

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Fairfield County
Daniel D. Hall, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JOHNNY JAMES COOK,

 ORIGINAL

RECEIVED
FEB 26 2019
SC Court of Appeals

APPELLANT

APPELLATE CASE NO. 2018-001174

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

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

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA

2 -----x

3 IN THE MATTER AND THE CARE OF

4 JOHNNY JAMES COOK

Case No.

5 2017-CP-20-137

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7 -----x

8 August 29, 2017

9 Fairfield, S.C.

10

11 B E F O R E: HONORABLE DANIEL HALL

12

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

14 JIM BOGAL, Esquire

15 Attorney for the Attorney General's Office

16

17 ANNA BROWDER, Esquire

18 Attorney for the Defendant

19

20 Aileen Butler

21 Official Court Reporter

22

23

24

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1	<u>E X H I B I T S.</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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1 THE COURT: All right. Mr. Bogle, tell us what it
2 is with we are doing here and what you're asking for.

3 MR. BOGLE: Thank you, Your Honor. May it please
4 the Court. For the record my name is Jim Bogle. I am
5 with the Attorney General's office.

6 Judge this case is called in the matter of the
7 care and treatment of Johnny James Cook. The case
8 number is 2017-CP-20-137. It's a common pleas case.
9 This is a probable cause.

10 THE COURT: Where is Mr. Cook?

11 MR. BOGLE: He's over here.

12 THE COURT: Oh, I'm a sorry.

13 MR. BOGLE: This is a probable cause hearing under
14 the sexual violent predator act. The purpose of this
15 hearing is for us to show probably cause to you that
16 there is a chance the guy might have a mental
17 abnormality or a personality disorder that makes him
18 likely to comit crimes of sexual violence in the
19 future and if so to get him evaluated.

20 Now, the statutory requirements have been in that
21 in that multi-disciplinary team met on the the case
22 back in March, voted for the case to go forward. The
23 prosecutor view committee met the following month in
24 April and voted for the case to go forward.

25 We then filed a petition. It was reviewed by the

1 chief administrative judge for common pleas in the
2 circuit. He signed off on a probable cause order for
3 the case to go forward.

4 Now, this is case is what we call a pickup case,
5 and by that I mean Mr. Cook had been released from the
6 department of corrections before we could have this
7 hearing. In fact, he got released in early March of
8 2017 prior to the MDT, multi-disciplinary team even
9 meeting. What happened was he got returned to SCDC in
10 January '17 on a violation of the terms and conditions
11 of electronic monitoring. Now when he arrived there
12 he had about a hundred and ninety something days of
13 time served. So his time spent at SVDC was pretty
14 short. And a he got released. But to get screened in
15 this particular law you got to have some time in SCDC
16 and there wasn't.

17 Now, as far as the background and stuff that makes
18 us concerned, he's got two lewd acts on a minor
19 counts, charges from 2011. He plead guilty under
20 North Carolina versus Alford here in Fairfield County.
21 He did get sentenced to time served. The young girls
22 involved were six-year old female that he kissed, and
23 a 11-year old female that he fondled. There is
24 another lewd act on a child from 1986. That involved
25 a nine-year old child. Female as well. He got ten

1 years suspended to three and then some probation and
2 he finished all that.

3 He's also got a criminal solicitation of minor
4 more recently in 2013. Again, that was a guilty plea
5 under North Carolina versus Alford and the sentence
6 was time served.

7 One thing that concerns us is in addition to these
8 sexual violent convictions he has got a stack of
9 indecent exposures. Four that I count. Also a
10 peeping Tom charge in 1999 involving a seven-year old
11 girl. So, what we are seeing is a pattern of conduct
12 involving young girls. While he was at the department
13 of corrections he did have some disciplinary matters
14 back in about a decade ago. One of them was sexual.
15 There were two sexual misconduct things where he was
16 caught exposing himself while at the department of
17 corrections. He has no record of sex offender
18 treatment while at the department. And that's kind
19 of where we are. We don't know what mental
20 abnormality there might be. We think there's a strong
21 suggestion that they focus on pedophilic arousal or
22 pedophilic urges because all of the young girls that
23 are the victims in this cases have been prepubescent.
24 There's one 16-year old store clerk involving one of
25 the cases, but the other girls I've been talking about

1 so far have all been under 12 years old. In the
2 prepubescent age of seven to nine years old.

3 Now, one of the things the Court might wonder
4 about is he has been out since March and he has not
5 been arrested for a sexual offense since then. I
6 believe he was picked up on a bench warrant for an old
7 trespassing case once and then we have the failure to
8 get electronic monitoring which we brought him before
9 you today that put him back in SCDC.

10 His prior plea agreements have been for time
11 served or probation or less time than he could have
12 gotten. Sometimes there is concern about that as to
13 how that impacts on the determination of whether or
14 not there is a probable cause to believe he's a
15 sexual violent predator. Our Court of Appeals
16 addressed this in the Valentine case, 659 S.E.2d in
17 2008. And they talk there about what the Supreme
18 Court had said in the Beaver case some years earlier,
19 642 S.E. 2d, 578. In both of those cases the judge
20 declined to find probable cause at a hearing just like
21 this based upon the fact that there was a plea
22 agreement. The fact that the guy got a short
23 sentence. The fact that the guy got probation. The
24 fact that the guy could have gotten more time than he
25 did. And the fact that there was no prior mental

1 health examination. And our Supreme Court said there
2 is no connection between a plea agreement and all the
3 intricacies involved in that and the determination of
4 the sexual violent predator. And both of those cases
5 got reversed and went back for probable cause
6 hearings.

7 The court basically said the judge relied on some
8 of the wrong things in the case of this nature.
9 That's what we have judge. I will be happy to answer
10 any questions you might have. But we're asking to
11 have him evaluated.

12 If Your Honor does find probable cause the
13 psychiatrist given to us by the Department of Mental
14 Health would be Donna Schwartz Maddox.

15 THE COURT: All right. Thank you. Miss Browder,
16 I will be glad to hear from you.

17 MS. BROWDER: Thank you, Your Honor. Mr. Cook is
18 51 years old. He did graduate high school. Based on
19 this case I don't believe that there is probable
20 cause. The statute in this case I don't believe
21 envisioned -- was envisioned to be used in this way.
22 Mr. Cook had a 1986 lewd acts. He did have a
23 subsequent lewd act in 2007 which was ten years ago,
24 Your Honor. On the '86 lewd act he got ten years
25 suspended to three years and three years probation.

1 The only reason the Attorney General's office was able
2 to file this action was because Mr. Cook went back in
3 to SCDC based on an electronic monitoring issue.

4 Your Honor, that issue just to give you a little
5 background on it and I believe Agent Hicks is here if
6 you like to hear from him. He could give you some
7 facts about it to. But my understanding is Mr. Cook
8 has his electronic monitoring which he still has
9 today. His battery die at 3:15 a.m. one morning and
10 they found him at nine o'clock the same morning in his
11 home. Essentially the battery just died. He has been
12 out since March of this year. He has a home. He does
13 not have electricity in the home but he goes out of
14 his way to charge his electronic monitoring at the
15 gazebo here outside. He goes to the police station
16 some times to charge his electronic monitoring. The
17 only reason this action was able to be filed is he
18 went back in -- because six hours his electronic
19 monitoring died.

20 They had ten years essentially since he was
21 re-arrested on that second lewd act and got timed
22 served for those. He was convicted in 2011 but they
23 were from 2007. Your Honor. They mentioned his
24 indecent exposures. He said he counted four of them
25 however my review of the records indicates one of them

1 was non pros. One of them the disposition is unknown.
2 The other two are from 2004 and 2002, 13 and 15 years
3 ago. The peeping Tom, Your Honor, was from 1999.
4 Which I can't even do -- 18 years ago I guess. I
5 don't believe at this point that there is probable
6 cause. He has been out since March of this year. He
7 was released before the MD team even met. It's now the
8 end of August. He has had no other problems with his
9 electronic monitoring which is the only reason he went
10 back in was for those six hours. He has not
11 re-offended in any way since he's been out. I don't
12 believe there is probable cause. And I believe the
13 statute was not envisioned to be used in this way when
14 it came to finding probable cause for an SVP action.

15 THE COURT: All right. Thank you. And again, you
16 are -- this is John James Cook who is present here in
17 the courtroom.

18 Ms. Browder: Yes, sir, Your Honor. And I would
19 ask -- this is a little unusual. If you do find there
20 is probable cause which I am submitting that I don't
21 believe there is probable cause, Your Honor. But that
22 he do be allowed to be out in the community for the
23 evaluation since he's already been out in the
24 community essentially this whole time other than the
25 electronic monitoring issue. He is very easy to find

1 is my understanding. This was pickup case. They knew
2 exactly where he would be. They were able to pick him
3 up and get him within the three days for this hearing.
4 So I would ask if you do find there is probable cause
5 that he be allowed to be in the community during this
6 process.

7 MR. BOGLE: My response to that, judge, would be
8 that it is unfortunate but the way the law reads while
9 this case is pending he has to be in custody
10 somewhere. So he would be in the county jail while
11 the evaluation goes on.

12 THE COURT: All right. Based upon what the Court
13 has heard today, Mr. Johnny James Cook is present here
14 in the courtroom. I have heard arguments from the
15 Attorney General and then arguments on behalf of Mr.
16 Cook from Ms. Browder. I find that there is probable
17 cause to exist and believe that Mr. Johnny James Cook
18 is a sexually violent predator.

19 Again, this finding is for probable cause. It
20 appears by looking at the statute that certainly he
21 has to be in custody prior to this hearing in which he
22 was taken into custody. The hearing was timely held.
23 It also appears by looking at the statute that the
24 Court does not have discretion to order him released.
25 That the language of 44-48-80 does not provide any

1 language by which this Court would have discretion to
2 order him to be released pending these hearings. So
3 again, I find probable cause and I would not order
4 that he be released. He is to remain in custody until
5 this matter is resolved. Thank you.

6 MR. BOGLE: Thank you. May I approach.

7 THE COURT: Yes.

8 MR. BOGLE: I got a proposed Order.

9 THE COURT: Thank you.

10 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Fairfield County, South Carolina, on the 29th day of August, 2017.

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

August 19, 2018

S/ AILEEN BUTLER

I N D E X

(PW) - Denotes Petitioner's Witness
(DW) - Denotes Respondent's Witness

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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All Exhibits were retained by the Clerk of Court for
Fairfield County.

P R O C E E D I N G S

THE COURT: I'm going to now go through some exemptions. These are situations where you may choose -- if these exemptions apply to you, you can choose not to serve. You can, certainly, stay with us, if you wish.

If you're more than 65 years of age and you wish to be excused this week, then we can excuse you. Certainly, if you're more than 65, often, your life experiences are very helpful in resolving particular issues in the case.

However, if you're more than 65 and wish to be excused this week, then, please, stand.

(No response.)

THE COURT: Thank you. No one stands.

Is there any member of the jury panel who has served as a juror in this court in the past three years? In other words, either in criminal court or a civil court, you would have come to this courtroom to be selected. You served as a juror in the past three years, if so --

Yes? We'll start in the back. Your number?

POTENTIAL JUROR: Juror No. 116.

THE COURT: I'll need your number and your name and the Clerk will determine -- is it Ms. Roach?

POTENTIAL JUROR: Yes, Sryia Roach.

THE COURT: And when do you believe you served?

POTENTIAL JUROR: Let's see, this is '18. I think it

1 was '16 or '17 I remember serving.

2 THE COURT: Okay. The Clerk will check their records.
3 Thank you, you can be seated.

4 Yes, sir, your number?

5 POTENTIAL JUROR: Juror No. 25.

6 THE COURT: And you are Mr. Klack?

7 POTENTIAL JUROR: Right.

8 THE COURT: And when do you believe you served?

9 POTENTIAL JUROR: I think last year or year before.

10 THE COURT: In the last year or so. All right, we will
11 check the Clerk's records, Mr. Klack. You may be seated.

12 And your number?

13 POTENTIAL JUROR: 20.

14 THE COURT: 20?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Mr. Burton, when did you --

17 POTENTIAL JUROR: It was about a year ago.

18 THE COURT: Here in this courtroom?

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: All right. We will check that.

21 All right. Going back to Ms. Roach, the Clerk does not
22 have a record of your service in the past three years. Do
23 you remember what type of case you were called for?

