objection
23 | about the contents of the DJJ portions of the documents
24 | only. I don't think it's necessary to renew my objection.

25 | THE COURT: I'll overrule that objection.

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1 (WHEREUPON Plaintiff's Exhibit No. 3 was entered
2 into evidence.)

3 By Mr. Flores:

4 Q Doctor, during your evaluation of Mr. Taft, did he
5 relate to you any instances of abuse he may have suffered
6 as a child?

7 A Yes.

8 Q What about those incidents of abuse was significant
9 to you?

10 A What was significant is that they started at a very
11 young age according to Mr. Taft. He said he was about five
12 years old when they began. And that these sexual offenses
13 involved his aunts and his uncles who were his mother's
14 brothers and sisters. And that there was also older
15 cousins involved as well. He reported to me that the adult
16 males would put their penis between his legs and rub back
17 and forth and that these offenses occurred, in his words
18 almost every weekend.

19 He said that his mother did not know of these
20 offenses, but that they did continue. He stated that his
21 aunts would also fondle his private parts and that he did
22 engage in oral sex on his uncles and on his aunts as well.
23 He said that those offenses started when he was five and
24 continued at least until he was seven. And he told me that
25 he did not understand what was going on then at five, six,

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1 seven, he was a very young child, but that he began liking
2 having sexual activity with these adults and he told me
3 that he would start asking them to do it with him or to
4 him.

5 He -- he said that these events have been with him
6 for all of his life. He wished that they had not happened.
7 He felt that he was different as a result of these events
8 occurring to him. He stated that he did not have a real
9 understanding of what was going on until he was into his
10 prepubescent, eleven, twelve, thirteen-year-old range, and
11 he told me that he knew it wasn't right, but he did not
12 then know that it was a crime.

13 And -- so he told me that these things occurred
14 frequently. They involved his aunts and uncles; they
15 involved penetration of his mouth with the fellatio, oral
16 sex on a male and involved all sex on a female as well.

17 MR. ALSTON: Your Honor, I would renew my
18 objection, to the extent he's going off of memory instead
19 of something he's written down, I'm going to object to
20 that. I think he's gotten to what he remembers.

21 THE COURT: I think he can testify as to what he
22 was told and he can testify from what he -- his
23 conversations, what he remembers and if there are any
24 documents that would refresh his recollections; I think he
25 can testify about that.

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1 By Mr. Flores:

2 Q Continue, if there's anything else you had to say.

3 A He told me that when he was fourteen years old that
4 the sexual victimization of Mr. Taft continued again. He
5 said a couple of times where he performed oral sex on his
6 uncles, but did not have sexual activity with any of his
7 women, or female relatives.

8 Q Doctor, the information you've just described, is
9 that all part of the basis of your opinion in this matter?

10 A It's a description of the extensive sexual
11 victimization that he's been through, and what he told me,
12 and what I wrote down as he told me that, as part of his
13 sexual history, which was part of the evaluation.

14 Q Doctor, what are risk factors?

15 A Risk factors are indicators of a variety of
16 different types, depending on what type of risks that we're
17 talking about. They seemed to have some type of
18 relationship between their presence or absence and a
19 particular event occurring.

20 Q All right. Doctor, in conducting your evaluation
21 of Mr. Taft, did you discover that he had any risk factors,
22 any identifiable risk factors to re-offend sexually?

23 MR. ALSTON: Objection, Your Honor, leading.

24 THE COURT: Overruled.

25 THE WITNESS: As part of my evaluation, I

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1 calculated three different sexual recidivism guides. These
2 are published and quite thoroughly researched documents.
3 They're not tests in the sense that you ask a question and
4 you get a response per se. What they do -- the risk guides
5 indicate are a number of different factors. Some of them
6 historical, some of them not, that have been correlated
7 with, or there has been shown a relationship between that
8 factor or a set of factors and the likelihood of
9 re-offending with a sexual act or acts.

10 Q Now, Doctor, you said you used several of these
11 sexual recidivism guides. What were the results of those
12 guides as administered to Mr. Taft?

13 A These guides included the Static 99, which is
14 commonly used, a sexual recidivism guide. And on that
15 scores can range from zero to twelve and on that risk
16 guide, he, in my calculation, had a score of five, which by
17 the categorization system of the authors of that, would put
18 him in the moderate to high risk of sexual recidivism.

19 A second risk guide is called the Rapid Risk
20 Assessment for Sex Offense Recidivism. It's a much briefer
21 instrument and he had a score of three, which would put him
22 in the moderate risk for re-offending sexually.

23 The third scale is called Minnesota Sex Offender
24 Screening Tool, revised. And on that risk guide, he had a
25 score of plus eight, which would put him in the highest of

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1 four risk categories for sexual recidivism.

2 And the last risk guide that I calculated is called
3 the Registrant Risk Assessment Scale. And it is a scale
4 that's been devised in New Jersey to aid the Courts in
5 making decisions regarding placement of persons convicted
6 of sexual offenses on the sex offender registry in that
7 state. And it results in a quantified score, numerical
8 score with three different levels of risk: Low, moderate
9 and high. And on that scale, he had a score of 80, which
10 would put him in the high risk category for sexual
11 recidivism.

12 Q Now, in rendering your opinion in this matter, you
13 relied on those sexual recidivism guides as well, is that
14 correct?

15 A That was part of the basis for my opinion, yes.

16 Q Now, during your evaluation, did you also calculate
17 probation risk?

18 A I did.

19 Q And how did you do that?

20 A I used two -- again, quantifiable numerical risk
21 guides. These are guides that have been used for many
22 years, and they specify a number of different factors which
23 have certain weights or numbers that can be calculated for
24 them; and then the factors are summed, they're totalled and
25 a total score is then compared against a poor to fair to

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1 good to excellent likelihood of success on probation. Or
2 low, moderate or high risk of failure on probation.

3 So these are not for sexual recidivism, these are
4 guides for any kind of offense that may or may not be
5 actual. The two guides that I used, one is called the
6 salient factor score and -- excuse me, the salient factor
7 score, it's been used by the United States Probation Office
8 for years and years and years. I'm not sure if they still
9 use it now, but it's been a well, well used instrument. On
10 that risk guide. He fell in the good category of four --
11 poor, fair, good or excellent likelihood of completing
12 probation successfully.

13 The second guide that I used is -- was developed by
14 the South Carolina Department of Probation and Parole and
15 Pardon Services and they've been using this guide for a
16 number of years. On that guide, he ended up with a score
17 of 22, which would put him in the category of a high risk
18 of failing probation. And by their -- their data at Pardon
19 and Parole and Pardon Services, approximately 55 percent of
20 persons with a score of 22 actually any score over 20,
21 about 55 percent would be able to complete probation
22 successfully, 45 percent do not complete probation
23 successfully by their -- by their numbers.

24 Q Doctor, was there any other information on which
25 you relied on rendering your opinion in this matter in

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1 2009?

2 A Yes. I administered two personality inventories.
3 One is called the Personality Assessment Screener. It is a
4 22 item paper and pencil test derived from the Personality
5 Assessment Inventory, which is a longer, 344 instrument.
6 It is a published -- separately published test and has been
7 peer reviewed and peer researched as well and a well used
8 instrument. That particular scale resulted in a -- results
9 in a number of different sub scales and certain ones
10 indicate that very marked problems or significant problems
11 on the part of the defendant.

12 And in Mr. Taft's case, he scored very high on a
13 scale measuring alienation. That scale describes persons
14 who feel unfairly treated and as persons who have
15 difficulty forming close personal relationships and persons
16 who are likely to blame others for their difficulties.

17 The second instrument is called the Trump Symptom
18 Inventory. Again it's a paper/pencil inventory, well
19 researched and used for many, many, many, years, and used
20 in persons who have histories of being abused; so it was
21 particularly relevant, I thought for the administration to
22 Mr. Taft. That instrument results in a variety of
23 different scales, measuring a variety of different data,
24 symptom patterns: Anxiety, depression and particular
25 symptoms of post-traumatic stress disorder.

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1 But it also as well measures concerns regarding
2 sexual matters and dysfunctional sexual behavior. And on
3 that instrument, Mr. Taft's highest scores were on three of
4 the twelve scales and that is on the scale of dysfunction
5 of sexual behavior. By the manual, which is the operating
6 guidelines for interpreting the test results, the manual
7 suggests that a high score on dysfunctional sexual behavior
8 is -- are persons who use sex to combat loneliness or
9 internal distress, and that high scores on that scale are
10 suggestive of sexual-risk taking and use of unsafe sex
11 practices.

12 His score, again, was also extremely high on a
13 scale measuring tension reducing behavior. And these are
14 acts that are done to reduce internal distress or internal
15 anxiety or anger, irritability and the interpretation of
16 that scale or persons that score high on that externalize
17 their distress through often inappropriate sexual or
18 aggressive behavior and sometimes through self-mutilation.

19 And then the third highest scale of these twelve
20 scales was on sexual concerns and high scores on that scale
21 according to the manual are indicative of sexual conflicts,
22 unwanted sexual preoccupation and shame regarding sexual
23 activities and responses. And so again, here, we have --
24 on a broad scale measuring a variety of different
25 psychological patterns and symptoms, clusters. In

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1 Mr. Taft's case, he had the highest scales on those areas
2 of sexual conflict scale and problems of a sexual area.

3 Q Doctor, was there any other information that you
4 relied upon during your evaluation of Mr. Taft in 2009?

5 A Yes. And that was in terms of what he told me
6 about the acts involving Minor2 and Minor1 the current
7 charges. And among -- among the questions that are part of
8 the sexual history guide that I use, which is from -- it's
9 a published guide, history guide from Nichols and
10 Wallander, who are authors of the Multiface of Sex
11 Inventory, 2nd Edition. That history guide asks about a
12 variety of sexual activities, fantasies and things of that
13 sort, but also asks about things such as masturbation, how
14 often the person is masturbating at the time when they're
15 being evaluated; and Mr. Taft reported to me that he was
16 masturbating every day and that when he had returned home
17 after being released from DJJ, he told me that he would try
18 not to engage in sexual activities with his sisters, but
19 that he would find himself alone with them and that he
20 would then start touching them.

21 He told me that he would try to stop the thoughts
22 and fantasies about his sisters, but that he couldn't help
23 it. He continued to act out and that he would engage in
24 sexual activity with them to the point of orgasm.

25 Q Doctor, based on your examination of Mr. Taft,

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1 review of his records, all of these factors we've been
2 discussing, the tests, the guidelines -- I'm sorry, the
3 assessments, guides, the information you gauged from
4 Mr. Taft, did you render an opinion to a reasonable degree
5 of psychological certainty as to whether Mr. Taft had a
6 mental abnormality or personality disorder when you
7 interviewed him in 2009?

8 A Yes.

9 Q And what was that opinion, Doctor?

10 A In my report to Mr. O'Neill, the attorney that had
11 retained me, I had -- excuse me, I'm looking for my report
12 through all this paper. Just a minute, please. Okay.

13 It was my opinion that Mr. Taft, at the time that I
14 saw him, which would have been in June of 2009, suffered
15 from a diagnosis of pedophilia, sexually attracted to
16 females and nonexclusive type.

17 Q All right. Doctor, what is pedophilia?

18 A Pedophilia is a diagnosable condition that must
19 last at least six months of duration, so it can't be just a
20 fleeting thought for example or even a single act, but six
21 months at least of recurrent and intense sexually arousing
22 fantasies, urges, or behaviors involving sexual activity
23 with children, generally prepubescent children, which is
24 saying children under the age of 13.

25 These urges or fantasies must cause the person

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1 significant distress and also have some impairment in their
2 social or occupational or academic functioning. And the
3 person has to be at least sixteen years old to get this
4 diagnosis and be at least five years older than the person
5 with whom he engaged in sexual activity.

6 So those are the three primary diagnostic criteria
7 from the Diagnostic and Statistical Manual, 4th Edition,
8 which is the American Psychiatric Association's guide to
9 the criteria for a variety of psychiatric diagnoses.

10 Q Could you explain to the jury what attracted to
11 females or that part of the diagnosis means?

12 A Well, once a clinician has established that there
13 are sexual -- that there is sexual interest in children,
14 then the next step is, is it directed predominantly at
15 females, predominantly at males or both males and females.
16 And in my opinion in Mr. Taft's case, it was directed
17 predominantly to females. The nonexclusive category is,
18 again, a clinician's decision of whether the individual has
19 sexual interest exclusively in children. That's the
20 exclusive category. The nonexclusive type is sexual
21 interest in children and adults.

22 Q Doctor, as part of that evaluation of Mr. Taft in
23 June of 2009, did you render an opinion to a reasonable
24 degree of psychological certainty as to whether Mr. Taft
25 met the legal criteria to be found a sexually violent

Geoffrey McKee - Direct Examination by Mr. Flores

1 predator at that time?

2 A I did.

3 Q And what was that opinion?

4 A In my report, on page two, the report's dated
5 9/27/09, I indicated that it is my opinion that he did meet
6 the South Carolina statutory definition of a sexually
7 violent predator.

8 Q And that opinion was based on your examination, the
9 records that you reviewed, the factors we discussed, your
10 assessments that you performed; is that right?

11 MR. ALSTON: Objection to leading.

12 THE COURT: Overruled.

13 By Mr. Flores:

14 Q Doctor, rendering that opinion, did you have an
15 opinion to a reasonable degree of psychological certainty
16 as to whether Mr. Taft's mental abnormalities, pedophilia
17 affected his emotional or volitional capacity such that he
18 was predisposed to commit future sexually violent acts?

19 MR. ALSTON: Objection, Your Honor.

20 THE COURT: I'm sorry?

21 MR. ALSTON: I said objection. Leading.

22 THE COURT: Overruled.

23 THE WITNESS: Well, I felt -- it was my opinion at
24 the time that he did meet the statutory definition of a
25 sexually violent predator and that he needed treatment and

Geoffrey McKee - Direct Examination by Mr. Flores

1 that consistent with that, that opinion that he met the
2 diagnoses -- that he met the statutory definition of a
3 sexually violent predator, that I felt that he needed
4 treatment in an inpatient or confined setting.

5 But, I also had the opinion in the report that if
6 Mr. Taft was given a probationary sentence for those
7 offenses in 2009 that he receive treatment from competent,
8 well-trained clinician and I believe I mentioned two such
9 clinicians.

10 Q Now, Doctor, are you familiar with the
11 Multidisciplinary Team and it's function at the sexually
12 violent predators civil commitment process?

13 A I am.

14 Q And in what way are you associated with that team?

15 A I've been the Department of Mental Health's
16 representative on Multidisciplinary Team since it's
17 inception in July of 1998.

18 Q And were you involved in the decisions to initiate
19 these proceedings against Mr. Taft?

20 A I apparently was.

21 Q When the Multidisciplinary Team meets and decides
22 whether to start the sexually violent predator process,
23 what is that called? What is that decision at the outset
24 of this process?

25 A What is the decision, did you say?

Geoffrey McKee - Direct Examination by Mr. Flores

1 Q Yes.

2 A Well, there are two decisions that the board, the
3 team votes to refer the person on to the prosecuting review
4 committee, which is the next step in the process or the
5 committee votes not to refer the case on to the prosecutors
6 review committee. The team can also decide to table a
7 particular case because they need more information. And
8 that's done occasionally.

9 Q Doctor, in reviewing the records you received as a
10 member of that Multidisciplinary Team, did you find any
11 information regarding whether Mr. Taft attended sex
12 offender treatment while he was serving his criminal
13 sentence?

14 A I don't know. I don't have that in front of me. I
15 don't have that chart involving the case at the
16 Multidisciplinary Team.

17 MR. FLORES: Beg the Court's indulgence.

18 By Mr. Flores:

19 Q Doctor, I'm going to put a hypothetical before you
20 for a moment. Assuming, Mr. Taft, whom you met with in
21 2009, following your meeting with him and your evaluation
22 in which you rendered an opinion that you believed at that
23 time that he was a sexually violent predator -- assuming
24 that Mr. Taft's been out in the community, he has had no
25 sexual violations while at the Department of Corrections,

Geoffrey McKee - Direct Examination by Mr. Flores

1 he's received no sex offender treatment or personal
2 counseling, would that change your opinion that you
3 rendered in 2009?

4 MR. ALSTON: Objection, Your Honor, based on
5 hypothetical.

6 THE COURT: Restate the question.

7 MR. FLORES: Posing a hypothetical situation, take
8 Mr. Taft from his evaluation with Dr. McKee in 2009, assume
9 that Mr. Taft has not been out in the community from that
10 period to now, he's had no sexual violations while he's
11 been at the Department of Corrections, he's had no sex
12 offender treatment or counseling while at the Department of
13 Corrections, would that change the opinion of the doctor
14 that he rendered in 2009?

15 MR. ALSTON: Same objection, Your Honor, because
16 he's posing a question to an expert witness based on a
17 hypothetical and assumptions that are not in evidence.

18 THE COURT: Okay. I'll overrule that objection.

19 THE WITNESS: That's difficult to answer. Very
20 difficult to answer. I have not seen Mr. O'Neill in some
21 two years, so I don't know, I don't have the personal
22 contact and the personal interview that I would need to do
23 to form a current and active opinion. All I can say is
24 that based on the hypothetical that you posed to me that
25 his scores on the sexual recidivism guides would not

Geoffrey McKee - Direct Examination by Mr. Flores

1 change. But candidly to be able to say whether he's a
2 sexually violent predator now, candidly, I have to be able
3 to evaluate the person. There's just a fundamental part of
4 doing my profession.

5 MR. FLORES: I just have a couple more questions,
6 Your Honor.

7 By Mr. Flores:

8 Q If the jury were to find Mr. Taft to be a sexually
9 violent predator, would he be offered treatment for his
10 pedophilia?

11 A Yes.

12 Q In describing pedophilia, is that a lifelong
13 condition?

14 A It's a persistent condition. We're not really sure
15 whether it's lifelong. It tends to diminish -- the urges
16 and the behavior can diminish with age, but it is a
17 persistent condition. That's the best I can -- it's a
18 chronic rather than acute condition.

19 Q So it cannot be cured?

20 A Actually, I'm a believer that it can be under
21 certain kinds of conditions with certain kinds of persons
22 who might meet the diagnosis of pedophilia, but the reasons
23 for that vary from person to person to person. Okay. And
24 I am a believer in sex offender treatment. I think it does
25 work and I think it is successful. And I think it is --

Geoffrey McKee - Direct Examination by Mr. Flores

1 it's certainly a manageable disorder. It's a manageable
2 disorder, even absent confinement, and that persons can
3 be -- can be treated in a way that they can manage their
4 illness, can manage their disorder.

5 Q Where would Mr. Taft go for this treatment if he's
6 committed at this trial today?

7 A He would go to the Department of Mental Health's
8 Sexually Violent Predator Treatment Program, which is
9 located in the Edisto Unit of the Department of Corrections
10 at the Broad River Correctional Institution.

11 Q And would Mr. Taft have the right to petition the
12 Court for his release?

13 A He would.

14 MR. ALSTON: Objection, Your Honor, relevancy.

15 THE COURT: Sustained.

16 By Mr. Flores:

17 Q Doctor, to your knowledge has he completed his
18 criminal sentence?

19 A Not to my knowledge, my specific personal
20 knowledge.

21 Q Who would be at risk if the jury were to release
22 Mr. Taft without further treatment?

23 MR. ALSTON: Objection, Your Honor. Overly broad.

24 THE COURT: Sustained.

25 MR. FLORES: Beg the Court's indulgence.

Geoffrey McKee - Direct Examination by Mr. Flores

1 Dr. McKee, thank you. I'm sorry -- Dr. McKee thank
2 you for your testimony today, please answer any questions
3 that Mr. Alston would pose for you.

4 THE COURT: Before you begin, Mr. Alston, this
5 would be a good time to take a morning break.

6 Ladies and gentlemen, I'm going to instruct you
7 that you should not begin to discuss the testimony that
8 you've heard thus far. The testimony and evidence has not
9 been completed, so it would be inappropriate for you to
10 begin to have any discussions about this case at this time.
11 Let's take a morning break and then we'll come back and
12 continue on.

13 (WHEREUPON the jury left the courtroom at 11:32
14 a.m.)

15 THE COURT: Dr. McKee, during this break, I'm going
16 to instruct you that you should not discuss your testimony
17 with anyone as you've not completed. You're free to step
18 down at this particular time.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Is there anything we need to take up
21 before we take a break?

22 MR. FLORES: Nothing from the State, Your Honor.

23 MR. ALSTON: Yes, ma'am, two things. I would renew
24 my motion to strike his testimony regarding the things that
25 my client told him in regards to these alleged details of

Geoffrey McKee - Direct Examination by Mr. Flores

1 his family situation. I think it is highly inflammatory.
2 My client tells me that disputes much of what was said.
3 There's no written record of it. I see in the report and,
4 of course, Dr. McKee, who was not appointed by the Court,
5 so I think it's an ambush to allow him to come in here and
6 state those particular things. So I'm going to renew my
7 objection on that. But I'll wait for your ruling on that.

8 THE COURT: Do you have a copy of Dr. McKee's
9 report?

10 MR. ALSTON: Yes, ma'am. As you can see, Your
11 Honor, it's just a letter that is two pages long and we've
12 heard over an hour of testimony of some pretty inflammatory
13 details that are nowhere indicated in that report that
14 involve hearsay from my client.

15 THE COURT: Any response from the State?

16 MR. FLORES: Yes, Your Honor. Dr. McKee has been
17 candid with the Court about the information that he gave
18 from Mr. Taft himself. I would submit that it is -- it was
19 all part of the basis of Dr. McKee's opinion as listed in
20 his report. While Mr. Taft may dispute some of the
21 information, I would submit that the evaluators often gauge
22 the sexual history of those individuals they evaluate. Dr.
23 McKee has done it, I would submit that Dr. Mulbry did it in
24 his report, Dr. Jackson has done it in her report, it's
25 relevant information, and it should be heard by the jury.

Geoffrey McKee - Direct Examination by Mr. Flores

1 THE COURT: I note that what's referred to as a
2 report is a two page letter that was sent by Dr. McKee to
3 Deon O'Neill in -- was it September of 2009? I believe
4 that his testimony was based upon all of the information
5 that he used in coming to those conclusions as expressed in
6 that letter. I'm going to overrule your objection to the
7 extent that he had personal conversations with Mr. Taft
8 about his sexual history and social history.

9 I think he can testify as to things that were told
10 him by Mr. Taft to the extent that he has notes that would
11 reflect that information, that he can testify from those
12 notes from all of the information that he has and documents
13 that he has. And those specific documents need not
14 necessarily be something admissible in court for him to be
15 able to testify from those things.

16 I -- while Mr. Taft may dispute some of those
17 things, I think on cross-examination you have the
18 opportunity to discuss those matters with him if you choose
19 to do so. And so I'll deny your motion.

20 MR. ALSTON: Okay. Your Honor, just for the -- the
21 report that we were referring -- the two page report, just
22 for the record, is, I believe a report that was attached to
23 your order on the probable cause hearing or after it, so I
24 guess there's no need to mark this as some sort of exhibit
25 to the case or file it to the extent that this needs to be

Geoffrey McKee - Direct Examination by Mr. Flores

1 appealed.

2 THE COURT: I believe that it's also listed as
3 Exhibit C to the petition.

4 MR. ALSTON: Okay.

5 THE COURT: That's where I see it at this
6 particular point, and so it is a part of the record, a part
7 of the petition that was submitted to the Court, and you
8 should have received a copy of that at the time that it was
9 filed.

10 MR. ALSTON: Yes, ma'am. And the second --

11 THE COURT: I'm sorry, it was a return to the
12 motion for summary judgement.

13 MR. ALSTON: Yes, ma'am.

14 THE COURT: That is Exhibit C, so it's not in the
15 petition. I'm sorry.

16 MR. FLORES: I would submit, I believe at the
17 probable cause hearing that this order was dependent
18 upon -- I'm sorry, this report, along with Dr. Jack
19 Lazarus' report was appended to the probable cause order.
20 I believe the language of that order states that.

21 Well, it's in the record, so --

22 THE COURT: And it could very well be attached to
23 my order, but in looking through the file right now, that's
24 where I see it attached is the return to the motion of
25 summary judgment.

Geoffrey McKee - Direct Examination by Mr. Flores

1 Yes, sir?

2 MR. ALSTON: Yes, ma'am. We just heard testimony
3 from Dr. McKee that my client is going to be sent to a
4 confined facility at the Department of Corrections. I
5 believe the door has been opened as to that, and I believe
6 that I'm allowed free rein to cross and in summation to
7 refer to that.

8 THE COURT: I think you can refer to the fact that
9 the Edisto Unit is located at the Department of
10 Corrections, but I don't think that that opens the door to
11 give you free rein to talk about any and all of what that
12 might mean in the Department of Corrections.

13 MR. ALSTON: Yes, ma'am. I --

14 THE COURT: Maybe you need to narrow down what you
15 want --

16 MR. ALSTON: Do I have the -- does the Court agree
17 with me that I have the right to refer to in my summation
18 at this point, that he will be incarcerated in a facility
19 at Broad River Correctional Institution --

20 THE COURT: He won't be incarcerated. You can't
21 refer to that.

22 MR. ALSTON: Okay. I can't refer to incarceration.
23 Confined.

24 THE COURT: He would be confined to a secure
25 facility.

Geoffrey McKee - Direct Examination by Mr. Flores

1 MR. ALSTON: Okay.

2 THE COURT: And you can certainly -- because it is
3 not an incarceration. He is not being -- as a criminal
4 defendant not being placed within that unit because he is a
5 defendant in a case.

6 MR. ALSTON: Okay, Your Honor, I didn't know that
7 incarceration was limited to criminal defense. I'm sorry.

8 THE COURT: Well, he is -- this is a civil
9 commitment and under civil commitment, the statute requires
10 that he be confined to a secure facility and the State of
11 South Carolina has determined that that secure facility
12 should be under the jurisdiction of the Department of
13 Mental Health, which is what's required by the statute. It
14 just happens to be physically located at the Edisto Unit at
15 the Department of Corrections. You could certainly say
16 that he will be physically housed -- since the door's been
17 open -- physically be housed at a unit on the premises of
18 the Department of Corrections. But to say that he's going
19 to be incarcerated, I don't think is an accurate reflection
20 of what the current status is.

21 MR. ALSTON: Yes, ma'am. Physically housed on a
22 unit administered by the department --

23 THE COURT: I said physically housed at a unit on
24 the premises of the Department of Corrections, but it is
25 operated by the Department of Mental Health.

Geoffrey McKee - Direct Examination by Mr. Flores

1 MR. ALSTON: Yes, ma'am.

2 THE COURT: Anything else we need to take up at
3 this time?

4 MR. FLORES: None from the State, Your Honor.

5 THE COURT: All right. Let's take a break.

6 (WHEREUPON a recess was observed.)

7 THE COURT: Is there anything we need to take up
8 before we bring the jury in?

9 MR. FLORES: Nothing from the State, Your Honor.

10 MR. ALSTON: Yes, ma'am, Your Honor. It occurred
11 to me during the break that Dr. McKee testified that he was
12 involved in the process under the statute to commence this
13 action. I believe, and it is my position, that that
14 disqualifies him as an independent expert in order to
15 render an opinion in this case. The best analogy -- and if
16 given more time, I could probably come up with a better
17 one, but the best analogy I have is having somebody
18 actually from the Attorney General's Office come in and
19 say, you know, a criminal prosecutor say, you know, as to
20 opine as Dr. McKee did, that he was involved in this action
21 at the inception renders him, per se unqualified to be an
22 independent expert.

23 THE COURT: I don't see that it renders him per se
24 unqualified. I think his testimony -- the testimony was
25 based upon his evaluation. Now, certainly, you can explore

Geoffrey McKee - Direct Examination by Mr. Flores

1 with him whether or not he has some type of bias or
2 prejudice toward Mr. Taft at this particular point in the
3 proceedings, and I think that's certainly something
4 relevant that the jury can consider in taking into
5 consideration his testimony and what weight to give it. I
6 don't think that that -- because of the fact that his
7 evaluation was conducted separate and apart from his duties
8 and responsibilities as a member of the Multidisciplinary
9 Team, I don't think that that makes his opinion just not
10 worthy and that he should be excluded in total. But I
11 think certainly it's something that's relevant for the jury
12 to consider. And so on that basis I would deny that
13 request.

14 MR. ALSTON: Okay. Thank you, Your Honor, please
15 note my exception to the ruling on the record. And I just
16 want to state that I may or may not go into that in cross,
17 but I do not want my position to be waived.

18 THE COURT: Yeah. I mean, you've raised it as a
19 basis for an objection. It's preserved in the record and,
20 you know, whether or not you choose to cross examine him on
21 it is your choice.

22 MR. ALSTON: Thank you.

23 THE COURT: If there's nothing else, Dr. McKee, if
24 you would resume the witness stand, please.

25 And then, Mr. Broom, you may ask the jury to come

Geoffrey McKee - Cross-Examination by Mr. Alston

1 in, please.

2 THE BAILIFF: Yes, ma'am.

3 (WHEREUPON the jury entered the courtroom at 12:16
4 p.m.)

5 THE BAILIFF: Your Honor, the jury is present.

6 THE COURT: Mr. Alston, you may proceed with your
7 cross.

8 MR. ALSTON: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 By Mr. Alston:

11 Q Good afternoon, Dr. McKee?

12 A Good afternoon.

13 Q I neglected to introduce myself to the jury, but I
14 am Rowland Alston to identify me correctly. I am the
15 attorney for Mr. Taft.

16 A Yes, sir.

17 Q Before I go into any details, Doctor, I have a two
18 page letter dated September 22, 2009 that I believe you
19 referred to earlier. And I just wanted --

20 MR. ALSTON: If I may approach the witness, Your
21 Honor?

22 THE COURT: Yes, sir.

23 By Mr. Alston:

24 Q -- hand that to you and just so you can tell me
25 that that is the extent of your written evaluation?

Geoffrey McKee - Cross-Examination by Mr. Alston

1 A It is.

2 Q Okay. And am I correct that there are no other
3 official evaluations you have, other than that one of my
4 client?

5 A That's correct.

6 Q Two pages, correct?

7 A That's correct.

8 Q Now, you don't have any evidence of an offense that
9 my client committed outside of his family setting, do you?

10 A No.

11 Q And you're not aware of any act of sexual deviancy
12 that my client may have committed outside of his family
13 setting, are you?

14 A I am not.

15 Q Okay. On page 1 of your report, you indicate a
16 percentage of 55 percent, and what does that indicate,
17 again, for the jury?

18 A That is the percent of persons with certain scores
19 on the South Carolina Probation, Pardon and Parole Risk
20 Scale, percentage of those persons with scores of 20 or
21 higher on that scale that successfully complete probation.

22 Q And so a majority of parolees, successful can meet
23 community supervision?

24 A According to their data, yes.

25 Q And you testified earlier, I believe that

Geoffrey McKee - Cross-Examination by Mr. Alston

1 | pedophilia can be cured. It's a curable condition,
2 | correct?

3 | A I believe that it is in certain circumstances, yes.

4 | Q And it is an amicable condition absent confinement?

5 | A It is.

6 | Q Okay. And I believe you testified that if Mr. Taft
7 | if found as a sexually violent predator that he would be
8 | physically housed in a unit located on the premises of the
9 | Department of Corrections; is that correct?

10 | A That is correct. As the program currently exists,
11 | yes.

12 | Q And that would be one of confinement, correct?

13 | A Yes.

14 | Q Okay. And did I understand your testimony to be
15 | that as of today, you cannot give an opinion as to whether
16 | or not Mr. Taft is a sexually violent predator?

17 | A That is correct.

18 | Q And this report that you did was an evaluation on
19 | June 5, 2009, correct?

20 | A Correct.

21 | Q And this report is dated, or the letter is dated
22 | September 27, 2009, correct?

23 | A That's correct.