24 POTENTIAL JUROR: I think it was a civil because we
25 awarded the lady some money.

1 THE COURT: All right.

2 POTENTIAL JUROR: It may have been a little bit longer,
3 but I'm not sure. But I remember I served because I was
4 sitting on that side in the back.

5 THE COURT: I understand. I can tell that you're a
6 whole lot younger than me, but, however, the older I get,
7 sometimes, what happened three years ago seems like a year,
8 sometimes, when things happen a year ago, it seems like
9 forever.

10 POTENTIAL JUROR: It could have been a little longer.

11 THE COURT: Well, the Clerk's records indicate that you
12 have not served, so we're going to ask that you stay with
13 us.

14 POTENTIAL JUROR: Okay.

15 THE COURT: Thank you for that information.

16 Mr. Burton, if you'll stand. You have served. You did
17 serve in 2017. If you'd like to stay with us and serve
18 again, we'll give you that opportunity, but it looks like
19 you're ready to go. Don't take anybody with you.

20 POTENTIAL JUROR: Okay.

21 THE COURT: All right. You're free to go.

22 Mr. Klack, you served about a year ago. Do you want to
23 stay with us?

24 POTENTIAL JUROR: I'd rather go, sir.

25 THE COURT: You'd rather go?

1 POTENTIAL JUROR: Yes, sir.

2 THE COURT: Well, I used to work in the meat business,
3 I cut meat until I was age 30. I don't know that I'd want
4 to go back and do that. Is that what you want to do?

5 POTENTIAL JUROR: I, actually, load trucks out at the
6 warehouse.

7 THE COURT: Okay. You load trucks at the meat
8 business?

9 POTENTIAL JUROR: That's right.

10 THE COURT: You're free to go.

11 POTENTIAL JUROR: Thank you, sir.

12 THE COURT: Thank you.

13 Let me go through some questions now for you, ladies
14 and gentlemen, where you may be excused under certain
15 circumstances.

16 Is there any member of the jury panel who has a child
17 under the age of seven and you have legal custody and the
18 duty of care for that child and you do not work outside the
19 home? So if you have children or you care for children
20 under the age of seven and you do not work outside the home,
21 then, please, stand.

22 (No response.)

23 THE COURT: Thank you. No one stands.

24 Is there any member of the jury panel who is the
25 primary caretaker for a person 65 years of age or older and

1 they're unable to care for themselves and you are the
2 primary caretaker for that person, then, please, stand.

3 (No response.)

4 THE COURT: Thank you. No one stand.

5 Is there any member of the jury panel who has the
6 primary care for a disabled person, a severely disabled
7 person, who is unable to take care of themselves and you do
8 not work outside of the home, then, please, stand.

9 (No response.)

10 THE COURT: Thank you. No one stands.

11 If you're a student or a teacher, we can postpone or
12 continue your service if you are teaching or going to school
13 this week and it would be a particular disruption for you to
14 serve as a juror because of your school responsibilities,
15 then we can transfer you to another term of court. Is there
16 any member of the jury panel who is a student or a teacher,
17 who would wish to be transferred to another term of court,
18 then, please, stand.

19 (No response.)

20 THE COURT: Thank you. No one stands.

21 I have one other question. We often call this sort of
22 the catch-all. If there's any reason you wish to be
23 transferred to another term of court, then I'm going to ask
24 you to come forward and talk with me individually about
25 that. Sometimes, people are self-employed and it's an

1 extreme hardship for them to have to serve as jurors this
2 particular week, or your employer may not be paying and it's
3 a particular hardship for you to serve this week, or you may
4 have other issues that make it especially hard for you to
5 serve as a juror this week. If you would like to speak to
6 the Court about your service and week to be transferred to
7 another term of court, then, please, stand and come forward.

8 (Jurors came forward.)

9 (Off-the-record discussion was held.)

10 THE COURT: Juror No. 116 will be protected for
11 Thursday and Friday.

12 We will transfer Juror No. 58 to another term of court.

13 Juror No. 14 will be transferred.

14 Juror No. 29 will be protected for Friday.

15 Madam Clerk, I find that the remainder of the panel
16 that's present here in the courtroom is qualified to serve
17 as jurors this week. We do have a trial that we would like
18 to start very shortly. I need to meet with the attorneys
19 for a brief time before we do that.

20 Y'all have been sitting here, I know some of you
21 probably have been in here for an hour, a little more than
22 an hour. We'll take a short break. We're going to take a
23 15-minute break. My watch says -- let's do this. Not even
24 15 minutes. Be back in your seats at five minutes till
25 12:00, five minutes till 12:00. If you'd like to leave the

1 courtroom, you can. If you don't, you can stay right here
2 with us. But you need to go out the front door. The
3 restroom is down in the basement. Just be back in your
4 seats at five minutes till 12:00. So we'll be at ease until
5 five minutes till 12:00.

6 Let me talk to the lawyers back in chambers.

7 (Jury panel exits the courtroom.)

8 (Short break.)

9 THE COURT: Ladies and gentlemen, we are about to begin
10 the trial of the case of State of South Carolina in the
11 matter of the care and treatment of Johnny James Cook. This
12 is case number 2017-CP-20-0137.

13 Before we select a particular jury in this matter,
14 there's some questions I need to ask you. We call this voir
15 dire. This is so that we have an idea of -- so that you'll
16 have an idea of the case and the Court intends to ensure
17 that we can flush out any potential interest or bias or
18 prejudice.

19 Let me do this, we'll start on my left.

20 Mr. Bogle, if you would stand and introduce yourself to
21 the jury?

22 MR. BOGLE: Thank you, Your Honor.

23 My name is Jim Bogle. I'm with the Attorney General's
24 Office.

25 THE COURT: Mr. Dunn, if you'd stand and introduce

1 yourself and your client.

2 MR. DUNN: My name is Geoff Dunn. I'm a lawyer. My
3 office is in Rock Hill and I live in Chester. This is
4 Johnny James Cook. He lives here in Winnsboro.

5 THE COURT: All right. Thank you.

6 Does any member of the jury panel know or know of
7 Johnny James Cook? In other words, do you know him from a
8 social, professional or business relationship? If you know
9 him and that would affect your ability -- well, let me just
10 put it this way. Does any member of the jury panel know or
11 know of Johnny James Cook? If so, please stand.

12 Yes, ma'am? If you would stand.

13 MR. DUNN: Your Honor.

14 THE COURT: Here's the way I'm going to handle that.

15 MR. DUNN: Yes, sir.

16 THE COURT: And if we need to approach after that.
17 Your number?

18 POTENTIAL JUROR: 63.

19 THE COURT: I think you're right, Mr. Dunn.

20 I'm going to ask if you'll come forward and let us talk
21 to you.

22 This is Juror No. 63, Ms. Courtney Harris. Ms. Harris
23 has been employed, up until two weeks ago, with the
24 Fairfield County Detention Center.

25 Tell me how you know Mr. Cook.

1 POTENTIAL JUROR: I only know him from coming in and
2 out with the cell release.

3 THE COURT: So you don't know him on a personal basis?

4 POTENTIAL JUROR: No.

5 THE COURT: The fact that he was in the detention
6 facility when you worked there, does that affect your
7 ability to be fair and impartial to both the State and the
8 Defense in this case?

9 POTENTIAL JUROR: No.

10 THE COURT: Thank you. You may be seated.

11 The nature of this case, and the Court is going to
12 instruct you on that in just a few moments, is related to
13 sexual offenses in the past for which Mr. Johnny James Cook
14 was convicted.

15 Is there any member of the jury panel who has any
16 knowledge of those offenses involving Johnny James Cook? If
17 so, please, stand.

18 (No response.)

19 THE COURT: Thank you. No one stands.

20 Would the fact that Johnny James Cook has been
21 convicted of sexual offenses and has completed his criminal
22 sentence related to that conviction in any way prevent you
23 from being able to be a fair and impartial juror in the
24 trial of this case? If so, please, stand.

25 Yes, ma'am, your number?

1 POTENTIAL JUROR: 112.

2 THE COURT: Yes, Ms. Ramsey, would that --

3 POTENTIAL JUROR: It would, yes.

4 THE COURT: It would affect your ability to be fair and
5 impartial?

6 POTENTIAL JUROR: Yes.

7 THE COURT: Thank you.

8 Juror No. 112 is excused.

9 Just remain in your seat -- Ms. Ramsey, if you'd just
10 remain in your seat with us until we conclude this part.

11 Let me do this. I would normally do this after our
12 jury has been selected, but let me just read to you what we
13 will be charging you with as jurors in this particular case.
14 It will probably be a little more helpful as we work through
15 the nature of some of the remaining questions.

16 The State in this case has brought this case under what
17 we call the Sexually Violent Predator Law of South Carolina.
18 The State seeks the civil commitment of Johnny James Cook,
19 the Respondent, for long-term control, care and treatment in
20 a secure facility. This is a not a criminal proceeding
21 seeking incarceration, but, rather, is a proceeding seeking
22 civil commitment.

23 The State of South Carolina alleges or claims that the
24 Respondent, or that Johnny James Cook is a sexually violent
25 predator under the law. Mr. Johnny James Cook denies that

1 he is a sexually violent predator and the burden of proof
2 is, therefore, on the State to prove by evidence to satisfy
3 the jurors in this case beyond a reasonable doubt that Mr.
4 Cook is a sexually violent predator.

5 As jurors, if you sit in judgment of the evidence that
6 is presented to you and at the close of all the evidence, if
7 the State is unable to meet that burden of proof as to one
8 or more elements of this claim, then the Respondent is
9 entitled to a finding that he is not a sexually violent
10 predator. If on the other hand -- and I will instruct you
11 again at the appropriate time, if the State has met that
12 burden, then you'll make a decision -- well, you'll make a
13 decision about whether the State has met that burden or
14 whether it has not met that burden at the appropriate time.

15 With that, I'll go through the remainder of the
16 questions that I need to ask you.

17 Is there any member of the jury panel or any of your
18 close personal friends or relatives ever been the victim of
19 a sexual assault? If so, please, stand.

20 All right. You've been excused. You will not need to
21 answer any more questions.

22 Yes, ma'am, your number?

23 POTENTIAL JUROR: 47.

24 THE COURT: Ms. Foster, you've answered that question
25 -- would the fact that you have answered that question in

1 the positive or the affirmative, would that affect your
2 ability to be fair and impartial in this case?

3 POTENTIAL JUROR: Yes, it will.

4 THE COURT: Thank you. You may be seated and you're
5 excused.

6 Yes, your number?

7 POTENTIAL JUROR: 91.

8 THE COURT: Mr. McChesney, the fact that you've
9 answered that question in the affirmative, would that affect
10 your ability to be fair and impartial to both the State and
11 the Defense in this particular case?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Thank you. You're excused.

14 Yes, ma'am? I'll start in the corner. Your number?

15 POTENTIAL JUROR: 116.

16 THE COURT: Ms. Roach, the fact that you've answered
17 that question in the affirmative, would that fact affect
18 your ability to be fair and impartial to both the State and
19 the Defense in this particular case?

20 POTENTIAL JUROR: No, it won't.

21 THE COURT: Thank you. You may be seated. You're
22 qualified.

23 Yes, ma'am, your number?

24 POTENTIAL JUROR: 82.

25 THE COURT: Ms. Lucas?

1 POTENTIAL JUROR: Yes.

2 THE COURT: The fact that you answered that question in
3 the affirmative, would that fact affect your ability to be
4 fair and impartial to both the State or the Defense in this
5 case?

6 POTENTIAL JUROR: Yes, it will.

7 THE COURT: Thank you. You may be seated. And you
8 will be excused.

9 Yes, your number?

10 POTENTIAL JUROR: 115.

11 THE COURT: Would the fact that you answered that
12 question in the affirmative affect your ability to be fair
13 and impartial to both parties in this case?

14 POTENTIAL JUROR: Yes.

15 THE COURT: Thank you. You may be excused. Just
16 remain in your spot.

17 Has any member of the jury panel or any of your close
18 personal friends or relatives ever been charged with or
19 convicted of a sexual offense? If so, please, stand.

20 (No response.)

21 THE COURT: Thank you. No one stands.

22 Is there any member of the jury panel that has any
23 training or experience in the fields of psychiatry,
24 psychology or, in a broad sense, the law? If so, please,
25 stand.

1 (No response.)

2 THE COURT: Thank you. No one stands.

3 (Has any member of the jury panel either currently or
4 formerly worked in the field of psychology, psychiatry or
5 the law? If so, please, stand.)

6 (No response.)

7 THE COURT: Has any member of the jury panel ever been
8 represented by either of the attorneys in this case, Mr.
9 Bogle, or Mr. Dunn? If so, please, stand.

10 (No response.)

11 THE COURT: Is there any member of the jury panel
12 that's related by blood or marriage or ever had a social
13 relationship with either Mr. Dunn or Mr. Bogle? If so,
14 please, stand.

15 (No response.)

16 THE COURT: Thank you. No one stands.

17 Potential witnesses in this case include Dr. Donna
18 Maddox. Is there any member of the jury panel either
19 related by blood or marriage, or had a professional or
20 business relationship with Dr. Donna Maddox? If so, please,
21 stand.

22 (No response.)

23 THE COURT: Thank you. No one stands.

24 Has any member of the jury panel ever been involved in
25 a prison ministry, prison outreach program or any other

1 program involving contact with incarcerated persons? If so,
2 please, stand.

3 (No response.)

4 THE COURT: Thank you. No one stands.

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

9 (No response.)

10 THE COURT: Thank you. No one stands.

11 Is there any member of the jury panel who is related by
12 blood or marriage to any other member of the jury panel? If
13 so, please, stand.

14 (No response.)

15 THE COURT: No one stands. I was informed by one of
16 the attorneys that he was in a trial where it had a husband
17 and wife on the jury panel and they were sitting by each
18 other, but, thankfully, everybody gets along well here in
19 Fairfield County and that's not an issue.

20 Certainly, those who have answered the question about
21 your employment, you will not need to answer this question
22 if you've stated your employment either as a school teacher
23 or a worker in education; however, the question is a little
24 broader than just a specific relationship to an educational
25 institution.

1 The question is, have you, a relative or a close friend
2 now or in the past been a school teacher, a preschool
3 teacher, a daycare worker or other child-related jobs? If
4 so, please, stand.

5 Yes, ma'am, your number?

6 POTENTIAL JUROR: 86, I believe.

7 THE COURT: Is it Ms. Mann?

8 POTENTIAL JUROR: Yes.

9 THE COURT: Yes, ma'am?

10 POTENTIAL JUROR: I worked at Majestic Academy for a
11 while, a daycare.

12 THE COURT: And would that fact affect your ability to
13 be fair and impartial in this case?

14 POTENTIAL JUROR: No, sir.

15 THE COURT: Thank you. You may be seated.

16 Yes, sir, your number?

17 POTENTIAL JUROR: 29. You said close relatives,
18 correct?

19 THE COURT: Yes, sir. And what's your situation?

20 POTENTIAL JURORS: Just my parents are teachers and my
21 wife.

22 THE COURT: Would that fact affect your ability to be
23 fair and impartial to both sides in this case?

24 POTENTIAL JUROR: No, sir.

25 THE COURT: Thank you. You may be seated.

1 Yes, ma'am, your number?

2 POTENTIAL JUROR: 95.

3 THE COURT: Ms. Miller?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: Yes, ma'am.

6 POTENTIAL JUROR: Teaching assistant.

7 THE COURT: Would that fact affect your ability to be
8 fair and impartial in this case?

9 POTENTIAL JUROR: No, sir.

10 THE COURT: Thank you. You may be seated.

11 Again, has any member of the jury panel or a close
12 relative or a close friend ever been a victim of a sex crime
13 or either, on the other hand, ever been accused or convicted
14 of a sex crime? If so, please, stand.

15 (No response.)

16 THE COURT: Thank you. No one stands.

17 Is there any member of the jury panel, or a relative or
18 close friend now or in the past ever been a victim of a
19 childhood crime? If so, please, stand.

20 (No response.)

21 THE COURT: Thank you. No one stands.

22 Is there any member of the jury panel that has a moral
23 or religious problem with sexual promiscuity? If so,
24 please, stand.

25 (No one stands.)

1 THE COURT: Thank you. No one stands.

2 Is there any member of the jury panel who is morally or
3 religiously offended by sexually explicit language or
4 details? If so, please, stand.

5 (No one stands.)

6 THE COURT: Thank you. No one stands.

7 Does anyone on the jury panel tend to believe a
8 psychiatrist's opinion more just because it's dependent on a
9 psychiatrist? If so, please, stand.

10 (No response.)

11 THE COURT: Thank you. No one stands.

12 Is there any member of the jury panel who knows for any
13 reason, for any reason why you would not be able to render a
14 fair and just verdict in this case, either for the State or
15 for the Defendant, the Respondent in this case? If for any
16 reason you are unable to serve as a juror and render a fair
17 and impartial verdict, then please stand.

18 (No response.)

19 THE COURT: Thank you. No one stands.

20 Anything further from the State as far as jury
21 qualifications?

22 MR. BOGLE: No, Your Honor.

23 MR. DUNN: No, sir.

24 THE COURT: Ladies and gentlemen, we'll be at ease for
25 just a little bit. The lawyers will now be given an

1 opportunity to select a jury. The Clerk of Court will
2 prepare a list for them to do that. It will just take a few
3 minutes. As soon as she does that, then we'll proceed with
4 the next step of jury selection.

5 I'll give y'all about five minutes to take a look at
6 the list.

7 (Pause.)

8 THE COURT: Is the State ready to proceed with the jury
9 selection?

10 MR. BOGLE: Yes, Your Honor.

11 THE COURT: Defense?

12 MR. DUNN: I am, Your Honor.

13 THE COURT: Madam Clerk, get us a jury. One alternate,
14 please.

15 THE CLERK: The Plaintiff strikes first.

16 MR. BOGLE: Thank you, ma'am.

17 The State would strike Juror No. 4.

18 THE CLERK: Defense?

19 MR. DUNN: No. 11.

20 THE CLERK: The State?

21 THE COURT: The numbers that they are calling out is
22 not the number on your tag, so don't think of it as either
23 good news or bad news. You'll find that out in a little
24 bit. The numbers that are being called out are not your tag
25 number, so just be at ease while they go through this

1 process.

2 THE CLERK: The State?

3 MR. BOGLE: No. 6.

4 THE CLERK: The Defense?

5 MR. DUNN: No. 23.

6 THE CLERK: The last three are used for the alternate.

7 MR. DUNN: Oh, okay.

8 No. 1.

9 THE CLERK: The State?

10 MR. BOGLE: No. 9.

11 THE CLERK: The Defense?

12 MR. DUNN: No. 51 -- I'm sorry, No. 10.

13 THE CLERK: The State?

14 MR. BOGLE: No. 17.

15 THE CLERK: The Defense?

16 MR. DUNN: Your Honor, may we approach for a second?

17 THE COURT: Yes.

18 (Bench conference.)

19 THE COURT: The number on the strike list, Juror No.

20 18, Defense has made a motion to strike that juror for

21 cause. The Court is granting that motion. So strike sheet

22 No. 18 is being struck, so, therefore, No. 21 on the strike

23 list will move up, Madam Clerk. You will draw another juror

24 to be one of the potential alternates.

25 So Mr. Dunn, I believe you have one more strike.

1 MR. DUNN: Yes, sir, No. 16.

2 THE CLERK: And now for our alternate.

3 THE COURT: Again, you're not limited to the two names
4 on there. You use the appropriate strikes. If we need to
5 add another juror -- well, I guess we need to do that.
6 Yeah, they need to have the choice on the alternates.

7 THE CLERK: Just one second, Judge.

8 (Pause.)

9 THE COURT: Will the lawyers approach?

10 Ms. Bond, if you would show them the strike list and
11 show them the juror number of the last -- so that will be
12 the third potential -- that's the third name as to the
13 potential alternate.

14 MR. DUNN: Thank you, Your Honor.

15 THE COURT: You need time to digest that information,
16 Mr. Bogle?

17 MR. BOGLE: Just one moment.

18 (Pause.)

19 MR. BOGLE: I'm good, Your Honor. Thank you.

20 THE COURT: Mr. Dunn, are you ready?

21 MR. DUNN: Yes, sir.

22 THE COURT: Madam Clerk.

23 THE CLERK: State strikes first.

24 MR. BOGLE: No. 24.

25 THE CLERK: Defense?

1 MR. DUNN: No. 23.

2 THE CLERK: I'm going to read out your strikes.

3 The State has struck No. 4, No. 6, No. 9, No. 17 and
4 for the alternate, No. 24; is this correct?

5 MR. BOGLE: That's correct, ma'am.

6 THE CLERK: The Defense has struck No. 1, No. 10, No.
7 11, No. 16, and No. 23 for the alternate; is that correct?

8 MR. DUNN: Yes, ma'am.

9 THE COURT: Let's be sure the record is clear. The
10 Court struck strike sheet No. 18 for cause after conferring
11 with both the attorneys.

12 THE CLERK: Okay. When I call your name, if you will
13 come down and have a seat in the jury box, please.

14 No. 4, Christopher Armstrong; No. 121, Jordan Samon;
15 No. 98, Mitchell Morris; No. 119, Lisa Robertson; No. 48,
16 John Frick; No. 116, Sryia Roach; No. 6, Brian Bairefoot;
17 No. 118, Ivie Roberts; No. 8, Joshua Bannister; No. 19,
18 Devon Peters; No. 61, Jerome Harden; No. 29, Kyle Crager.
19 And our alternate will be No. 131, Christy Stokes.

20 THE COURT: Ladies and gentlemen of the jury, those of
21 you who were not selected for this particular case, the good
22 news is you're free for the rest of the day and tomorrow.
23 However, call after 6:00 tomorrow evening, the number the
24 clerk has given you to call. We anticipate we do have other
25 matters scheduled to begin, very likely, on Wednesday

1 morning. However, you'll need to call the number you've
2 been provided after 6:00 tomorrow evening to receive
3 instructions about Wednesday. So call after 6:00.

4 Everyone remain seated while those jurors are allowed
5 to leave the court. Thank you.

6 (The remaining jury panel was excused.)

7 THE COURT: Thank you, ladies and gentlemen. I'll just
8 give you a little outline of where we're going for the rest
9 of the day. I'm just going to give you some basic short
10 preliminary remarks here in just a moment. You'll be
11 released to go to lunch. I'm going to ask that you be back
12 on the main floor at 2 o'clock. The clerk will have
13 somebody there and they'll show you back upstairs. So be
14 back at 2 o'clock.

15 We anticipate that this trial will not be very lengthy.
16 It would very likely finish some time tomorrow. After you
17 come back from lunch, the lawyers will have an opportunity
18 to give you some opening statements, talk to you a little
19 bit about the case. Before they do that, when you come
20 back, I'll give you some basic instruction on your role as
21 jurors.

22 What I want you to leave with is this, when you go to
23 lunch, do not discuss the case among yourselves. In fact,
24 even when you go back to the jury room, you're not to
25 discuss the case among yourselves. You go home tonight,

1 don't discuss it with the folks you live with. Do not look
2 up any names on the internet, do any independent research.
3 The theory is that to be fair to both sides in this case
4 that you're not to render a verdict or make a final decision
5 on the case until you've heard all of the evidence that's
6 presented here in the courtroom. Nothing else is permitted.
7 So do not discuss the case until the end of the case when I
8 give you instructions on what you can discuss in reaching
9 your verdict. But in the meantime, no internet searches, no
10 Googling places. My children say I shouldn't say that
11 Google stuff, but it makes sense to me. No Googling
12 anybody, any names, any places, any past events.

13 With that, when you come back this afternoon, the clerk
14 will swear you in again and then we'll begin the trial. So
15 we're going to allow you to leave at this time. We've got
16 some work we're going to take up while you're not here, but
17 we should all be ready to start back at 2 o'clock.

18 So everyone remain seated while this jury panel is
19 excused for lunch.

20 (The jury exits the courtroom for lunch.)

21 MR. DUNN: Your Honor, my client informs me that he
22 needs to use the bathroom.

23 THE COURT: All right. We'll take a quick break while
24 he goes to the restroom. When he comes back, we'll take up
25 the motions in limine.

1 MR. DUNN: Thank you, Your Honor.

2 (Short break.)

3 THE COURT: All right. Let's see, we have motions in
4 limine on behalf of Respondent. I have three of those. And
5 then two motions on behalf of the State.