24 | Q Which means that almost two years have evaluated --
25 | or excuse me, two years have lapsed since he was evaluated

Geoffrey McKee - Redirect Examination by Mr. Flores

1 by you?

2 A That's correct.

3 MR. ALSTON: Your Honor, I have no further
4 questions.

5 THE COURT: Any redirect examination?

6 MR. FLORES: Briefly, Your Honor.

7 **REDIRECT EXAMINATION**

8 By Mr. Flores:

9 Q Dr. McKee, Mr. Alston showed you a copy of this
10 letter that you sent to Deon O'Neill. Is that the
11 customary way of reporting your information to defense
12 counsel doing an aid in sentencing evaluation?

13 A No, sir. The way in which I do evaluations, when
14 I'm retained by a defense attorney is to tell the defense
15 attorney that I will -- if I accept the case -- that I will
16 accept the case, I will see the patient, I will review
17 records, I'll do testing and then I will report the results
18 of my examination verbally to the defense attorney and
19 indicate that it is the defense attorney's decision to tell
20 me whether to draft a written report and that it is the
21 defense attorney's decision, whether he or she would call
22 me as a witness in the case. I don't accept cases from the
23 defense under any other conditions, and I go through those
24 same stipulations, those same conditions when I first meet
25 the defense attorney's client.

Geoffrey McKee - Recross-Examination by Mr. Alston

1 Q With regard to Mr. Alston's question about these
2 crimes only occurring in the family setting, even with
3 this, you opine that at that time, in 2009, you believed he
4 was a sexually violent predator?

5 A Yes.

6 MR. FLORES: Beg the Court's indulgence.

7 No further questions, Your Honor.

8 THE COURT: Anything further?

9 MR. ALSTON: Just a few follow up.

10 **RECROSS-EXAMINATION**

11 By Mr. Alston:

12 Q When you were describing the circumstances in which
13 you give these letters out, this letter was again generated
14 during his criminal prosecution, correct?

15 A That is correct.

16 Q And are you aware of any report prepared during
17 this sexually violent predator action that finds my client
18 as a sexually violent predator?

19 A I am not aware of it.

20 MR. ALSTON: Thank you Your Honor. That's all I
21 have.

22 THE COURT: Thank you, you may step down.

23 THE WITNESS: May I be excused?

24 MR. FLORES: Your Honor --

25 THE COURT: Yes, you may be excused. Thank you

Rebecca Jackson - Direct Examination by Mr. Flores

1 very much. No objection, I assume?

2 MR. ALSTON: No, ma'am.

3 THE COURT: Thank you. You may call your next
4 witness.

5 MR. FLORES: Yes. The State would call Dr. Rebecca
6 Jackson.

7 THEREUPON,

8 DR. REBECCA JACKSON,
9 after being duly sworn, testified as follows:

10 THE CLERK: Please have a seat. State your full
11 name for the record.

12 THE WITNESS: Rebecca Jackson.

13 **DIRECT EXAMINATION**

14 By Mr. Flores:

15 Q Good afternoon, Dr. Jackson.

16 A Hi.

17 Q Would you describe to the jury how you're currently
18 employed?

19 A I am Chief Psychologist for the Department of
20 Mental Health.

21 Q And what professional degrees do you possess,
22 Doctor?

23 A I have a bachelor's degree in Psychology from West
24 Virginia University, a master's degree in Psychology from
25 the University of North Texas and a PhD in Clinical

Rebecca Jackson - Direct Examination by Mr. Flores

1 Psychology from the University of North Texas.

2 Q Have you had any specialized training within the
3 field of psychology?

4 A Yes, I did a residency and Public Policy in
5 Criminal Justice in the University of Washington where I
6 trained in forensic psychology and sexually violent
7 predator populations, specifically. I also did training in
8 forensic psychiatric hospitals.

9 Q Dr. McKee told the jury about the process of
10 becoming board certified. Are you board certified in
11 forensic psychology?

12 A I am not, no.

13 Q Okay. Have you been -- have you previously been
14 recognized as and testified as an expert in the field of
15 forensic psychology in the courts of law in this state?

16 A Yes.

17 Q And about how many times have you been so
18 recognized, Doctor?

19 A About a dozen times.

20 MR. FLORES: At this time, Your Honor, we would
21 move for Dr. Jackson to be recognized as an expert in
22 forensic psychology?

23 THE COURT: Is there any voir dire?

24 MR. ALSTON: No, Your Honor.

25 THE COURT: Well, I find her so qualified as an

Rebecca Jackson - Direct Examination by Mr. Flores

1 expert in forensic psychology.

2 Q Doctor, how were you approached to conduct an
3 evaluation of Mr. Taft in this matter?

4 A I was appointed by the Court after his probable
5 cause hearing.

6 Q And how were you paid to conduct your evaluation in
7 this case?

8 A I'm paid by the State.

9 Q Doctor, as part of that evaluation, did you meet
10 with and interview Mr. Taft?

11 A I did.

12 Q And is that man you met with here in the courtroom
13 today?

14 A He is. He is seated next to Mr. Alston.

15 Q Doctor, on how many occasions did you sit down and
16 talk with Mr. Taft?

17 A Once.

18 Q For about how long?

19 A About two hours.

20 Q In addition to meeting with and interviewing
21 Mr. Taft, what information did you receive to aid you in
22 conducting that evaluation?

23 A I received records from the Department of Juvenile
24 Justice, the Generations Group Home, Sex Offender Treatment
25 Program, the Department of Corrections from his current

Rebecca Jackson - Direct Examination by Mr. Flores

1 term of incarceration, as well as arrest records, victim
2 impact statements, and information related to the sexually
3 violent predator process such as the probable cause
4 document.

5 Q And how did you obtain that information?

6 A From the Attorney General's Office.

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

9 A It is.

10 Q At the time you conducted your interview and
11 evaluation of Mr. Taft, was there any information you could
12 not obtain?

13 A No.

14 Q Doctor, can you explain to the jury how an
15 individual's past sexual behavior, sexual offense behavior,
16 relates to his future sexual behaviors?

17 A Well, similar to what Dr. McKee was discussing
18 earlier, an individual's past behavior is often predictive
19 of their future behavior, whether it be sex offender
20 behavior, whether it be eating habits, smoking, past
21 behavior is a strong predictor of future behavior.

22 Q All right. Dr. Jackson, based on your interview
23 with Mr. Taft and your review of his file, at the time of
24 your interview, had he been convicted of a sexually violent
25 offense?

Rebecca Jackson - Direct Examination by Mr. Flores

1 A Yes.

2 Q And what had he been convicted of?

3 A He had been convicted in 2010, he pleaded guilty to
4 two counts of lewd act on a child and in 2006, he was
5 adjudicated in family court of three counts of assault and
6 battery of a high and aggravated nature.

7 Q And, Doctor, are these 2010 convictions for lewd
8 act, are those offenses, which are listed in the sexually
9 violent predator act as being sexually violent offenses?

10 A They are.

11 Q Okay.

12 MR. FLORES: Beg the Court's indulgence.

13 By Mr. Flores:

14 Q Doctor, when you conducted your evaluation of
15 Mr. Taft, were you aware of the details underlying those
16 offenses that you just described?

17 A Yes.

18 Q And what were those details?

19 MR. ALSTON: Your Honor, I'm going to object.
20 These people have already heard this from Dr. McKee. I
21 think they're just trying to repeat, inflammatory
22 testimony.

23 THE COURT: I think there needs to be a foundation
24 laid, but I would agree to the repeated repetition may not
25 be appropriate. You can certainly rephrase the question.

Rebecca Jackson - Direct Examination by Mr. Flores

1 MR. FLORES: Thank you, Your Honor.

2 By Mr. Flores:

3 Q We've heard testimony from Dr. McKee regarding
4 sexually violent offenses, both the lewd act and an ABHAN
5 offenses. Were the details of those events part of the
6 basis of your opinion in this matter?

7 A Yes.

8 Q What were the ages of the victims in the initial
9 charges in the ABHAN?

10 A His sisters were five and six at the time and a
11 brother who's also listed as a codefendant was nine years
12 old.

13 Q And then the second offenses?

14 A Again, those were his sisters for the second set of
15 offenses and they were then eight and nine years old.

16 Q Doctor, Dr. McKee also testified about sex offender
17 treatment that Mr. Taft received at Generations. Was a
18 report part of -- was that information part of the basis
19 for your opinion in this matter?

20 A Yes.

21 Q And in what respect -- excuse me. In your review
22 of that discharge report, did Mr. Taft successfully
23 complete the program?

24 A He did. It was noted he graduated from the
25 program, yes.

Rebecca Jackson - Direct Examination by Mr. Flores

1 Q Doctor, Mr. Taft -- I'm sorry, Dr. McKee testified
2 about instances of abuse that Mr. Taft suffered when he was
3 a child. Did Mr. Taft also relate to those -- those acts
4 during your interview of Mr. Taft?

5 A Yes. Mr. Taft discussed the family's history of
6 abuse with me. I also reviewed a report from the
7 Department of Juvenile Justice where his mother had
8 actually talked about these same events, that he did come
9 from a family of multigenerational abuse, where Mr. Taft's
10 mother's father was actually incarcerated for sexual abuse
11 of his daughter and had abused several of the family
12 members. So at least three generations of sexual abuse
13 occurred in this family.

14 Q What about those instances of abuse is significant
15 to you, Doctor?

16 A It's very significant, especially in families of
17 multigenerational abuse. Research suggests that in these
18 types of families that sexual behavior and sexual abuse
19 becomes very normalized and that the victims and the
20 perpetrators talk about these acts as though they're
21 accepted, a normal part of family life, and that about half
22 of individuals who are victims in these kinds of
23 environments are also perpetrators, often at the same time.

24 It becomes very difficult to determine who's the
25 victimizer in some of these families they're very

Rebecca Jackson - Direct Examination by Mr. Flores

1 intertwined in that way.

2 Q Doctor, what are risk factors?

3 A Like Dr. McKee said, risk factors are qualities or
4 attributes of a person that predict some relevant future
5 behavior, put a person at risk for a behavior. For
6 example, if you think about a risk of heart disease, for
7 example, some historical risk factors would be your gender,
8 male gender, your age, advancing age as related to heart
9 attack and a family history. And these are all sort of
10 historical factors that you can't do anything about, but
11 they put you at risk for a future heart attack.

12 Q What risk factors does Mr. Taft have with regard to
13 historical risk factors?

14 A Having committed a past act of sexual violence is a
15 risk factor. Because he did abuse his brother, having a
16 male victim's been identified in the literature as being
17 predictive. Mr. Taft is young, which is a risk factor and
18 unmarried, which is also a risk factor.

19 Q Let me ask you, Doctor, Mr. Taft committed his
20 first offenses, his first sexual offenses when he was an
21 adolescent?

22 A Yes.

23 Q What does the literature say about adolescent
24 sexual offenders?

25 MR. ALSTON: Objection: Leading and it's --

Rebecca Jackson - Direct Examination by Mr. Flores

1 THE COURT: Rephrase the question.

2 ///

3 By Mr. Flores:

4 Q Are there risk factors that are specifically -- I'm
5 sorry. Are there risk factors that adolescents -- that
6 have been identified that adolescents -- where adolescents
7 who have them will re-offend?

8 MR. ALSTON: Same objection. Leading.

9 THE COURT: Rephrase the question.

10 By Mr. Flores:

11 Q Doctor, are there different risk factors for
12 adolescents?

13 A There are some different risk factors for
14 adolescents, but the primary difference between adolescent
15 and adult offender patterns appear to be more the
16 developmental stage of the adolescent and that the long
17 term prediction is not as good as it can be with adults
18 because adolescents are still growing. They're still
19 developing and changing. Their identities are not set in
20 stone yet. So the risk factors associated tend to be more
21 here and now kind of risk factors rather than some long
22 term risk factors that you see with adults.

23 Q For example what kind of risk factors would be
24 present for adolescents?

25 A Being socially isolated, for example. That has

Rebecca Jackson - Direct Examination by Mr. Flores

1 | been identified as a risk factor, and that's something that
2 | changes as adolescents develop and they grow up and form
3 | other relationships. It's a much more dynamic or
4 | changeable factor.

5 | Q Doctor, did you perform any assessments as part of
6 | your evaluation?

7 | A I did. I scored Mr. Taft on an instrument called
8 | the Static 99, which is a risk assessment instrument that
9 | includes some of the risk factors that we talked about
10 | earlier, being young, being unmarried, having history of
11 | sexual violence.

12 | Q Did you perform any further assessments?

13 | A I did not.

14 | Q So solely the Static 99?

15 | A Solely the Static 99.

16 | Q Is that commonly your protocol on conducting these
17 | evaluations?

18 | A It is. The Static 99 is the most widely used risk
19 | assessment instrument in these kinds of cases and has the
20 | most research support. So I do use that.

21 | Q And was that assessment part of the basis of your
22 | opinion?

23 | A Yes.

24 | Q Okay. When assessed, what score did Mr. Taft
25 | receive on that?

Rebecca Jackson - Direct Examination by Mr. Flores

1 A He received a score of 6 and the scores on a Static
2 99 range from negative 3 to a 12, and Mr. Taft scored a 6.

3 Q And this is a revised version as opposed to the one
4 Dr. McKee used?

5 A Exactly. In 2009 Dr. McKee would have given the
6 original Static 99, that has different scoring. The
7 instrument was revised last year, and it's the revised
8 Static I gave, the more updated version.

9 Q And a 6 corresponds to what level of re-offense?

10 A So the way the Static 99 works is that there was a
11 developmental example of sexual offenders who got out of
12 prison and they were each scored on this instrument. The
13 authors followed them up over time and looked at who
14 re-offended and by looking at the score that each person
15 received on the instrument, they can then kind of say,
16 well, of people who've scored X on this instrument, Y
17 percent then re-offended.

18 So in that developmental sample of people who
19 scored a 6, roughly 25 percent of them re-offended sexually
20 in a five-year period and roughly 33 percent re-offended
21 sexually over a ten-year period.

22 Q Is that significant with regard to your opinion in
23 this matter?

24 A It was.

25 Q Doctor, in your report you stated that his score

Rebecca Jackson - Direct Examination by Mr. Flores

1 was overestimated due to inability to form relationships.

2 How would that have affected his score?

3 MR. ALSTON: Objection, Your Honor. His question
4 has not been established by the testimony.

5 THE COURT: Rephrase. Lay a foundation.

6 By Mr. Flores:

7 Q In your report, you referred to information that
8 might affect that score.

9 MR. ALSTON: Leading. Objection, Your Honor.

10 THE COURT: Rephrase.

11 By Mr. Flores:

12 Q Was there anything in your evaluation that caused
13 you to reassess that score?

14 A Yes. Because Mr. Taft is young and young is a risk
15 factor and he did receive one of his six points for being
16 young. But part of that being young is he doesn't have an
17 opportunity or didn't have an opportunity to form adult
18 relationships partly because he was young and partly
19 because he spent his adult -- his two years of adult life
20 incarcerated. It's very difficult to form romantic,
21 intimate, appropriate relationships in prison. So he
22 actually received a risk score point.

23 So two out of his six points on this instrument are
24 because he's young and unmarried and it was my opinion that
25 that therefore overestimated what his actual risk is on

Rebecca Jackson - Direct Examination by Mr. Flores

1 that instrument.

2 Q Does the instrument allow for overestimation?

3 A Yes. In the manual there's discussion of the
4 evaluator's ability to use some clinical judgment in
5 assessing whether it's an over or under estimation of risk.

6 Q Doctor, was there any other information upon which
7 you relied in rendering your opinion regarding Mr. Taft?

8 A By information do you mean documents or --

9 Q Any other information as far as prior evaluations
10 conducted on Mr. Taft.

11 A I did review prior evaluations, such as Dr.
12 McKee's.

13 Q What other evaluations would you refer to or rely
14 upon in rendering your opinion in this matter?

15 A I looked at a report by Dr. Lazarus who wrote a
16 report back in 2009.

17 Q Were those evaluations a part of the basis of your
18 opinion in this matter?

19 A Yes.

20 Q Doctor, based upon your examination of Mr. Taft and
21 review of his records and all of these factors that we've
22 been discussing, did you render an opinion to a reasonable
23 degree of psychological certainty as to whether Mr. Taft
24 has a mental abnormality or personality disorder?

25 A Yes.

Rebecca Jackson - Direct Examination by Mr. Flores

1 Q What was that opinion?

2 A Similar to Dr. McKee I provided a diagnosis of
3 pedophilia. However, Dr. McKee diagnosed him with
4 pedophilia sexually attracted to females. I actually
5 diagnosed him with pedophilia, limited to incest. And what
6 that means is that his sexual attraction to children seems
7 to be limited to his family members. It's limited to
8 incest. No indication that he's actually aroused to other
9 females or other children. Therefore, I provided that more
10 narrow diagnosis. I thought it was more descriptive.

11 Q What does the literature say about those
12 individuals who commit -- or pedophiles who commit acts
13 against family members?

14 A On average, individuals who commit only incest
15 offenses are at a much lower risk to re-offend than
16 individuals who commit sexual offenses against unrelated
17 children.

18 Q And does that literature take into account
19 individuals who have been previously adjudicated for sex
20 offenses and received intense sex offender treatment and
21 then subsequently re-offend?

22 MR. ALSTON: Objection, leading.

23 THE COURT: Restate the question.

24 MR. FLORES: Does the literature that Dr. Jackson's
25 just referred to, does that literature take into account

Rebecca Jackson - Direct Examination by Mr. Flores

1 individuals who have already been adjudicated of a sexual
2 offense and received sexual offender treatment and then
3 re-offend.

4 THE COURT: Overruled.

5 THE WITNESS: The research would include a mix of
6 individuals. Whether they received intensive treatment or
7 not would be dependent upon the sample that was studied.

8 Q Does that research take into account those
9 individuals who acknowledge in a sex offender treatment
10 program the behavior is wrong?

11 A Sure.

12 Q Did Mr. Taft show any remorse during his sex
13 offender treatment?

14 MR. ALSTON: Objection, Your Honor. Un-relevant.

15 THE COURT: Sustained.

16 By Mr. Flores:

17 Q Doctor, since Dr. McKee's evaluation, June of 2009,
18 based on the records received, pursuant to this act and any
19 evaluation that you've done of Mr. Taft, are you aware of
20 any sex offender treatment or counseling that Mr. Taft has
21 received?

22 A At the Generations Group Home.

23 Q So that was -- I asked prior to Dr. McKee's
24 evaluation. So subsequently to Dr. McKee's evaluation has
25 there been any sex offender treatment?

Rebecca Jackson - Direct Examination by Mr. Flores

1 A Not to my knowledge.

2 Q Doctor, what does the literature in your field say
3 about juveniles who commit sexual offenses and receive sex
4 offender treatment?

5 MR. ALSTON: Objection, Your Honor, overly broad.

6 THE COURT: Overruled.

7 THE WITNESS: I'm sorry, could you --

8 By Mr. Flores:

9 Q Sure I can restate that. I stated, Doctor, what
10 does the literature in your field say about juveniles who
11 commit sexual offenses and receive sex offender treatment?

12 A I'm sorry I don't -- I'm not -- I don't understand
13 the question.

14 Q With regards to recidivism, those individuals who
15 have committed sexual offenses and received successful sex
16 offender treatment, what does your -- the literature in
17 your field say about those individuals or their likelihood
18 to re-offend?

19 A Well, adolescent sex offenders in general have
20 actually a lower recidivism rate than adult sex offenders
21 and part of this is what we were discussing earlier about
22 they're still developing and how sexual acting out during
23 adolescents can be more of a short term developmental,
24 almost split for some adolescents and they actually
25 re-offend less in adulthood than individuals who begin

Rebecca Jackson - Direct Examination by Mr. Flores

1 | offending in their adulthood.

2 | Q About how much less?

3 | A I don't know.

4 | MR. BOGLE: Beg the Court's indulgence.

5 | Can we have one moment, Your Honor?

6 | (WHEREUPON, there was a brief break while the
7 | attorneys conferred out of the hearing of the jury and the
8 | Court Reporter.)

9 | By Mr. Flores:

10 | Q Doctor, in diagnosing Mr. Taft with pedophilia, is
11 | that a chronic condition?

12 | A Yes.

13 | Q And what would that mean?

14 | A Chronic means enduring, something that lasts for a
15 | long time.

16 | Q Is it a manageable condition?

17 | A It is a manageable condition, yes.

18 | Q And can be managed with treatment; is that correct?

19 | A Sure.

20 | Q Doctor, do you have an opinion to a reasonable
21 | degree of psychological certainty as to whether Mr. Taft
22 | meets the legal criteria to be found to be a sexually
23 | violent predator at this time?

24 | A I do.

25 | Q And what is that opinion?

Rebecca Jackson - Direct Examination by Mr. Flores

1 A My opinion is that -- well, just to reiterate what
2 the standard is, that my understanding, I was assessing,
3 does he have a mental abnormality or personality disorder;
4 and we discussed that. And then the second prong of the
5 statute says that he is likely to engage in acts of sexual
6 violence if not confined in a secure facility for long term
7 control, care and treatment. And it was my opinion that
8 although Mr. Taft does present a certain degree of risk,
9 that he can be managed without a total confinement
10 facility, that he is -- because his offending was limited
11 to his siblings, removing his access to the siblings,
12 providing treatment; that those things can be done while
13 Mr. Taft is in the community, and that total confinement is
14 not necessary to prevent him victimizing his siblings
15 again.

16 Q So it's your opinion he does not meet the legal
17 criteria at this time?

18 A Yes.

19 Q And you took into account the fact that he
20 committed the acts in 2006, he went through successful
21 offender treatment and recommitted acts in 2008? That was
22 all part of your basis?

23 MR. ALSTON: Objection to leading.

24 THE COURT: Rephrase the question.

25 By Mr. Flores:

Rebecca Jackson - Direct Examination by Mr. Flores

1 Q Did you take into account in the basis of your
2 opinion the fact that Mr. Taft committed acts in 2006, went
3 through successful sex offender treatment and then,
4 recommitted acts in 2008?

5 MR. ALSTON: Objection, Your Honor. I'm not sure
6 some of that has been established by the testimony.

7 THE COURT: Overruled.

8 THE WITNESS: Yes. I did consider all of that.
9 Mr. Taft did go to the Generations Group Home where he
10 completed sex offender treatment. He was able to
11 articulate to me many of the tools that he learned in
12 treatment. He did graduate. It's unfortunate that he was
13 sent home to the same environment he had been in and I did
14 consider that. For Mr. Taft, it was similar to being in a
15 high risk environment, going to treatment -- pretend you're
16 at, say a weight loss facility for six months, you want to
17 lose weight, you go to this weight loss facility. They
18 teach you lots of tools to lose weight, teach you how to
19 exercise, manage your diet and you're doing very well and
20 then you go home and nothing's changed at home. People are
21 still ordering pizza, there's still soda in the house.

22 So he was placed back in the high risk environment
23 and his behavior reverted to how it was beforehand, and so
24 I certainly did consider his environment. I considered the
25 fact that he went to treatment. I considered all of that

Rebecca Jackson - Direct Examination by Mr. Flores

1 in my opinion.

2 Q Did he have a plan when he returned to that high
3 risk environment to avoid re-offending?

4 A He had something of a plan when he came out that he
5 talked about having safety people, which is important in
6 the community, to have people you can talk to.
7 Unfortunately, he also said that, you know, Generations
8 never had a chance to work because I was put right back in
9 a high risk situation. He kind of -- he was able to
10 express that despite learning these tools. He did feel
11 somewhat helpless when he was put back in that same
12 environment.

13 Q Was his family aware of the plan that he put in
14 place?

15 A I believe so.

16 Q So they were aware of the treatment?

17 MR. ALSTON: I'll object to that. That's all
18 speculation, Your Honor.

19 THE COURT: Sustained.

20 By Mr. Flores:

21 Q So despite he had a placement in plan to prevent
22 this, he still offended; is that correct?

23 MR. ALSTON: Objection, leading.

24 THE COURT: Rephrase.

25 By Mr. Flores:

Rebecca Jackson - Direct Examination by Mr. Flores

1 Q Despite having a plan to avoid re-offending, did
2 re-offend?

3 A He re-offended, yes.

4 Q Doctor, do you know where Mr. Taft will go if he is
5 released today?

6 A He'll be released to probation and he has an
7 arrangement at a halfway house, for lack of a better
8 chance, called Second Chance that he will be living in and
9 he will be on probation which requires him to check in with
10 his probation officer, attend sex offender treatment and
11 have no access to his siblings -- no contact with his
12 siblings.

13 Q Doctor, in performing your evaluation, did you rely
14 upon the Department of Probation Parole and Pardon
15 Services, Parole Risk Assessment --

16 A No.

17 Q -- that was described by Dr. McKee earlier?

18 A No.

19 Q You did not?

20 A No, I did not.

21 Q You did not rely on that?

22 A No.

23 Q Has Mr. Taft scheduled sex offender treatment and
24 who with?

25 A I don't know.

Rebecca Jackson - Cross-Examination by Mr. Alston

1 MR. ALSTON: I'm sorry, I didn't hear the question.

2 MR. FLORES: I said has Mr. Taft scheduled sex
3 offender treatment? Who would be that provider.

4 MR. ALSTON: Objection, Your Honor, relevancy.
5 That's a question regarding respective measures, Your
6 Honor.

7 THE COURT: I understand. I think you can ask if
8 she's aware of what programs are available to him, but I
9 don't think the question is appropriate.

10 MR. FLORES: Beg the Court's indulgence.

11 Your Honor, we have no further questions at this
12 time.

13 THE COURT: Any cross?

14 MR. ALSTON: Yes, ma'am.

15 **CROSS-EXAMINATION**

16 By Mr. Alston:

17 Q Good afternoon, Doctor.

18 A Hello.

19 Q Like I did with Dr. McKee --

20 MR. ALSTON: Your Honor, if I may approach?

21 THE COURT: Yes, sir.

22 By Mr. Alston:

23 Q I just want to hand you the evaluation report that
24 you -- that I believe you prepared, and I just wanted you
25 to go through it and make sure that that document is

Rebecca Jackson - Cross-Examination by Mr. Alston

1 complete?

2 A Yes.

3 Q Okay. And this is a report of seven pages,

4 correct?

5 A Yes.

6 Q And you evaluated Christopher on November 2nd of

7 last year, correct?

8 A Yes.

9 Q And your diagnosis is one of limited to incest, as
10 you testified, correct?

11 A Yes.

12 Q And it was your testimony that Dr. McKee's Static
13 99 test was one that was actually out of date at the time
14 of your evaluation, correct?

15 A It was out of date during my evaluation, not during
16 his. Back in 2009, that was still the version that --

17 Q But it's out of date now.

18 A Now, it is.

19 Q And am I understanding you correctly in that the
20 only way for -- the way for my client's score to improve on
21 the Static 99 is for him to get married?

22 A To get married and to grow older. It will go down.

23 Q And you testified that pedophilia is a curable
24 condition right?

25 A No, I --

Rebecca Jackson - Cross-Examination by Mr. Alston

1 Q It's a treatable condition, correct.

2 A It's treatable, it's manageable, yes.

3 Q Okay. And it can be managed without confinement,
4 correct?

5 A In Mr. Taft's case, I believe it can, yes.

6 Q Okay. And your testimony is today that he does not
7 meet the criteria for a sexually violent predator as
8 outlined in the act, correct?

9 A Yes.

10 Q And I believe you also concluded that the research
11 has demonstrated that incest offenders represent a low risk
12 to re-offend in the nature of familial child molesters,
13 correct?

14 A Yes.

15 Q And are you aware of any evidence or any report or
16 any record that Mr. Taft has performed any act of sexual
17 deviancy outside of his family setting?

18 A No, all of his criminal acts were against his
19 siblings and even when he was in a group home with other
20 adolescent sex offenders, other children, there's no
21 evidence that he sexually acted out while in the vicinity
22 of these children or had access to them.

23 Q Okay.

24 MR. ALSTON: Court's indulgence, Your Honor.

25 Your Honor, that's all I have at this time.

1 THE COURT: Any redirect?

2 MR. FLORES: No, Your Honor..

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

4 MR. FLORES: Your Honor, I would ask that Dr.
5 Jackson be excused. She's here under subpoena.

6 THE COURT: Any objection?

7 MR. ALSTON: No, ma'am.

8 THE COURT: You may be excused. Thank you very
9 much.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Ladies and gentlemen, I think at this
12 time -- I think this would be a good time to take a lunch
13 break. I'm going to remind you the instructions that I've
14 given to you previously. That is that you should not begin
15 to discuss this matter among yourselves as you still have
16 not heard all of the evidence that has to be presented.

17 Please remember my instructions to you yesterday
18 that as you come and go from the courthouse, please do not
19 listen to any conversations that you may hear in the
20 hallways. Again, for the reasons that you have to make the
21 decisions based upon the evidence that's presented here in
22 the courtroom and not based on conversations that you may
23 overhear. Please also do not allow anyone to approach you
24 to discuss this matter with you. Again, if someone
25 attempts to do that, please tell them that you are a juror

1 and you cannot report (sic) it and I ask that you -- I'm
2 sorry -- that you cannot discuss it and I ask that you
3 report it as soon as possible.

4 Ladies and gentlemen, I'm going to ask that you
5 report back at about 2:15 to the same jury room where
6 you've been throughout the course of this trial and when
7 you return at that time, then we'll be about ready to
8 continue on with the trial of this particular matter. I
9 hope you have a pleasant lunch, thank you.

10 (WHEREUPON the jury left the courtroom at 12:59
11 p.m.)

12 THE COURT: Is there any matter we need to take up
13 before we break for lunch?

14 MR. FLORES: Nothing from the State, Your Honor.

15 MR. ALSTON: There is, Your Honor, if that's the
16 conclusion of the State's case.

17 MR. FLORES: We would like the lunch hour to decide
18 if that's the end of the State's case.

19 THE COURT: All right. I assume that after the
20 conclusion of the State's case that there would be motions
21 anyway.

22 MR. ALSTON: Yes, ma'am.

23 THE COURT: I just made that assumption. So we'll
24 just wait and see what happens after lunch.

25 MR. FLORES: Thank you, Your Honor.

1 MR. ALSTON: Thank you, Your Honor.

2 THE COURT: I did receive proposed charge from the
3 State and I received one from the respondent. Is there
4 anything else that I need to consider at this time just
5 from looking at the information?

6 MR. ALSTON: No, ma'am, I would like -- I may have
7 lost my proposed charge from the State. If I could have a
8 copy of that.

9 MR. FLORES: Yes.

10 THE COURT: And there was also a proposed verdict
11 form, I believe. Nevermind that was one done by my law
12 clerk. You all haven't seen that yet. So you'll get him a
13 copy?

14 MR. FLORES: Yes, ma'am.

15 THE COURT: And so we'll just come back at 2:15 and
16 see where we are at that time.

17 MR. FLORES: Thank you Your Honor.

18 MR. ALSTON: Thank you.

19 MR. FLORES: Your Honor, may I approach?

20 THE COURT: Yes.

21 MR. FLORES: Here's the State's proposed verdict
22 form. This is the one we typically do, just to give that
23 to you.

24 THE COURT: Yeah.

25 MR. FLORES: I gave a copy to opposing counsel.

1 THE COURT: Okay.

2 (WHEREUPON a recess was observed for lunch.)

3 THE COURT: Brenda, can you tap on that microphone
4 for me, please.

5 (WHEREUPON the court reporter tapped the microphone
6 on the witness stand.)

7 THE COURT: I noticed that there was some static
8 coming from that microphone earlier and the jury has sent
9 me a note saying that because of the static, sometimes it's
10 hard to hear and understand the witnesses and I don't know
11 whether it's a function of talking too close to the
12 microphone or what. I didn't hear it as much with a last
13 witness as much as I did with the first witness. So we
14 just need to be cognizant of that.

15 Is there anything that we need to take up before we
16 get started?

17 MR. FLORES: Yes, Your Honor. Although I'd like to
18 do this in front of the jury, the State's case has been
19 presented. We will conclude our case at this time.