6 Mr. Bogle, we'll start with yours.

7 MR. BOGLE: Thank you, Your Honor. Judge, our first
8 motion in limine is, basically, not during examination of
9 witnesses to talk about the place the guy might go. As Your
10 Honor knows, the burden of proof is to show he has a mental
11 abnormality or a personality disorder that makes him likely
12 to reoffend, that he's been convicted of certain sexually
13 violent crimes and that he cannot control this likelihood to
14 reoffend. That's all we have to prove.

15 Now, at the present, they're building a brand new
16 facility for the sexually violent predators on the Broad
17 River campus. It's being built by Correct Care, who's in
18 charge of the treatment. Currently, though, a lot of them
19 still are behind the wire at the old death row, the Edisto
20 Unit. There's two wings --

21 THE COURT: Let's do this.

22 Mr. Dunn, what's your position on the motion to exclude
23 you from referring -- making any comment or eliciting any
24 information in front of the jury about where he is being
25 housed?

1 MR. DUNN: Your Honor, should I be so inclined to go
2 down that road, to me, the jury's got to make the decision
3 that not only is Mr. Cook not able to -- that he meets the
4 definition or that he needs to be housed, I think a jury, if
5 they're making a determination as to whether or not they're
6 going to house somebody against their will, they should have
7 a right to know where they're going to house them.

8 THE COURT: Mr. Bogle, I'll continue to hear you on
9 that issue.

10 MR. BOGLE: Just any talk about it being a death row,
11 behind the wire, at a prison, former death row would be
12 prejudicial, could distract the jury, wouldn't be fair to
13 the State. It's not one of the things we have to prove.

14 Now, I have no problem with everybody talking about it
15 being a secure facility. He can't go to outpatient. He's
16 got to be confined to a secure facility that he cannot
17 depart from, cannot leave from. But the actual location,
18 the conditions, the fact that one of the wings they're using
19 is a wing of the prison.

20 Now, as Your Honor knows, it's sealed off from the
21 actual prison. The place where these guys are is totally
22 staffed by the Department of Mental Health. Security is by
23 the Department of Mental Health. There's no contact with
24 Department of Corrections, except for food, it's provided by
25 SCDC.

1 So we think referring to the location as a prison, it
2 kind of goes back to saying he's being punished. This is a
3 non-committed civil scheme before you, Your Honor. We would
4 think that would distract the jury and prejudicial to the
5 State to call it prison, he could be there for life, it's
6 the old death row, things like that.

7 THE COURT: All right. Thank you.

8 Mr. Dunn.

9 MR. DUNN: Your Honor, just if it smells like a duck
10 and walks like a duck, it's probably a duck. If a man can't
11 leave somewhere because he's behind prison wire and has
12 people guarding him, I think that would be a prison. We can
13 call it whatever we want to call it, which in this case,
14 they try to hide behind the language of Department of Mental
15 Health, but I think at the end of the day, it's still a
16 prison facility. He's got to eat prison food. I think the
17 jury should hear about that, Your Honor.

18 THE COURT: Thank you.

19 I'm going to grant the motion to preclude you from
20 referring to a particular place. It's clear this is a civil
21 hearing and it's, also, clear that he is being -- that part
22 of his commitment is to be in the care of Department of
23 Mental Health. So any reference to any particular place or
24 description of that place, I find improper. So I grant that
25 motion to exclude that information to go in front of the

1 jury.

2 Mr. Bogle.

3 MR. BOGLE: Thank you, Your Honor. The second motion
4 has to do with treatment. And not to repeat myself, but in
5 the first motion, I talked about the elements we have to
6 prove and that's all we have to prove. Any reference to the
7 type of treatment he might have to get, how the treatment's
8 conducted, how many sessions there are a week or things like
9 that would be purely speculative because they don't know
10 until he gets out there. It, also, could distract the jury
11 and mislead the jury from their burden. Their burden is to
12 find a sexually violent crime, the existence of a mental
13 abnormality or a personality disorder and make a finding of
14 whether or not he can control those things to the extent
15 that he's been confined for treatment.

16 So any testimony about treatment -- and our expert, Dr.
17 Donna Maddox, she's the psychiatrist appointed by the Court
18 to evaluate the guy. She's not a treatment person and
19 probably doesn't know anything about the treatment. It's
20 not something we have to prove and we think going into the
21 treatment and types of treatment would be speculative and
22 could confuse the jury and wouldn't be relevant. Thank you.

23 THE COURT: Mr. Dunn.

24 MR. DUNN: Your Honor, I would argue under 44-48-30,
25 which is the statute, subsection 1 and subsection B of 1,

1 that not only does the State have to show that he suffers
2 from a mental abnormality, is likely to engage in sexual
3 acts if not confined, but it also talks about having
4 long-term care, control and treatment.

5 Your Honor, one of the common complaints I have heard
6 from folks in this program when I have dealt with the
7 clients is not necessarily getting treatment, but they're
8 not getting treatment. And I think a jury might have a duty
9 and obligation to understand what kind of treatment is being
10 offered, if any, having to make the determination as to
11 whether or not a person meets the definition. The jury has
12 a burden of proving -- the State has the burden of proving
13 beyond a reasonable doubt and a jury has an obligation and a
14 duty to find beyond a reasonable doubt before they make the
15 determination.

16 THE COURT: Well, I don't think beyond a reasonable
17 doubt is the standard.

18 MR. BOGLE: It is.

19 THE COURT: It is? Okay, I'm sorry, go ahead.

20 MR. DUNN: It is, Your Honor. And, you know, that's a
21 very high standard and a high burden that the State bears.
22 It's the highest one that we have in our court system in
23 South Carolina, Your Honor. And, you know, once a person is
24 committed to this program, it's not likely -- I mean, while
25 there are statutory ways of getting out, you know, it's a

1 very hard -- it's not an easy door to go back through once
2 an individual, usually, a man, goes through it. And as
3 such, I think the jury has the right to hear what kind of
4 treatment may or may not be offered to Mr. Cook should he go
5 into that program.

6 THE COURT: Thank you, Mr. Dunn.

7 I'm going to grant the State's motion. It appears that
8 the type of treatment he may receive or allegedly may
9 receive would not be relevant to the issue of whether he's a
10 sexually violent predator.

11 Any other motions on behalf of the State?

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

13 THE COURT: Mr. Dunn, I'll be glad to hear from you.

14 MR. DUNN: Your Honor, I've got three. They all go to
15 Dr. Maddox at the time that she testifies.

16 Your Honor, the first one, I move that there be no
17 mention of nonqualified convictions. And what I mean by
18 that, Your Honor, if you look at the statute, the statute
19 has certain convictions that an individual must have been
20 convicted of or pled guilty to or found guilty of pursuant
21 to North Carolina vs. Alford or no contest. But those
22 convictions are enumerated in Subsection 2 of 44-48-30, Your
23 Honor. And Mr. Cook has been convicted of several of those.
24 And I'm sure at the appropriate time, the State is going to
25 try to move for those. And I'm not necessarily opposing

1 those, at least, not on those grounds.

2 Your Honor, my client has a very colorful past and has
3 been convicted or been found guilty of a number of other
4 cases. Some that are sexual in nature and some that are
5 not. And I would argue that regardless if they're sexual in
6 nature or just convictions in general that allowing those
7 convictions to come into the jury would be more prejudicial
8 to my client than probative.

9 Part of the criminal system, as Your Honor is aware of,
10 sometimes, there's a lot of negotiations going on.
11 Sometimes, Defendant's take things that they don't
12 necessarily agree with, but in the interest of their
13 long-term interest, they plead guilty to things -- you know,
14 guilty pursuant to offered things to try to get out of jail,
15 to try to limit the damage that's been done even if they
16 don't agree with it. Your Honor, I would argue that in
17 trying later on by the State to use those is more
18 prejudicial to Mr. Cook than probative.

19 The main one, Your Honor, the most serious one of
20 those, just so the Court is aware, is in 1989, I believe it
21 was, he pled guilty to a -- let me make sure I get it
22 correct. On August 31st, 1990, he pled guilty to an ABHAN,
23 which is not a charge that is enumerated in the statute
24 44-48-30.

25 And just the nature of the allegation of that one, I

1 think the jury -- I believe the State is going to try to use
2 and I would argue not to let those details come in. He's
3 got some peeping toms and some public urinations, indecent
4 exposures that I would argue are more along the lines of,
5 you know, just public urinations than they are sex, but the
6 State and I may disagree over those parts. I just argue any
7 of those charges, they're just inflammatory. You start
8 talking about indecent exposures and peeping toms and ABHANS
9 and those sort of things, it causes the jury to become more
10 prejudicial against my client, Your Honor.

11 THE COURT: Mr. Bogle.

12 MR. BOGLE: Yes, Your Honor. Thank you.

13 I've got a memo of law on this. Did you leave it in
14 the car or I can pass it up?

15 THE COURT: If you'll pass that up. Did you file it?

16 MR. BOGLE: It was emailed to everybody last week.

17 THE COURT: I have the clerk's file. You didn't file
18 it?

19 MR. BOGLE: No, sir. It was part of our trial package,
20 like the jury charges.

21 Judge, in this particular case, Dr. Maddox has
22 diagnosed the Respondent with, among other things,
23 Antisocial Personality Disorder. To diagnose that, you have
24 to look at the entire criminal record, which makes his
25 entire criminal record relevant as a basis for her

1 diagnosis.

2 At the same time, in the Ettel case, which is a Court
3 of Appeals case from 2008, the circuit judge properly
4 admitted the testimony regarding Ettel's sexual offenses as
5 well as a prior nonsexual conviction. Some of the sexual
6 offenses --

7 THE COURT: It says a prior nonsexual murder
8 conviction.

9 MR. BOGLE: That's correct. And some of the nonsexual
10 crimes have not resulted in convictions. Again, we're
11 looking at a pattern of behavior here. And so, the sexually
12 violent crimes, in which there's four, would come in, but
13 his other criminal activity shows an Antisocial Personality
14 diagnosis. It also shows a pattern of behavior.

15 Now, the aggravated assault counsel is talking about is
16 sexual in nature. What happened, the witness will testify,
17 he was at a Belk asking a 16-year-old clerk for help and
18 then reached up and grabbed her crotch. Now, that later
19 pleaded out as an ABHAN. At the same time, it was sexual in
20 nature. And what Dr. Maddox is looking for is a pattern in
21 behavior.

22 The Ettel case that I just mentioned talks about prior
23 offenses, looking for a pattern of sexual assaults. In
24 addition, the Corley case details offenses prior to
25 convictions similar to each other. In the Corley case, that

1 came out. It also was ratified by the past criminal history
2 as found to be directly relevant. That's the White case
3 from the Appeals Court in 2007 quoting Corley, which is a
4 Supreme Court case from 2003. White, also, mentioned
5 convictions and sexual offenses that didn't result in
6 convictions can be considered under the law.

7 She is trying to diagnose him with the Antisocial
8 Personality Disorder I mentioned a moment ago. She is,
9 also, diagnosing him with a Voyeuristic Disorder, that's
10 from the peeping tom convictions, and Exhibition Disorder,
11 that's from his exposing himself to female guards while he
12 was at the Department of Corrections. She's looking at
13 everything about this guy to try and see whether or not he
14 has a mental disorder that he cannot control. She's, also,
15 got the Pedophilic Disorder, attracted to female, because
16 his convicted victims, sexual violent victims, were all
17 children.

18 So that's kind of where we are. We think the case law
19 allows us to go into this. Certainly, she can be
20 cross-examined about the type of crimes and whether or not
21 they resulted in convictions. But I think Dr. Maddox will
22 take those things into perspective. A conviction,
23 obviously, carries more weight than a nonconviction. But
24 the pattern of behavior here and the prior case law allowing
25 prior crimes that didn't result in convictions to show the

1 pattern and justify the diagnosis, I think it would be
2 appropriate in this case, Judge.

3 THE COURT: I'm going to deny the Defense motion. It
4 appears that, again, this is a civil hearing; however, the
5 testimony is to be based and the jury has to weigh what a
6 qualified expert determines to be their position in this
7 case. That includes, according to the statute, that that
8 expert would have reasonable access to the person for the
9 purposes of examination as well as access to all relevant
10 medical, psychological and criminal offense and disciplinary
11 records and reports. I believe that language is not
12 restricted to criminal convictions.

13 Certainly, again, as Mr. Bogle has stated, Dr. Maddox
14 can be cross-examined on some of those. But I'm going to
15 deny the Respondent's motion to limit Dr. Maddox's
16 statements about the records that she reviewed and the basis
17 of her findings.