20 THE COURT: I will allow you to rest in front of
21 the jury. If we can go ahead and take up any motions at
22 this time so that when they come back in we can --

23 **MIDTRIAL MOTIONS**

24 MR. ALSTON: Yes, ma'am. Your Honor, at this time,
25 since the State has concluded their case in chief, I move

1 for a directed verdict. And I know oftentimes in civil
2 cases that moving for a directed verdict at this juncture
3 is a format. In this case, I think the argument is a very
4 powerful one. If I may beg the Court's indulgence by
5 reading the law on sexually violent predator. Section
6 44-48-30, says sexually violent predator means a person who
7 (A) has been convicted of a sexually violent offense and
8 (B) suffers -- suffers from a mental abnormality or a
9 personality disorder that makes the person likely to engage
10 in acts of sexual violence if not confined in a secure
11 facility for long term care or -- I'm sorry -- long term
12 control, care, and treatment.

13 Suffers, present tense. And I direct the Court's
14 attention to Section 44-48-090, subsection A: The Court
15 must conduct a trial to determine whether the person is a
16 sexually violent predator. And notwithstanding any
17 exceptions I may take to the verdict form which you have
18 submitted, the Court has crafted that very language in the
19 present tense, is and is not.

20 Your Honor, the State has not offered any testimony
21 that my client is a sexually violent predator. The expert
22 for the criminal prosecution sat there and said that he
23 could not, today, say that he is a sexually violent
24 predator. Dr. Jackson, who testified, said that he is not
25 a sexually violent predator, both at the time she evaluated

1 him and her opinion was that -- was so today.

2 And, Your Honor, I don't see any valid reason why
3 the State can rest its laurels on an opinion rendered
4 almost two years ago and not present any evidence that my
5 client is a sexually violent predator today when this civil
6 action is all about today and the statute calls for it
7 plainly.

8 And for those reasons, I think that there's only
9 one conclusion that the jury could reach in this case if
10 they properly applied the evidence to the law, and that is
11 my client is not a sexually violent predator because there
12 has been nothing proffered by the State to the contrary and
13 for that reason, Your Honor, I move for a directed verdict.

14 THE COURT: MR. Flores?

15 MR. FLORES: Yes, in response, Your Honor, taking a
16 look at the evidence that's most reasonable for -- in a
17 light -- from the -- looking at the evidence presented
18 today, there's testimony from both witnesses that Mr. Taft
19 suffers from pedophilia, whether it be pedophilia attracted
20 to females nonexclusive or pedophilia attracted to females
21 nonexclusive when it's incest, that is a -- that is both
22 witnesses testifying a chronic condition, neither testified
23 that it was cured. It's a treatable or manageable
24 condition. So as far as whether that -- whether Mr. Taft
25 suffers from that condition, I believe, is a present

1 tense -- present tense mental abnormality that has been
2 testified to by both witnesses.

3 Taking a look at the evidence beyond that, both
4 witnesses -- both experts opined and albeit at different
5 times, one, Dr. McKee, opined in 2009 that he believed that
6 Mr. Taft fit the definition of sexually predator at that
7 time. Dr. Jackson says that she doesn't believe that he
8 fits the definition at this time. There's testimony in the
9 record showing that Mr. Taft has completed no further sex
10 offender treatment; he's been incarcerated or outside of
11 the community during that time and we would submit that
12 along with that, accompanied by the assessments that were
13 used in rendering Dr. McKee's opinion, that they would
14 reflect on whether or not Mr. Taft can control his mental
15 abnormality such that he's safe to be at large and whether
16 or not he would commit acts of sexual violence.

17 The question, of course, we believe that whether or
18 not Dr. McKee's opinion is more pertinent than Dr.
19 Jackson's is a question for the jury. It goes to the
20 weight of the evidence that was presented, the facts of
21 what Mr. Taft had done are in evidence. The 2006
22 adjudications followed by the 2010 convictions along with
23 the intervening sex offender treatment, I believe that
24 creates a question for the jury as to whether or not
25 control is present, despite the opinion of Dr. Jackson.

1 And that would be it, Your Honor.

2 THE COURT: Any response?

3 MR. ALSTON: Yes, ma'am. The act is not the
4 pedophilia act, it's the Sexually Violent Predator Act.
5 And if Dr. McKee could opine today that he was a -- he is a
6 sexually violent predator, then they would have an
7 argument. But they don't because Dr. McKee expressly
8 stated today he can't give that opinion. There is no
9 evidence proffered by the State that my client is a
10 sexually violent predator. And I don't see how the State
11 can disagree with that statement or anyone. And so because
12 there's no evidence that he is a sexually violent predator,
13 there's nothing to submit to the jury and I believe my
14 client is entitled to a directed verdict.

15 MR. FLORES: Briefly in response, Your Honor?

16 THE COURT: Very briefly.

17 MR. FLORES: The question presented today is
18 whether or not Mr. Taft is a sexually violent predator. It
19 is a question that is designed for the jury. You know,
20 whether -- you know, if there are conflicting expert
21 opinions, that goes to the jury -- the jury can gauge the
22 weight, the credibility of those opinions as they heard it
23 from the witness stand today. And it does create a jury
24 question. Thank you, Your Honor.

25 THE COURT: I'm going to respectfully deny your

1 motion. I think that there are factual issues that exist.
2 I understand that the focus at this particular point has
3 been on the ultimate conclusion that's been expressed by
4 both Dr. McKee and by Dr. Jackson, but I think that there
5 are facts and circumstances in evidence in this record that
6 bears on those facts and circumstances that would allow the
7 jury to be able to make a decision as to whether or not he
8 should be confined to a secure facility for the purposes of
9 long term control, care, and treatment. Specifically, of
10 course, the evidence demonstrates that he has been
11 convicted of a sexually violent offense.

12 The second prong that he does, in fact, suffer from
13 a mental abnormality or personality defect -- personality
14 disorder, that being pedophilia. The -- certainly the
15 diagnoses between the two physicians differs somewhat and
16 that variation in that particular diagnosis may have an
17 impact or bearing upon the jury's finding as to whether or
18 not he needs to be confined for long term treatment and
19 control and whether or not he would be able to control
20 those sexual urges that's been expressed.

21 Certainly, there's a difference between Dr. McKee's
22 diagnosis and Dr. Jackson's. One, Dr. Jackson's says it's
23 incest and limited only to familial members. Dr. McKee's
24 diagnosis was a little broader. They both testified that
25 the condition of pedophilia is manageable. They both

1 testified as to the risk factors involved. And I think the
2 apparent difference is whether or not -- and the idea that
3 Mr. Taft has previously received some sex offender
4 treatment and in light of that treatment re-offended and
5 granted the treatment was before he was actually charged
6 with a sexually violent offenses in this particular case,
7 but the fact that he received that treatment and that there
8 were allegations that he did, in fact, commit those
9 offenses, I -- all of that, I believe, is information for
10 the jury to determine whether or not he under the
11 circumstances and with the specific sentence that's been
12 imposed in this particular case, that he receive probation
13 and the circumstances around that probation that he would
14 be in a halfway house or that he would be away from his
15 current environment and what impact that has based upon Dr.
16 Jackson's testimony and whether that would affect Dr.
17 McKee's testimony in the eyes of the jury -- I think that
18 there's -- there is evidence there from which they could
19 make a decision that Mr. Taft is a sexually violent
20 predator under the act because of the offense and because
21 of the level of treatment and because of the diagnosis that
22 was rendered at the time that he was convicted.

23 I understand from you Mr. Alston that you're
24 focusing on the word is, which indicates -- it's almost as
25 if you're arguing as of today. And it's interesting to

1 | note that neither doctor opined that as of today, he is or
2 | is not. So it is a -- it appears to be evidence -- there
3 | appears to be evidence from which the jury would ultimately
4 | have to make a decision as to whether he is at this
5 | particular time. In order to do that, I think they have to
6 | consider all of the evidence that's been presented,
7 | including the evidence that's been presented about what his
8 | risk factors are, the evidence presented about the incest
9 | versus the nonspecific, female nonspecific; the information
10 | that's been presented about whether he would be placed back
11 | in the environment that he was placed back into when he was
12 | released from DJJ and what impact that had upon his
13 | re-offending. Those are all factors I think that they have
14 | to take into consideration in determining whether or not
15 | ultimately Mr. Taft is a danger to others and therefore
16 | must be committed for long term treatment.

17 | Both doctors indicated that since it was a
18 | manageable condition, that he would need the receive
19 | treatment. So really it boils down to whether he needs to
20 | receive treatment inside a confined facility or outside a
21 | confined facility and I think that they have to judge that
22 | based upon all of the other evidence, not just the
23 | particular opinion that's been rendered by the experts.

24 | And as you are well aware, they will be instructed
25 | that they can disregard an expert's opinion if they have a

1 | good and sufficient reason for doing so. And it could be
2 | factors related to education, training, experience, all of
3 | those things that they'll have to take into account in
4 | judging the credibility of those witnesses.

5 | So I understand your position, but respectfully I
6 | think I have to deny those in this particular realm.

7 | MR. ALSTON: I understand. For clarity of the
8 | record's sake, may I address the Court?

9 | THE COURT: Yes.

10 | MR. ALSTON: The first thing I believe you said
11 | early on -- I want to make sure I didn't misunderstand you,
12 | that there has not been an expert who has said that as of
13 | today he is or is not -- to the extent that you said that,
14 | Your Honor, I respectfully take exception to that. It is
15 | my understanding that Dr. Jackson testified that that was
16 | her opinion today that he was not a sexually violent
17 | predator.

18 | THE COURT: And if that's -- if the record bears,
19 | that, then I stand corrected.

20 | MR. ALSTON: And the other thing I have, Your
21 | Honor, is -- to make sure I understand your ruling -- is
22 | it the Court's position that an expert witness -- an
23 | expert witness's opinion that the defendant or respondent
24 | is a sexually violent predator --

25 | THE COURT: I'm sorry?

1 MR. ALSTON: I'm sorry, is it this court's position
2 that the proffer of an expert witness by the State who
3 opines that my client is a sexually violent predator is not
4 necessary to go forward to the jury? Because that's not
5 here.

6 THE COURT: My ruling is based upon all of the
7 evidence that has to be presented. There is testimony that
8 there has been opinion that in 2009, Mr. Taft met the
9 definition, and I think as to whether or not he still meets
10 that definition, while Dr. McKee could not testify
11 specifically today because he had not interviewed him
12 recently, I think that that in conjunction with other
13 evidence that's present, including the testimony of Dr.
14 Jackson, creates a factual issue from which -- whether or
15 not in the jury's mind his condition sufficiently changed
16 or whether they choose to believe that his condition
17 sufficiently changed based upon the evidence, but that's
18 really a question that they're going to have to wrestle
19 with.

20 That's not to say that in all cases in which the
21 State presents evidence they will be able to necessarily
22 use previous opinions. But certainly in this particular
23 case, that's additional information for the jury to
24 consider; and, in fact, to consider whether there's been a
25 change and why there's been a change if that's what they

1 | warrant to consider, and whether to believe the current
2 | expert based upon her education, training, versus the
3 | previous opinion.

4 | MR. ALSTON: Thank you, Your Honor. I'm not
5 | arguing with the Court, I just want to state for the
6 | record, it's the respondent's position that an expert
7 | opinion that the respondent is a sexually violent predator
8 | is a prerequisite for the case to be submitted to a jury.

9 | Thank you, Your Honor.

10 | THE COURT: Okay. Thank you.

11 | I can't -- I can't let my thought just go
12 | undiscussed. And again, Mr. Alston, -- and I'm not trying
13 | to argue with you. I'm just trying to make is that the
14 | record is at least clear from my thought process, is
15 | that -- nevermind.

16 | MR. ALSTON: You can argue with me all you want to,
17 | Your Honor.

18 | THE COURT: No, I just realized coming back around
19 | what your argument was. Your argument, basically, is that
20 | because Dr. Jackson opines today that he is not a sexually
21 | violent predator, he does not meet the definition's
22 | standard and, therefore as of this moment the opinion
23 | today, he does not meet that standard; and therefore Dr.
24 | McKee's opinion -- Dr. McKee's opinion from some time ago
25 | should not be considered because he could not opine as of

1 today that he is one?

2 MR. ALSTON: No, ma'am, my position is quite simply
3 that the State has the burden to produce someone who will
4 opine that my client is a sexually violent predator and
5 they haven't done that. It's my understanding that's a
6 prerequisite of the statute, by the plain language of the
7 statute, is, in the present tense. There's been no
8 testimony from Dr. McKee or Dr. Jackson that my client is a
9 sexually violent predator. To the contrary, Dr. McKee
10 testified he could not say whether or not my client is a
11 sexually violent predator today and Dr. Jackson said he is
12 not, both when she examined him and today. So --

13 THE COURT: But are you -- but, I guess my
14 questions are, are you talking about today because Dr.
15 McKee did opine that he met the definition? So the
16 question becomes at which point do you want to believe that
17 he is or is not?

18 MR. ALSTON: He was testifying that he met the
19 definition as to when he examined him almost two years ago
20 in 2009 during his criminal case. But I asked him in
21 cross-examination, Did I understand you correctly, because
22 he already said it once, You cannot say whether or not my
23 client today is sexually violent predator and his response
24 was in the affirmative. So they haven't proffered anybody
25 who said that my client is a sexually violent predator.

1 THE COURT: And, again, just to make sure I
2 understand, I take that to mean that someone has to opine
3 as of today, the date of trial, the time that the jury is
4 making a decision that he is a sexually violent predator in
5 order for it to get to the jury is what I hear you saying.

6 MR. ALSTON: If -- I think they have to give an
7 opinion that is current, that they're going to say that he
8 is a sexually violent predator, if not today, then at least
9 when the civil action commences. And if they've changed
10 their mind, then that will be elicited in testimony. But
11 the simple fact of the matter is, as of today, the State
12 has not produced anyone who can opine that my client is a
13 sexually violent predator.

14 MR. FLORES: If I could respond, Your Honor?

15 THE COURT: Yes, sir.

16 MR. FLORES: Just briefly. I know it's --
17 unpublished opinions are not precedential in Court, but a
18 recent opinion in March, I believe it was dated March, in
19 the matter of Thomas Simmons, that case involved the
20 rendering of an opinion by Department of Mental Health that
21 Mr. Simmons did meet the definition for sexual sadism,
22 which was a mental abnormality, but that doctor opined that
23 he did not at that time feel that he met the definition of
24 a sexually violent predator.

25 The State also submitted two witnesses in that case

1 | who were social workers who were familiar with Mr. Simmons
2 | condition who were involved in part of his treatment at the
3 | Department of Juvenile Justice. That case was submitted to
4 | the jury. We would say that the statute does not require a
5 | doctor or an expert to opine in the affirmative that on
6 | this date an individual does meet the definition of a
7 | sexually violent predator. We would just offer that as
8 | information to the Court.

9 | MR. ALSTON: And I would just add an expert or
10 | any -- there's been no one.

11 | Your Honor, may I state something else for the
12 | record?

13 | THE COURT: Yes, sir.

14 | MR. ALSTON: As you know, the history of this case,
15 | the State has been given plenty of opportunity to produce
16 | someone to give a current opinion as to whether my client
17 | is a sexually violent predator and here we are, basically
18 | arguing the same thing. They're using something from 2009
19 | against my client and I'm just -- I don't know what kind of
20 | precedent this will set, but I guess the Court will take it
21 | up to the extent necessary, but if they're not obligated to
22 | produce a current opinion, how do they come close to
23 | fulfilling their obligations, notwithstanding their burden
24 | of proof of beyond a reasonable doubt?

25 | Your Honor, if I may also? The statute also says,

1 | you know, likely to engage in acts of sexual violence.
2 | Again, there's been no testimony that he is in that
3 | condition.

4 | THE COURT: I've heard the arguments. And Mr.
5 | Alston, I don't know what kind of precedent it would set as
6 | well. I understand that their -- that it's not only the
7 | opinion that they have a mental abnormality, but in order
8 | to fall under the statute, they have to be likely to engage
9 | in sexual violence and that means, according to statute the
10 | person has a propensity to commit acts of sexual violence,
11 | and that it is to such a degree as to pose a menace to the
12 | health and safety of others. And I think under the facts
13 | of this particular case, that really is a jury question.

14 | I think that there are competing opinions and,
15 | there's evidence even from Dr. McKee who opines that he
16 | thought his risk of re-offending was higher, that he met a
17 | higher standard, that there's a -- that he could receive
18 | treatment in a -- while on probation, and so I think that
19 | there's evidence for the jury to take into consideration
20 | and to determine, you know, whether at this particular
21 | point they reach -- the State has met that burden. You
22 | know, ultimately whether or not the State meets the burden
23 | of beyond a reasonable doubt, it becomes a jury function.

24 | At this particular point, you understand that I'm
25 | only concerned with the existence of that evidence. I

1 think there is evidence that exists and I think it becomes
2 a factual question. Notwithstanding all of the good
3 questions that you've raised about what could -- what is
4 the appropriate level of evidence that has to be presented
5 and whether or not the State has to present someone who is
6 willing to testify at this particular point that he is, in
7 fact -- that he does, in fact, meet the statutory
8 definition. I think that that has to be based upon all the
9 facts and circumstances, and that it's not just one
10 person's opinion that would create that issue of fact. I
11 think there has to be enough evidence there, and I think
12 the case law would seem to support that even though there
13 may be challenges to an expert's opinion or testimony, that
14 would appear to weigh in favor of the respondent, that when
15 you consider the totality of the circumstances and all the
16 evidence presented, there's enough for the jury to
17 ultimately make a decision and I think that's what we have
18 here.

19 MR. ALSTON: Thank you, Your Honor, please note my
20 exception to the ruling for the record.

21 THE COURT: Yes, sir.

22 Mr. Alston, I remember this morning you said at the
23 conclusion of the State's case that you would want some
24 time to have a discussion with your client and with his
25 mother.

1 closing arguments. Sometimes those arguments may cause you
2 to think about the evidence in a different light or they
3 may raise questions that you'll want to discuss among
4 yourselves when it's time for you all to begin your
5 deliberations.

6 Now, when they have concluded their closing
7 arguments, then I will instruct you on the law and then you
8 may begin your deliberations at that particular point.

9 MR. Flores, if you'd like to make a closing
10 argument.

11 MR. FLORES: Yes, Your Honor. Thank you.

12 **CLOSING ARGUMENTS**

13 MR. FLORES: May it please the Court, Mr. Alston,
14 ladies and gentlemen of the jury, thank you for your
15 patience today. It's been a long day listening to
16 testimony from our experts and listening to the details of
17 this case. When I came to you this morning during our
18 opening statement, I told you this case was about
19 protecting the citizens of Richland County and South
20 Carolina. We have presented a case to you where we believe
21 you will find that Mr. Taft is a sexually violent predator.

22 Now, the judge, again, will charge you on the law
23 in the case, but it's two things, has Mr. Taft been
24 convicted of a sexually violent offense? Does he have a
25 mental abnormality that makes him more likely to commit

1 sexually violent offenses. We would submit that he has.
2 Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2 are
3 certified convictions for committing a lewd act on a minor,
4 to which Mr. Taft pled guilty in 2010. These are sexually
5 violent offenses.

6 So how do we get that? Details. Mr. Taft didn't
7 just commit these two acts in 2008. What was the story
8 before? You heard the experts testify today about sexual
9 abuse. Mr. Taft comes from a family who has a history of
10 sexual abuse. From the age of five to the age of fourteen,
11 he was sexually abused by aunts, uncles and cousins and he
12 learned this behavior. As Dr. Jackson said, research shows
13 that sexual behavior at such young ages has the potential
14 of becoming normalized. This behavior has become
15 normalized for Mr. Taft.

16 We know that based on this adjudication,
17 Plaintiff's Exhibit 3. This adjudication when Mr. Taft was
18 a juvenile and he pled guilty to three counts of assault
19 and battery of a high and aggravated nature for sexual
20 offenses against his sisters and brother when they were
21 five and six years old.

22 Well, what happened next? He went to Generations,
23 Sex Offender Treatment for Juveniles. And you heard both
24 Dr. McKee and Dr. Jackson state that he received sex
25 offender treatment, that according to reports from

1 | Generations he completed it successfully. He was there for
2 | thirteen months and completed it successfully.

3 | We learned from Dr. Jackson that he had a detailed
4 | relapse plan. .They shared that plan with his family
5 | because they knew when he was released he would return home
6 | into a high risk environment, to the location where his
7 | victims still lived. And he shared that with his family.
8 | We heard testimony that Mr. Taft left that program July of
9 | 2007. According to arrest warrants in these two cases for
10 | which Mr. Taft pled guilty, within six weeks of that
11 | intensive treatment where he did well, he's committed these
12 | sexual acts.

13 | The State would submit to you that that shows a
14 | lack of control, a lack of learning the education that he
15 | was taught, that treatment that he went for and that he
16 | received and where he -- where it was reported that he did
17 | very well. As Dr. McKee stated on the stand, his attitude
18 | during treatment was positive. He got along with others in
19 | the program. He seemed to learn and really get those
20 | treatment lessons so that he could leave. But within six
21 | weeks, he recommitted sexually violent offenses, that
22 | included the penetration of his sisters because we would
23 | submit that he went into a high risk environment. He was
24 | taught not to do those things. He had a plan. His family
25 | knew that these acts could happen again.

1 We've heard today testimony from two doctors who
2 have rendered medical -- I'm sorry, psychological diagnoses
3 of Mr. Taft. Both have stated he's a pedophile, attracted
4 to females, nonexclusive from Dr. McKee, limited to incest
5 from Dr. Jackson. And Dr. Jackson would have you believe
6 based on the literature, incest offenders, recidivate,
7 re-offend at a lower rate. So does that take into account
8 him going to get treatment and within six weeks
9 re-offending? I'd ask you to think about that. Mr. Alston
10 pointed out that Dr. McKee's report is a mere two pages and
11 that he wrote the report at the request of Mr. Taft's
12 defense counsel. We would submit that Dr. Jackson's report
13 is seven pages. Seven is greater than two. Seven must
14 have greater weight than two.

15 I would submit to you, what did you hear today from
16 these two reports? They both cover the facts of Mr. Taft's
17 offenses. They both discuss the sexual abuse and how that
18 behavior is normalized. But what did you hear from Dr.
19 McKee that you didn't hear from Dr. Jackson? When asked
20 what other assessments did you use to measure risk factors,
21 risk factors that are historically-measured, well-studied
22 for recidivism, for re-offending. Dr. Jackson did one
23 assessment. Dr. McKee used at least six different
24 assessments in trying to determine whether Mr. Taft was at
25 risk to re-offend.

1 Now, six to one, those aren't -- you know, it's not
2 about the numbers. Seven, two, six, one, it's not about
3 the numbers. What's the information you get from those
4 assessments? Dr. Jackson's assessment, the Static 99 on,
5 the new Static 99, or study that tells us whether or not
6 individuals will re-offend, he scored a six for Mr. Taft.
7 Dr. Jackson said that's a little high because he hasn't had
8 a chance to develop meaningful relationships, develop a
9 relationship outside of family.

10 What did Dr. McKee's assessments tell us? He also
11 performed a Static 99, the valid version at the time he did
12 his evaluation. Mr. Taft received a five, moderate high
13 risk. Well, what else did he run? He ran three other
14 assessments that showed that Mr. Taft was in a moderate, a
15 high moderate and a high risk to re-offend on three
16 separate instruments. Not only that, but Dr. McKee also
17 measured Mr. Taft's likelihood to be successful during
18 probation because we also heard from both witnesses that
19 Mr. Taft would be on probation whenever he is released.

20 Dr. Jackson didn't give us any information about
21 whether or not Mr. Taft would be successful during
22 probation. Dr. McKee stated that using an instrument
23 developed and administered by Department of Probation,
24 Pardon, and Parole Services, that Mr. Taft is among the 45
25 percent more likely not to succeed at probation. Think

1 about what those evaluators said. Think about what they
2 relied upon. Think about what facts were developed and
3 what offenses and what has happened in this case.

4 Ladies and gentlemen, that's the State's case.
5 Thank you for your jury service. It is one of the hardest
6 things and one of the best things about our country is that
7 you can serve on a jury and answer such difficult questions
8 as those that are presented in this case.

9 In conclusion, I would say, look at the facts.
10 Look at what you heard today. Look at what happened in
11 this situation. I would submit based on everything you
12 heard today that we have met our burden of showing that
13 Mr. Taft is a sexually violent predator beyond a reasonable
14 doubt. Thank you.

15 THE COURT: Mr. Alston?

16 MR. ALSTON: Thank you, Your Honor, Mr. Flores.

17 THE COURT: Yes, sir.

18 MR. ALSTON: The State of South Carolina filed this
19 action against my client to prove one thing to you, that
20 Christopher Taft is a sexually violent predator. A
21 predator. Now, as I said at the beginning, you heard
22 testimony about his very disturbing childhood in which he
23 was abused and he abused. And as in the beginning and as
24 I'm going to say now, I'm not sugar coating it. He did
25 some terrible things. Terrible things that he pled guilty

1 to, and he was sentenced for, and he served time for, and
2 was given probation to get a second chance; and then the
3 State filed this action against him to rob him of that
4 second chance.

5 As you heard Dr. McKee testify, the State's
6 intention or the result is that he will be confined in a
7 secure facility located on the premises of the Department
8 of Corrections. His liberty will be gone.

9 Now, they're trying to prove -- they have to prove
10 beyond a reasonable doubt that my client is a predator. We
11 have all seen the television show where someone's in a chat
12 room, pretending to be a young person and there's somebody
13 on the line thinking it's the real thing and the other
14 person takes the bait. The child says, yes, come play with
15 me. Meet me at the playground, meet me at the school, meet
16 me at McDonalds, meet me at my house and unsuspecting to
17 the perpetrator, he shows up with cameras there. And
18 there's two things we feel when we see that. We feel
19 disgust, obviously. But we also feel great fear because
20 that person is a predator. The person who sought them out
21 is a predator.

22 Where is that in this case? Where is one bit of
23 testimony that says my client sought out somebody outside
24 of his home. The diagnosis of Dr. Jackson was limited to
25 incest. As disturbing as that is, it's limited to incest.

1 He was born into an environment where he was abused and he
2 did terrible things. But there's not one record of him
3 seeking out people outside of his home. And that's a
4 predator. But beyond that, the State, again, has the
5 burden of proof. What have they -- well, this is not a
6 matter of two pages versus seven pages. It's what's in
7 those pages and what they testified to today. I will
8 submit and have no problem submitting to the jury that this
9 is a much more extensive evaluation of my client, and my
10 client's current condition is what's at issue here. Dr.
11 Jackson evaluated him thoroughly, went over his
12 developmental history, his educational history, his
13 employment history, his medical history, his mental health
14 history, his institutional disciplinary history, his prior
15 psychological evaluations, one of which was this report;
16 his mental status and current presentation. She went into
17 all this stuff, risk assessment, diagnoses, and she came to
18 the conclusion that as of November second, 2010 and today
19 he is not a sexually violent predator.

20 He does not meet the definition of a sexually
21 violent predator under the statute. Is he troubled? Yes.
22 Does he need therapy? Yes. Does he need to be confined in
23 a secure facility located on the Department of Corrections
24 premises? No.

25 He was sentenced, as I said. And look at these

1 exhibits again. The exhibits the State has to offer, no
2 report, but sentencing sheets from almost two years ago for
3 those crimes. And a juvenile petition from incidents in
4 2005. The State is trying to retry my client for the same
5 thing he's already pled guilty to. They're trying to rob
6 him of any chance he can to redeem himself. He was given
7 probation by the Court and his criminal sentence for a
8 reason. Because the Court recognized an opportunity for
9 redemption that shouldn't be taken away from them. But
10 that's what the State is trying to do in this case. So
11 when you have not one person come and say whether or not
12 he's a sexually violent predator -- or excuse me, when you
13 have not one person come and say he is a sexually violent
14 predator, how have they met their burden of proof beyond a
15 reasonable doubt?

16 That's what we're here for today, right now. Not
17 for what happened in the past. He's already been tried on
18 that. They've got to bring someone in who says, yes, sir,
19 he is a sexually violent predator. They haven't done it.
20 If you recall when I asked Dr. McKee in my cross, I said,
21 can you say that he is a sexually violent predator today.
22 No. Why did he say that? He said I believe in direct,
23 Because I examined him almost two years ago and I didn't
24 examine him again. That's not evidence of his condition.
25 That's an expert opinion. He can't make the State's case.

1 We had Dr. Jackson, again, who evaluated him
2 pursuant to the standards of his discipline. She said yes,
3 he's troubled, but I can't say he's a sexually violent
4 predator. He does not -- he does not meet the criteria.
5 The standard is beyond a reasonable doubt, and doubt is
6 everywhere in this case because they have not brought one
7 bit of testimony as to how my client is now. I don't
8 understand how any finding of sexually violent predator can
9 stand based on those facts. It is not the evidence in this
10 case that is telling, it is the lack of evidence. And
11 that's where the reasonable doubt comes into play.

12 Now, again, I'm going to emphasize to the jury, I
13 in no way belittle or diminish or reduce what he did in his
14 youth. I know it was terrible. I know it's one of the
15 most awful things you can think of. But what we're here
16 for today is whether or not the State has met their burden
17 of proof in finding that he is a predator. And for all
18 those reasons, no finding by a professional and no
19 incidents outside of his troubled home, they have not met
20 their burden of proof. They have not proved their case
21 beyond a reasonable doubt and I ask the jury that you find
22 that, and you let him go forth with his probation
23 conditions so he can prove to society that this
24 twenty-year-old young man can have a chance at redemption
25 and prove that he can be a safe member and a productive

1 member to this country. Thank you.

2 THE COURT: Any response?

3 MR. FLORES: No response, Your Honor.

4 JURY CHARGE

5 THE COURT: During this trial, ladies and
6 gentlemen, you and I have certain duties to perform. As
7 the trial judge it's my responsibility to preside over the
8 trial of this case and to rule upon or pass upon the
9 admissibility of evidence that's been presented throughout
10 the course of this trial. And you are to consider only the
11 competent evidence which is before you. To any evidence to
12 which there was an objection sustained, you must not
13 speculate as to what the evidence might have been or the
14 reasons for the objection. Again, you should consider all
15 the testimony that's been presented, along with the
16 exhibits that have been made a part of the record in this
17 case.

18 You also must never insinuate to be true strew any
19 suggestion that's made of a question that's asked of the
20 witness. The question is not evidence, but it can be
21 considered by you only to the extent that it supplies
22 meaning to the answer that was provided by the witness.
23 Again, you should consider all the evidence as well as the
24 exhibits in this particular case.

25 Now, I have the additional duty and responsibility

1 to instruct you on the law that applies. And as the trial
2 judge, I'm the sole judge of the law that applies. If you
3 have any preconceived ideas as to what the law is or what
4 the law should be or your interpretation of the law, you
5 must set all that aside. For under your oath as jurors,
6 you are sworn to accept the law as I charge it to you.

7 Now, if by chance I make some error in my charge to
8 you, then there's another court at another time that can
9 correct those errors of law. But for purposes of this
10 trial, right now, this moment, you must accept the law as I
11 charge it to you as being the correct statement of the law.

12 Now, in every case tried before a jury, you, the
13 jurors become the sole and exclusive judges of the facts of
14 this case. No one can tell you what the facts of this case
15 are. And if I've done anything throughout the course of
16 this trial that's given you any impression that I'm
17 commenting on the facts, that I'm telling you what facts to
18 find, that I'm giving an opinion about the facts, I ask
19 that you set that aside as well. I assure you I don't have
20 an opinion about the facts of this case. That's not my job
21 here, that's not my role. That's your duty, your
22 responsibility as jurors to determine the facts of this
23 case.

24 Now, in order to do that, you have to analyze and
25 evaluate the evidence and determine what evidence convinces

1 you of it's truth. In order to do that, you have to judge
2 the credibility and believability of the witnesses who have
3 testified. And in judging the credibility or believability
4 of those witnesses, you may consider the following factors:
5 What was the manner and appearance of the witness who
6 testified? Was he or she hesitant or straightforward in
7 answering the questions? Or what was his or her ability to
8 know the facts that they testified about? Is there reason
9 that a witness would want to give testimony that would help
10 or hurt one side or the other? In other words, was the
11 witness's testimony bias or prejudice in some manner. And
12 was the testimony of a witness strengthened or weakened by
13 other testimony or other evidence?

14 Now, ladies and gentlemen in determining the
15 credibility of the witnesses, you may believe one witness
16 against several witnesses or you may believe several
17 witnesses against one witness. You can believe a portion
18 of a witness's testimony and disregard other portions of
19 that same witness's testimony. And if you have a good and
20 sufficient reason for doing so, you may accept the
21 witness's testimony in its entirety or you may reject it in
22 its entirety. Ladies and gentlemen, you should not do this
23 arbitrarily, but if in your good judgment there's reason
24 for you to consider these factors, then you should do so.

25 The law requires, ladies and gentlemen, that you

1 should exercise your good judgment, your common sense, your
2 sense of logic and reasoning. Use your experiences in
3 life. You then apply these attributes to the evidence and
4 determine what you the jury consider to be truthful
5 evidence, and then to those true statements of fact as
6 determined by you, you apply the law as I charge it to you,
7 and then you will be able to arrive at your verdict.

8 Ladies and gentlemen, your verdict should not be
9 based upon sympathy, passion or prejudice. By your
10 verdict, you have no friends to reward and you have no
11 enemies to punish. Your verdict should simply speak the
12 truth.

13 Now, in this -- ordinarily, ladies and gentlemen,
14 when witnesses testify, they cannot testify as to opinions
15 or conclusions. An exception exists for those that we call
16 expert witnesses. Those are witnesses who because of their
17 education or training, they profess to be an expert in some
18 art or science and they can state an opinion as to the
19 relevant matter in which they profess to be an expert and
20 they can also give their reasons for their opinion.

21 You should consider any and every expert opinion
22 that has been offered in this case and give it the weight
23 that you think it deserves. If you should find that a
24 witness's opinion is not supported by sufficient education
25 or training or if the witness's testimony or opinion is

1 | outweighed by other testimony or other evidence, then you
2 | are not required to accept that opinion. An expert's
3 | opinion is to be given no greater weight than that of any
4 | other person simply because that person professes to be an
5 | expert. You are not required to accept an expert's opinion
6 | even though it may be uncontradicted.

7 | Now, in this case, ordinarily in civil cases, the
8 | person who's bringing the action has the burden of proving
9 | their case by what we call the greater weight or
10 | preponderance of the evidence. In this particular case,
11 | the State is bringing the case under the sexually violent
12 | predator law of South Carolina. The State seeks to
13 | involuntarily -- seeks the involuntary civil commitment of
14 | the respondent for long term control, care, and treatment
15 | in a secure facility. This is not a criminal proceeding
16 | that seeks to incarcerate the respondent, rather it is a
17 | proceeding seeking civil commitment in a secure facility.

18 | The State claims, or it alleges that the
19 | respondent, Christopher Taft is a sexually violent predator
20 | under the law. The respondent, Mr. Taft, denies that he is
21 | a sexually violent predator. The burden of proof is on the
22 | State to prove by evidence that satisfies each one of you
23 | beyond a reasonable doubt that the respondent is a sexually
24 | violent predator. If the State is able to meet that burden
25 | and prove to you beyond a reasonable doubt that the

1 respondent is a sexually violent predator, then you must
2 return a finding, finding that Mr. Taft is a sexually
3 violent predator.

4 If, on the other hand, the State is unable to prove
5 beyond a reasonable doubt that Mr. Taft is a sexually
6 violent predator, then you must return a finding that he is
7 not a sexually violent predator.

8 Now, as I stated, in most cases in civil court,
9 they have to prove by a greater weight or a preponderance
10 of the evidence. As I stated in this case, it has to be
11 beyond a reasonable doubt. The State has to prove its case
12 beyond a reasonable doubt.

13 Reasonable doubt is doubt -- it's proof that leaves
14 you firmly convinced. There are very few things that we
15 know in this world with absolute certainty and the law does
16 not require proof that overcomes every possible doubt. But
17 if, based upon all of the evidence that has been presented
18 in this case, you are firmly convinced that the respondent,
19 Christopher Taft is a sexually violent predator, then you
20 must return a verdict finding that he is a sexually violent
21 predator.

22 If, however, on the other hand, you think that
23 there is a real possibility that he is not a sexually
24 violent predator, then you must give him the benefit of
25 that doubt and return a finding that he is not a sexually

1 violent predator. Before you may find a verdict on behalf
2 of the State, the State has to prove each and every element
3 and convince you beyond a reasonable doubt as I've defined
4 that term to you.

5 First of all, the State must prove beyond a
6 reasonable doubt that the respondent has been convicted of
7 a sexually violent offense.

8 Now, ladies and gentlemen, I charge you that lewd
9 act upon a minor under the age of sixteen is a sexually
10 violent offense.

11 Secondly, the State must prove that the respondent
12 suffers from a mental abnormality or personality disorder.

13 And third, the State must prove beyond a reasonable
14 doubt that that mental abnormality or personality disorder
15 makes the respondent likely to engage in acts of sexual
16 violence if he is not confined in a secure facility for
17 long term control, care, and treatment.

18 Now, ladies and gentlemen, inherent in these
19 elements that the State must prove -- I'm sorry, inherent
20 in the elements that the State must prove is that this
21 requirement that the respondent's mental abnormality or
22 personality disorder causes him serious difficulty in
23 controlling his behavior. In order for you to understand
24 all of the elements that the State must prove, there are
25 certain definitions I'll go over with you.

1 First of all, mental abnormality. Mental
2 abnormality means a condition, mental condition, affecting
3 a person's emotional or volitional capacity that
4 predisposes a person to commit sexually violent offenses.
5 This mental abnormality or personality disorder must cause
6 the respondent serious difficulty in controlling his
7 behavior; likely to engage in acts of sexual violence means
8 that the person's propensity to commit acts of sexual
9 violence is to such a degree as to pose a menace to the
10 health and safety of others. This requires a finding that
11 the respondent is dangerous to others.

12 Now, ladies and gentlemen, again, I remind you that
13 the burden of proof is upon the State to prove to your
14 satisfaction beyond a reasonable doubt that the respondent
15 in this case has been convicted of a sexually violent
16 offense as I have instructed you and also suffers from a
17 mental abnormality or personality disorder and that that
18 abnormality or personality disorder makes the defendant
19 likely to engage in acts of sexual violence if he is not
20 confined in a secure facility for long term control, care,
21 and treatment.

22 Now, if the State carries that burden and convinces
23 you beyond a reasonable doubt as to each of those elements,
24 then it would be entitled to a finding that Christopher
25 Taft is a sexually violent predator. If, however, the

1 State has failed to meet that burden beyond a reasonable
2 doubt any one of these elements, then the respondent,
3 Christopher Taft, would be entitled to a finding that he is
4 not a sexually violent predator.

5 Now, ladies and gentlemen, once you have considered
6 all of the evidence in this particular case and you have
7 determined the facts and you have applied the law as I have
8 charged it to you, then you will be able to arrive at your
9 verdict.

10 At that time, it will be time for your foreperson
11 to complete the verdict form. Let me go over the form with
12 you. The form says, We the jury, unanimously find, one is
13 Christopher Taft is a sexually violent predator; the next
14 one is Christopher Taft is not a sexually violent predator.
15 There's no significance to the order in which I put them on
16 a page. I have to put one first, I have to put one second.
17 But you should consider all of the evidence that has been
18 presented in this case and determine whether or not the
19 State is able to meet its burden. If you find that the
20 State is able to meet that burden, again, then you would
21 check -- of proving beyond a reasonable doubt that
22 Christopher Taft is a sexually violent predator, then you
23 would check that blank and you would sign your name, Madame
24 Foreperson, and put today's date.

25 If, however, you -- the jury finds that the State

1 has failed to prove beyond a reasonable doubt that
2 Christopher Taft is a sexually violent predator, then what
3 you would check is that Christopher Taft is not a sexually
4 violent predator.

5 No matter what your verdict, Madame Foreperson,
6 once you have completed and checked the appropriate box,
7 then you would sign your name and place today's date and
8 then knock on the door and let us know that you have
9 reached a verdict.

10 Now, ladies and gentlemen, your verdict must be
11 unanimous. It must be the verdict of all 12 of you. You
12 have been sworn as fair and impartial jurors to determine
13 the facts of this case based upon the evidence that has
14 been presented and based upon my instructions of the law to
15 you. And again, when you have done that, you will be able
16 to arrive at your verdict, and no one would be able to
17 complain about that verdict, and you would have fully
18 discharged your duty and your responsibility as jurors in
19 this matter.

20 Once again, ladies and gentlemen, your verdict
21 should not be based upon sympathy, passion or prejudice.
22 Your verdict should simply speak the truth based upon the
23 facts and the law.

24 At this time, ladies and gentlemen, I'm going to
25 ask that you retire to the jury room. I'm going to ask

1 that you not begin your deliberations just yet. The law
2 requires that I consult with the attorneys to see if I have
3 omitted anything from my charge. If I have not omitted
4 anything from my charge, then the exhibits, as well as the
5 verdict form will be sent to you.

6 Now, Madame Foreperson, if during the course of
7 your deliberations there are any questions that come up, if
8 you will simply write the question on a sheet of paper,
9 knock on the door, and give it to the bailiff, and we'll
10 try to answer that question. If you have no questions and
11 once you've completed the form, knock on the door at that
12 time, and let us know that you've reached a verdict, and
13 we'll receive you back into court.

14 Now, Mr. Perlotte.

15 THE JUROR: Yes, ma'am?

16 THE COURT: As alternate, again your role has been
17 extremely important. If one of your fellow jurors had been
18 unable to complete service, then you would step into that
19 person's shoes. When they go back to retire to the jury
20 room, I ask that you just wait outside the door, and I'll
21 come and excuse you in a few moments.

22 At this time, ladies and gentlemen, I ask that you
23 retire to the jury room and await further instructions.

24 (WHEREUPON the jury left the courtroom at 3:53
25 p.m.)

1 THE COURT: Are there any exceptions to the charge
2 by the State?

3 MR. FLORES: None from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. ALSTON: Yes, ma'am, I would renew my -- as I
6 requested and I object to you not providing charge and
7 language regarding hesitate to act. I think that just
8 gives them the firmly convinced standard, it gives them one
9 side of the equation and not the other. I think my
10 client's entitled to that. It's undue prejudice on his
11 part since this is a civil action, his liberty interest is
12 at stake and that's been a common theme throughout all my
13 objections as you well know.

14 And I also have a concern -- a new concern about
15 the verdict form that occurred to me as you were charging
16 the jury. I respectfully request that the verdict form be
17 amended to include the standard beyond a reasonable doubt
18 have to find. I think that that's important that they know
19 that that is there, instead it's not a mere finding, this
20 is a finding that's beyond a reasonable doubt.

21 And I also respectfully take exception to the Court
22 not elaborating in this charge to a greater detail to the
23 ramifications of confinement or the nature of confinement
24 or the nature of the commitment which is confinement.

25 THE COURT: I don't -- the only one I'm considering

1 client becomes unruly or disruptive, then you understand
2 that the officers will take him back right away.

3 MR. ALSTON: And I understand that Your Honor.

4 (WHEREUPON it was reported that the jury had a
5 verdict at 5:56 p.m.)

6 THE COURT: I understand that the jury has reached
7 a verdict in this case.

8 Is there anything that we need to take up before we
9 bring them in?

10 MR. FLORES: Nothing from the State, Your Honor.

11 MR. ALSTON: Nothing, Your Honor. What's your
12 opinion on polling the juries.

13 THE COURT: I always ask after the verdict if the
14 parties wish to poll the jurors so if you do, then I poll
15 them. I just remind you that there shouldn't be any
16 outburst in the courtroom no matter what the verdict may
17 be.

18 You may ask the jury to come in, please.

19 (WHEREUPON the jury entered the courtroom at 5:58
20 p.m.)

21 THE BAILIFF: Your Honor, the jury is present.

22 THE COURT: Madame Foreperson, I understand that
23 you have a verdict; is that correct.

24 THE FOREPERSON: Yes, Your Honor, we have a
25 verdict.

1 THE COURT: Pass it to the bailiff. Thank you.
2 Madame Clerk, if you would please publish the
3 verdict.

4 VERDICT

5 THE CLERK: Case number 2010-CP-40-4923, State of
6 South Carolina versus Christopher Taft in a matter of the
7 care and treatment of Christopher Taft. We the jury
8 unanimously find beyond a reasonable doubt Christopher Taft
9 is a sexually violent predator. This is signed foreperson,
10 Carla Reed, May 24, 2007.

11 Madame Foreperson, is this your verdict and the
12 verdict of the entire jury.

13 THE FOREPERSON: Yes, ma'am it is.

14 THE COURT: Do the parties wish to poll the jurors?

15 MR. FLORES: No, Your Honor.

16 MR. ALSTON: Yes, ma'am, Your Honor.

17 POLLING OF THE JURY

18 THE COURT: Ladies and gentlemen, the clerk will
19 call your name individually. She will ask you two
20 questions. Those questions will be: Was this your verdict
21 and is it still your verdict. And I ask that you answer
22 according to your conscience.

23 THE CLERK: Carla Reed, was this your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 (WHEREUPON the jury left the courtroom at six
2 o'clock p.m.)

3 THE COURT: Are there any post trial motions at
4 this time?

5 MR. FLORES: None from the State.

6 **POST-TRIAL MOTIONS**

7 MR. ALSTON: Yes, ma'am, from the respondent. I
8 move that the Court reconsider all of the previous
9 objections I have made during the trial of the case. I
10 also move that the Court grant a motion for judgment
11 notwithstanding the verdict or in the alternative a new
12 trial. With all due respect to the Court, I believe the
13 Court made an error of law in submitting this case to the
14 jury for their deliberation given the lack of evidence that
15 my client is a sexually violent predator.

16 As the Court is well aware, the Court serves a very
17 important gate keeping roll, not only in letting evidence
18 in or not in but also in what should be submitted to the
19 jury for deliberation and what should not. And I believe
20 the statute is very clear that this is a case of present
21 tense and not the past, and by allowing the reports of 2009
22 and the testimony there for the jury's deliberation and the
23 absence of any opinion that he is a sexually violent
24 predator is in essence retrying him for what he'd already
25 been convicted of.

1 And based on those reasons and all reasons I've
2 already submitted to you in my motions for directed
3 verdict, I respectfully ask for a judgment notwithstanding
4 the verdict or in the alternative a new trial.

5 THE COURT: Instead of asking the State for a
6 response, I'd be interested in receiving memorandum on that
7 issue. Particularly relating to the gate keeper function
8 and whether there is a threshold that has to be presented
9 before it can be submitted to the jury and whether the
10 testimony in this case met that threshold. I'll give you
11 ten days in order to submit that and I'll give the State
12 ten days to respond.

13 MR. ALSTON: The respondent, Your Honor?

14 THE COURT: I'm sorry, I give the respondent ten
15 days to supply that memorandum.

16 MR. ALSTON: Upon receipt of theirs.

17 THE COURT: Well, I'm giving -- since you're making
18 the motion, I'm asking you to prepare the memorandum first
19 outlining specifically your claims and then give the State
20 ten days to respond to that. So -- which would be ten days
21 would be Friday, June 3rd, and the State has until the 13th
22 of June to respond.

23 And depending on the briefs, I may require
24 additional argument. I may not. I just need to wait and
25 see.

1 MR. ALSTON: Okay, Your Honor, thank you.

2 And also -- in furtherance of my arguments for
3 judgment notwithstanding the verdict for a new trial, I
4 want to renew all my concerns I had with the jury charge
5 and the -- our respective position of the lack of detail
6 into the nature of confinement under the statute.

7 THE COURT: You can certainly raise that in your
8 brief, but I think that the jury charge was appropriate and
9 sufficient. I'm more concerned with your argument as to
10 whether or not it should have gone to the jury. And so I
11 would spend -- I'm not telling you how to preserve your
12 issues, but I would --

13 MR. ALSTON: Spend more time on the --

14 THE COURT: But I'm telling you that that's the one
15 that I would be concerned about.

16 MR. ALSTON: Yes, ma'am.

17 THE COURT: Anything further?

18 MR. BOGLE: In the meantime, Your Honor, normally,
19 we have a proposed order for commitment and then post-trial
20 motions come later. I guess the question is -- he's being
21 held in the county jail awaiting disposition of this case.
22 Can he stay there pending these motions, or shall I
23 submit --

24 THE COURT: I think he should stay there until such
25 time as the motions are resolved.

1 MR. BOGLE: Thank you, Your Honor.

2 MR. ALSTON: Your Honor, a housekeeping question,
3 given that I have to submit a memo and you have not ruled
4 on this, I guess that any notice of appeal is not triggered
5 until you issue your final order?

6 THE COURT: That's correct. That's my
7 understanding that because there are post-trial motions
8 that have been raised, that the time for appeal does not
9 get triggered until those motions are ruled upon.

10 MR. ALSTON: Would there be any harm of me filing a
11 notice of appeal in any event to make sure there's not.

12 THE COURT: Certainly you can seek whatever
13 guidance from whatever higher authority you think you need
14 to seek. I'm just telling you that that generally is my
15 understanding that when there is a 59(e), which is I
16 believe what this is, that the time for appeal does not
17 begin to run until the 59(e) has been ruled upon. But you
18 know you can always seek an advisory opinion from the clerk
19 of the Court of appeals to the extent that she'll give you
20 one.

21 At this time, just to be clear, Mr. Taft will
22 remain in the custody of the Alvin S. Glenn Detention
23 Center until such time as there's been a formal order and
24 ruling on your motions.

25 MR. ALSTON: And Your Honor, one more thing. I'm

1 going -- as you are aware, I got appointed to this case
2 directly by the clerk of court under Rule 608, and I have
3 greatly exceeded to the extent that the State ever gets
4 funding to compensate me, I have greatly exceeded the
5 requirement --

6 THE COURT: You just need to submit an order to me.

7 MR. ALSTON: Okay. Thank you, Your Honor.

8 THE COURT: And I think it requires an order and I
9 think you have to detail your time or whatever.

10 Anything else?

11 MR. FLORES: Nothing from the State, Your Honor.

12 THE COURT: Thank you all very much.

13 MR. ALSTON: Thank you, Your Honor.

14 MR. FLORES: Thank you, Your Honor.

15 * * * * * END OF TRANSCRIPT * * * * *

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Deferred Sentence Per J. Childs 1-20-10

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND
STATE

INDICTMENT/CASE#: 2009-GS-40-01843

Christopher Taft

AKA:

Race: B Sex: M Age: 19

DOB: SS#:

Address: 118

City, State, Z

DL# SID# SCJ9008504

*CDL Yes ☐ No ☐ CMV yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Lewd ActIn violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (defendant initial)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Mamant Taft 70937
Solicitor SC Bar #Christopher Taft
DefendantJen. Ornel
Attorney for Defendant74814
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$0; provided that upon the service of 3 days/months/years and/or payment of \$0; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

\$47.12 (Public Def/Prob)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$60-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

\$90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk:

Court Reporter:

Jeanette McBride/c
D. Helms P. MayRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. Of \$ Beginning

\$ paid to Public Defender Fund

Other: Sex Offender Counselingand Treatment / Anger ManagementIntensive Probation / No 90 DayAdm. Fee / 100 DayAdm. Fee / 100 DayAdm. Fee / 100 DayAdm. Fee / 100 DayAdm. Fee / 100 DayAdm. Fee / 100 DayAdm. Fee / 100 DayAdm. Fee / 100 DayAdm. Fee / 100 DayAdm. Fee / 100 Day

WITNESSES

(S) RICHARD CARTER, RCSD

ARREST WARRANT NUMBER

1-937514

ACTION OF GRAND JURY

TRUE BILL

JUL 16 2009

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-40-1843

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2009

92

THE STATE

vs.

Christopher Taft

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST

SC Code: 16-3-655(A) (1)

CDR Code: 0385

Class FEL/A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Christopher Taft
hereby appear in my own person and plead guilty to the within indictment.

Lewd Act

Defendant

Witness:

C.C.C. PLS. AND G.S.

COPIED TRUE COPY
ORIGINAL FILED
JUL 16 2009
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 15, 2009, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Christopher Taft did in Richland County on or between August 1, 2008 and October 30, 2008, wilfully, unlawfully and feloniously commit a sexual battery against a minor who at the time was less than eleven (11) years of age to wit: Minor!

all in violation of Section 16-3-655 (A) (1), SC Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. Bang

Warren B. Giese, SOLICITOR

ARREST WARRANT

I-937514

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Pontiac

THE STATE.

0811102811

against

Christopher Taft

Address:

Columbia, SC 29204-

Phone:

SSN:

Sex: M Race: B Height: 5 8 Weight: 123

DL #:

DOB: Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Richard Carter - 1220

Offense: Sex / Criminal sexual conduct with minor or
Attempt - victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on 2-24-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Pontiac Magistrate
10509 Two Notch Road
Elgin, SC 29045

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Pontiac

Personally appeared before me the affiant Richard Carter

being duly sworn deposes and says that defendant Christopher Taft

did within this county and state on or about 08/01/2008

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Pontiac

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above
the crime set forth and that probable cause is based on the following facts:That on or about 8/1/2008 while at in the Pontiac Magisterial District of Richland County, one Christopher
Taft did commit the crime of CSC with a minor under 11-1st Degree, Statute Number 16-3-655. It is believed the defendant
committed the crime because he did between 8/1/2008 and 10/30/2008 willfully and unlawfully commit multiple incidents of sexual
battery with (Victim) (8 YOA). On one occasion, Mr. Taft (17 YOA) told (Victim) to come into his room where he
pulled down her pants. The defendant pulled down his pants then inserted his penis into the victim's vagina and had sexual
intercourse with her. A forensic interview of the Victim was conducted at the Dickerson CAC where the Victim disclosed the
details of the incident(s) implicating the defendant. Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Pontiac

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/1/2008

defendant Christopher Taft

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Pontiac

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 02/06/2009

Signature of Issuing Judge
G A Surles

Judge Code: 5039

Judge's Address 10509 Two Notch Road

Elgin, SC 29045-

Judge's Telephone (803)576-2520

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

S.C. Attorney General
Apr 21, 2009
SCCA 518

AFFIDAVIT

CERTIFIED TRUE COPY
ORIGINAL FILED
C.C. PRB & G.S.C.
JAN 16 2009
RICHLAND COUNTY
SOUTH CAROLINA

2009 MAR -4 PM 2:38

08/20/2012 15:10

8035761612

RICHLAND CO CDC

PAGE 05/42

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Deferred Sentence Per J. Childs 1-20-10

211

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND
STATE

INDICTMENT/CASE#: 2009-GS-40-1844

Christopher Taft

A/W#: 1937516

AKA:

Date of Offense: 02/24/2009

Race: B

Sex: M

Age: 19

DOB: 1

SS#:

Address:

City, State, Zip Columbia, SC 29204

DL#

SID# SCJ9008504

*CDL Yes ☐ No ☐ CMV yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Lewd Act

In violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Taft
Solicitor

70937
SC Bar #

Chris Taft
Defendant

James
Attorney for Defendant

74414
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2009-GS-40-01843

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corps.

Recipient:

May serve W/E beginning
Substance Abuse Counseling ☐

*Fine
\$14-1-206 (Assessments 107.5%)
\$14-1-211(A)(1) (Conv. Surcharge) \$100
\$14-1-211(A)(2) (DUI Surcharge) \$100
\$56-5-2995 (DUI Assessment) \$12
\$56-1-286 (DUI Breath Test) \$25
\$47.12 (Public Def/Prob) \$500
\$14-1-212 (Law Enforce. Funding) \$25
\$14-1-213 (Drug Court Surcharge) \$100
\$50-21-114 (BUI Breath Test Fee) \$50
\$56-5-2942(J) (Vehicle Assessment) \$40/ea
\$90.7 (SCCJA Surcharge) \$5
3% to County (if paid in installments)
TOTAL

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. Of \$ Beginning \$ paid to Public Defender Fund

Other: Sex offender registry
Counseling and treatment
anger management / Intensive
probation / 40-60 days
no contact with victims / no
Appointed P.D. or appointed other counsel. Then \$47.12 requires \$500 be paid to Clerk during probation

Clerk of Court/ Deputy Clerk: Jeanette W. McBride
Court Reporter: P. Nay

Presiding Judge: RICHLAND COUNTY
Judge Code: SOUTH CAROLINA
Sentence Date:

WITNESSES

(S) RICHARD CARTER, RCSD

ARREST WARRANT NUMBER

I-937516

ACTION OF GRAND JURY

TRUE BILL

[Signature] JUL 16 2009
 Foreperson of Grand Jury
 Date:

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO: 2009-GS-40-1844

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2009

92

THE STATE
 vs.

Christopher Taft

Indictment for
 CRIMINAL SEXUAL CONDUCT
 WITH A MINOR 1ST

SC Code: 16-3-655(A) (1)
 CDR Code: 0385
 Class FEL/A(V)

After being fully advised as to my
 legal rights, I hereby waive presentment
 to the Grand Jury.

Defendant

Christopher Taft
 hereby appear in my own proper person and
 plead guilty to the within indictment to

✓ Lewd Act

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECEIVED TRUE COPY
 ORIGINAL FILED
 JUL 20 2009
 C.C.C. PLS. AND G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 15, 2009, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Christopher Taft did in Richland County on or between August 1, 2008 and October 30, 2008, wilfully, unlawfully and feloniously commit a sexual battery against a minor who at the time was less than eleven (11) years of age to wit: *Minor 2* all in violation of Section 16-3-655 (A) (1), SC Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

W. B. Giese

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SHAWN P. BARFIELD,

PETITIONER,

IN THE INTEREST OF:

CHRISTOPHER TAFT

Address:

Mt. Pleasant SC 29464

Date of Birth: 11/22/90

A JUVENILE

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT

DOCKET NO.: 2006-JU-10-667

2006 MAR 23 AM 10:21

JULIE J. ARMSTRONG
CLERK OF COURT

BY

JUVENILE PETITION

CRIMINAL SEXUAL CONDUCT w/ MINOR
FIRST DEGREE

0877409047

2006 JAN -9 PM 12:49
BARBARA A. SCOTT
CC, CP, SC
FAMILY COURT

Shawn P. Barfield, the petitioner, having sufficient knowledge to believe that a case has arisen which invokes the juvenile jurisdiction of the court alleges:

1. That the above named juvenile resides in or was found in Charleston County.
2. That the names and addresses of the child's parents/guardians/custodians are as follows:

Name	Relationship	Address
Leslie Calloway	Mother	Same as juvenile
Jerome Calloway	Father	Same as juvenile

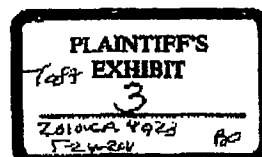
3. The above named juvenile was a delinquent child, on or about September 01, 2005 until January 30, 2006, in Charleston County, South Carolina he did commit the offense of Criminal Sexual Conduct First Degree, in that he did engage in sexual battery with Minor, the victim, in violation of Section 16-3-652(1)(b) of the South Carolina Code Of Laws (1976, as amended).
4. That the above named juvenile was less than seventeen (17) years of age when the above mentioned acts occurred.

WHEREFORE, the petitioner prays that the court determine whether these allegations are true and whether the juvenile is in need of the care, protection or discipline of the State.

March 7, 2006
Charleston, South Carolina

VERIFICATION MUST BE ATTACHED

SCCA/481 (9/93)



Shawn P. Barfield
Petitioner

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG
CLERK OF COURT

By: *[Signature]*
DEPUTY CLERK FAMILY COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SHAWN P. BARFIELD,

PETITIONER,

FILED
2006 MAR 23 AM 10:27
JULIE J. ARMSTRONG
CLERK OF COURT

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUITDOCKET NO.: 2006-JU-10-663

BY _____

IN THE INTEREST OF:

CHRISTOPHER TAFT

Address:

Mt. Pleasant SC 29464

Date of Birth: 11/22/90

JUVENILE PETITION

CRIMINAL SEXUAL CONDUCT w/ MINOR
FIRST DEGREE

A JUVENILE

Shawn P. Barfield, the petitioner, having sufficient knowledge to believe that a case has arisen which invokes the juvenile jurisdiction of the court alleges:

1. That the above named juvenile resides in or was found in Charleston County.
2. That the names and addresses of the child's parents/guardians/custodians are as follows:

Name	Relationship	Address
Leslie Calloway	Mother	Same as juvenile
Jerome Calloway	Father	Same as juvenile
3. The above named juvenile was a delinquent child, on or about September 01, 2005 until January 30, 2006, in Charleston County, South Carolina he did commit the offense of Criminal Sexual Conduct First Degree, in that he did engage in sexual battery with Minor 2, the victim, in violation of Section 16-3-652(1)(b) of the South Carolina Code Of Laws (1976, as amended).
4. That the above named juvenile was less than seventeen (17) years of age when the above mentioned acts occurred.

WHEREFORE, the petitioner prays that the court determine whether these allegations are true and whether the juvenile is in need of the care, protection or discipline of the State.

Shawn P. Barfield
Petitioner

March 7, 2006
Charleston, South Carolina

VERIFICATION MUST BE ATTACHED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SHAWN P. BARFIELD,

PETITIONER,

FILED
2006 MAR 23 AM 10:27
JULIE J. ARMSTRONG
CLERK OF COURT

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUITDOCKET NO.: 2006-JU-10-664

IN THE INTEREST OF:

CHRISTOPHER TAFT

Address:

Mt. Pleasant SC 29464

Date of Birth: 11/22/90

BY _____

JUVENILE PETITION

CRIMINAL SEXUAL CONDUCT WITH MINOR
 FIRST DEGREE

A JUVENILE

Shawn P. Barfield, the petitioner, having sufficient knowledge to believe that a case has arisen which invokes the juvenile jurisdiction of the court alleges:

1. That the above named juvenile resides in or was found in Charleston County.
2. That the names and addresses of the child's parents/guardians/custodians are as follows:

Name	Relationship	Address
Leslie Calloway	Mother	Same as juvenile
Jerome Calloway	Father	Same as juvenile
3. The above named juvenile was a delinquent child, on or about September 01, 2005 until January 30, 2006, in Charleston County, South Carolina he did commit the offense of Criminal Sexual Conduct First Degree, in that he did engage in sexual battery with Minor 3 the victim, in violation of Section 16-3-652(1)(b) of the South Carolina Code Of Laws (1976, as amended).
4. That the above named juvenile was less than seventeen (17) years of age when the above mentioned acts occurred.

WHEREFORE, the petitioner prays that the court determine whether these allegations are true and whether the juvenile is in need of the care, protection or discipline of the State.

Shawn P. Barfield
 Petitioner

March 7, 2006
 Charleston, South Carolina

VERIFICATION MUST BE ATTACHED

SCCA/481 (9/93)

RECEIVED OFFICE

2010 APR 27 AM 11:13

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SHAWN P. BARFIELD,

PETITIONER

IN THE INTEREST OF:

CHRISTOPHER TAFT

Address:

Mt. Pleasant SC 29464

Date of Birth: 11/22/90

A JUVENILE

FILED

2006 JUN -8 PM 3:35

JULIE J. ARMSTRONG
CLERK OF COURTIN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT

DOCKET NO.: 2006-JU-10-0665

BY _____

AMENDED
JUVENILE PETITION

LEWD ACT UPON A MINOR

RECEIVED

JUN 23 2006

CHARLESTON COUNTY SC

Shawn P. Barfield, the petitioner, having sufficient knowledge to believe that a case has arisen which invokes the juvenile jurisdiction of the court alleges:

1. That the above named juvenile resides in or was found in Charleston County.
2. That the names and addresses of the child's parents/guardians/custodians are as follows:

Name	Relationship	Address
Leslie Calloway	Mother	Same as juvenile
Jerome Calloway	Father	Same as juvenile
3. The above named juvenile was a delinquent child, in that on or about January 29, 2006, in Charleston County, South Carolina he did commit the offense of Lewd Act Upon A Minor in that he did willfully and lewdly commit or attempt a lewd or lascivious act upon Minor or her parts, a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the person or of the child, in violation of Section 16-15-140 of the South Carolina Code Of Laws (1976 as amended).
4. That the above named juvenile was less than seventeen (17) years of age when the above mentioned acts occurred.