18 Mr. Dunn?

19 MR. DUNN: Number two and number three probably are
20 going to be wrapped up inside that same order of the Court,
21 but just so it's clear for the record.

22 THE COURT: Yeah, I don't know what you mean by move
23 there be no mention of alleged victims where charges were
24 not brought.

25 MR. DUNN: That may be more of a typo because this is a

1 boilerplate I took off of another case. I don't believe he
2 was ever not charged with something, but in the event that
3 he was not charged with a crime. A lot of times there's
4 allegations of victims, but no criminal charges are actually
5 brought. The purpose of that would be to limit the State
6 not bring up unindicted allegations, sort of a 404(b) and --

7 THE COURT: Well, let me ask you, as a practical
8 matter, are there instances where he was charged and never
9 convicted? Certainly, Dr. Maddox would just be reviewing
10 records of those, case summaries or something, but there
11 were never any charges brought, I assume, even in the case
12 where you indicated he -- unlike where he was charged with
13 grabbing the woman, the clerk, but then pled to assault and
14 battery of a high and aggravated nature. Are there any that
15 you intend where he was not convicted of some events?

16 MR. BOGLE: In this particular case, I don't believe
17 there are. At the same time, these doctors will testify
18 they're looking for a pattern of behavior. And if you're
19 charged with something, but not convicted, it still goes to
20 prior --

21 THE COURT: I'm asking the question, here today, it's
22 not going to be an issue in this case?

23 MR. BOGLE: I don't believe so.

24 THE COURT: You don't believe it's an issue in this
25 case?

1 MR. BOGLE: I don't believe it's an issue today. I
2 think legally, we could, but I don't --

3 THE COURT: Well, then, it does not appear to be an
4 issue, Mr. Dunn. If, during the course of the testimony
5 before we get to there, if it looks like that's going to be
6 an issue, then make your appropriate objection and we will
7 deal with it then.

8 MR. DUNN: Thank you, Your Honor.

9 Your Honor, number three in my motions in limine, it's
10 my experience that these doctors start talking about their
11 opinions based on the records they reviewed, but the records
12 that they review, Your Honor, are hearsay. You know,
13 outside of the certified criminal convictions that the State
14 is easily able to get by going to the Clerk's Office and
15 getting copies of, which Mr. Bogle has already provided to
16 me. You know, a lot of information is just police reports,
17 it's talking to witnesses, it's, you know, sort of reading
18 between the line on what happened at the plea hearings.
19 Your Honor, I would argue all of that is hearsay and, as
20 such, it should be excluded from these proceedings as well.

21 THE COURT: Thank you, Mr. Dunn.

22 Mr. Bogle.

23 MR. BOGLE: Just to reiterate, the case law that we
24 provided in that memo, the Ettel case, the Corley case, even
25 the Harvey case, which was reversed because a document was

1 improperly admitted, still, the testimony about the
2 underlying details behind the offense is necessary to
3 justify the diagnosis and explain to the jury what happened.

4 At the same time, Rule 703, regarding expert witnesses
5 also says that the type of data being talked about is relied
6 upon experts in the field in forming opinions, then the
7 facts or data need not be admissible in and of themselves as
8 evidence. So you have that under the expert witness Rule
9 703 of South Carolina Rules of Evidence. But even without
10 that, I think the case law is pretty clear that she can talk
11 about the underlying details.

12 Now, I'm not going to ask her to say Little Mary told
13 the police he did this. I'm going to ask her to talk about
14 what the records show.

15 THE COURT: And what do you mean by the record?

16 MR. BOGLE: What the conduct was reported to the
17 police. The things he -- like, if he was convicted of doing
18 something to Mary, I'm going to ask what the records show he
19 did to that girl. That's based on her review of the records
20 and that's admissible under the cases I mentioned a minute
21 ago, the Ettel case, the Corley case. Underlying details
22 are necessary for the State to prove -- or relevant to prove
23 the elements under section 44-48-30, subparagraph 1.

24 THE COURT: All right. I'm going to deny your motion,
25 Mr. Dunn. It does appear under the case law and the

1 application of the rule is that -- Dr. Schwartz-Watts,
2 certainly, understands in a pretty specific way of what she
3 can say or can't say. It appears that the State intends to
4 abide by any boundaries that are required under our case law
5 and rules of evidence. So I'm going to deny your motion.

6 Anything else?

7 MR. BOGLE: No, Your Honor.

8 Can we put one last thing on the record?

9 THE COURT: Yes.

10 MR. BOGLE: You may have said it and I forgot to.
11 Whether or not there was any objections as to how the jury
12 was picked?

13 THE COURT: I'm sorry, I did not do that. And the jury
14 has not been sworn.

15 So Mr. Bogle, do you have anything else as far as the
16 selection of the jury?

17 MR. BOGLE: We do not, Your Honor.

18 THE COURT: Mr. Dunn?

19 MR. DUNN: Your Honor, I just have one. Your Honor, I
20 object to the jury panel as a whole. One of the things --
21 and I've only ever tried two of these sexually violent
22 predator cases and both of them happened in the month of
23 June, but what I find is that when you get to the June term
24 of court, whether it's for common pleas or for general
25 sessions, you have an extra large number of teachers,

1 teacher assistants, preschool workers, other kinds of
2 professions that deal with children because during the
3 school year, the courts give them -- you know, defer their
4 service until the summertime so it doesn't cause an undue
5 burden on the teacher and on the school system. And I,
6 certainly, understand that.

7 The problem is that puts unduly -- a harsh burden on --
8 or a harsh unreality to these types of cases where there's
9 allegations of sex with children. Mr. Cook has got a number
10 of convictions for child-related sex cases. Your Honor, I
11 would argue that when the Court goes back and looks at the
12 strikes the Respondent had to take, I had to strike
13 teachers. And I feel it puts Mr. Cook at an unfair
14 advantage and, Your Honor, I would just object to the jury
15 pool as a whole.

16 THE COURT: All right. Thank you. I'll deny your
17 objection.

18 Anything further?

19 MR. BOGLE: Nothing from the State, Your Honor.

20 MR. DUNN: I don't believe so.

21 THE COURT: All right. We'll be at ease until 2
22 o'clock.

23 (WHEREUPON, a lunch recess was taken.)

24 THE COURT: Mr. Bogle, are y'all ready?

25 MR. BOGLE: Yes, Your Honor.

1 THE COURT: Mr. Dunn?

2 MR. DUNN: I'm ready, Your Honor.

3 I have a matter to bring up to the Court at the
4 appropriate time.

5 THE COURT: Yes, sir.

6 MR. DUNN: Your Honor, it came to my attention, Mr.
7 Cook is currently being -- when he's not in the courtroom is
8 residing in the jail cell in the back on this hallway. It's
9 immediately to your right. The jury room is right at the
10 end of the hallway. And when the jurors came back from
11 lunch, Your Honor, my client was sitting there. And there
12 was a number of the jurors that had to walk by his door,
13 which was open -- well, the door wasn't open, but the window
14 was open and they could look in. And one or two of them
15 looked in. I closed the door, came back a little ago and I
16 had to reopen it, so I'm not sure how many more jurors got
17 to see my client sitting in an incarcerated manner in the
18 back hallway there, Your Honor.

19 I would argue that it, certainly, causes some prejudice
20 to my client. The whole purpose of this juror matter is for
21 them to determine whether or not he's a danger to the
22 community and needs to be put in this program. Them seeing
23 him already in a manner of some kind of incarceration, to
24 me, gives a bad suggestion -- gives a suggestion to the
25 jury. And I would argue that has prejudiced Mr. Cook having

1 seen him in that manner, incarcerated. I think the only
2 recourse would be to move for a mistrial, Your Honor.

3 THE COURT: Thank you.

4 Mr. Bogle, do you wish to be heard on the Defense's
5 motion for a mistrial?

6 MR. BOGLE: Usually, in these trials, and I don't know
7 what Mr. Dunn's strategy is, it somehow comes up that he's
8 been finishing prison, sitting in the county jail and needs
9 his freedom or something like that. He's just been sitting
10 and waiting and waiting. So it may come out, I don't know
11 if it will or not. I won't bring it out, but Mr. Dunn may.
12 But I can't speak to his strategy.

13 I guess the only thing I can think of, it's a small
14 courthouse, they've got to walk by somehow. For some
15 reason, that holding cell is close to whatever route they
16 take. I guess the first thing to do is to ask does anybody
17 even know who that was or does it in anyway prejudice them.

18 THE COURT: Well, I'm not going to go down that road.
19 I'm going to deny the motion.

20 I note your objection, Mr. Dunn. I note this is a
21 small courthouse. The Defendant is, certainly,
22 appropriately dressed in street clothes. Even though he may
23 have been sitting in a room or a cell, he's not shackled
24 here in the courtroom. I assume he was not shackled while
25 he was sitting in the cell. I'm not sure what jurors saw or

1 thought, however, I believe to question -- I'd have to ask
2 the general question to all the jurors what somebody may or
3 may not have seen. And in the Court's opinion, that would
4 just likely open up -- it may be so suggestive that it would
5 then taint the jury. So I'm going to leave it like it is
6 and I'll deny your motion.

7 Anything else?

8 MR. DUNN: No, sir.

9 THE COURT: Anything, Mr. Bogle?

10 MR. BOGLE: No, Your Honor.

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

12 (The jury enters the courtroom.)

13 (The jury is sworn.)

14 THE COURT: Thank you, ladies and gentlemen. I
15 appreciate your promptness in being back here at 2 o'clock.
16 I'm going to give you just some general instructions on this
17 case. So once we finish that, then we'll, actually, begin
18 the trial.

19 I do state to you again that any time during the course
20 of this trial, do not discuss the case among yourselves,
21 with your family or folks that you're around when you're not
22 in the courthouse. Don't be using any electronic devices,
23 electronic media to do any investigation in names or people
24 involved here. Again, we want you when it is the
25 appropriate time to base whatever decision you make as a

1 jury on what you hear and see here in this courtroom.

2 In this particular case, you have been selected as
3 jurors to be fair and impartial jurors in this case and in
4 this matter. And I'm going to tell you again, as I stated
5 during the general jury qualifications, that this case has
6 been brought by the State of South Carolina under the
7 Sexually Violent Predator law of South Carolina. The State
8 seeks the civil commitment of Johnny James Cook, the
9 Respondent, for long-term control, care and treatment in a
10 secure facility. This is not a criminal proceeding seeking
11 incarceration, but, rather, is a proceeding seeking civil
12 commitment.

13 The State of South Carolina alleges or claims that the
14 Respondent, Johnny James Cook, is a sexually violent
15 predator under the law. The Respondent, Johnny James Cook,
16 denies that he is a sexually violent predator. So the
17 burden of proof is, therefore, on the State to prove by
18 evidence sufficient to satisfy each of you beyond a
19 reasonable doubt that Mr. Cook is a sexually violent
20 predator. If the State is unable to meet that burden of
21 proof as to one or more of the elements of this claim, the
22 Respondent is entitled to a finding that he is not a
23 sexually violent predator.

24 I want you to understand that Mr. Cook is not accused
25 of committing a crime in this proceeding. Your job, ladies

1 and gentlemen of the jury, in a civil case, as in any other
2 case, is that you are the fact finders in the case. You
3 listen to the evidence and the testimony that you hear and
4 see here in this courtroom and your job is to determine what
5 you believe are the facts in the case and then render a
6 verdict based on the oath that you took as jurors.

7 My job as the judge is to rule on matters of law,
8 issues of law. If at any time, I make any kind of comment
9 or you believe that I'm commenting or have an opinion about
10 the case or about the facts of the case, you must disregard
11 that. I am not the fact finder. I am here to rule on
12 issues of law and you're here to be the fact finders in this
13 case.

14 In just a few moments, the attorneys will have an
15 opportunity to make opening statements to you. In this
16 case, the State, like the plaintiff in a civil case, they
17 have the burden of proof. They will be allowed to address
18 you first. And after they make their opening statement,
19 then the Respondent, Mr. Cook, his attorney will be given an
20 opportunity to speak to you about what they believe is their
21 contention what the issues in the case are. Once we finish
22 the opening statements, then the State will present evidence
23 that they believe is appropriate in their case.

24 Once all the evidence is in, then I will give you some
25 instructions on what the law is that you're to apply in this

1 case. The lawyers will have an opportunity to make closing
2 statements to you. Then at that time, whether it's this
3 afternoon or in the morning, you will then be able to begin
4 deliberating and discussing the case. Again, do not discuss
5 the case at all until that point.