WHEREFORE, the petitioner prays that the court determine whether these allegations are true and whether the juvenile is in need of the care, protection or discipline of the State.

Shawn P. Barfield
Petitioner

June 23, 2006
Charleston, South Carolina

VERIFICATION MUST BE ATTACHED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE INTEREST OF:

Christopher Taft
A JUVENILE

Hearing Judge
Date of Hearing:
Assistant Solicitor:
Juvenile's Attorney:
Department of Juvenile Justice:
Court Reporter:

FILED

2006 JUN 22 PM 4:17

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT

DOCKET #: 2006-JU-10-1112-005

200-JU-10-_____

200-JU-10-_____

JUVENILE ORDER FOR
COMMITMENT FOR EVALUATION (DJJ)

Billy A. Tunstall

JUNE 22, 2006

Shawn P. Barfield

Jeffrey Wiseman

J. Beard for M. Farmer

Sharon D. Jones

AN ADJUDICATORY HEARING was held on the above date resulting in the following disposition of the charges:

The juvenile admitted his/her guilt to the charge(s) of:

ABHAN

The charge is: ☐ As Petitioned ☒ As Amended

ABHAN

The charge is: ☐ As Petitioned ☒ As Amended

ABHAN

The charge is: ☐ As Petitioned ☒ As Amended

The charge is: ☐ As Petitioned ☐ As Amended

The charge is: ☐ As Petitioned ☐ As Amended

The charge is: ☐ As Petitioned ☐ As Amended

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the above named juvenile is hereby committed to a South Carolina Department of Juvenile Justice Reception and Evaluation Center for a period not to exceed forty-five (45) days for the purposes of conducting an evaluation on said child and making recommendation to the Court concerning proper disposition of this case.

AND IT IS FURTHER ORDERED that the juvenile be detained at the Charleston County Juvenile Detention Center upon his/her return from the Reception and Evaluation Center pending a dispositional hearing.

AND IT IS FURTHER ORDERED that the charge of Lewd Act on a Minor (2006-JU-10-1112) shall be dismissed by the State. The juvenile shall have a psychosexual evaluation while at the Coastal Evaluation Center.

AND IT IS SO ORDERED.

FAMILY COURT JUDGE

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)
CLERK, FAMILY COURT

BY [Signature]
DEPUTY CLERK

This 22 day of June, 2006
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FILED

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT

2006 AUG 10 AM 10:06

DOCKET NO.: 2006JU-10-0663

2006JU-10-0664

2006JU-10-0665

JU-10-

vs.

JULIE J. ARMSTRONG
CLERK OF COURTChristopher Taft

COMMITMENT ORDER

A JUVENILE

BY)

(DJJ)

AN ADJUDICATORY HEARING was held on 8-8-06 resulting in the juvenile entered a plea of guilty/no contest to the charges of:ABHAN (06-0663)The charge is: ☒ As Petitioned ☐ As AmendedThe charge is: ☐ As Petitioned ☐ As AmendedABHAN (06-0664)The charge is: ☒ As Petitioned ☐ As AmendedThe charge is: ☐ As Petitioned ☐ As AmendedABHAN (06-0665)The charge is: ☒ As Petitioned ☐ As AmendedThe charge is: ☐ As Petitioned ☐ As AmendedThe charge is: ☐ As Petitioned ☐ As AmendedThe charge is: ☐ As Petitioned ☐ As Amended

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that in the best interest of the above named juvenile that:

☐ he/she probation is revoked and the juvenile be committed to the South Carolina Department of Juvenile Justice for an indeterminate period not to exceed his/her twenty-first (21st) birthday, unless sooner released by proper authority; or☐ he/she be committed to the South Carolina Department of Juvenile Justice for an indeterminate period not to exceed his/her twenty-first (21st) birthday, unless sooner released by proper authority; or☒ he/she be committed to the South Carolina Department of Juvenile Justice for a determinate period of 6 months with no good time credit or time served.AND IT IS FURTHER ORDERED The 6 month commitment is suspended upon placement in a sex offender treatment facility, with no good time credit.A review hearing shall be scheduled in ninety (90) days if the juvenile has not been placed. The juvenile shall continue on a term of indefinite probation after his commitment. If the juvenile is the co-defendant (the juvenile's brother) are placed together, the Department of Juvenile Justice make an Affirmative Finding that it is in the best interest of the juvenile.

AND IT IS SO ORDERED.

Jeffrey Wiseman
Attorney for JuvenileBeam For M. Farmer
Department of Juvenile Justice Representative

PRESIDING JUDGE

Cth

By

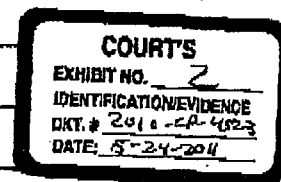
DEPUTY CLERK

**COURT
EXHIBIT
NO. 1**

REPORT OF L. WILLIAM MULBRY, JR., M.D. AND R. GREGG DWYER, M.D., Ed.D
DATES OF EVALUATION: APRIL 26, AND MAY 2, 2011
(SEALED AND ON FILE WITH THIS COURT)

- What is his current status in regards to his probation?
- If he is currently on probation, when did his probation start?
- How long did he actually spend in incarcerated?
- If his probation continues and ~~as~~ he is not declared a Sexual Predator, what else they plans to keep him away from his sisters and other minors?

[Signature]



I cannot answer the question as presented. You, the jury, have heard all of the testimony and have the exhibits. You must base your decision on the evidence and exhibits that have been presented. If you need to rehear portions of the

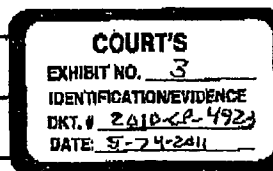
We have a juror that would like
to hear the testimony of Dr. McKee.

[Signature]

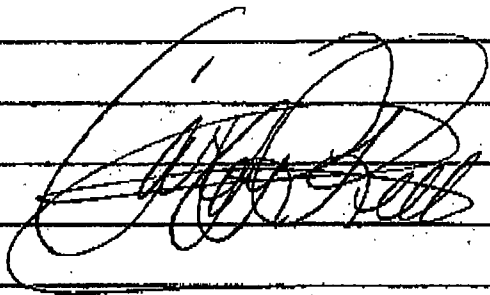
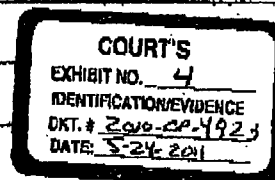
Do you wish to hear all or just a portion of the
testimony? If a portion, tell us what part.
Alison Renee Lee

The second part of his testimony, after
our break. Mainly the cross examination
by ~~Attorney~~ Attorney Rustin.

[Signature]



Can we get clarification of the
3 Statutes? We are stuck on
the 3rd in regards to being
contained.

A large, stylized handwritten signature in black ink, appearing to be 'C. B. Smith' or similar, written over several horizontal lines.

Testimony. I can replay that testimony. I would need to know what testimony you need to rehear. You have heard the evidence and the law as I charged it to you.

Al Green Lee

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-40-4923State of South CarolinaChristopher Taft

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

The defendant has been found to be a Sexually Violent Predator by a jury of his peers. Post trial motions have been made and taken under advisement. Respondent shall remain in custody of Alvin S. Glenn Detention Center.

Dated at Columbia, South Carolina, this 24th day of May, 20 10.

Al Sher Lee
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 24th day of May, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

James H. Bogle, Jr.Rowland P. Alston III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

State of South Carolina,

Civil Action No.: 2010-CP-40-4923

Petitioner,

v.

VERDICT

Christopher Taft,

Respondent.

IN THE MATTER OF THE CARE AND
TREATMENT OF CHRISTOPHER TAFT

WE, THE JURY, UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT:

☒

Christopher Taft **IS** a Sexually Violent Predator.

☐

Christopher Taft **IS NOT** a Sexually Violent Predator.

Foreperson

Date:

5/24/11

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 CHRISTOPHER TAFT,)
 RESPONDENT)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-40-4923

MOTION FOR CONTINUANCE

JEANE L. W. MURPHY
 C.C.P. & G.
 2011 FEB 18 PM 12:36
 FILED

NOW COMES the State, by and through the undersigned counsel, and moves before this Honorable Court for an order continuing this matter past the ninety (90) day time set forth in S.C. Code Ann. §44-48-90 for good cause, as follows:

The court-approved examiner, Dr. Rebecca Jackson issued a report dated November 19, 2010 concluding Respondent did not meet the criteria as a sexually violent predator. South Carolina Code Section 44-48-90(B), as amended in May 2010, requires the trial to be conducted within 90 days of the date of Dr. Jackson's evaluation. Pursuant to South Carolina Code Section 44-48-90 (C), as amended in May 2010, the Attorney General has retained a qualified expert, Dr. R. Gregg Dwyer of the Medical University of South Carolina, to perform a subsequent examination. It is anticipated that the time for that evaluation will carry past the 90 days referenced above, or past February 19, 2011.

Therefore, the State requests that the Court continue this matter, pursuant to S.C. Code §44-48-90, for good cause to allow Dr. Dwyer to complete his evaluation, and until such time as the Court is asked to set a trial date, or as soon thereafter as the case may be scheduled at the convenience of the Court and the parties.

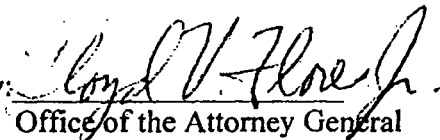
WHEREFORE, the State prays for an order continuing this case, pursuant to S.C. Code §44-48-90, for good cause, until such time as the Court is asked to set a trial date, or as soon thereafter as the case may be scheduled at the convenience of the Court and the parties.

Respectfully Submitted,

ALAN WILSON
Attorney General

LLOYD V. FLORES, JR.
Assistant Attorney General

By:



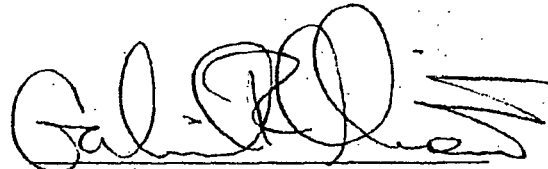
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3243

February 17, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby certify that on this 17th day of February, 2011 I served a copy of Motion for Continuance on Respondent's counsel of record by depositing same in the U.S. Mail, postage prepaid, and addressed as follows:

Rowland P. Alston, III., Esquire
1314 Lincoln Street, Suite 214
Columbia, South Carolina 29211



Gabriel R. Martin
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Phone: (803) 734-3243

FILED
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U.S. MAIL
C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft

IN THE COURT OF COMMON PLEAS

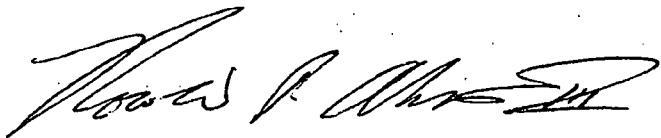
Civil Action No.: 10-CP-40-4923

CHRISTOPHER TAFT'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the Defendant, Christopher Taft, an indigent litigant in this SVP action, by and through his undersigned attorney, will move before the presiding judge in the Richland County Court of Common Pleas, on the tenth day after service hereof or at such time and place as is convenient to the court and counsel for an Order granting this Defendant summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the within action for the reason that there is no genuine issue of material fact and this Defendant is entitled to judgment in its favor as a matter of law.

This motion is based upon the grounds that all the evidence in the case, even when taken in a light most favorable to the Plaintiff, fails to establish any fault, actionable conduct or liability on the part of the Defendant, or any valid and existing claim of the Plaintiff against the Defendant. This Motion is further based upon the pleadings, the testimony, the South Carolina Code of Laws, specifically § 44-48-90, and any additional matter accepted by this Court.

RESPECTFULLY SUBMITTED.



Rowland P. Alston III
Rowland P. Alston III, LLC
1314 Lincoln Street, Suite 214
Columbia, South Carolina 29201
(803) 708-0460

Attorney for Defendant Christopher Taft

February 22, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft

IN THE COURT OF COMMON PLEAS

Civil Action No.: 10-CP-40-4923

CERTIFICATE OF SERVICE

I, Rowland P. Alston III, the attorney for the indigent litigant Christopher Taft, do hereby certify that I have served the foregoing Notice of Motion and Motion for Summary Judgment in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of record as indicated below:

ATTORNEY FOR THE PLAINTIFF

Lloyd V. Flores, Jr., Esquire
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549



Rowland P. Alston III

February 22, 2011

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2010-CP-40-4923

IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 CHRISTOPHER TAFT)
 RESPONDENT.)

RETURN TO MOTION FOR SUMMARY
 JUDGMENT

NOW COMES the State, by and through the undersigned counsel, who would make the following Return to the Motion for Summary Judgment, and ask that (1) the Motion be denied, and (2) Respondent remain in custody pending final disposition of this matter. In support of this Return the following is offered:

A. POSTURE OF THE CASE

1. The State filed a Petition on or about July 27, 2010 pursuant to the Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10, *et seq.*
2. Prior to the filing of the State's Petition, Respondent had been screened by the Multi-Disciplinary Team on June 17, 2010 and the Prosecutor Review Committee on July 20, 2010, as required by the Act.
3. A Probable Cause Order was filed on or about August 17, 2010.
4. A Probable Cause Hearing was held on October 6, 2010, and an Order was filed that day directing that Respondent be evaluated to determine whether or not he was a sexually violent predator. The Court appointed Rebecca L. Jackson, Ph.D., to conduct the evaluation.
5. Dr. Jackson issued her report, dated November 19, 2010, in which she concluded Respondent did not fit the criteria as a

sexually violent predator and recommended that he not be committed to the Department of Mental Health.

6. Respondent's max-out date from the Department of Corrections was on or about October 1, 2010. He is currently at the Richland County Detention Center pending final disposition of this case, as required by S. C. Code Ann. Section 44-48-80 and the prior Order for Evaluation issued by this Court.
7. S.C. Code Ann. § 44-48-90(B), as amended in May 2010, requires the trial to be conducted within 90 days of the date of Dr. Jackson's evaluation. Pursuant to S.C. Code Ann. § 44-48-90(C), as amended in May 2010, the Attorney General retained a qualified expert, Dr. R. Gregg Dwyer (then of the University of South Carolina School of Medicine, but now at MUSC), to perform a subsequent examination. Since it was anticipated that the time for that evaluation would carry past the 90 days referenced above the State moved for a continuance, filed February 18, 2011. That motion is still pending with the Court.

Served
2/17/2011

B. APPLICABLE LAW

8. Summary judgment should be granted only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. The evidence, and all inferences which can be reasonably drawn from the evidence, must be viewed in the light most favorable to the nonmoving party. *Wilson v. Style Crest Prods., Inc.*, 367

S.C. 653, 627 S.E 2d 733 (2006). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Cullum Mech. Const., Inc. v. S.C. Baptist Hosp.*, 344 S.C. 426, 544 S.E.2d 838 (2001).

C. ISSUES OF MATERIAL FACT

9. After reviewing Dr. Jackson's report, the State had concerns and consulted with Dr. Dwyer, a forensic psychiatrist with extensive experience in the field of sexually violent predators, who has indicated that further inquiry is necessary before it can be concluded whether Respondent fits the criteria of a sexually violent predator, as defined in the Act. Based upon Dr. Dwyer's response, the State agreed to retain him on November 30, 2010. **(EXHIBIT A).**
10. Respondent's counsel was notified of the change in law and the hiring of Dr. Dwyer by letter dated December 9, 2010. **(EXHIBIT B).** S.C. Code Ann. Section 44-48-90(C), effective May 2010, provides as follows: "Upon receipt of the evaluation issued by the court-appointed expert as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D), the person *or the Attorney General* may retain a qualified expert to perform a subsequent examination." (Emphasis added).
11. Prior to Respondent's guilty plea in March 2010, Mr. Deon O'Neil, Esquire (Respondent's counsel for his 2010 charges)

requested forensic psychological evaluations to be performed on Respondent. In a letter dated September 27, 2009 to Mr. O'Neil from Dr. Geoffrey R. McKee of the University of South Carolina School of Medicine, Dr. McKee diagnosed Respondent with Pedophilia, Sexually attracted to females, Non-exclusive and an Adjustment Disorder, Not otherwise specified. As a result of his evaluation of Respondent, Dr. McKee also opined that Respondent met the statutory definition of a sexually violent predator at that time. **(EXHIBIT C).**

12. A second evaluation was performed on Respondent by Jack Luadzers, Ph.D. of Carolina Psychotherapy Associates. Dr. Luadzers opined "based primarily on the case history, repeated sexually deviancy and violent sexual behaviors, which are predictive of future deviant sexual behaviors in the community, that [Respondent] be incarcerated for a period of time that would remove him from society and that he be returned only upon his completion of inpatient sex offender treatment. Dr. Luadzers also opined that Respondent's behavior was "consistent with that of a sexual predator." **(EXHIBIT D).**

D. PRIOR EVALUATIONS ORDERED BY THE COURTS:

13. While not occurring often, the seeking of an additional evaluation by the State has been ordered by the circuit courts on several occasions, both prior to and after the 2010 amendments to the law, as follows:

- a. Don Boyd, initial evaluation by Dr. Daniel Neller, subsequent evaluation by Dr. Donna Schwartz-Watts, Case No. 2008-CP-02-1484. Boyd committed to the Sexually Violent Predator Treatment Program (SVPTP).
- b. Roosevelt Jacques, original evaluation by Dr. Daniel Neller, subsequent evaluation by Dr. Donna Schwartz-Watts, Case No. 2009-CP-40-0688; Dr. Schwartz-Watts concurred with Dr. Neller, and the case was dismissed.
- c. Wallace Jefferies, Department of Mental Health recommended release, evaluation by Dr. Peggy Wadman, Case No. 2005-CP-23-4962, subsequent evaluation by Dr. R. Gregg Dwyer at the request of the State, jury trial resulted in Respondent remaining committed to the SVPTP.
- d. David Turner, initial evaluation by Dr. Daniel Neller; subsequent evaluation by Dr. Donna Schwartz-Watts, Case No. 2009-CP-40-0688; Dr. Schwartz-Watts agreed with Dr. Neller and the case was dismissed.
- e. Richard Holbrook, initial evaluation by Dr. Peggy Wadman, subsequent evaluation by Dr. R. Gregg Dwyer, Case No. 2009-CP-10-7168. Holbrook committed to SVPTP after jury trial.
- f. Thomas Simmons, Department of Mental Health recommended release, evaluation by Dr. Kimberly Harrison, Case No. 2008-CP-26-3108. Subsequent evaluation by Dr. R. Gregg Dwyer,

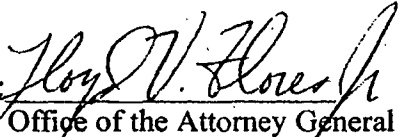
at the request of the State, recommended Simmons remain in
SVPTP. Case is pending in Horry County.

WHEREFORE, since there exist genuine issues of material fact as to whether Respondent meets the definition of a sexually violent predator based on the differing opinions of the Court-appointed evaluator Dr. Jackson and Drs. McKee and Luadzers, and further inquiry into the facts of the case is desirable to clarify the application of the Sexually Violent Predator Act to the Respondent, the State would request that (1) the Motion filed by the Respondent be denied, (2) Respondent remain in custody as required by the Act until final disposition of this matter, and (3) the Court grant such other relief as is just and proper.

Respectfully Submitted,

ALAN WILSON
Attorney General

LLOYD V. FLORES, JR.
Assistant Attorney General

By: 
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3243

March 2, 2011
Columbia, South Carolina

Exhibit A



HENRY McMASTER
ATTORNEY GENERAL

November 30, 2010

R. Greg Dwyer, M.D., Ed.D
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
67 President Street
MSC 861
Charleston, SC 29425

Re: *In the Matter of the Care and Treatment of Christopher Taft*
C.A. No. 2010-CP-40-4923

Dear Dr. Dwyer:

This letter confirms the Attorney General's Office has retained you as an expert in the above referenced Sexually Violent Predator action. The Office will pay you up to \$1500 to review the existing records, and discuss your findings and recommendations with this Office. If you recommend a full comprehensive evaluation, your fee will be \$3000, with all fees previously paid applying toward that amount. This amount will include any and all psychological and physiological tests for evaluation purposes, preparation of such expert reports as may be necessary and one day of trial appearance. You will be working with Assistant Attorney Lloyd Flores to advise him in this matter and prepare for trial if necessary.

During your work for this Office, you will need to ensure you do not accept any other work that could create the fact or appearance of a conflict of interest. Please submit invoices within thirty days of rendering services. The invoices should be mailed to the South Carolina Attorney General, Attn: Finance, PO Box 11549, Columbia, SC 29211. The Attorney General very much appreciates your willingness to serve as an expert in this case.

Sincerely,

John W. McIntosh
Chief Deputy Attorney General

cc: Assistant Attorney General James Lloyd Flores
Thomas Osmer, Director of Finance

Exhibit B



HENRY McMASTER
ATTORNEY GENERAL

December 9, 2010

Rowland P. Alston, III., Esquire
1314 Lincoln Street, Suite 214
Columbia, South Carolina 29211

Re: In the Matter of the Care and Treatment of Christopher Taft
Case No. 2010-CP-40-4923

Dear Mr. Alston:

Enclosed please find a copy of the report of Dr. Rebecca Jackson, Chief Psychologist and appointed by the Court, regarding your client. Note that she diagnoses him with pedophilia, sexually attracted to female, non-exclusive type, limited to incest, but concludes that he is not likely to engage in acts of sexual violence in the future, and recommends that he not be found to be a sexually violent predator, as defined by S.C. Code Ann. Section 44-48-30.

This report is dated November 19, 2010, and as I read the amendments to the Sexually Violent Predator Act, effective May of 2010, the ninety-day clock for disposing of this case by trial or otherwise begins November 19.

S.C. Code Annotated Section 44-48-90 (C) effective May 2010, provides as follows: "Upon receipt of the evaluation issued by the court-appointed expert as to whether the person is a sexually violent predator pursuant Section 44-48-80 (D), the person or the Attorney General may retain a qualified expert to perform a subsequent examination."

Based upon the above, please take notice that our office has retained an independent expert, Dr. Gregg Dwyer of the University of South Carolina School of Medicine, to conduct a subsequent evaluation of your client.

Should you have questions, please advise.

Very truly yours,

James G. Bogle, Jr.
Senior Assistant Attorney General

JGB:grm
Enclosure
cc: Dr. R. Greg Dwyer
Deborah R.J. Shupe, Esquire

Exhibit C

REPORT OF GEOFFREY R. MCKEE, Ph.D, ABPP, DATED SEPTEMBER 7, 2009
(SEALED AND ON FILE WITH THIS COURT)

Exhibit D

REPORT OF JACK L. LAUDZERS, Ph.D, DATED NOVEMBER 25, 2009
(SEALED AND ON FILE WITH THIS COURT)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft

IN THE COURT OF COMMON PLEAS

Civil Action No.: 10-CP-40-4923

**CHRISTOPHER TAFT'S RETURN TO
MOTION FOR CONTINUANCE**

2011 MAR 2 PM 1:28
JEANE L. BRIDGE
C.C.P. G.S.

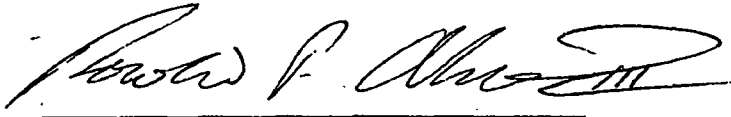
The Defendant, Christopher Taft, by and through his undersigned counsel, makes this Return to the State of South Carolina's Motion for Continuance.

The Defendant objects to the motion on the following grounds:

1. The State of South Carolina did not consult with the undersigned prior to the filing of the motion, as required under Rule 11 (a), S.C.R.Civ.P.
2. There is no trial scheduled to continue, and the motion is therefore without merit.
3. The motion was not made within statutory deadline contained in S.C. Code § 44-48-90.
4. The Defendant has remained incarcerated since the first report of November 19, 2010 declared him to not be a Sexually Violent Predator.
5. The State has had an expert retained since at least December 9, 2010, but has not had the subsequent examination performed.
6. The state has not provided good cause for the continuance under the circumstances.
7. The State should not be allowed to postpone trial, with the Defendant remaining incarcerated and kept from clearing his name as a Sexually Violent Predator.

For these and any other reasons as may be heard and/or considered, the Defendant requests that the Court dismisses or denies the State's Motion for Continuance.

Respectfully submitted,



Rowland P. Alston III

The Law Office of Rowland P. Alston III, LLC

1314 Lincoln Street, Suite 214

Columbia, SC 29201

(803) 708-0460

Attorney for Defendant Christopher Taft

March 2, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft

IN THE COURT OF COMMON PLEAS

Civil Action No.: 10-CP-40-4923

**CHRISTOPHER TAFT'S MEMORANDUM
AGAINST THE PETITIONER'S
MOTION FOR CONTINUANCE
AND IN SUPPORT OF HIS
MOTION FOR SUMMARY JUDGMENT**RECEIVED
OCT 19 - 2 PM 1:29
J. W. HARRIS
CLERK OF COURTSTATEMENT OF THE CASE

Defendant Christopher Taft ("Taft"), an indigent litigant, was incarcerated pursuant to a conviction of an offense set forth in the Sexually Violent Predator ("SVP") Act, specifically S.C. Code § 44-48-30 (2). *See Petition of State*, ¶2. Before Taft's release from incarceration, and pursuant to the SVP Act, on June 17, 2010, a Multi-Disciplinary Team assessed that Taft met the definition of a SVP. *Id.*, ¶4. On July 20, 2010, the Prosecutor's Review Committee subsequently determined that there was probable cause to believe that Taft was a SVP as defined under the Act. *Id.*, ¶5. The State of South Carolina ("State"), as petitioner, filed this SVP civil action on July 27, 2010 against Taft.

On October 6, 2010, the Circuit Court found probable cause existed to find that Taft was a SVP as defined under the Act. *See 10/06/10 Order*. The Court also ordered a professional examination of Taft, per the request of the State, and appointed Rebecca Jackson, Ph.D. ("Dr. Jackson"), as the examiner. *Id.* Also on October 6, 2010, the State made a formal request for a jury trial. *See 10/06/10 Petitioner's Request for Jury Trial*.

On or about October 8, 2010, Taft was transferred from the custody of the Department of Corrections to Richland County at the Alvin S. Glenn Detention Center, where he has remained incarcerated.

On November 2, 2010, Dr. Jackson examined Taft. And on November 19, 2010, Dr. Jackson issued her report ("Report"). The Report concluded that Taft did not meet the definition of a SVP under the Act. *See 11/19/10 Psychological Evaluation.*

In a correspondence dated December 9, 2010, counsel for the State provided a copy of the Report and informed counsel for Taft that the State had retained another expert, Dr. Gregg Dwyer, for a subsequent examination, as provided for in the Act, and that the "ninety day clock for disposing of the case by trial or otherwise begins November 19." *See 12/09/10 letter from James G. Bogle, Esq.*

The State did not have subsequent examination performed, and on February 18, 2011, the State filed a motion for continuance, to continue the "matter" and the "case" to "until such time as the Court is asked to set a trial date." *See 02/18/11 Motion for Continuance.* The State did not consult with counsel for Taft prior to the motion as required under Rule 11, S.C.R.Civ.P. *See 03/02/11 Return to Motion for Continuance.*

The motion for continuance references S.C. Code § 44-49-90 (B). The relevant portion of this statute, which was amended on May 12, 2010, reads:

If a request [for trial] is made, the court must schedule a trial before a jury in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80 (D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. (Emphasis added.)

Because the ninety day deadline for the Court to schedule a trial after the issuance of the court appointed expert opinion had passed, and because no continuance of any trial had yet been granted by the Court, as required pursuant to § 44-48-90 of the Act, Taft filed a motion for summary judgment on February 22, 2011.

Taft now asks the Court to dismiss the State's motion for continuance, or, in the alternative, to deny the motion, and asks the Court to grant his motion for summary judgment, for the reasons set forth below.

DISCUSSION / ARGUMENT

I. As to the State's Motion for Continuance

- A. The motion should be dismissed because it is premature, or, in the alternative, untimely.

S.C. Code § 44-49-90 (B) requires that the Court must schedule a trial within ninety days of the date of the initial court-ordered evaluation. The evaluation is dated November 19, 2010. Per the position of the attorney general in its 12/09/10 correspondence, the ninetieth day is February 16, 2010.

There has been no scheduled trial before February 16, 2010. Under the Act and as a matter of logic, a continuance can only be properly requested and granted if a trial has been scheduled. The motion requests a continuance of "this matter" and "the case," but the Act specifically refers to only continuance of a "trial." In this case, a trial has not been scheduled, the case has not been called for trial, and Taft has not received notice of a trial date, so there is nothing for the Court to continue. The motion should therefore be dismissed on this basis alone.

Should the Court construe the Act to allow a motion for continuance even in the absence of a scheduled trial date before the statutory deadline, the motion should still be dismissed as untimely. The motion was not made within the mandated timeframe of ninety days. Further, the

State's motion was not filed until February 18, 2010. The motion is therefore untimely under the statute and should be dismissed.

- B. The motion should be dismissed because it does not comply with Rule 7 and due process.

The proper form of motions is governed by Rule 7 (b), S.C.R.Civ.P. Specifically, Rule 7 (b) (1) states that the motion "shall state with particularity the grounds therefor." Our courts have long emphasized the importance of this requirement. "One of the basic purposes of a notice of motion is to apprise the opposing party of the relief sought and the grounds therefor." Skinner v. Skinner, 257 S.C. 544, 549, 186 S.E.2d 523, 529 (1972). "A notice of motion must apprise the opposing party of the relief sought by the moving party and the grounds therefor." Salvo v. Hewitt, Coleman & Associates, 274 S.C. 34, 39, 260 S.E.2d 708, 711 (1979) (*emphasis added*). And as a constitutional issue, due process "requires that a litigant be placed on notice of the issues which the court is to consider." Bass v. Bass, 272 S.C. 177, 180, 249 S.E.2d 905, 906 (1978).

Here, the State's notice of the motion merely states that it is "anticipated" that the time for the subsequent examination will continue past the ninety day deadline, and requests a continuance for "good cause." As mentioned, the State's motion was filed on February 18, so at that time it was more than "anticipated" that any second examination would have to occur past the ninety day deadline; it is known. Further, "good cause" is a *requirement* for a continuance under the statute and court rules; it is not a *particular*, which should be contained in the notice. Finally, the notice is silent as to how Taft will not be substantially prejudiced as a result, and this is a requirement for a continuance as well.

The notice is not sufficient to place Taft on notice of the specific grounds for the motion. Taft should not be required to anticipate the particulars before the hearing. Taft should not be

required to first know of, and respond to, the particulars of the motion at the hearing. The State's motion should be dismissed because it violates Rule 7 and due process.

C. The motion should be denied because there is no good cause for it.

Because the State has failed to list the particulars of good cause for the motion, Taft is required to anticipate the grounds in advance. Nevertheless, good cause cannot exist in this case because the subsequent expert was retained by the State no later than December 9, 2010. There can be no good cause why the examination has not occurred, given the extensive amount of time that has passed since retainer of the expert, and the significant resources of the State in having a department dedicated to prosecuting these actions, even during an election year. For these reasons, and for any other reasons should the Court entertain them, the State's motion should be denied.

D. The motion should be denied because Taft will be substantially prejudiced otherwise.

Taft has been imprisoned since his transfer from the custody of the Department of Corrections to Alvin S. Glenn Detention Center on or about October 8, 2010. Requiring him to remain incarcerated well after the ninety day statutory period has elapsed will unduly deprive him of his liberty, especially after he has served both the time required for his criminal sentence and the time incarcerated under the Act. Should the Court allow the State to proceed, Taft may have to take depositions and engage in extensive discovery to prepare for trial. Taft has the right to be present at these depositions, yet he remains an incarcerated litigant. Further, it may be necessary for Taft to subpoena Dr. Jackson, the State's expert, and other experts at a trial, should the State be allowed to go forward. Finally, and most importantly, Taft should not be required to wait on the State yet again past the ninety day deadline to have yet another evaluation performed, after an expert already declared him not an SVP in the November 2010 Report. There can be no

greater prejudice to this civil litigant than his continued deprivation of liberty, all the while keeping him from clearing his name as a Sexually Violent Predator.

For these and other grounds that may be heard by the Court, Taft will suffer substantial prejudice should the motion be granted. The motion should therefore be denied.

II. As to Taft's Motion for Summary Judgment

A. The motion should be granted because the only examination of Taft pursuant to the Act finds that Taft is not a SVP.

"When the [ninety] day period has passed, and no continuance has been granted, the proper procedure for a respondent to follow is to file a motion to dismiss." *In re Matthews*, 345 S.C. 638, 643, 550 S.E.2d 311, 313 (2001). Here, Taft has properly filed his motion after the deadline passed and before a continuance was granted. However, Taft's motion is couched as a motion for summary judgment since the Court should consider materials outside of the pleadings.

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Rule 56(c), S.C.R.Civ.P.* The United States Supreme Court has declared:

"In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Here, since the only evidence in the case is the Report, which finds that Taft is not an SVP, and since the statutory deadline has passed for Taft to be tried as a SVP, the Court should grant Taft's motion for summary judgment because there is no genuine issue of material fact and

the State has failed to establish, in a considerable amount of time, an essential element to its case, namely an expert opinion that Taft is a SVP. Taft's motion for summary judgment should be granted on this ground alone.

B. The statute, as amended, violates the Federal and South Carolina Constitutions.

It is Taft's position that the Act violates the *ex post facto* clause. For a law to fall within *ex post facto* prohibitions, it must satisfy a two-prong test. First, the law must "retroactively apply to events occurring before its enactment." *In re Luckabaugh*, 351 S.C. 122, 135, 568 S.E.2d 338, 344 (2002). Second, it must "disadvantage the offender affected by it." *Id.* The law must be "criminal or penal in purpose or nature to offend the *ex post facto* clause. *Id.*

The Court in *Luckabaugh* found the SVP Act, as of the year 2002, as meeting the first prong, but not the second prong because the Act was a "non-punitive scheme." *Id.* It is Taft's position that the Act, as amended since 2002, in (1) extending the time for trial from sixty days to ninety days from a favorable expert opinion, in (2) allowing the State a second bite at the apple in getting a subsequent expert opinion of an accused, in (3) allowing continuance of his incarceration beyond ninety days upon a showing of "good cause" without "substantial prejudice," and in (4) changing the word "shall" to "must" throughout, makes the Act punitive in nature and scheme, and thus in violation of the *ex post facto* clause of the Federal and South Carolina Constitutions.

Taft acknowledges that he could benefit under the Act as well, should he had desired a subsequent expert opinion. However, Taft asserts that, as the accused and incarcerated, he and only he should have these statutory rights under any version of the Act. That the State has them as well makes the legislature's intent for the Act plain—to assure a second conviction and further incarceration of the accused.

Finally, to the extent the current Act violates the due process clause of the Federal and South Carolina Constitutions, both substantively and procedurally, and for all the reasons set forth above, Taft asks that the Court dismiss the pending civil action against him and order his release from the custody of the State immediately.

CONCLUSION

For the reasons set forth above, the State's motion for continuance should be dismissed, or, in the alternative, denied. Should the Court dismiss or deny the State's motion, the Court should then grant Taft's motion for summary judgment, on the basis of statutory construction, the lack of evidence against him, and the expiration of the mandated deadline for trial. Should the Court grant the State's motion, the Court should dismiss the action against him on constitutional grounds.

Respectfully submitted,



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(803) 708-0460

Attorney for Defendant Christopher Taft

March 2, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NO. 2010-CP-40-4923
	)	
IN THE MATTER OF THE CARE	)	
AND TREATMENT OF	)	ORDER OF CONTINUANCE
CHRISTOPHER TAFT,	)	
RESPONDENT	)	

RICHLAND COUNTY
FILED
2011 MAR -7 PM 1:41
KAREN E. W. JORDAN
CLERK

This matter comes before the Court upon the motion of the State for a continuance. A hearing was held on the motion on March 2, 2011 in Columbia; the State was represented by Assistant Attorney General Lloyd V. Flores, Jr., and the Respondent was personally present and represented by Rowland P. Alston III.

I have considered the showing made in respect to this matter and am of the opinion that good cause exists to support the State's motion. As an initial matter, I find the statutory language is unclear as to whether a subsequent evaluation must be conducted within 90 days of the receipt of the court appointed evaluator's report such that a trial must then be conducted within the statutory 90-day limitation period. South Carolina Code Section 44-48-90(B), as amended in May 2010, states:

Within 30 days after the determination of probable cause by the court pursuant to Section 44-48-80, the person [being evaluated] or the Attorney General may request, in writing, that the trial be before a jury. . . . If a request is made, the court must schedule a trial before a jury in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced.

SCANNED

South Carolina Code Section 44-48-90(C), as amended in May 2010, states, "Upon receipt of the evaluation issued by the court appointed expert as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D), the person or the Attorney General may retain a qualified expert to perform a subsequent examination."

I find the 90-day limitation does not apply to a subsequent evaluation pursued under Section 44-48-90(C). As a result, I am of the opinion that good cause exists to grant the motion for a continuance based on the State's right to obtain a subsequent evaluation. In doing so, I rely on the fact that, were the situation reversed and Respondent sought a subsequent evaluation, he should not be bound by the 90-day limitation to complete a trial without the completion of the evaluation. As a result, I find good cause that Dr. Dwyer's subsequent evaluation should be completed prior to the trial of this matter.

However, in making this finding, I note the existence of two other forensic evaluations performed on Respondent as a result of his prior criminal charges: one by Dr. Geoffrey McKee and one by Dr. Jack Luadzers. While I agree with the State that the statute does permit a subsequent evaluation following a court appointed evaluation, I question the efficacy of obtaining a fourth evaluation of Respondent. Because the statute permits this evaluation and the two prior evaluations were performed as a result of criminal charges and not specifically performed under the Sexually Violent Predator Act, I agree this evaluation can be conducted.

I have also considered whether Respondent would suffer substantial prejudice should I grant a continuance in this matter and am of the opinion that, while Respondent does suffer prejudice and the issue is a close question, I find Respondent will not suffer substantial prejudice such that the motion should be denied.

Respondent completed his criminal sentence on October 1, 2010. As a result of the State's pursuit of this action under the Sexually Violent Predator Act and a finding of probable cause to order an evaluation on October 6, 2010, Respondent has been detained in the Alvin S. Glenn Detention Center for 5 months past his criminal sentence. As a result of his detention pursuant to the Act, I find Respondent does suffer prejudice in that he is deprived of his liberty. However, his continued confinement does not rise to the level of substantial prejudice at this juncture.

Further, while the State has the right to retain any expert it chooses to conduct a subsequent evaluation of the Respondent, when it became apparent that Dr. Dwyer would not be able to finish a subsequent evaluation of Respondent in a timely manner, the State should have retained another qualified forensic examiner to conduct the evaluation. The Court is not swayed by the State's argument that Dr. Dwyer's change of employment, the 2010 holiday season, or his continued efforts to rectify his laboratory situation should excuse Dr. Dwyer's inability to complete or initiate an evaluation of Respondent. At the very least, within 90 days of being retained, Dr. Dwyer should have at least reviewed the records he received in this case prior to the State's filing this motion.

To avoid Respondent's continued detention from reaching a level of substantial prejudice, I order Dr. Dwyer to complete his entire evaluation of Respondent by May 2, 2011. A final report of that evaluation shall be delivered to Respondent's counsel by May 9, 2011, and this matter shall come to trial on May 23, 2011.

As to Respondent's arguments raised in his return and his memorandum against the State's motion, I find the following:

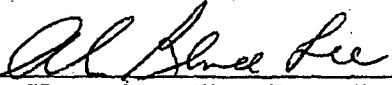
1. As to whether the motion should be denied for failing to consult with Respondent's counsel as required by Rule 11(a), SCRCP, I find consultation by the Attorney General's Office would have served no useful purpose. I remind the Attorney General's Office that consultation with opposing counsel regarding motions for continuance in the future should be done in a timely fashion and a certification addressed in its motion.
2. As to the lack of a scheduled trial in these matters, because I find the 90-day trial limitation inapplicable, this argument is moot.
3. As to Respondent's argument that the motion was not timely made, I find that had the 90-day limitation applied to request a continuance in this matter, the motion was timely filed.
4. As to Respondent's argument that the motion should be dismissed because it does not comply with Rule 7, SCRCP, and due process grounds, I find the motion adequately states the grounds for seeking a continuance in this matter.
5. As to Respondent's motion for summary judgment based on the initial evaluation of Respondent under the Act, since I have granted the State a continuance for a subsequent evaluation, the motion is denied. However, this ruling does not preclude any future motion for summary judgment or dismissal by Respondent.
6. As to Respondent's motion for summary judgment/dismissal that the Act, as amended, violates the *ex post facto* clause of the Federal and South Carolina Constitutions, I find the Act, as amended, remains a non-punitive scheme. In re Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002). As such, the Act does not violate the *ex post facto* clause of the Federal and South Carolina Constitutions.

7. As to Respondent's argument that the Act, as amended, violates the due process clauses of the Federal and South Carolina Constitutions, I find the Act, as amended, is no such violation.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED THAT

1. This case shall be continued for good cause pursuant to S.C. Code § 44-48-90.
2. Respondent does not suffer substantial prejudice such that the motion should be denied.
3. Dr. R. Gregg Dwyer must complete his evaluation of Respondent no later than May 2, 2011.
4. A copy of the final report issued by Dr. R. Gregg Dwyer shall be delivered to Respondent's counsel no later than May 9, 2011.
5. This matter shall be set for trial as the first case on the docket for May 23, 2011.
6. Respondent shall remain under the jurisdiction of this Court until a final disposition of this matter.
7. Respondent shall remain in custody at the Alvin S. Glenn Detention Center until a final disposition of this matter, *or further order of the Court.*

IT IS SO ORDERED.


 The Honorable Allison Renee Lee,
 Chief Administrative Judge for the
 Fifth Judicial Circuit Court of Common Pleas

March 4, 2011
 Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft,

Respondent.

IN THE COURT OF COMMON PLEAS

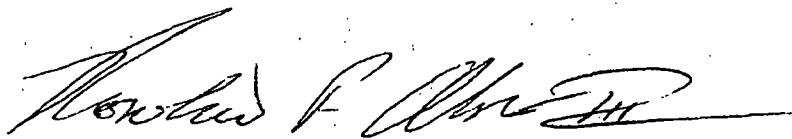
C/A No.: 2010-CP-40-4923

**NOTICE OF MOTION
AND MOTION TO ALTER
OR AMEND A JUDGMENT**2011 MAR 10 PM 2:40
JEANETTE M. MORRIS
& G.S.RICHLAND COUNTY
FILED

PLEASE TAKE NOTICE that the Respondent, Christopher Taft, by and through his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas, Fifth Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting the Respondent's Motion to Alter or Amend a Judgment of the Granting of Continuance and Denial of Summary Judgment, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, as to the within action. The Court entered an Order of Continuance on March 7, 2011, granting the State of South Carolina's Motion for Continuance and denying the Respondent's Motion for Summary Judgment, which was received by the undersigned on March 9, 2011 (less than ten (10) days from the filing of this motion).

This motion is based upon the pleadings, any memorandum previously or subsequently submitted, the common and statutory laws of the State of South Carolina, and any other matter considered by the Court.

Respectfully submitted,



Rowland P. Alston III
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(803) 708-0460

March 10, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-4923

CERTIFICATE OF SERVICE

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 MAR 10 PM 2:20

RICHLAND COUNTY
FILED

I, the undersigned, do hereby certify that I have served the **NOTICE OF MOTION AND MOTION TO ALTER OR AMEND A JUDGMENT** in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the Court and attorney(s) of record as indicated below:

The Hon. Alison Renee Lee
Chief Administrative Judge
Common Pleas - 5th Judicial Circuit
P.O. Box 192
Columbia, SC 29202-0192

Lloyd V. Flores, Jr., Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Rowland P. Alston III
Attorney for the Respondent

March 10, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-40-4923

**CHRISTOPHER TAFT'S MEMORANDUM
IN SUPPORT OF HIS MOTION TO
ALTER OR AMEND THE JUDGMENT**RICHLAND COUNTY
FILED
MAR 18 PM 12:32
JANETTE W. McBRIDE
C.C.P. & G.S.**STATEMENT OF THE CASE**

On March 18, 2010, Respondent Christopher Taft ("Respondent") pled guilty in General Sessions to two counts of Lewd Act Upon a Minor, and was committed to the custody of the Department of Corrections.

The Respondent was assessed by a Multi-Disciplinary Team on or about June 17, 2010, and was determined to satisfy the definition of a Sexually Violent Predator ("SVP") under the SVP Act ("Act"). *See Petition*, ¶4.

On or about July 20, 2010, a Prosecutor's Review Committee determined that there was probable cause to believe that Respondent was a SVP. *Id.*, ¶5.

On July 27, 2010, the State of South Carolina ("State"), as petitioner, filed this SVP civil action against the Respondent.

On August 17, 2010, the Court entered a Probable Cause Order. *See Probable Cause Order*.

On September 21, 2010, the undersigned was appointed by the Richland County Clerk of Court to represent the Respondent in this action, pursuant to Rule 608, S.C.A.C.R.

The max-out date of Respondent from the Department of Corrections was on or about October 1, 2010. See State's Return to Motion for Summary Judgment, ¶6. At that time, the Respondent was transferred directly from the custody of the Department of Corrections to the custody of Richland County at Alvin S. Glenn Detention Center, where he remains incarcerated.

On October 6, 2010, a Probable Cause hearing was held, and the Court entered an Order finding probable cause exists to find the Respondent as an SVP, and ordered an evaluation of the Respondent to be performed by Rebecca Jackson, PhD. See Order for Evaluation. The Order also provided that the State would provide counsel for Respondent a copy of Dr. Jackson's evaluation within five days of receipt. Id.

Also on October 6, 2010, the State made a formal request for a jury trial. See Petitioner's Request for Jury Trial.

On November 2, 2010, Dr. Jackson examined the Respondent. And on November 19, 2010, Dr. Jackson issued her report ("Report"). The Report concluded that the Respondent did not meet the definition of a SVP under the Act. See 11/19/10 Psychological Evaluation.

In a correspondence dated December 9, 2010, counsel for the State first provided a copy of the Report to counsel for the Respondent, informed counsel for the Respondent that the State had retained another expert, Dr. Gregg Dwyer, for a subsequent examination, as provided for in the Act, and declared that the "ninety day clock for disposing of the case by trial or otherwise begins November 19." See 12/09/10 letter from James G. Bogle, Esq.

The State did not have subsequent examination performed, and on February 18, 2011, the State filed a motion for continuance, to continue the "matter" and the "case" to "until such time as the Court is asked to set a trial date." See State's Motion for Continuance. The State did not

consult with counsel for Taft prior to the motion as required under Rule 11, S.C.R.Civ.P. *See Respondent's Return to Motion for Continuance.*

On February 22, 2011, after the expiration of ninety days since the issuance of the Report and before a continuance had been granted, the Respondent filed a motion for summary judgment.

On March 2, 2011, the Court heard the State's Motion for Continuance and the Respondent's Motion for Summary Judgment. Through his undersigned counsel, the Respondent presented his arguments orally at the hearing and on the record, and submitted to the Court a Return to the State's motion and a memorandum against the motion for continuance and in support of the motion for summary judgment.

On March 7, 2011, the Court entered an Order ("Order") that granted the State's motion for continuance and denied the Respondent's motion for summary judgment. On March 10, 2011, the Respondent timely filed a motion to alter or amend the judgment of the Order, and served it upon the Court and the State, pursuant to Rule 59(e), S.C.R.Civ.P.

The Respondent now asks the Court to alter the judgments contained in the Order, and, consequently, dismiss or deny the State's motion for continuance and grant the Respondent's motion for summary judgment for the reasons set forth below. The Respondent also incorporates by reference, in support of this motion, all the contents of his prior memorandum against the State's motion for continuance and in support of the Respondent's motion for summary judgment, and all the contents in the Return to the said motion for continuance.

DISCUSSION / ARGUMENT

I. The Court should alter its judgment on statutory interpretation.

In the Order, the Court found that “the statutory language is unclear as to whether a subsequent evaluation must be conducted within 90 days of the receipt of the court appointed evaluator’s report such that a trial must then be conducted within the statutory 90-day limitation period.” *See Order, p. 1*. Further, the also Court found that “the 90-day limitation does not apply to a subsequent evaluation pursued under Section 44-48-90 (C).” *Id., p. 2*. Consequently, the Court found that good cause existed “to grant a motion for continuance based on the State’s right to obtain a subsequent evaluation” and that the evaluation “should be completed prior to the trial of this matter.” *Id.* In regards to an argument of the Respondent, the Court found the ninety day trial limitation inapplicable as to the lack of a scheduled trial. *Id., p. 4*.

Contrary to the Court’s findings, the relevant statute clearly and unambiguously states the ninety day limitation applies only to the scheduling of a trial, and provides the right for either party to move for a continuance only after a trial has been scheduled. It clearly does not provide for an extension of time beyond the ninety day period and/or before a trial has been scheduled. Good cause cannot exist when the statute is clear.

S.C. Code § 44-49-90 (B) is the main provision of the statute at issue. The relevant portion of this provision of the statute, which was amended on May 12, 2010, is as follows:

If a request [for trial] is made, the court must schedule a trial before a jury in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80 (D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. (Emphasis added.)

“Statutory interpretation is a question of law.” S.C. Coastal Conservation League v. S.C. Dept. of Health and Environmental Control, 390 S.C. 418, 425, 700 S.E.2d 246, 250 (2010). The Court of Appeals has stated comprehensively:

It is well established that in interpreting a statute, the court’s primary function is to ascertain the intention of the legislature. When the terms of the statute are clear and unambiguous, the court must apply them according to their ordinary meaning. Furthermore, in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant. State v. Leopard, 349 S.C. 467, 470-71, 563 S.E.2d 342, 344 (Ct. App. 2002).

S.C. Code § 44-49-90 (B) plainly requires that the Court must schedule a trial within ninety days of the date of the initial court-ordered evaluation. The statute thus places upon the Court the ultimate ministerial duty to set the case for trial, and within an explicit timeframe. The statute, with the word “must,” makes the scheduling of trial within, and limited to, a specific timeframe mandatory. Respectfully, the Court misconstrues the statute when it finds it unclear in regards to a subsequent evaluation, such that the subsequent evaluation must be conducted within ninety days of the initial evaluation so that a trial must also then be conducted within ninety days of the initial evaluation. Rather, the ninety day limitation period clearly applies only to the scheduling of a trial.

In regards to the provision of the right of motion for continuance, it is clear and unambiguous as well, as it relates only to the continuance of a trial that has already been scheduled. By construing the language of a continuance of trial to allow for an extension of the ninety day timeframe for a subsequent evaluation and scheduling of trial, the Court improperly expanded the statute’s operation.

Finally, § 44-49-90 (C), the provision regarding the right to a subsequent evaluation, is also clear and unambiguous in relation to the statute as a whole, as the subsequent evaluation

must take place within the ninety day timeframe and before the scheduled trial date required by § 44-49-90 (B). The initial evaluation is dated November 19, 2010. There was no subsequent evaluation performed before the ninety day period elapsed, just as there was no trial scheduled prior to the expiration of the ninety day period or prior to the filing of the State's motion for continuance.

It is the scheduling of trial by the Court that places the parties on notice of the time available to get their cases ready. It is only after the Court's scheduling of trial that a motion for continuance can be made. And absent a proper continuance, it is only within the ninety day timeframe that a subsequent evaluation may occur. Obviously, when the party who undertakes the burden of procuring the subsequent evaluation realizes that it cannot occur before the scheduled trial, it is that party's right, and obligation, to request a continuance as explicitly provided for by the statute.

However, as previously mentioned and raised, that is not the scenario in this case. Here, there was no trial scheduled as mandated by the statute. The ninety-day period expired before trial was scheduled. There can be no other reason for the ninety-day period other than placing a strict and definite time frame for the disposition of these cases, given that citizens often remain incarcerated after the completion of their criminal incarceration. The Court, through the Order, in essence, did not grant *a proper continuance* under the statute, but rather improperly granted *an extension of time* that was expressly limited by the statute. The ruling effectively makes the mandatory limitation period discretionary and thus superfluous. "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010), quoting In re Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995).

The legislative intent for this mandatory and specific ninety day limitation period for the scheduling of trial is obvious: it is manifestly and extremely unjust to allow a person who has completed a criminal sentence to remain incarcerated for a potentially indefinite period of time pending resolution of a civil proceeding.

Even though the Act has been found to be non-punitive in nature in prior cases, the Respondent is still an incarcerated prisoner. His right to liberty and due process should be paramount. Moreover, the Act was amended in May 2010, and the Act should be construed punitive for the reasons set forth below, in any event. All ambiguities, inconsistencies, or deficiencies in the statutory language, to the extent they exist, should be construed to the Respondent's favor. Any statutory ambiguity is not and cannot be a basis for good cause.

Because the Respondent is an incarcerated civil litigant, and because the statute is clear and unambiguous, the Court should grant the Respondent's Motion to Amend the Judgment, deny or dismiss the State's motion for continuance, and grant the Respondent's motion for summary judgment. The Court should alter its judgment accordingly.

II. The Court should alter its judgment that the motion for continuance was not untimely.

The Court found the State's motion for continuance timely filed. *See Order, p. 4.* The motion should have been dismissed as untimely. The motion was not made within the mandated timeframe of ninety days. In filed correspondence dated December 9, 2010, counsel for the State provided a copy of the Report and informed counsel for the Respondent that the State had retained another expert, Dr. Gregg Dwyer, for a subsequent examination, as provided for in the Act, and that the "ninety day clock for disposing of the case by trial or otherwise begins November 19." *See 12/09/10 letter from James G. Bogle, Esq.* Based on the official position of

the State, the time to request a continuance expired on February 16, 2011. The State's motion was not filed until February 18, 2010, more than ninety days later.

The statute is clear and unambiguous that the request for continuance must have been made within the ninety day timeframe. The intent of the legislature for this requirement is the same as previously mentioned: it is impermissible to allow a citizen to remain incarcerated for a potentially indefinite period of time after completion of the criminal sentence. To allow a motion for continuance to be filed not only before a trial has been scheduled, but also after the ninety day deadline, would render the express time limitation completely moot.

The State's motion is untimely under the statute and should have been dismissed and/or denied. The Court should alter its judgment accordingly.

III. The Court should alter its judgment that the State's motion complies with Rule 7 and due process.

The proper form of motions is governed by Rule 7 (b), S.C.R.Civ.P. Specifically, Rule 7 (b) (1) states that the motion "shall state with particularity the grounds therefor." Our courts have long emphasized the importance of this requirement. "One of the basic purposes of a notice of motion is to apprise the opposing party of the relief sought and the grounds therefor." Skinner v. Skinner, 257 S.C. 544, 549, 186 S.E.2d 523, 529 (1972). "A notice of motion must apprise the opposing party of the relief sought by the moving party and the grounds therefor." Salvo v. Hewitt, Coleman & Associates, 274 S.C. 34, 39, 260 S.E.2d 708, 711 (1979) (*emphasis added*). And as a constitutional issue, due process "requires that a litigant be placed on notice of the issues which the court is to consider." Bass v. Bass, 272 S.C. 177, 180, 249 S.E.2d 905, 906 (1978).

Here, the State's notice of the motion for continuance merely stated that it is "anticipated" that the time for the subsequent examination will continue past the ninety day

deadline, and requests a continuance for “good cause.” As mentioned, the State’s motion was filed on February 18, so at that time it was more than “anticipated” that any second examination would have to occur past the ninety day deadline; it was known. Further, “good cause” is a *requirement* for a continuance under the statute and court rules; it is not a *particular* that should be contained in the notice. Finally, the notice was silent as to how the Respondent would not be substantially prejudiced as a result, and this is a requirement for a continuance as well.

The notice was not sufficient to place the Respondent on notice of the specific grounds for the motion. The Respondent should not be required to anticipate the particulars before the hearing. The Respondent should not be required to first know of, and respond to, the particulars of the motion at the hearing. The State’s motion should have been dismissed because it violates Rule 7 and due process. The Court should alter its judgment accordingly.

IV. The Court should alter its judgment that there was good cause for the State’s motion.

“To justify a continuance, the moving party must show not only the absence of some material evidence, *but also due diligence* on his part to obtain it.” Hundley ex rel Hundley v. Rite Aid of S.C., Inc., 339 S.C. 285, 305, 529 S.E.2d 45, 56 (Ct. App. 2000). (*emphasis added*.)

Good cause for a continuance does not exist in this case because (1) the requirements of the statute are clear, (2) any statutory ambiguity is not a basis for good cause, as previously mentioned, (3) there was already material evidence in the form of the Report, and (4) the State retained a subsequent expert no later than December 9, 2010 yet failed to ensure that the evaluation was performed. The State had plenty of time to procure another expert when it was apparently needed to go forward in a timely fashion. That the State failed in its due diligence is a problem of the State’s creation and good cause necessary for a continuance under the statute cannot exist. The Court even found a lack of due diligence by the State, for it declared in the

Order that “when it became apparent that Dr. Dwyer would not be able to finish a subsequent evaluation of the Respondent in a timely manner, the State should have retained another qualified forensic examiner to conduct the evaluation.” *See Order, p. 3.* (The Respondent would go further: the State, with the burden of going forward, should have also ensured the case was scheduled for trial within ninety days.) The Court found that it was not “swayed by the State’s argument” as to why the subsequent evaluation had not occurred. *Id.* There can be no good cause under these facts. The Court should alter its judgment accordingly.

V. The Court should alter its judgment that the Respondent is not substantially prejudiced as a result of the continuance.

The Respondent has been imprisoned since his transfer from the custody of the Department of Corrections to Alvin S. Glenn Detention Center in October, 2010. In addressing the issue of substantial prejudice in the Order, the Court found that the Respondent suffered prejudice but not substantial prejudice “such that the motion should be denied.” *See Order, p. 2.*

Requiring the Respondent to remain incarcerated well after the ninety day statutory period has elapsed unduly deprives the Respondent of his liberty, especially after he has served both the time required for his criminal sentence and the time incarcerated under the Act. Notwithstanding the scheduling of trial in the Order, the Respondent should not be required to wait on the State yet again past the ninety day deadline to have yet another evaluation performed, after an expert has already declared the Respondent not an SVP in November 2010. There can be no greater prejudice to a civil litigant than the Respondent’s continued deprivation of liberty after his criminal sentence has been served, all the while keeping the Respondent from clearing his name with the public as a Sexually Violent Predator.

If these facts do not give rise to substantial prejudice, it is impossible to conceive of a scenario that would. The Respondent is substantially prejudiced by a continuance in this case, and the Court should alter its judgment accordingly.

VI. The Court should alter its judgment that the motion for continuance is not denied due to failure of counsel for the State to consult with counsel for the Respondent prior, as provided for in Rule 11, S.C.R.Civ.P.

The State did not consult with the Respondent prior to the filing of the motion for continuance. This is plainly called for in Rule 11(a), S.C.R.Civ.P., and the requirement is an important one, as it would not be mandated in the Court Rules otherwise. As a result the State's motion should have been dismissed. The Court should alter its judgment accordingly.

VII. The Court should alter its judgment as to the Respondent's motion for summary judgment.

It is the Respondent's understanding that, at the hearing on March 2, the Court raised the prior forensic evaluations of the Respondent for previous criminal charges, which were considered by the Court in finding probable cause in this SVP action, as possibly presenting genuine issues of material fact to defeat his motion for summary judgment. To the extent that those reports were a basis to deny the Respondent's motion for summary judgment, the Respondent respectfully takes exception to the same.

The Respondent should not be prejudiced by evidence used by the prosecution of his criminal case in this civil action. If prior evaluations were all that were required to defeat a motion to dismiss or for summary judgment in an SVP action, it would render such motions futile, as many litigants have had expert evaluations favorable to the State performed for the State's case-in-chief during criminal prosecutions. Further, allowing the Attorney General to rely on the work of a Solicitor in a prior criminal case unduly absolves the State with the

obligation of going forward in this civil action, in which the standard of proof is beyond a reasonable doubt.

“When the [ninety] day period has passed, *and no continuance has been granted*, the proper procedure for a respondent to follow is to file a motion to dismiss.” *In re Matthews*, 345 S.C. 638, 643, 550 S.E.2d 311, 313 (2001) (*emphasis added*). Here, the Respondent properly filed his motion after the deadline passed and before a continuance was granted.

Since the only evidence in the case is the Report, which finds that the Respondent is not a SVP, since the statutory deadline has passed for the Respondent to be tried as a SVP, and since the standard of proof is beyond a reasonable doubt, the Court should have granted the Respondent’s motion for summary judgment because there is no genuine issue of material fact and the State has failed to produce, in a considerable amount of time, an essential element to its case—an expert opinion issued during this action that the Respondent is a SVP. The Respondent’s motion for summary judgment should have been granted on this ground alone. The Court should alter its judgment accordingly.

VIII. The Court should alter its judgment that the statute, as amended, does not violate the Federal and South Carolina Constitutions.

The Act, amended in May 2010, violates the *ex post facto* clause. For a law to fall within *ex post facto* prohibitions, it must satisfy a two-prong test. First, the law must “retroactively apply to events occurring before its enactment.” *In re Luckabaugh*, 351 S.C. 122, 135, 568 S.E.2d 338, 344 (2002). Second, it must “disadvantage the offender affected by it.” *Id.* The law must be “criminal or penal in purpose or nature to offend the *ex post facto* clause. *Id.*

The Court in *Luckabaugh* found the SVP Act, as of the year 2002, as meeting the first prong, but not the second prong because the Act was a “non-punitive scheme.” *Id.* It is the Respondent’s position that the Act, as amended since 2002, in (1) extending the time for trial

from sixty days to ninety days from a favorable expert opinion, in (2) allowing the State a second bite at the apple in getting a subsequent expert opinion of an accused, in (3) allowing continuance of his incarceration beyond ninety days upon a showing of "good cause" without "substantial prejudice," and in (4) changing the word "shall" to "must" throughout, makes the Act punitive in nature and scheme, and thus in violation of the *ex post facto* clause of the Federal and South Carolina Constitutions.

The Respondent acknowledges that he could benefit under the Act as well, should he had desired a subsequent expert opinion. However, the Respondent asserts that, as the accused and incarcerated, he and only he should have these statutory rights under any version of the Act. That the State has them as well makes the legislature's intent for the Act plain—to assure a second conviction and further incarceration of the accused.

Finally, to the extent the current Act violates the due process clause of the Federal and South Carolina Constitutions, both substantively and procedurally, and for all the reasons set forth above, the Court should have dismissed the pending civil action against the Respondent and order his release from the custody of the State immediately. The Court should alter its judgment accordingly.