6 From time to time during the course of a trial, you may
7 hear lawyers stand and say they have an objection or they
8 may want to approach the bench. One, I ask that you not
9 hold that against them. They're doing their job in
10 advocating for the position of their respective clients. If
11 they make an objection or they come to the bench and I talk
12 to them outside of your presence or if it's an objection
13 that I think that we need to discuss outside your presence,
14 I'll send you back to your jury room while we resolve those
15 issues. Those would be matters of law that I'm to
16 determine. So again, don't hold that against the attorneys
17 when they do that. They're simply doing their job and
18 following proper procedure.

19 You have the responsibility in deciding whether to
20 believe a witness. You have a right to consider whether a
21 witness has an interest in the result of the trial, whether
22 the witness is prejudiced towards either the Plaintiff or
23 the Defendant in this case, and you have an opportunity to
24 observe those witnesses and what they may have seen or heard
25 or learned and the way that witness acts in a witness stand.

1 You have a right to consider anything that is presented in
2 this courtroom that's in the record that will help you
3 evaluate the testimony of the witnesses and to make a
4 decision in this case. That means it is your duty to pay
5 close attention to the witnesses, pay close attention to the
6 attorneys and to the Court.

7 At the appropriate time -- well, here's what I want you
8 to do, sometime before you come back in -- the next time we
9 take a break -- I may bring you back in here if we get
10 through today and start back tomorrow and I'll instruct you
11 on this before you leave. I want you to select a jury
12 foreperson. A foreperson is simply somebody to communicate
13 with the Court in writing if we need to, any questions that
14 need to be written that the Court can answer and to make
15 sure that deliberations are properly carried out. So I'm
16 going to ask that you select a foreperson among yourselves.
17 A foreperson has no more say than any other of the jurors
18 that are on the jury panel. They are simply somebody that
19 the Court needs to communicate on behalf of the jury back
20 between the Court and yourself.

21 Anything further as far as preliminary instructions
22 from the State?

23 MR. BOGLE: No, Your Honor.

24 THE COURT: From the Defense?

25 MR. DUNN: No, sir.

1 THE COURT: Ladies and gentlemen, if you'll give these
2 attorneys your attention. Mr. Bogle will address you first.

3 Mr. Bogle.

4 OPENING STATEMENT

5 MR. BOGLE: Thank you, Your Honor. May it please the
6 Court.

7 Mr. Dunn.

8 I introduced myself earlier today. My name is Jim
9 Bogle with the Attorney General's Office. Sitting over here
10 next to me is Chris Rankin. He's our law clerk working for
11 the office. He'll be assisting me during the case.

12 Now, some folks, when they hear it's us, they wonder
13 why the Attorney General out of Columbia? Why not the local
14 solicitor or the county attorney or someone like that? And
15 the reason is that when they passed this law back in 1998,
16 they named our office to do all these cases in all the
17 counties. So there's two of us, me and Christopher Morrow,
18 we have the State divided up and do the cases in the
19 different circuits around the State.

20 Here's what this is all about. When the General
21 Assembly passed this law back in 1998, they made a finding.
22 Their finding was there's some people out there who are
23 mentally abnormal and extremely dangerous. They're called
24 sexually violent predators. And they exist. And they're
25 people who prison is not working for them. They've got some

1 mental condition, some mental abnormality, something wrong
2 with them that they cannot control. And because of that,
3 the General Assembly went on to say that the normal civil
4 commitment process isn't good enough. And we set up this
5 law to determine who those people are and civilly commit
6 them for what's called long-term control, care and treatment
7 by the Department of Mental Health. And that's what this
8 case is.

9 Now, Johnny James Cook has been convicted of some
10 sexually violent crimes. These are the things we have to
11 prove to you. What does the State have to prove in this
12 case? Bear in mind, like the Judge said, the burden of
13 proof is beyond a reasonable doubt. He'll explain to you at
14 the end what that means.

15 Let me say this, we have to prove to you, number one,
16 has Mr. Cook been convicted of a sexually violent crime? He
17 has, four times. And you'll get those documents and you'll
18 be able to look at them as the case progresses. But the
19 next question is, does he have a mental abnormality or a
20 personality disorder that makes him likely to commit these
21 crimes again unless he's confined for long-term control,
22 care and treatment? In this case, the sexually violent
23 crimes were crimes against small children. He was convicted
24 four times.

25 And the next thing is, if he's got this mental

1 abnormality or personality disorder or both, is it such a
2 thing that's wrong with him that he cannot control it so
3 that he is a danger or a menace to people in society? The
4 State has to prove to you each of these things, again,
5 beyond a reasonable doubt.

6 Now, some time ago in an earlier court hearing, the
7 judge, just like this one here, appointed Dr. Donna Maddox,
8 who's seated back over there. She's a forensic
9 psychiatrist, formerly with the Department of Mental Health,
10 also, with the South Carolina School of Medicine. Her job
11 was to analyze and interview Mr. Cook, talk to him, look at
12 all the records on him, his criminal records, witness
13 statements, incident reports, police reports, find out as
14 much as she could about him, diagnose him and decide whether
15 or not she could give a medical diagnose, does he have a
16 personality disorder or a mental abnormality, like
17 pedophilia, for example, which is a sexual interest in
18 prepubescent children? Does he have these things? She
19 diagnosed him with both, both a personality disorder and
20 more than one mental abnormality.

21 The next question is if you look at him compared to
22 other sex offenders, is he a guy that's likely to reoffend
23 so much that he can't control his behavior? And I would
24 suggest the evidence will show that that's the case. She'll
25 testify about it, but the evidence would also show it even

1 if you didn't hear from her. I'll tell you why. He gets
2 convicted. He goes to prison. I think we can all agree,
3 prison is not a good place to be. He gets out of prison, he
4 does it again. Goes to prison, gets out, does it again. I
5 would suggest to you that reoffending over and over again
6 against small children suggest that he cannot control his
7 behavior.

8 Now, I mentioned that Dr. Maddox was a psychiatrist.
9 In court proceedings, usually, a witness cannot give
10 opinions. They can only testify to things they heard,
11 things they saw, things they smelled. Like, I saw the light
12 turn red, I heard the gun go off, I saw the man hit the
13 other man, things like that. But in special circumstances,
14 if a witness has the particular training and expertise in
15 their field of study that they can help you, the jury, on
16 the findings of facts, they can give an opinion. So we will
17 qualify Dr. Maddox as an expert witness to give an opinion
18 about whether or not he has this condition and whether or
19 not Mr. Cook can control himself. That's where Donna Maddox
20 comes in.

21 Now, at the same time, she's a witness like any other
22 witness. And your job is to decide what weight to give a
23 witness' testimony, how much to believe, how much not to
24 believe. You can believe part of a witness, none of a
25 witness, all of a witness, that is totally your call. It is

1 your job to find out what the facts are. And I would
2 suggest to you in this case, the facts are he's been
3 convicted of four sexually violent crimes over and over
4 again between 1986 and 2012. He gets convicted and does it
5 again.

6 He's got a mental abnormality and a personality
7 disorder and these make him likely to commit these crimes
8 again unless he's confined to long-term control, care and
9 treatment. That's what the case is about. It's a civil
10 commitment case. It's probably not like the kind of case
11 you thought you might be here if you were selected on a jury
12 trial. That's what it is.

13 It's your job to listen to what's on that witness
14 stand. Look at the documents that are introduced in
15 evidence and listen to the Judge's explanation about the law
16 and then reach a fair verdict. And I would submit to you
17 based on the evidence in this case, the verdict you will
18 reach is one for the State. Thank you.

19 THE COURT: Thank you, Mr. Bogle.

20 Mr. Dunn.

21 OPENING STATEMENT

22 MR. DUNN: If it may please the Court, Your Honor.

23 Good afternoon. My name is Geoff Dunn. As I told you
24 earlier, I live in Chester, but my office is in Rock Hill.
25 I come down to Fairfield a fair amount as part of my

1 practice. Go to Lancaster sometimes, Chester sometimes and
2 York County a lot.

3 I'm not going to sugar coat it to y'all. Y'all
4 definitely have a hard case to hear this week. I'm sure
5 y'all thought y'all were going to listen a car wreck and
6 contract disputes, that's not what you get. You get one of
7 those hard cases that nobody really wants to think about,
8 nobody really wants to have to take action. Any time we
9 hear about somebody being involved in sexual acts with
10 children, things that -- or criminal acts with children,
11 it's hard. It's hard as a person to listen to, it's hard as
12 a jury to listen to, and I understand that.

13 What we ask that you do today, tomorrow and however
14 long this case takes is that you be fair and impartial,
15 something you've already told the Judge you're willing to
16 do, listen to all the facts.

17 Just because a person has committed a sexual offense
18 against either children or adolescents in the past doesn't
19 mean they're a sexually violent predator. That's why we're
20 here. Just because somebody has done something in the past
21 doesn't mean they're going to do it in the future. That's
22 why we're here.

23 As you will hear and you've already heard in opening,
24 Mr. Cook has broken the law a number of times. And there's
25 a number of times he has been punished. That's not why

1 we're here. We're here for a civil matter. I would ask
2 that as you listen to the evidence that you just -- you keep
3 it fair and impartial, you keep an open mind.

4 You're going to hear the State goes first, that's
5 because they're the one bringing the action. Any time the
6 State brings an action or a party brings an action, whether
7 it's a car wreck or just a private person, or, in this case,
8 the government, they go first because they have the burden
9 of proof. In this matter, the State bears the burden of
10 proof to prove beyond a reasonable doubt that Mr. Cook is,
11 in fact, a sexually violent predator.

12 I would ask that as you listen to the evidence that you
13 ask a couple of questions in the back of your mind as it
14 goes on. One is, is he really going to reoffend later in
15 the future? Two, is there other treatment options that are
16 available to him besides this harsh? At the end of the day,
17 the recourse is to put Mr. Cook into a facility against his
18 will. That is an extraordinary step the State would take
19 and that's why the burden is proof beyond a reasonable
20 doubt. So I ask you to ask yourselves as you're listening
21 to the testimony, is there something that we can do or that
22 can be done that isn't that harsh, that isn't that imposing
23 on Mr. Cook and his ability to live his life?

24 At the end of the day, I would submit to you that when
25 the doctor gives her opinion that she's guessing. She's

1 trying to make a good guess. She's trying to make the best
2 guess to her ability. But at the end of the day, whatever
3 opinion she renders about he's likely to reoffend, it's just
4 that, it's a guess. It's hard to guess what will go on in
5 the future. Unlike movies, unlike books, we don't know what
6 tomorrow brings and we don't know what a person may or may
7 not do. I would ask that you just, again, keep an open
8 mind.

9 On behalf of Mr. Cook, thank you for being here and
10 giving him his opportunity to be heard.

11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Dunn.

13 Mr. Bogle, call your first witness.

14 MR. BOGLE: Thank you, Your Honor, may it please the
15 Court. We would call Dr. Donna Maddox.

16 DONNA SCHWARTZ MADDOX, M.D.,

17 after being duly sworn, testified as follows:

18 THE WITNESS: I do.

19 DIRECT EXAMINATION

20 BY MR. BOGLE:

21 Q Would you state your full name and county of residence,
22 please?

23 A Sure. Donna Schwartz, S-C-H-W-A-R-T-Z, Maddox,
24 M-A-D-D-O-X, and I live in Anderson County.

25 Q What is your current occupation?

1 A I am in the practice of private forensic psychiatry.

2 Q Now, what about your past employment history? Who have
3 you worked for in the past?

4 A Yes, I, actually, retired from the State August of last
5 year. During my training as a resident in psychiatry, I
6 worked for the Department of Mental Health for five years,
7 and that was 1989 to 1993. Then I worked at the University
8 of South Carolina School of Medicine in Columbia for over 17
9 years. And then I went and finished up my career at the
10 Department of Mental Health, where I've worked for the last
11 seven years and, actually, treating inpatients in the
12 hospital. So I retired in August of last year and I have
13 been engaged since then in the practice of forensic
14 psychiatry.

15 Q Do you have a contract with the Department of Mental
16 Health to still do cases under this law that we're here
17 about today?

18 A I do. Since 1999, when this law was started, I've had
19 contracts with the Department of Mental Health off and on
20 for those years.