CONCLUSION

There was no trial scheduled within ninety days of the initial evaluation, as mandated by the Act. The State did not procure a subsequent evaluation within ninety days of the initial evaluation. The State filed a defective, untimely, and premature motion for continuance wholly lacking in good cause. The Respondent did as instructed by our Courts, and filed a motion to dismiss after the timeframe expired and before a continuance of trial had been granted. The Respondent has remained, and still remains, incarcerated after completion of his criminal

sentence while the requirements of the Act and the burden of going forward was neglected by others, yet he is still deprived of his liberty and is the only one who suffers prejudice.

For the reasons set forth above, the Court should alter all aforementioned judgments contained in the Order accordingly, and order the immediate release of the Respondent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rowland P. Alston III", written over a horizontal line.

Rowland P. Alston III
The Law Office of Rowland P. Alston III, LLC
1314 Lincoln Street, Suite 214
Columbia, SC 29201
(803) 708-0460

Attorney for Respondent Christopher Taft

March 18, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE MATTER OF THE CARE)
AND TREATMENT OF)
CHRISTOPHER TAFT,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-40-4923

THE STATE'S RETURN TO RESPONDENT'S
MOTION TO ALTER OR AMEND PURSUANT
TO RULE 59, SCRPC

TO: THE HONORABLE ALISON RENEE LEE, CIRCUIT COURT JUDGE AND
ROWLAND P. ALSTON, III, ESQUIRE, COUNSEL FOR RESPONDENT

Respondent Christopher Taft moves to alter or amend this Court's Order filed March 7, 2011, granting the State's Motion for a Continuance filed February 18, 2011 and denying Respondent's Motion for Summary Judgment filed February 22, 2011. As an initial matter, the State agrees with the Court's Order granting its Motion for a Continuance and denying Respondent's Motion for Summary Judgment and would rely upon its arguments made during the hearing on this matter. However, the State submits this return to rebut several arguments Respondent raised in his memoranda filed March 2, 2011 and March 18, 2011 and not specifically addressed by the State prior to this return.

- A. The Court properly interpreted the interplay between South Carolina Code Sections 44-48-90(B) and -90(C), and properly found good cause to grant the State's motion for a continuance.

The State agrees with the Court's interpretation of Sections 44-48-90(B) and -90(C) that the subsequent evaluation requested by either the State or the individual subject to the Act must be completed prior to a trial is conducted. Furthermore, the State agrees with the Court's determination that good cause exists to grant its motion for a continuance in this matter. The General Assembly's intent in permitting a subsequent evaluation implicitly requires the evaluation to be completed before a trial is conducted. Moreover, based on the limited number of forensic experts in South Carolina qualified to perform such evaluations, good cause exists to permit Dr.

Dwyer to complete his evaluation of Respondent in this case. Therefore, the Court properly found good cause existed to grant the State's motion for continuance.

B. The Court properly found the motion for a continuance was timely.

The State agrees with the Court's determination that the State's motion for a continuance was timely. The State filed its motion for a continuance in this matter on February 18, 2011, which was within the 90-day period under the Act.

C. The Court properly denied Respondent's arguments concerning Rule 7, SCRCP, and Rule 11(a), SCRCP.

The State agrees with the Court's disposition of Respondent's argument concerning Rule 7, SCRCP, and Rule 11(a), SCRCP. The State's motion for a continuance adequately placed the Respondent on notice that it was seeking a continuance because the subsequent evaluation permitted by the Act would not be completed within the 90-day period. Moreover, consultation with opposing counsel concerning a motion for a continuance brought pursuant to the Act would serve no useful purpose.

D. The Court properly denied Respondent's motion for summary judgment because there exists a genuine issue of material fact.

Respondent contends the Court improperly considered the two previous forensic psychological evaluations of Respondent to deny his motion for summary judgment. Specifically, Respondent contends the State should not be permitted to utilize "the work of a Solicitor in a prior criminal case" to defeat his motion for summary judgment. Respondent mischaracterizes the two previous forensic psychological evaluations and their importance to these proceedings.

In its return to Respondent's motion for summary judgment, the State attached two forensic psychological evaluations as exhibits: one performed by Dr. Geoffrey McKee, Ph.D., the other by Dr. Jack Luadzers, Ph.D. A cursory review of both evaluations reveals the Solicitor did not seek

these evaluations. Respondent, through his public defender, Deon O'Neil, sought these evaluations in an effort to mitigate his pending criminal charges. Furthermore, the Act permits both the Multi-Disciplinary Team and the Prosecutor's Review Committee to rely on this type of evaluation in reviewing individuals subject to the Act. See S.C. Code Ann. §§ 44-48-50 & -60 (Supp. 2010). Respondent's contention that the State cannot now rely on these evaluations is nonsensical.

Moreover, both of these evaluations provide opinions contrary to the opinion of the court-appointed evaluator, Rebecca Jackson, Ph.D. Dr. McKee states explicitly in his report that Respondent meets the definition of a sexually violent predator, and Dr. Luadzers opines that Respondent should have in-patient sexual offender treatment prior to his return to society. While these two evaluations were not performed pursuant to the Act, both dispute Dr. Jackson's opinion and create a genuine issue of material fact, which should be decided by a jury in this matter. Therefore, Respondent's motion should be denied on this ground because a genuine issue of material fact exists such that summary judgment is improper. Rule 56(c), SCRCP.

E. The Court properly determined Respondent does not suffer substantial prejudice.

The State agrees with the Court's determination that Respondent does not suffer substantial prejudice. It is in the best interest of all parties involved that a final disposition is reached in cases brought under the Act as shown by the General Assembly's requirement that an individual subject to the Act must remain in custody until the conclusion of proceedings under the Act. S.C. Code Ann. § 44-48-80(D) (Supp. 2010).

F. Respondent's *ex post facto* argument fails because Respondent cannot show the Act is punitive in nature and scheme to trigger the *ex post facto* prohibitions of the Constitutions of the United States and South Carolina.

In order for a law to fall within the *ex post facto* prohibitions of the Constitutions of the United States and South Carolina, a statute must be criminal or penal in purpose or nature to offend the *ex post facto* clauses. In re Luckabaugh, 351 S.C. 122, 135, 568 S.E.2d 338, 344 (2002). Respondent bares the burden of proving the statute is punitive in nature and scheme such that it is unconstitutional. Id.

Respondent alleges the Act is punitive in nature and scheme such that it violates the *ex post facto* clauses of the Constitutions of the United States and South Carolina. In making his argument, Respondent contends amendments to the Act made subsequent to the Luckabaugh opinion in 2002 have made the Act punitive in nature and scheme. Specifically, Respondent alleges the Act is punitive “in (1) extending the time for trial from sixty days to ninety days from a favorable expert opinion, in (2) allowing the State a second bite at the apple in getting a subsequent expert opinion of an accused, in (3) allowing a continuance of [Respondent’s] incarceration beyond ninety days upon a showing of ‘good cause’ without ‘substantial prejudice,’ and in (4) changing the word ‘shall’ to ‘must’ throughout.” (Emphasis in original).

As to Respondent’s argument that the General Assembly’s extension of the time required to conduct a trial pursuant to the Act from sixty days to ninety days, the State contends Respondent’s position is fundamentally flawed because he fails to elucidate how the Act was amended and the effect of those amendments on the process. Prior to the 2010 amendments to the Act, South Carolina Code § 44-48-90 stated:

Within sixty days after the completion of a hearing held pursuant to Section 44-48-80, the court must conduct a trial to determine whether the person is a sexually violent predator. Within thirty days after the determination of probable cause by the court pursuant to Section 44-48-80, the person or the Attorney General may request, in writing, that the trial be before a jury. If such a request

is made, the court must schedule a trial before a jury at the next available date in the court of common pleas in the county where the offense was committed.

(Emphasis added).

In 2010, the General Assembly amended Sections 44-48-80 to require the evaluation conducted by the appointed qualified expert to be conducted within sixty days of the completion of the probable cause hearing. See S.C. Code Ann. § 44-48-80(D) (Supp. 2010). The General Assembly also amended Section 44-48-90 as follows:

- (A) The court must conduct a trial to determine whether the person is a sexually violent predator.
- (B) Within thirty days after the determination of probable cause by the court pursuant to Section 44-48-80, the person or the Attorney General may request, in writing, that the trial be before a jury. If no request is made, the trial must be before a judge in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. If a request is made, the court must schedule a trial before a jury in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced.

(Emphasis added).

Prior to the 2010 amendments, following a probable cause hearing, the court was required to conduct a trial in the matter within sixty days. This requirement implicitly demanded the qualified expert's evaluation had to be conducted and completed as well as any subsequent evaluation requested by an individual subject to the Act. Thus, both the State and the individual subject to the Act had to receive all reports, conduct discovery, and prepare for trial within the

sixty-day window dictated by the Act. Based on the Act's explicit time constraints, compliance with the Act was a serious challenge for both the State and an individual subject to the Act such that many of these cases were subject to orders of continuance removing the time limits but not dictating a new schedule for completion. Moreover, because receipt of the court-appointed evaluator's report dictates the progression of the action, very little discovery or preparation for trial could be completed until the report was issued.

The State submits that in altering the time limits within the Act, the General Assembly intended to make the process more reasonable for both the State and the individual subject to the Act. Because the court-appointed evaluator's report dictates progression of these cases, the General Assembly provided for the evaluation to be completed before a trial is conducted. In making this observation, the State relies upon the Act's explicit amended language requiring the case to be tried after the court-appointed evaluator's report has been issued. The State would further submit the 2010 amendments provide a clearer timeline to conduct a trial under the Act. The State contends the mere expansion of the time limits for completing the court-appointed evaluator's report and for conducting a trial do not make the Act punitive in nature and scheme.

As to Respondent's argument that the Act allows "the State a second bite at the apple," Respondent mischaracterizes the role of the qualified expert under the Act. It is implicit in the act of the court appointing an expert to perform an evaluation that the individual appointed works at the request of the court such that neither party employs the individual and the expert is unbiased. Cf. In re Campbell, 379 S.C. 593, 599-601, 666 S.E.2d 908, 911 (2008) (interpreting South Carolina Code Section 62-5-407(b) which requires the Probate Court to appoint one or more physicians to examine an individual for whom a conservator will be appointed due to mental deficiency to require neutral and objective examiners). To characterize the qualified expert as the

State's evaluator incorrectly implies the State specifically chooses and mandates whom the Court should appoint to conduct the evaluation. While the State provides a list of qualified evaluators available at the Department of Mental Health, the Court is not bound by the list and may appoint any evaluator it chooses. Therefore, Respondent's argument misinterprets the statutory language concerning the role of the qualified expert, and fails to articulate a basis upon which the Act could be punitive in nature and scheme.

With regard to Respondent's argument that the Act is punitive because a court can grant a continuance which continues to deprive Respondent from liberty based upon good cause without substantial prejudice, the mere existence of a mechanism by which either party can obtain a continuance in order for the Act to be properly administered cannot render the Act punitive. Importantly, whether to grant or deny a motion for a continuance under the Act is left to the sound discretion of the court. Under the Act, the court must weigh all factors in determining whether the party seeking a continuance has shown good cause and that the non-moving party will not suffer substantial prejudice. See S.C. Code Ann. § 44-48-90(B) (Supp. 2010). By providing this mechanism, the General Assembly intended for these trials to be effectively prepared as well as controlled by the Circuit Courts to ensure proper resolution of these cases in a timely fashion. In re Miller, 385 S.C. 539, 547-549, 685 S.E.2d 619, 624-625 (Ct. App. 2009), cert. granted. S.C. Supreme Court, October 7, 2010.

Lastly, Respondent alleges the General Assembly's act of changing the word "shall" to "must" throughout the Act makes it punitive. Respondent's argument is nonsensical. The General Assembly often uses these words interchangeably to mandate a requirement that cannot be waived or ignored. Collins v. Doe, 352 S.C. 462, 470-471, 574 S.E.2d 739, 743 (2002) ("Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to

enact a mandatory requirement.'').

- G. Respondent fails to argue how the Due Process clauses of the Constitutions of the United States and South Carolina are offended by the amendments to the Act.

While Respondent relies on all of his arguments raised at the hearing and his memoranda in stating the Due Process clauses of the Constitutions of the United States and South Carolina are offended, Respondent fails to argue what substantive or procedural violations have occurred. Therefore, Respondent's arguments should be denied on this ground because they are merely conclusory.

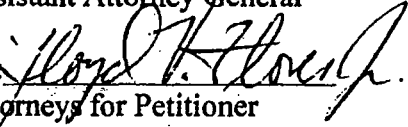
Conclusion

For all of the reasons stated at the hearing and in this return, Respondent's motion should be denied because there are no grounds upon which the Court should reconsider, alter, or amend its order granting the State's motion for a continuance and denying Respondent's motion for summary judgment.

Respectfully submitted,

ALAN WILSON
Attorney General

LLOYD V. FLORES, JR.
Assistant Attorney General

By: 
Attorneys for Petitioner
S.C. Bar No. 78361
Office of the Attorney General
Post Office Box 11549
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lflores@scag.gov

March 22, 2011
Columbia, South Carolina

THE LAW OFFICE OF
ROWLAND P. ALSTON III, LLC

1314 LINCOLN STREET, SUITE 214
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: 803.708.0460
FACSIMILE: 803.708.0462
ROWLAND@ROWLANDALSTON.COM

March 18, 2011

The Hon. Allison Renee Lee
Chief Administrative Judge
5th Judicial Circuit - Common Pleas
P.O. Box 192
Columbia, SC 29202-0192

Re: State of S.C. v. Christopher Taft; C/A No. 2010-CP-40-4923

Dear Judge Lee:

As you know, I represent the indigent Respondent Christopher Taft in this SVP action.

Per your request, enclosed please find a filed copy of the Respondent's memorandum in support of the motion to alter or amend the judgment.

Thank you for your time with this matter, and I look forward to appearing before you again soon. I am copying opposing counsel on this letter and its contents so that he may be served with the same.

Sincerely,



Rowland P. Alston, III

RECEIVED

MAR 21 2011

ATTORNEY GENERALS
OFFICE

Encl.

Cc: Lloyd V. Flores, Jr., Esq. (w/encl)
Christopher Taft (w/encl)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

State of South Carolina,

Docket No.: 2010-CP-40-4923

Petitioner,

ORDER

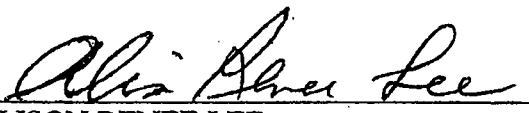
v.

Christopher Taft,

Respondent.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Respondent's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order filed March 7, 2011. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
March 29, 2011

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-4923

NOTICE OF MOTION AND
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT

TO: LLOYD V. FLORES, JR., ESQ., ATTORNEY FOR PETITIONER:

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through his undersigned counsel, pursuant to Rule 59, S.C.R.Civ.P., and any other applicable rules and law, will argue a motion for a judgment notwithstanding the verdict before the Hon. Alison Renee Lee, at a time and place to be designated by the Court:

The Respondent hereby moves for an order for judgment notwithstanding the verdict. The ground(s) for the motions include, but are not limited to, that there was only one inference that could be drawn from the evidence and/or one sole inference was not in doubt, namely that the State did not prove beyond a reasonable doubt that Respondent is a sexually violent predator pursuant to the applicable statute.

The motion is based upon the objections and motions noted on the record, any memorandum of law, South Carolina case law, South Carolina statutory law, the exhibits at trial, the testimony at trial, and any additional matter considered by the Court.

Respectfully submitted,



Rowland P. Alston III
The Law Office of Rowland P. Alston III, LLC
1314 Lincoln Street, Suite 214
Columbia, SC 29201
(803) 708-0460
Attorney for the Respondent

June 1, 2011

2011 JUN
AM 10:09

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-4923

CERTIFICATE OF SERVICE

2011 JUN - 1 AM 10:39
JUL 1 2011
COP 16

I, the undersigned, do hereby certify that I have served the **NOTICE OF MOTION AND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT** in the above-captioned case, by causing a copy of the same to be hand delivered or personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the Court and attorney(s) of record as indicated below:

The Hon. Alison Renee Lee
Chief Administrative Judge
Common Pleas - 5th Judicial Circuit
P.O. Box 192
Columbia, SC 29202-0192

Lloyd V. Flores, Jr., Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Rowland P. Alston III
Attorney for the Respondent

June 1, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-4923

NOTICE OF MOTION AND
MOTION FOR A NEW TRIAL

TO: LLOYD V. FLORES, JR., ESQ., ATTORNEY FOR PETITIONER:

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through his undersigned counsel, pursuant to Rule 59, S.C.R.Civ.P., and any other applicable rules and law, will argue a motion for a new trial before the Hon. Alison Renee Lee, at a time and place to be designated by the Court:

The Respondent hereby moves for an order for a new trial. The ground(s) for the motion include, but are not limited to, that the Court should have granted the Respondent's motion for a new trial because the Court's decision to deny is wholly unsupported by the evidence and/or the Court's conclusions of law were controlled by errors of law.

The motion is based upon the objections and motions noted on the record, any memorandum of law, South Carolina case law, South Carolina statutory law, the exhibits at trial, the testimony at trial, and any additional matter considered by the Court.

Respectfully submitted,



Rowland P. Alston III
The Law Office of Rowland P. Alston III, LLC
1314 Lincoln Street, Suite 214
Columbia, SC 29201
(803) 708-0460
Attorney for the Respondent

June 1, 2011

2011 JUN - 1 AM 10:09

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-4923

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served the **NOTICE OF MOTION AND MOTION FOR A NEW TRIAL** in the above-captioned case, by causing a copy of the same to be hand delivered or personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the Court and attorney(s) of record as indicated below:

The Hon. Alison Renee Lee
Chief Administrative Judge
Common Pleas - 5th Judicial Circuit
P.O. Box 192
Columbia, SC 29202-0192

Lloyd V. Flores, Jr., Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Rowland P. Alston III
Attorney for the Respondent

June 1, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-4923

NOTICE OF MOTION AND
MOTION TO RECONSIDER

2011 JUN - 1 AM 10:10

TO: LLOYD V. FLORES, JR., ESQ., ATTORNEY FOR PETITIONER:

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through his undersigned counsel, pursuant to Rule 59, S.C.R.Civ.P., and any other applicable rules and law, will argue motions for reconsideration, a judgment notwithstanding the verdict, and a new trial before the Hon. Alison Renee Lee, at a time and place to be designated by the Court:

The Respondent hereby moves for an order reconsidering the motion to exclude, redact, and/or strike the testimony of Dr. Geoffrey McKee, PhD, and reconsidering the Respondent's filed request to charge the jury.

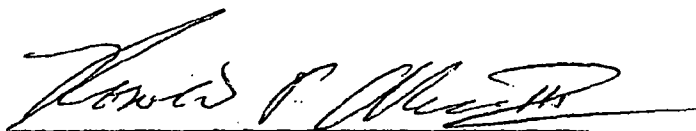
The ground(s) for the motion include, but are not limited to, the following:

1. The Court abused its discretion in allowing the testimony of Dr. Geoffrey McKee to be considered by the jury because: (1) it was inherently inflammatory and unduly prejudicial, (2) it was based upon stale and unreliable evidence by his own admission, (3) his prior formal opinion in 2009 was improperly rendered because the Respondent at that time did not meet the threshold statutory definition of a sexually violent predator, and (4) he did not and could not opine at trial that the Respondent meets the definition of a sexually violent predator.
2. The jury, given the repetitive questioning of the Court after the charge, should have been re-charged on the full definition of the "beyond a reasonable doubt" standard under South Carolina law.

These motions are based upon the objections and motions noted on the record, any memorandum of law, South Carolina case law, South Carolina statutory law, the exhibits at trial, the testimony at trial, and any additional matter considered by the Court.

Respectfully submitted,

(SIGNATURE OF COUNSEL PAGE TO FOLLOW.)



Rowland P. Alston III
The Law Office of Rowland P. Alston III, LLC
1314 Lincoln Street, Suite 214
Columbia, SC 29201
(803) 708-0460
Attorney for the Respondent

June 1, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-4923

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served the **NOTICE OF MOTION AND MOTION TO RECONSIDER** in the above-captioned case, by causing a copy of the same to be hand delivered or personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the Court and attorney(s) of record as indicated below:

The Hon. Alison Renee Lee
Chief Administrative Judge
Common Pleas - 5th Judicial Circuit
P.O. Box 192
Columbia, SC 29202-0192

Lloyd V. Flores, Jr., Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

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JANUARY 10 2011



Rowland P. Alston III
Attorney for the Respondent

June 1, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

In the Matter of the Care and Treatment of
Christopher Taft

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-40-4923

**RESPONDENT'S MEMORANDUM
IN SUPPORT OF MOTIONS TO
RECONSIDER, FOR JUDGMENT
NOTWITHSTANDING THE VERDICT,
AND FOR A NEW TRIAL****STATEMENT OF THE CASE**

The Respondent incorporates by reference the statements of the case contained in prior memoranda filed with the Court. The Respondent also craves reference to the yet unpublished transcript of record of the trial of the case throughout this memorandum.

At the trial of the case, the Petitioner State of South Carolina ("State") elicited the testimony of only two witnesses in its case-in-chief. The first witness was Dr. Geoffrey McKee, Ph.D. ("McKee"). The second witness was Dr. Rebecca Jackson, Ph.D. ("Jackson"). The only exhibits at trial were records of the Respondent's underlying criminal convictions.

Prior to and during the trial of the case, the Respondent moved that the Court exclude, redact, and/or strike the testimony of McKee. The Court denied the Respondent's motions in limine and objections during trial in this regard.

McKee gave extremely explicit details regarding the incest of the Respondent, testified that his forensic evaluation of Respondent was in 2009 regarding Respondent's underlying criminal charges, and testified that he could not opine that the Respondent presently met the definition of a sexually violent predator ("SVP") because it had been so long since he evaluated

the Respondent. Neither McKee nor Jackson testified that the Respondent presently met the statutory definition of a SVP under the Sexually Violent Predator Act ("Act").

At the conclusion of the State's case-in-chief, the Respondent moved for a directed verdict, since there was no evidence that the Respondent presently met the definition of a SVP.

The Court denied the motion for a directed verdict and submitted the case to the jury for their deliberation. The verdict form, prepared by the Court, gave the jury the option of the finding that the Respondent, beyond a reasonable doubt, "is a sexually violent predator."

During deliberation, the jury wrote several questions to the Court concerning the Respondent's probation, measures to keep him from contact with his family, the cross-examination of McKee, and the statutory definition of a SVP.

Given the concern of Respondent that these questions gave rise to the inference that the jury did not understand the full meaning of the "beyond a reasonable doubt" standard under South Carolina law, the Respondent again requested that the Respondent's previously filed request to charge regarding the same be given to the jury. The Court again denied the request.

After deliberation, the jury returned a verdict that the Respondent is a SVP.

The Respondent made a post trial motion for a judgment notwithstanding the verdict, for a new trial, and for reconsideration of evidence allowed and jury charges given. The Court took the post trial motion(s) under advisement and requested a memorandum to be submitted in support of the same.

The Respondent asks that the Court grant the motion for a judgment notwithstanding the verdict, or, in the alternative, for reconsideration and a new trial, for the reasons given and supported herein.

DISCUSSION / ARGUMENT

I. The Court should have granted the Respondent's motion for judgment notwithstanding the verdict.

There was no testimony that the Respondent presently met the statutory definition of a SVP. This is necessary for a proper submission of the case by the Court, in its role as a gatekeeper, to a jury for their deliberation of a verdict.

A. The present condition of Respondent is the ultimate issue of the case.

The statute clearly states that the ultimate issue in SVP actions is whether or not the Respondent is a sexually violent predator. "The Court must conduct a trial to determine whether the person is a sexually violent predator." *S.C. Code § 44-48-90 (A) (emphasis added)*. That the statute is written in present tense indicates that forensic evaluations which are stale are not proper evidence to support such a finding. McKee's testimony recognized that the condition of an SVP is not a permanent one, as he testified that pedophilia is a curable condition. Further, the Act recognizes that the condition or finding of one as a SVP is not permanent, as a finding of negligence in a tort action or guilt in a criminal action, as it expressly calls for an initial evaluation by at least one court appointed expert after the probable cause hearing and calls for an SVP's condition to be re-evaluated on an annual basis after trial. *See S.C. Code § 44-48-80 (D) and § 44-48-110*. Thus, the present condition of a Respondent is the ultimate issue to be decided by a jury in SVP cases, and expert testimony regarding the same is essential. Moreover, the verdict form prepared by the Court recognizes the present condition as the issue, as it calls for the jury to find whether or not the Respondent "is" or "is not" a sexually violent predator.

B. The State did not make its case beyond a reasonable doubt as a matter of law.

"The Court must determine whether, beyond a reasonable doubt, the person is a sexually violent predator." *S.C. Code § 44-48-100 (A) (emphasis added)*. The State has the burden to

prove, beyond a reasonable doubt, that Respondent presently meets all elements of a SVP to warrant a finding, and must at least submit evidence probative of each element to warrant submission of the case to a jury.

A trial judge properly denies a motion for a judgment notwithstanding the verdict when the evidence is susceptible to more than one inference or its inference is in doubt. See Wright v. Hiester Construction Co., Inc., 389 S.C. 504, 512, 698 S.E.2d 822, 826 (Ct. App. 2010). Here, the state elicited no testimony at trial that the Respondent presently met the statutory definition of all elements of a SVP. Rather, the only testimony on the ultimate issue at trial was by Jackson, and she testified that the Respondent did not meet the statutory definition of a SVP. McKee testified that he could not opine as to the Respondent's current condition, since it had been so long since he had evaluated the Respondent. Thus, there was without doubt only one proper inference to be drawn from the evidence, or lack thereof: the State did not prove beyond a reasonable doubt that the Respondent is a SVP.

The Court, in its role as gatekeeper, should not have submitted to the case to the jury. The Court should substitute the finding of the jury with a finding that, beyond a reasonable doubt, the Respondent is not a SVP.

II. The Court should have granted the Respondent's motion for a new trial.

A trial court's decision to deny a new trial will not be disturbed on appeal unless the decision "is wholly unsupported by the evidence or the court's conclusions of law have been controlled by errors of law." See Wright, supra, at 512-13, 826-27. As discussed above, since there was no testimony that the Respondent presently met the statutory definition of an SVP, the evidence did not come close under a reasonable doubt standard to supporting the jury's finding. Further and as a consequence, the Court made an error of law in not granting the Respondent's

motion for a directed verdict, and in allowing expert testimony and not re-charging the jury as discussed below.

III. The Court should reconsider allowing McKee's testimony and its jury charge.

A. McKee's testimony was unduly prejudicial and inflammatory.

The Court is also a gatekeeper as to what evidence is submitted to a jury under Rule 702, SCRE. *See State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009).

The Respondent objected to the extremely explicit details of Respondent's incest. That the Respondent committed acts of sexual deviancy were not an issue in the case, since the Respondent did not contest that he had prior convictions of sexually violent crimes. The probative value of the testimony of McKee was thus greatly outweighed by the undue prejudice of such testimony and the needless presentation of cumulative evidence. *See Rule 403, SCRE*. Over Respondent's objection, the Court allowed the testimony into evidence, and the result was a jury tainted with the salacious.

B. McKee's evaluation was irrelevant, stale, and unreliable.

McKee evaluated Respondent in 2009 prior to his criminal conviction for lewd act on a minor. His report, or letter, which he testified from, evidences this. *See 09/27/09 Letter of McKee*. This letter has been part of the record since the Order for Evaluation was entered. *See 10/06/10 Order for Evaluation*. Because, at the time of McKee's evaluation, the only conviction that the Respondent had on his record was an ABHAN charge from Family Court, and because, upon information and belief, the Respondent had at that time no conviction of a "sexually violent crime" under the Act, McKee could not have properly opined in 2009 that the Respondent met the statutory definition of an SVP. Further, the evaluation of the Respondent was not conducted pursuant to the Act. Allowing McKee to testify regarding his prior evaluation was thus irrelevant to the ultimate issue at trial.

McKee also testified that he could not opine that the Respondent presently met the statutory definition of an SVP because of the great lapse in time since the 2009 evaluation. By McKee's own admission, his evaluation of the Respondent was/is stale, and therefore unreliable. Since McKee could not opine that the Respondent presently met the statutory definition of a SVP, he could not offer any testimony directly relating to the ultimate issue. There could not have been a rational finding that his testimony was probative, or that any probative value outweighed undue prejudice. Respectfully, the Court abused its discretion in allowing it. "The trial court abuses its discretion when that discretion is based upon an error of law or upon factual findings that are without evidentiary support." S.C.D.S.S. v. Lisa C., 380 S.C. 406, 411, 669 S.E.2d 647, 650 (Ct. App. 2008).

C. The Court should have re-charged the jury on the reasonable doubt standard.

South Carolina has a fully developed understanding of the standard of proof of "beyond a reasonable doubt." Not only does South Carolina adhere to the explanation that "beyond a reasonable doubt" leaves a fact finder "firmly convinced" of a finding, this state also puts the standard in complete context by further explaining that a "reasonable doubt is the kind of doubt that would cause a person to hesitate to act." See State v. Darby, 324 S.C. 114, 477 S.E.2d 710 (1996). The "hesitate to act" element was not charged by the Court upon direct request by the Respondent before and during jury deliberation. The Supreme Court of the United States has "repeatedly approved" this specific charge. See Victor v. Nebraska, 511 U.S. 1, 12, 114 S.Ct. 1239, 1250 (1994). Given the nature of the written questions to Court by the jury, and given that the Respondent's liberty interest was at stake, the Court should have re-charged the jury on the full meaning of "beyond a reasonable doubt" under South Carolina and U.S. Supreme Court jurisprudence.

CONCLUSION

There was no testimony that the Respondent presently met the statutory definition of an SVP. The only testimony on Respondent's present condition was that he was/is not an SVP. The testimony of McKee was unduly prejudicial, irrelevant, stale, and unreliable.

For the reasons set forth above, the Court should:

- (1) grant the Respondent's motion for judgment notwithstanding the verdict; or,
- (2) grant the Respondent's motions for reconsideration and a new trial.

Respectfully submitted,



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June 1, 2011

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2010-CP-40-4923

IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 CHRISTOPHER TAFT,)
 RESPONDENT.)

PETITIONER'S RETURN TO
 RESPONDENT'S MOTIONS TO
 RECONSIDER, FOR JUDGMENT
 NOTWITHSTANDING THE VERDICT,
 AND FOR A NEW TRIAL

TO: THE HONORABLE ALISON RENEE LEE, CIRCUIT COURT JUDGE AND
 ROWLAND P. ALSTON, III, ESQUIRE, COUNSEL FOR RESPONDENT

Respondent moves for an order granting his motion for judgment notwithstanding the verdict or, in the alternative, an order granting his motions to reconsider and for a new trial. The basis of Respondent's motion for judgment notwithstanding the verdict is as follows:

- (1) The State failed to present expert testimony opining Respondent currently meets the definition of a sexually violent predator and the Act requires such an opinion in order for the State to meet its burden; and
- (2) The State failed to meet its burden of proving Respondent is a sexually violent predator.

Respondent also asks the Court to reconsider its decisions made with regard to the Court's rulings on Respondent's motion for a directed verdict, in permitting Dr. McKee's testimony, and failing to re-charge the jury concerning the reasonable doubt standard. Specifically with regard to the Court's decision to permit Dr. McKee's testimony, Respondent contends admission was error because:

- (1) The testimony was inherently inflammatory and unduly prejudicial;
- (2) It was based on "stale and unreliable evidence" by McKee's own admission;
- (3) McKee's prior opinion was improperly rendered because the Respondent did not meet the threshold statutory definition of a sexually violent predator; and
- (4) McKee could not opine at trial that Respondent meets the definition of a sexually violent predator.