21 Q What professional or educational degrees do you hold?

22 A I'm licensed to practice medicine in South Carolina and
23 Georgia.

24 Q Have you had specialized training?

25 A I have.

1 Q Now, this is a mental issue case we're doing here, but
2 you're a medical doctor. What's the difference between a
3 psychiatrist and a psychologist?

4 A Good question. Psychiatrist are medical doctors, so
5 we're licensed to practice medicine. We prescribe
6 medications, we make diagnoses. For example, when I worked
7 at Patrick E. Harris, which was an inpatient psychiatric
8 hospital, I, also, would manage my patient's blood pressure,
9 diabetes, those sorts of things. A psychologist is licensed
10 to administer and interpret certain tests.

11 So the difference is we both have the same area of
12 interest, we treat people who are mentally ill, but
13 psychologists are, also, able to do test like IQ tests and
14 things like that, whereas psychiatrists can also prescribe
15 medicines.

16 Q Now, have you previously been recognized by the courts
17 of this state as an expert witness in the field of forensic
18 psychiatry?

19 A I have.

20 Q About how many times overall?

21 A Approximately 750 times.

22 Q Now, when I say forensic psychiatry, I'm using the word
23 forensic. What does that mean with regard to psychiatry?

24 A Forensic psychiatry, it is a subspecialty of medicine.
25 So, for example, if you have an internal medicine doctor,

1 cardiology is a subspecialty of internal medicine. And
2 forensic psychiatry is a subspecialty in psychiatry. And
3 that means that I had to take an extra year of training. I
4 did four years of residency in general psychiatry to become
5 a general psychiatrist. And then a forensic psychiatrist
6 has an additional year of study. And, basically, what
7 forensic psychiatry is, is anywhere any legal issue where
8 somebody's mental state, how somebody thinks, how somebody
9 feels, how they act where it's related to a legal issue.

10 Q Have you been previously recognized as an expert
11 witness by the circuit courts of this state as an expert in
12 cases brought under the Sexually Violent Predator Act like
13 the one involving Mr. Cook?

14 A Yes.

15 Q About how many of those?

16 A Over a hundred.

17 Q And have you testified for the State as well as for the
18 Defense in the past?

19 A I have.

20 Q In this particular situation, have you had any
21 specialized training regarding the Sexually Violent Predator
22 law, how it works?

23 A Yes.

24 Q What type?

25 A A number of things. First of all, I took some training

1 in Canada, which is where one of the centers of expertise of
2 sexual disorders is. And I did that during my forensic
3 psychiatry residency program. I've also, over the years,
4 gone to various education seminars in Atlanta, Georgia. I
5 became a specialist in one of the tests that they use to
6 assess sex offenders. I've also had specialized training in
7 the physiologic tests that are sometimes used to evaluate
8 sex offenders. And I've also recently taken a 12-hour
9 course on some of the psychological tests that are used to
10 evaluate sex offenders.

11 Q Thank you, Dr. Maddox.

12 MR. BOGLE: Your Honor, at this time, we would move to
13 have Dr. Donna Maddox recognized as an expert witness in the
14 field of forensic psychiatry.

15 THE COURT: Mr. Dunn?

16 MR. DUNN: No objection.

17 THE COURT: I find that she is qualified to testify as
18 an expert in forensic psychiatry.

19 Ladies and gentlemen of the jury, let me just instruct
20 you that a person normally cannot give opinion testimony in
21 court. Normally, when a person testifies, they must testify
22 as to what they either saw, heard or sensed by smell or
23 something of that nature. However, there is an exception
24 when someone is qualified because of education and
25 experience. They are permitted to give their opinion in

1 certain areas if the Court qualifies them that way. This
2 witness will be qualified in the area of forensic psychiatry
3 to give opinion testimony in that area. That does not mean
4 that you must accept the opinion, but it is evidence for you
5 to use in any way you see fit and give the weight and
6 credibility you believe is appropriate.

7 Mr. Bogle.

8 MR. BOGLE: Thank you, Your Honor.

9 BY MR. BOGLE:

10 Q Dr. Maddox, how did you become involved in this case
11 involving Johnny James Cook?

12 A I was contacted by the Department of Mental Health and
13 notified that they were going to get a court order
14 appointing me to complete this evaluation.

15 Q So you were appointed by the Court to evaluate him; is
16 that right?

17 A Yes.

18 Q Okay. What type of evaluation were you asked to do?

19 A To determine whether he met the criteria for a sexually
20 violent predator. And what that means for a psychiatrist,
21 does he have a mental abnormality or personality disorder
22 that makes him likely to engage in acts of sexual violence
23 if he's not confined for long-term care, control and
24 treatment.

25 Q Would you describe to the jury your protocol, your

1 method of operation in doing cases, evaluations of this
2 type?

3 A Yes. Forensic psychiatry is a little bit different
4 than general psychiatry. If you've ever gone to a general
5 psychiatrist's office, normally, the psychiatrist will just
6 have you give a history. You just report what's going on
7 and they're able to render a diagnosis and begin treatment.

8 In forensic psychiatry, because it's a legal issue, we
9 have a little bit different methodology. So one of the
10 things that we do is we review a lot of records. And in
11 this case, I reviewed a lot of records about Mr. Cook. He
12 had some prior incarcerations. He had some prior legal
13 charges. I reviewed those records. I was able to review
14 some of the records for while he did his time in prison in
15 terms of what programs he's completed and what kinds of
16 treatment and education he's had during his confinements.
17 And I also had just mainly the criminal records and what had
18 been done in the court.

19 Q Okay. Now, did you also, as part of this evaluation,
20 meet with and interview Mr. Cook?

21 A I did. I evaluated him for about an hour and a half.

22 Q Okay. Was that sufficient time in your mind to meet
23 with him and talk about what you needed to know?

24 A Oh, yes. Overall, he is very articulate and he's
25 intelligent. And he was cooperative throughout most of the

1 interview. So that was more than enough time.

2 Q And just for the record, is the guy you talked with in
3 the courtroom today and would you identify him?

4 A He is. He's sitting next to Mr. Dunn in, I'll say, an
5 orange or melon-colored shirt.

6 Q Okay.

7 MR. BOGLE: Let the record reflect she has identified
8 Mr. Cook.

9 Q Now, did you explain the purpose of this evaluation to
10 Mr. Cook?

11 A I did.

12 Q Did he agree to go through with it?

13 A He did.

14 Q Okay. As far as meeting with and talking to him, you
15 mentioned a minute ago some of the records you looked at.
16 In a broader sense, what type of documentary records did you
17 look at involving Mr. Cook?

18 A Again, I looked at -- he's had a history of legal
19 charges, so I was able to go back through and look at all
20 the history of the charges he's had. Some of those were
21 offenses that were sexual and some were not. I also was
22 able to review, again, the prison records that talked about
23 how he did in prison and what treatment he had. I looked at
24 some probation records. He had a history of some being
25 violated while he was on probation. I was able to look at

1 those records. I looked at the indictments. I looked at
2 the arrest warrants, any statements that were made by
3 victims over the course of his history.

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

6 A It is.

7 Q And did you consider and rely upon this information,
8 along with the interview of Mr. Cook in rendering an opinion
9 or conclusion?

10 A I did.

11 Q Now, can you explain to the jury how a person's past
12 sexual offense behavior relates to future sexual offense
13 behavior?

14 A Sure. Mr. Dunn was kind of right in his opening. No
15 one can predict behavior. No one has a crystal ball. No
16 one is a hundred percent accurate. But we do this in
17 medicine all the time. So what we do, and, oftentimes,
18 physicians have to make predictions. So, for example, if
19 you go to your internist's office and you have high blood
20 pressure and you have high cholesterol and you smoke and you
21 have a family history of heart disease, we're going to know
22 you run a high risk of having a heart attack. It doesn't
23 mean that you're the person that's going to have a heart
24 attack, but it means you're a high risk and it means you
25 need treatment. There are things that you can do to reduce

1 those risks.

2 So what we do in this case is the past behavior is one
3 of the predictors of future behavior as it is for many, many
4 diseases. And so it's very important to look at past
5 behaviors. They tell us a lot of things. They tell us
6 circumstances a person was under, what the person may have
7 been thinking at the time of the offense, whether they were
8 suffering from mental illness, whether they were
9 intoxicated. So there's a lot to learn by looking at past
10 behavior.

11 Q In this particular case, in your review of these
12 records, did you find whether or not Mr. Cook had been
13 convicted of some crimes that the law calls sexually
14 violent?

15 A He was.

16 Q Okay. Now, is it necessary in explaining your
17 diagnosis to go into the underlying details behind the
18 convictions?

19 A To a degree, yes, for a diagnosis, but also to render
20 the opinions that this statute requires, yes.

21 Q And you mentioned a minute ago other criminal
22 activities. Is it also necessary in making your evaluation
23 to look at crimes that he's been convicted of that might not
24 have been sexual in nature?

25 A Yes.

1 Q Why is that?

2 A Part of the risk assessment that we do in determining
3 what level of risk is he and whether he needs treatment or
4 not, one of the risk factors that has been proven is that if
5 somebody has a past history of some violent behavior, then
6 that's a risk factor. So if there were charges where the
7 person has had a conviction or a plea for a violent -- what
8 we call a violent charge, not the legal definition of
9 violent charge, but whether there's been an assault of a
10 person or a battery upon a person, you have to consider that
11 as well.

12 MR. BOGLE: If I may approach the witness, Your Honor?

13 Q I'd like to hand you the certified copy of indictment
14 number 1986-GS-20-309 from Fairfield County. And attached
15 to it, you have the warrant, you've got the sentencing sheet
16 and the indictment.

17 A Yes, sir.

18 Q Is this a document you've seen before?

19 A It is.

20 Q Okay. Does that document indicate that Mr. Cook was
21 convicted of a sexually violent crime here in Fairfield
22 County?

23 A Yes.

24 Q And what does the crime involve?

25 A He was indicted for lewd act upon a child.

1 Q And did he plead no contest or nolo contendere to that
2 charge?

3 A That's correct.

4 Q And what's the date of the conviction?

5 A October 30th, 1986.

6 Q Now, is lewd act upon a child a sexually violent crime
7 under the Sexually Violent Predator Act?

8 A It is.

9 MR. BOGLE: Your Honor, at this time, we would move to
10 introduce into evidence the certified copy of the documents
11 relating to the 1986 conviction.

12 THE COURT: Mr. Dunn?

13 MR. DUNN: No objection to the actual document.

14 THE COURT: Let the record showed State's Exhibit 1 is
15 admitted into evidence without objection.

16 (WHEREUPON, State's Exhibit No. 1 was admitted into
17 evidence.)

18 BY MR. BOGLE:

19 Q Now, Dr. Maddox, on this particular crime, 1986, right?

20 A Yes.

21 Q Okay. Did you review these documents as part of your
22 evaluation?

23 A I did.

24 Q Are they part of the basis for your opinion about Mr.
25 Cook?

1 A They are.

2 Q And are these the type of documents commonly reviewed
3 by experts in your field?

4 A They are.

5 Q Looking at State's Exhibit No. 1, again, is it
6 necessary to look at the underlying details of what happened
7 here and what he did?

8 A Yes.

9 Q Would you please relate to the jury the facts and
10 circumstances you found relevant in making your diagnosis
11 about Mr. Cook relating to this offense you're looking at
12 before you, the 1986 conviction for lewd act on a child?

13 A Yes.

14 MR. DUNN: Your Honor, I'm going to renew my objection
15 previously argued.

16 THE COURT: Thank you. I'll note your previous
17 objection. Your objection is overruled.

18 THE WITNESS: The affidavit stated that he molested a
19 nine-year-old female by rubbing her body with his hands,
20 rubbing her vagina and her buttocks, during which time, he
21 did have a knife present while this occurred in the Town of
22 Winnsboro.

23 Q And what did you find in looking at the incident
24 reports and things like that? Was this a child who was
25 related to him in any way, shape or form?

1 A No. My understanding was she was an acquaintance.

2 Q Okay. What was the sentence of the Court? What did
3 the Judge give him when he was found guilty, when he pled no
4 contest to the charge or nolo contendere?

5 A He was sentenced to 10 years, provided upon the service
6 of three years and three years under the supervision of
7 South Carolina. And a condition ordered was to attend
8 mental health counseling.

9 Q Now, based upon your interview with him and looking at
10 all the records you looked at, did he ever go to mental
11 health counseling regarding that conviction?