The basis of Respondent's motion for a new trial is as follows:

- (1) The evidence presented by the State did not come close to meeting the reasonable doubt standard to support the jury's finding; and

- (2) The Court made errors of law in not granting Respondent's motion for a directed verdict, in allowing Dr. Geoffrey McKee's testimony, and for failing to re-charge the jury concerning the reasonable doubt standard.

Petitioner submits this return to rebut the arguments Respondent has raised.

STATEMENT OF THE CASE

Pursuant to the Sexually Violent Predator Act ("Act"), a trial in this matter was held on May 23-24, 2011 in Richland County. At trial, Petitioner elicited the expert testimony of Dr. Geoffrey McKee, Ph.D., and Dr. Rebecca Jackson, Ph.D., in its case-in-chief. Petitioner also submitted certified copies of Respondent's convictions into evidence.

Dr. McKee testified about an evaluation he performed upon the request of Respondent's counsel after his 2008 criminal charges, resulting in his 2010 guilty plea. Dr. McKee testified the 2009 evaluation was an "aid-in-sentencing" evaluation conducted to aid the Court of General Sessions in sentencing Respondent in the event Respondent was found guilty or pled guilty to the underlying criminal charges pending at the time. Dr. McKee testified about Respondent's prior sexual history, his prior juvenile adjudication, his prior sex offender treatment, the evaluation he conducted, and the information he gained from assessments and tests he conducted of Respondent. Dr. McKee further testified that when he evaluated Respondent in 2009 it was his opinion to a reasonable degree of psychological certainty that Respondent suffered from pedophilia. Dr. McKee also testified it was his opinion when he evaluated Respondent in 2009 that Respondent was a sexually violent predator. Dr. McKee declined to offer a current opinion at trial because he could not professionally render an opinion without conducting a current interview of Respondent.

Dr. Jackson testified she was appointed by the Court to conduct an evaluation in this matter. In rendering an opinion, she testified she based her opinion on Respondent's criminal history, his prior sex offender treatment, his history of sexual abuse, and all the information she received concerning Respondent, including prior evaluations. She opined to a reasonable degree of psychological certainty that Respondent suffered from pedophilia, attracted to females, non-exclusive, limited to incest. She testified it was her opinion Respondent did not meet the definition of a sexually violent predator because his mental abnormality was limited to incest, the literature in her field found a lower likelihood of sexual recidivism for incest offenders, and Respondent would be on probation and away from his family. Dr. Jackson testified that records she relied upon in deriving her opinion showed Respondent had not completed any further sex offender treatment and had been incarcerated since his evaluation with Dr. McKee in 2009.

At the close of Petitioner's case, Respondent moved for a directed verdict. The Court denied Respondent's motion finding the evidence as presented when taken in a light most favorable to Petitioner led to more than one inference. The Court determined the case should be submitted to the jury for resolution and Respondent could be a sexually violent predator based on the evidence presented.

Following the jury's deliberation, the jury found beyond a reasonable doubt Respondent is a sexually violent predator. Respondent moved the Court for judgment notwithstanding the verdict or, in the alternative, a new trial. The Court took the post-trial motions under advisement and requested Respondent and Petitioner submit memoranda concerning those motions.

- A. Because the Court properly denied Respondent's motion for a directed verdict, the Court should deny Respondent's motion for

judgment notwithstanding the verdict. The evidence taken in a light most favorable to Petitioner is susceptible to more than one inference in this matter and demonstrates Respondent is a sexually violent predator.

Under the Act, the court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. S.C. Code Ann. § 44-48-100 (Supp. 2010). It is Petitioner's burden to prove beyond a reasonable doubt that the person has (A) been convicted of a sexually violent offense, and (B) suffers from a mental abnormality or a personality disorder that makes the person likely to engage in acts of sexual violence if not confined to a secure facility for long-term control, care and treatment. S.C. Code Ann. §44-48-30 (1)(a), (b) (Supp. 2010). "Likely to engage in acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others. S.C. Code Ann. § 44-48-30 (9) (Supp. 2010).

In ruling on a motion for a directed verdict, "the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt." Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). When either the evidence yields more than one inference or its inference is in doubt, the trial court should deny the motion. McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626, S.E.2d 884, 886 (2006). The trial court must determine whether a verdict for the opposing party "would be reasonably possible under the facts as liberally construed in his [or her] favor." Id. at 293, 628 S.E.2d at 503 (quoting Harvey v. Strickland, 350 S.C. 303, 309, 566 S.E.2d 529, 532 (2002)). Neither a directed verdict nor judgment notwithstanding the

verdict should be granted unless only one reasonable inference can be drawn from the evidence. Brady Dev. Co. v. Town of Hilton Head Island, 312 S.C. 73, 439 S.E.2d 266 (1993). A motion for judgment notwithstanding may be granted only if no reasonable jury could have reached the challenged verdict. State v. Gaster, 349 S.C. 545, 554, 564 S.E.2d 87, 92-93 (2002).

Petitioner contends the Court properly denied Respondent's motion for a directed verdict. Viewing the admitted evidence in a light most favorable to Petitioner, the evidence yielded more than one reasonable inference concerning whether Respondent is a sexually violent predator. As described above, Petitioner presented evidence in the form of testimony from two witnesses as well as certified convictions of Respondent's sexual offenses. Both of Petitioner's witnesses were qualified as experts in the field of forensic psychology and both rendered opinions to a reasonable degree of psychological certainty that Respondent suffered from pedophilia. The only difference in the diagnoses was Dr. Jackson limited Respondent's pedophilia to incidents of incest.

Because it was undisputed that Respondent had been convicted of a qualifying sexually violent offense and Respondent suffered from a mental abnormality, the ultimate question for determination was whether Respondent's pedophilia makes him likely to commit acts of sexual violence if not confined to a secure facility for long-term control, care and treatment. Stated another way, the question for determination was whether Respondent's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

In order to prove its case, Petitioner sought to show Respondent has an absolute lack of control over his mental abnormality and he would commit acts of sexual violence

if not confined for long-term control, care, and treatment. Both experts testified that past sexual offending behavior is relevant in determining whether an individual will reoffend in the future. Petitioner elicited the history of Respondent's sexual abuse through Dr. McKee to show Respondent's actions in seeking out his family members for sexual gratification was a learned behavior which has been normalized and accepted based on the years of continued and repeated abuse. Petitioner further elicited testimony through Dr. McKee that Respondent had been adjudicated as a juvenile for sexual offenses against his siblings and was ordered to attend sex offender treatment. Dr. Jackson testified she also relied upon Respondent's history of abuse and prior adjudication as part of the basis of her ultimate opinion and diagnosis of Respondent.

The certified copy of Respondent's arrest warrant from his 2010 convictions indicated he reoffended after "successful" sex offender treatment within six weeks of returning to the family home. Through the testimony of Dr. Jackson, Petitioner showed Respondent had a detailed relapse prevention plan, and his family was aware of the plan before he moved back into the family home following completion of his sex offender treatment. Further Petitioner elicited testimony from Dr. Jackson that Respondent and his family were aware of the high risk situation Respondent would be re-entering when he returned to the family home.

With regard to Dr. Jackson, Petitioner elicited testimony her opinion was Respondent was not likely to sexually reoffend based heavily on her limiting Respondent's mental abnormality to incest offending. Dr. Jackson also relied heavily upon the fact Respondent would be on probation and his probation conditions required him to stay away from his siblings until they were age 16 or older. In contradiction to

this testimony, Petitioner elicited the testimony of Dr. McKee to instruct the jury as to the exhaustive list of assessments and tests Dr. McKee performed during his aid-in-sentencing evaluation concerning Respondent's likelihood to reoffend in a sexually violent manner and as a measure of Respondent's likelihood of success in probation. Dr. Jackson also testified, as described above, Respondent had not had any further sex offender treatment and had been incarcerated for the entire period of time following his evaluation with Dr. McKee.

Viewing the evidence presented by Petitioner in a light most favorable to Petitioner, a question of fact was presented for a jury's determination as to whether Respondent's pedophilia would make him more likely to commit acts of sexual violence. On one hand, the jury could have believed that the normalization of incestual relationships as a result of Respondent's history of being sexually abused, Respondent's failure to abstain from committing acts of sexual violence within six weeks of the "successful" completion of a 13-month sex offender treatment program, Respondent's likelihood of sexual reoffending and success at probation as measured by the assessments and tests performed by Dr. McKee, and Respondent's lack of any further sex offender treatment show Respondent's pedophilia makes it likely for him to commit acts of sexual violence. On the other hand, the jury could have believed Respondent's pedophilia was limited to acts of incest, which corresponds to a lower likelihood to reoffend, along with the parameters established through probation that would limit access to his siblings until they were sixteen show Respondent was less likely to commit acts of sexual violence.

In either case, viewing the totality of the evidence presented by Petitioner in a light most favorable to Petitioner, a question of fact was presented for the jury because

more than one inference could be drawn by the jury to determine the ultimate question of whether Respondent is a sexually violent predator. Law, supra; McMillan, supra. Therefore, the Court's decision to deny Respondent's motion for a directed verdict was proper under the circumstances of this case. Further, the Court should deny Respondent's motion for judgment notwithstanding the verdict because a reasonable jury could have reached the challenged verdict based upon the evidence presented. Gaster, supra.

- B. Because Respondent misinterprets the Act to require an expert's opinion finding an individual to be a sexually violent predator as a prerequisite to the ultimate finding by a Court or jury that Respondent is a sexually violent predator, the Court should deny Respondent's motion for judgment notwithstanding the verdict on this ground.

The testimony of an expert is not necessary to establish Respondent or any individual subject to the Act is a sexually violent predator. Specifically, an expert's testimony is not necessary to establish the likelihood that Respondent would engage in future acts of sexual violence and a jury is free to accept or reject any portion of the testimony presented by any of the witnesses at trial, including Dr. Jackson. "As a general rule, the jury is free to accept or reject in whole or in part the testimony of any witness, including an expert witness." Sauers v. Poulin Bros. Homes, Inc., 328 S.C. 601, 605, 493 S.E.2d 503, 504 (Ct. App. 1997) (citing State v. Milian-Hernandez, 287 S.C. 183, 186, 336 S.E.2d 476, 478 (1985) (The jury may properly disregard expert testimony.); State v. Campen, 321 S.C. 505, 510, 469 S.E.2d 619, 622 (Ct. App. 1996) (Although the only expert testimony established that the defendant had the ability to conform his conduct to standards of right and wrong, the expert's testimony was not "dispositive, inasmuch as the jury could have elected to disregard [the expert's opinion]."); State v. Smith, 304 S.C.

129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991) (The jury is free to believe one portion of a witness's testimony and disbelieve another.); accord, Smith v. Safeco Life Ins. Co., 303 S.C. 131, 399 S.E.2d 427 (Ct. App. 1990)).

Additionally, Petitioner is not required to present expert testimony of its own in order to directly refute the testimony of Dr. Jackson. See e.g., Black v. Hodge, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991); see also, Sauers v. Poulin Bros. Homes, Inc., 328 S.C. at 606, 493 S.E.2d at 504-05. The testimony by other witnesses may be believed by the jury over the testimony of the expert witness, and the jury is free to accept or reject any portion of the testimony of the expert and other witnesses. As stated above, Petitioner presented conflicting testimony and evidence as to whether Respondent was likely to commit acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment. Under the circumstances of this case, the question was ultimately one for the jury to decide based on the properly admitted evidence.

C. Because the Court properly admitted Dr. McKee's testimony, the Court should deny Respondent's motion to reconsider and motion for a new trial on this ground.

Generally, all relevant evidence is admissible. Rule 402, SCRE. Evidence is relevant if it tends to establish or make more or less probable the matter in controversy. Rule 401, SCRE. Of course, relevant evidence may be excluded if the danger of unfair prejudice substantially outweighs its probative value. Rule 403, SCRE. The facts or data in a particular case upon which an expert bases an opinion, if of a type reasonably relied upon by experts in the particular field in forming opinions or inferences about the subject, need not be admissible in evidence. Rule 703, SCRE.

In In the Matter of the Care and Treatment of Corley, 353 S.C. 202, 577 S.E.2d

451 (2003), the Supreme Court held that the probative value of the details underlying Corley's Assault and Battery of a High and Aggravated Nature (ABHAN) and Criminal Sexual Conduct (CSC) convictions, as presented in the indictments, outweighed any danger of undue prejudice, during a commitment trial pursuant to the Act.

During trial, the State's expert, Dr. Donna Schwartz-Watts, and Corley's expert, Dr. Harold Morgan, both testified they diagnosed Corley with depression and anti-social personality disorder. Both experts also addressed his past drug use. Corley attempted to stipulate his previous ABHAN and CSC convictions, and argued the details underlying those convictions should be kept out. Noting that the admission of evidence was in the sound discretion of the trial court, and observing the requirements of Rules 401 and 403, SCRE, the Court held that past criminal history was directly relevant to establishing whether an individual is a sexually violent predator. Accordingly, the Court held the State was not required to accept Corley's stipulation regarding his previous convictions and testimony concerning the details of the convictions was admissible.

Moreover, the State sought to prove that Corley's likelihood to re-offend was based in part upon the fact his previous convictions were similar to each other. The testimony of the State's expert illustrated why the evidence regarding the details of the offenses were directly relevant to the ultimate issue in the case. Dr. Schwartz-Watts testified the details were important if a person's past crimes were similar in nature, such as similar sex, race, and age of the victims. The Court held that the details as presented in the indictments were not unduly prejudicial, under Rule 403, SCRE, and were properly admitted into evidence.

In In the Matter of the Care and Treatment of Ettel, 377 S.C. 558, 660 S.E.2d

285 (Ct. App. 2008), the Court of Appeals held the Circuit Court properly admitted Dr. Pam Crawford's testimony regarding Ettel's prior unconvicted sexual offenses and a prior murder conviction. The Court found the convictions relevant because "Dr. Crawford had relied on them in evaluating Ettel's need for and likelihood of success in treatment, as well as his ability to control his behavior in the future." *Id.* at 562, 660 S.E.2d at 288. (citing Gaster, *supra*, and Rule 401, SCRE). The Court also observed, looking at Ettel's sexual offenses, there was "established 'a pattern of behavior of sexual assaults' and this pattern was significant because as Dr. Crawford stated, 'future behavior [can only be predicated] on past behavior.'" *Id.* at 563, 660 S.E.2d at 288.

In finding the probative value of the testimony outweighed its prejudicial effect, the Court noted Dr. Crawford used the information to establish her opinion concerning whether Ettel suffered from a mental abnormality and whether Ettel could control his behavior. With regard to the testimony's prejudicial effect, the Court noted this information was not the only information Dr. Crawford relied upon in deriving her expert opinion but was merely one set of information from many sources upon which she relied.

To conclude, Corley and Ettel would stand for the proposition that details about underlying sexual offenses, convictions, and adjudications may be submitted to the jury in a case of this nature when the expert relies upon this information in rendering her opinion. As explained above, Petitioner presented testimony from its expert witnesses regarding Respondent's history of sexual abuse and sexual offending. Both experts testified Respondent's history was part of the basis of their opinions regarding Respondent's pedophilia and whether he could be found a sexually violent predator. While the testimony was often graphic in nature and detailed severe abuse suffered by

Respondent, the testimony was relevant to display how the experts opined Respondent suffered from pedophilia and to establish how the incestual behavior became normalized and part of an acceptable familial relationship for Respondent. Ultimately, this information was relevant to determining whether Respondent had adequate control over his sexual behavior and was relevant to the issue of whether he was likely to commit acts of sexual violence. Therefore, the Court properly admitted Dr. McKee's testimony concerning Respondent's past sexual abuse and sexual offending because its probative value substantially outweighed any undue prejudice to Respondent.

With regard to Dr. McKee's ability or inability to opine Respondent met the statutory definition as a sexually violent predator when he evaluated Respondent in 2009 or during the current trial of the matter, Respondent's argument goes to the weight McKee's opinion should be given by the jury and not its admissibility. Based on his testimony and his documented report, it was the opinion of Dr. McKee in 2009 after interviewing and evaluating Respondent that Respondent was a sexually violent predator. In an effort to show Dr. McKee's opinion should be given greater weight than Dr. Jackson's opinion, Petitioner presented testimony through Dr. Jackson that Respondent was in the same mental and physical condition as he was when Dr. McKee evaluated him in 2009. Dr. Jackson testified Respondent had been incarcerated and away from the community since his evaluation with Dr. McKee. She also testified Respondent had completed no further sex offender treatment following his allegedly successful treatment prior to his 2008 criminal charges. In attempting to argue Dr. McKee's opinion should not be given greater weight than Dr. Jackson's opinion, Respondent utilized effective cross-examination to point out the circumstances of the evaluation and the rendering of

that opinion. Ultimately, the issue was one for the jury to determine whether Respondent could control his propensity to commit sexually violent offenses, and the jury was free to give each opinion the weight it deserved in determining whether Respondent is a sexually violent predator. Sauers, supra.

Moreover, assuming, arguendo, Dr. McKee's ultimate opinion concerning whether Respondent was a sexually violent predator was not admissible, the assessments and tests Dr. McKee conducted for his evaluation of Respondent were admissible and relevant to the issues presented at trial. The assessments, which Dr. McKee detailed for the jury, were aimed at measuring the likelihood of sexual recidivism as well as the likelihood of success during probation. Because the ultimate issue presented in this case was whether Respondent could control his propensity to commit sexually violent offenses, any assessment or test that would shed light on Respondent's likelihood to reoffend in a sexually violent manner or his likelihood to succeed at probation was relevant for the jury's consideration. Therefore, Dr. McKee's testimony concerning his prior evaluation was relevant to the issues presented at trial and was not stale or unreliable.

- D. Because the Court properly denied Respondent's request to re-charge the jury concerning the reasonable doubt standard, the Court should deny Respondent's motion to reconsider and motion for a new trial on this ground.

Respondent argues the Court erred in failing to charge "reasonable doubt is the kind of doubt that would cause a person to hesitate to act" and the Court should reconsider that decision in light of the jury's written questions to the Court. As an initial matter, the jury did not request to be re-charged on the definition of reasonable doubt, and there is no indication the jury was confused by the definition offered by the Court in

its jury charge. Therefore, Respondent's motion to reconsider should be denied on this ground for that reason. On the merits, the "hesitate to act" language has been suggested by the South Carolina Supreme Court as an appropriate way of defining reasonable doubt, but has not been required. See State v. Manning, 305 S.C. 413, 417, 409 S.E.2d 372, 375 (1991) (recommending trial courts adopt the "hesitate to act" language as found in Holland v. United States, 348 U.S. 121, 75 S.Ct. 127 (1954), when defining reasonable doubt). However, the South Carolina Supreme Court has not required the Manning charge be given and has left its use within the discretion of the trial court. See e.g., State v. Jones, 343 S.C. 562; 578, 541 S.E.2d 813, 821 (2001) (stating a Manning charge is the correct statement of South Carolina law but its use is not required); State v. Johnson, 315 S.C. 485, 487, 445 S.E.2d 637, 637 (1994) (stating the South Carolina Supreme Court did not mandate a Manning charge in defining reasonable doubt). Because a Manning charge is discretionary with the Court and the Court properly defined "beyond a reasonable doubt" in her jury charge, Respondent's motion to reconsider should be denied on this ground.

Conclusion

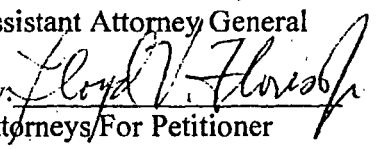
For all of the reasons above and any reason relied upon during a hearing on Respondent's motions, should a hearing be scheduled in this matter, these motions should be denied and the Court should sign an order committing Respondent to the Sexually Violent Predator Treatment Program for his long-term control, care, and treatment.

[Signature block on following page]

Respectfully submitted,

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June 8, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

State of South Carolina,

Petitioner,

v.

Christopher Taft,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2010-CP-40-4923

**ORDER ON RESPONDENT'S
POST-TRIAL MOTIONS**

RICHLAND COUNTY
FILED
2011 AUG 30 AM 9:08
JEANETTE W. McBRIDE
C.L.R. & G.S.

This matter came before the Court upon post-trial motions filed by Respondent on June 1, 2011 for reconsideration and a new trial or, in the alternative, for judgment notwithstanding the verdict. Petitioner filed its Return to Respondent's motions on June 8, 2011. Respondent is represented by Rowland P. Alston, III, Esquire. Lloyd V. Flores, Jr., Esquire represents the Petitioner.

BACKGROUND

This is an action to determine whether Respondent meets the statutory definition of a sexually violent predator under S.C. Code Ann. § 44-48-10, *et seq.* ("Sexually Violent Predator Act"). On May 24, 2011, a jury verdict was returned finding that Respondent is a sexually violent predator ("SVP") pursuant to the applicable statute. Respondent pled guilty in 2006 to three counts of assault and battery of a high and aggravated nature. After his release for time served on the 2006 offenses, Respondent pled guilty to two counts of lewd act on a minor in 2010.

DISCUSSION

1. Motion for Reconsideration and New Trial

Respondent moves for an order reconsidering rulings made at trial. Specifically, Respondent asks the Court to reconsider its rulings on Respondent's motion to exclude, redact, and/or strike the testimony of Dr. Geoffrey McKee and in refusing to charge the definition of reasonable doubt requested by the Respondent.

Respondent contends that the Court abused its discretion in allowing the testimony of Dr. McKee for the following reasons: (1) it was inherently inflammatory and unduly prejudicial, (2)

it was based on stale and unreliable evidence, (3) Dr. McKee's opinion that Respondent met the criteria of an SVP in 2009 was improperly rendered because the Respondent did not meet the statutory definition in 2009, and (4) Dr. McKee could not opine at trial that the Respondent met the definition of an SVP.

At trial, Petitioner elicited details regarding Respondent's sexual offenses from Dr. McKee. Dr. McKee conducted an aid-in-sentencing evaluation of Respondent in 2009 at the request of Respondent's counsel. At trial, the Court ruled that Dr. McKee was permitted to testify regarding the details of the offenses because they formed part of the basis of his opinion rendered after the evaluation of Respondent in 2009. Dr. McKee testified Respondent suffered from pedophilia and met the definition of an SVP in 2009. Dr. McKee could not opine whether Respondent met the definition of an SVP at the time of trial because he had not performed a more recent evaluation of Respondent since the 2009 evaluation. Both Dr. McKee and Dr. Jackson testified that Respondent's history was part of the basis of their opinions regarding whether Respondent's pedophilia placed him at risk to reoffend.

Generally, all relevant evidence is admissible. Rule 402, SCRE. Relevant evidence may be excluded if the danger of unfair prejudice substantially outweighs its probative value. Rule 403, SCRE. The facts or data in a particular case upon which an expert bases his opinion need not be admissible in evidence, if of a type reasonably relied upon by experts in a particular field in forming opinions or inferences about the subject. Rule 703, SCRE. Details about underlying sexual offenses, convictions, and adjudications have been permitted in cases to determine whether an individual meets the criteria of an SVP and when the expert relies upon this information in rendering an opinion. See *In the Matter of the Care and Treatment of Corley*, 353 S.C. 202, 577 S.E.2d 451 (2003); *In the Matter of the Care and Treatment of Ettel*, 377 S.C. 558, 660 S.E.2d 285 (Ct. App. 2008). Dr. McKee's testimony regarding the details of Respondent's convictions formed part of the basis of his opinion. His testimony was relevant as to the issue of whether Respondent met the definition of an SVP at the time of trial, despite the fact that Respondent had not been found an SVP at the time of Dr. McKee's evaluation in 2009. This testimony was properly before the jury. Respondent's motion to reconsider the Court's ruling as to Dr. McKee's testimony is **DENIED**.

Respondent requested the Court to charge the jury that reasonable doubt "is the kind of doubt that would cause a person to hesitate to act." See *State v. Darby*, 324 S.C. 114, 477 S.E.2d

710 (1996). The trial court declined to charge the definition of reasonable doubt requested by Respondent and gave the jury a *Victor v. Nebraska*¹ charge. A trial court must charge the current and correct law. *State v. Darby, supra*. If the requested charge states a sound principle of law that is applicable to the case, and not otherwise covered by the charge, refusal to charge it is error and requires a new trial. *Id.* It is within the trial court's discretion to determine which charges are relevant given the evidence presented. *Id.* To warrant reversal on appeal, the party seeking the requested charge must demonstrate error and prejudice. *Id.*

In its ruling regarding the reasonable doubt jury charge, the trial court refused to charge the "hesitate to act" language because the charge given encompassed the applicable law on reasonable doubt. The reasonable doubt instruction given to the jury stated the correct and applicable law and adequately covered the definition of reasonable doubt.

Respondent also moves for a new trial on the basis that there was no testimony Respondent met the definition of an SVP at the time of trial and the evidence presented did not support the jury's finding that Respondent met the statutory definition of an SVP at the time of trial. In addition, Respondent contends the Court made an error of law in denying Respondent's motion for a directed verdict, in allowing the testimony of Dr. McKee, and in failing to recharge the jury on the "hesitate to act" element of reasonable doubt.

A trial court's decision to deny a new trial will not be disturbed unless the decision is "wholly unsupported by the evidence or the court's conclusions of law have been controlled by errors of law." See *Wright v. Hiester Construction Co., Inc., supra*, at 512-13, 698 S.E.2d at 826-27. As discussed below, the case was properly submitted to the jury because there was evidence from which a jury could determine that Respondent met the criteria of an SVP at the time of trial. Dr. McKee's testimony regarding Respondent's sexual history was relevant and not otherwise excluded and formed part of the basis of his opinion rendered in 2009. The "reasonable doubt" instruction given to the jury reflected the correct and applicable law. Accordingly, Respondent's motion for a new trial is **DENIED**.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, Respondent's motion for reconsideration pursuant to Rule 59(e) SCRCP and

¹ *Victor v. Nebraska*, 511 U.S. 1, 12, 114 S.Ct. 1239, 1250 (1994).

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motion for a new trial are **DENIED**. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

2. Judgment Notwithstanding the Verdict

In his post-trial motions, Respondent moves for judgment notwithstanding the verdict on the basis that there was only one inference that could be drawn from the evidence presented, specifically that the State did not prove beyond a reasonable doubt that Respondent is a sexually violent predator pursuant to the applicable statute. Respondent contends that there was no testimony that the Respondent met the statutory definition of a sexually violent predator at the time of trial.

Judgment as a matter of law is warranted where there is either no evidence to support the verdict or where the trial court's legal conclusions were controlled by errors of law. *Wright v. Hiester Constr. Co.*, 389 S.C. 504, 512-13, 698 S.E.2d 822, 826-27 (Ct. App. 2010). In deciding motions for directed verdict and judgment notwithstanding the verdict, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Bishop Logging Co. v. John Deere Industrial Equipment Co.*, 317 S.C. 520, 450 S.E.2d 183 (Ct. App. 1995). If more than one inference can be drawn from the evidence, the case must be submitted to the jury. *Id.* Once a case has been submitted to the jury, the factual findings of the jury should not be disturbed unless a review of the record discloses no evidence which reasonably supports the verdict. *Id.*

At the close of Petitioner's case, Respondent made a motion for directed verdict on the basis that the only inference to be drawn from the evidence was that Respondent did not meet the statutory definition of an SVP at the time of trial. Viewing the evidence in the light most favorable to the Petitioner, there was evidence in the record to allow the jury to determine whether Respondent met the statutory definition of an SVP. At trial, Petitioner presented the testimony of Dr. Geoffrey McKee, M.D. and Dr. Rebecca Jackson, Ph.D. and introduced the certified convictions of Respondent's sexual offenses into evidence. Because it was undisputed that Respondent was convicted of a qualifying sexually violent offense and Respondent suffered from a mental abnormality, the ultimate issue for determination was whether Respondent's pedophilia made him likely to commit acts of sexual violence if not confined to a secure facility for long-term control, care and treatment.

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Dr. McKee testified that he performed an aid-in-sentencing evaluation on Respondent in 2009, resulting in the 2010 guilty pleas. Dr. McKee testified Respondent suffered from pedophilia and met the definition of an SVP in 2009. Dr. McKee testified that Respondent was adjudicated as a juvenile for sexual offenses against his siblings and was ordered to attend sex offender treatment. Respondent reoffended within six weeks of returning to the family home and after completing sex offender treatment. Dr. Jackson was appointed by the Court to conduct an evaluation of Respondent in November 2010. She testified that in her opinion Respondent suffered from pedophilia but did not meet the definition of an SVP because Respondent was not likely to sexually reoffend if released from confined conditions. Dr. Jackson's opinion was based on her diagnosis that Respondent's pedophilia was limited to incest offending and because Respondent's probation conditions would prevent Respondent from contacting his siblings until they were 16 or older. Dr. Jackson testified that Respondent had not received any further sex offender treatment since Dr. McKee's evaluation in 2009. Both Drs. McKee and Jackson testified that an individual's prior sexual history is used as a predictor in determining the likelihood of an individual to sexually reoffend.

The jury had the opportunity to hear and judge the credibility of Drs. McKee and Jackson during their testimony. More than one inference could be drawn from the evidence as to the issue of whether Respondent's pedophilia would make him more likely to commit acts of sexual violence if not confined in a secure treatment facility. This question was one for the jury and Respondent's motion for directed verdict was properly denied. Accordingly, Respondent's motion for judgment notwithstanding the verdict is **DENIED**.

ORDER

After considering the arguments presented by the parties, Respondent's motions for reconsideration, new trial, and judgment notwithstanding the verdict are **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

August 29, 2011
Columbia, South Carolina



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CRIMINAL RECORDS

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05/03/2010

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WITNESSES

(S) RICHARD CARTER, RCSD

ARREST WARRANT NUMBER

I-937514

ACTION OF GRAND JURY

TRUE BILL

JUL 16 2009

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-40-1843

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2009

92

THE STATE

vs.

Christopher Taft

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST

SC Code: 16-3-655(A) (1)

CDR Code: 0385

Class FEL/A(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

Christopher Taft
hereby appear in my own proper person and
plead guilty to the within indictment or to

Lewd Act

Chris Taft
Defendant

Witness:

C.C.C. PLS. AND G.S.

14-ZIND 3-1140102
OFFICE

06/15/2010 13:36 8035761925

CRIMINALRECORDS

PAGE 05/11

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 15, 2009, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Christopher Taft did in Richland County on or between August 1, 2008 and October 30, 2008, wilfully, unlawfully and feloniously commit a sexual battery against a minor who at the time was less than eleven (11) years of age to wit: *Minor 1*

all in violation of Section 16-3-655 (A) (1), SC Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. Bang

Warren B. Giese, SOLICITOR

PAGE 08/11

WITNESSES

(S) RICHARD CARTER, RCSD

CRIMINAL RECORDS

ARREST WARRANT NUMBER

I-937516

ACTION OF GRAND JURY

TRUE BILL

JUL 16 2009

Foreperson of Grand Jury

Date:

VERDICT

8035761925

13:36

06/15/2010

Foreperson of Petit Jury

Date:

324

DOCKET NO. 2009-GS-40-1844

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2009

92

THE STATE
vs.

Christopher Taft

Indictment for

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WITH A MINOR 1ST

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

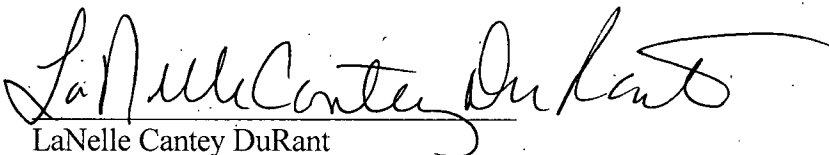
W. B. Giese

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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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 28th, 2013



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

JAN 28 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

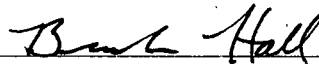
IN THE MATTER OF THE CARE AND TREATMENT OF
CHRISTOPHER TAFT,

APPELLANT

APPELLATE CASE NO. 2011-199986

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of January, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of January, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

RECEIVED
JAN 28 2013
SC Court of Appeals