12 A Well, my understanding was his supervision was violated
13 because he did not attend.

14 Q Okay. I now hand you a certified copy from the Clerk's
15 Office in Fairfield County indictment number 2007-GS-20-343,
16 conviction date of May 9, 2011. Is this a document you've
17 seen as part of your work on this case?

18 A It is.

19 Q Okay. So that's the sentencing sheet, the indictment
20 and the warrants that went with that conviction?

21 A Yes, sir.

22 Q What was the conviction for?

23 A Lewd act.

24 Q And is that a sexually violent crime in South Carolina?

25 A It is.

1 Q I've got to ask you that each time, okay?

2 A Yes, sir, it is.

3 Q Okay. Thank you.

4 MR. BOGLE: I'd like to move to introduce this
5 conviction for lewd act as State's Exhibit No. 2.

6 THE COURT: Mr. Dunn?

7 MR. DUNN: There's no objection to that document.

8 THE COURT: State's Exhibit No. 2 is admitted into
9 evidence without objection.

10 (WHEREUPON, State's Exhibit No. 2 is admitted into
11 evidence.)

12 BY MR. BOGLE:

13 Q What's the date of the conviction, the lower right-hand
14 corner of the sentencing sheet?

15 A May 9th, 2011.

16 Q And in the upper right-hand corner, the date of the
17 offense?

18 A July 11, 2007.

19 Q Again, is this something you looked at as part of your
20 evaluation?

21 A It is.

22 Q And it's something you relied upon in making a
23 determination about Mr. Cook?

24 A Yes.

25 Q And it's something relied upon by experts in your

1 field; is that correct?

2 A Yes.

3 Q What are the underlying facts of this case that you
4 found relevant to your diagnosis to what Mr. Cook did?

5 A According to the indictment, he committed a lewd act
6 upon a child under the age of 16 by licking between the legs
7 and kissing upon the victim, who was six years old, with the
8 intent of arousing or appealing his sexual desires.

9 Q And what was the sentence of the Court on that one?

10 A He was sentenced to time served.

11 Q So he had been in jail awaiting trial?

12 A Yes.

13 Q And got sentenced to whatever time that was?

14 A Yes.

15 Q And what was the date of conviction, the bottom of the
16 sentencing sheet?

17 A May 9th, 2011.

18 Q I approach you again and I show you a certified copy
19 from the Clerk of Fairfield County of indictment number
20 2007-GS-20-346, along with the sentencing sheet, indictment
21 and the warrant. Have you seen that document before?

22 A I have.

23 Q And what's the date of conviction, lower right-hand
24 corner of the sentencing sheet?

25 A May 9th, 2011.

1 Q So same date as the last one?

2 A Yes, sir.

3 Q And the date the offense occurred?

4 A July 9th, 2007.

5 Q And is the crime there lewd act on a child?

6 A It is.

7 Q And, again, is that a sexually violent crime in South
8 Carolina?

9 A It is.

10 Q Now, looking at both State's Exhibit 2 and State's
11 Exhibit 3 where it talks about how he pled guilty, did he
12 plead guilty under something called North Carolina vs.
13 Alford?

14 A Yes.

15 Q Okay. As a forensic psychiatrist, do you know what
16 that means?

17 A I do.

18 Q What is it?

19 A It means that he was not saying he committed the
20 offense, he did not plead guilty, but he understood that if
21 this case were to go to a trial, there was a high chance he
22 would be convicted.

23 Q And does it have the same affect on your life as far as
24 prison, as far as losing certain rights as if you pled
25 guilty?

1 A Yes.

2 Q So it's a conviction?

3 A Yes.

4 Q And is a plea under North Carolina vs. Alford a
5 conviction under the Sexually Violent Predator law?

6 A It is.

7 Q The third one I showed you, State's Exhibit No. 3 --

8 MR. BOGLE: Again, move to introduce this into
9 evidence. I called it State's Exhibit No. 3. It's not yet.
10 Move to admit it as State's Exhibit No. 3.

11 MR. DUNN: No objection to the actual document.

12 THE COURT: State's Exhibit No. 3 is introduced into
13 evidence without objection.

14 (WHEREUPON, State's Exhibit No. 3 was admitted into
15 evidence.)

16 BY MR. BOGLE:

17 Q Now, Dr. Maddox, what underlying details or facts about
18 this case did you find significant that you want to share
19 with the jury?

20 A The indictment held that he pulled his penis out of his
21 pants and masturbated in front of the victim, who was an
22 11-year-old female.

23 Q Were these victims related to him in this case?

24 A They were not.

25 Q And what sentence did he get from the Court?

1 A He was sentenced -- this was is a little different --
2 to time served, but with special conditions that he be on
3 the sex offender registry and that he have electronic
4 monitoring.

5 Q Okay. Next, I approach you with a certified copy from
6 the Clerk's Office here in Winnsboro, indictment number
7 2012-GS-20-332. Is this a document you've seen as part of
8 your work in this case?

9 A It is.

10 Q Okay. And is that a conviction here in Fairfield
11 County?

12 A It is.

13 Q What is it a conviction for?

14 A Criminal solicitation of a minor.

15 Q And what's the date he was sentenced in the lower
16 right-hand corner of the sentencing sheet?

17 A August 5th, 2013.

18 Q And then the date of the crime in the upper right-hand
19 corner?

20 A September 1st, 2012.

21 Q Is criminal solicitation of a minor a sexually violent
22 crime under our law?

23 A It is.

24 MR. BOGLE: Move to introduce this as State's Exhibit
25 No. 4, Your Honor.

1 THE COURT: Mr. Dunn?

2 MR. DUNN: Again, no objection to the actual document.

3 THE COURT: State's Exhibit No. 4 introduced into
4 evidence without objection.

5 (WHEREUPON, State's Exhibit No. 4 was admitted into
6 evidence.)

7 BY MR. BOGLE:

8 Q Dr. Maddox, regarding this conviction, State's Exhibit
9 No. 4, what underlying details about this crime did you find
10 significant in reaching your decision or your conclusions
11 about Mr. Cook?

12 A Again, according to the indictment, he attempted to
13 entice the victim to engage or participate in sexual
14 activity. And the arrest warrant stated that he offered a
15 sexual act upon an 11-year-old minor, which occurred at
16 Jackie's Sandwich Shop.

17 Q Okay. So the four cases we're talking about, we're
18 talking ages six, nine and 11, is that, basically, it?

19 A Correct.

20 Q All of them girls?

21 A Yes.

22 Q Okay. Now, do you rely solely on a person's past
23 criminal history to make an ultimate decision?

24 A No.

25 Q Okay. In this particular case, is it also necessary to

1 look at other criminal convictions that might not be
2 classified as sexually violent?

3 A Yes.

4 Q Why is that the case?

5 A Any kind of conviction or any behaviors that,
6 certainly, have a sexual component to them, it's necessary
7 to review them.

8 Mr. Bogle, I need to backtrack, too. I looked at my
9 report. I think I misspoke, one of the victims, the
10 six-year-old victim, one of his victims was related to him,
11 it was a niece.

12 Q That was a niece?

13 A Yes, sir.

14 Q Okay. So the four little girls we're talking about,
15 one was a niece, but the others were not related to him?

16 A That's correct.

17 Q Again, talking about other criminal history. Why,
18 again, is it necessary to look at other criminal history
19 that is not a sexually violent crime?

20 A For a number of reasons. Again, especially if it is a
21 crime that has to do with sexual activity, illegal sexual
22 activity, that's important. And, also, as I mentioned
23 before, if there's been a crime or behavior that's shown
24 violence towards another individual, that's important in
25 these cases. They're risk factors. Again, just looking at

1 things that makes somebody's risks higher. And we, also,
2 look at things that make people's risks lower. So those are
3 risk factors that need to be examined.

4 Q What is it you found significant about his other
5 criminal history in making your conclusions about Mr. Cook?

6 A He's had --

7 MR. DUNN: Your Honor, I renew my objection again.

8 THE COURT: I note your objection for the record and
9 you're overruled.

10 BY MR. BOGLE:

11 Q What about his other criminal history did you find
12 significant in reaching a conclusion about this case?

13 A There was a 1989 charge and conviction for assault and
14 battery of a high and aggravated nature. And what happened
15 in this case, in July of 1989, he asked a 16-year-old
16 female, a Belk department store clerk to help him find a
17 gift for his girlfriend. While holding a garment up against
18 the clerk, he put his hand in her crotch. He pleaded guilty
19 to assault and battery of a high and aggravated nature and
20 was sentenced to nine years consecutive to a probation
21 revocation of seven years.

22 Q Was there, also, another aggravated assault back when
23 he was a juvenile, meaning under 17?

24 A There was.

25 Q What about the indecent exposure charges, did you find

1 any of those?

2 A Yes.

3 Q How many?

4 A He had two in the community and, also, there were two
5 counts while he was confined in the Department of
6 Corrections.

7 Q So two indecent exposure convictions while he was out
8 in the community?

9 A Yes, sir.

10 Q Were those on separate dates or at the same time?

11 A They were separate dates. One in 2002 and one in 2004.

12 Q Was there, also, a peeping tom conviction?

13 A There was.

14 Q When I say peeping tom, what does that mean?

15 A Watching someone in the state of undress and they don't
16 know they're being observed.

17 Q Okay. What was the date of that?

18 A 1999.

19 Q Now, what's the significance of all these other crimes?
20 Would seem to have a sexual overtone to them?

21 A Yes. Well, they're significant for a number of
22 reasons. First of all, each one of them are different
23 behaviors. So we know that he's had a history of some
24 crimes that involved sexual gratification and response to
25 young females. We know that he's had charges and

1 convictions for exposing his genitals. We know that he's
2 had a peeping tom conviction. We, also, know that he was
3 convicted for grabbing the crotch of a female employee.
4 Each one of those are symptoms that you can see with sexual
5 disorders.

6 There are nine different sexual disorders. They're
7 called Paraphilias. In psychiatry, we have a book that we
8 use called the DSM. And the reason we use that book is so
9 if I call a psychiatrist or a psychologist in California, we
10 understand we're talking about the same illnesses.

11 So Paraphilias mean deviant arousal. And there's nine
12 different kinds. And each one of those charges, peeping
13 tom, which in psychiatric terms, we call Voyeurism, that's a
14 sexual disorder. There's a sexual disorder known
15 Frotteurism, which is grabbing somebody, touching them
16 without consent, which would be consistent with him grabbing
17 the crotch of the young lady at Belk. There's also
18 Exhibitionism, which is exposing yourself or showing your
19 genitals. So each one of those charges and convictions
20 represent a different potential paraphilic diagnosis.

21 Q Now, regarding these crimes, you're interviewing the
22 guy about all these things?

23 A Yes.

24 Q What is he telling you about this? What is he saying
25 about these crimes, about the victims, about things like

1 that? What's he saying to you about this which you found
2 significant?

3 A Well, Mr. Cook, he did plead under Alford to the lewd
4 act charges, the four sets of those, and he denies those
5 offenses. He adamantly denies that he offended against the
6 children in these cases. He stated to me that Fairfield is
7 a very small county and that people know him here. And he
8 feels like whenever there's some type of sexual impropriety,
9 it's very easy for someone to accuse him because they know
10 his history.

11 Q Okay. But the record shows a conviction four times?

12 A That's correct.

13 Q Even though it called no contest, even though it was
14 allowed to be under that case called North Carolina vs.
15 Alford, he still got convicted four times?

16 A That's correct.

17 Q Could have gone to trial, could have rolled the dice?

18 A Yes.

19 Q Did he say anything about the offense against his
20 niece?

21 A He denied that he sexually offended against his niece,
22 but he did say that he owed her an apology and he had since
23 apologized to her and they were on good terms.

24 Q Did he want her to forgive him?

25 A Yes.

1 Q Okay. Did you find that unusual that he would want
2 forgiveness from someone that he claims he didn't do
3 anything to?

4 A Not necessarily. Perhaps, a little bit. Also, if they
5 had gone to trial or if those things were in public, he may
6 have had some guilt about that. So it could be two-fold
7 reasons.

8 Q Was he forthcoming and honest to you in his reactions
9 to you when you were asking him questions?

10 A With some things, he was and with other things, he was
11 not. For example, when I was getting a sexual history from
12 him, he was pretty straightforward in describing his sexual
13 activity and some of the things he's done with consenting
14 adults. I felt like, given the circumstances, he was
15 somewhat straightforward, but he would deny other things.
16 The best example I can give, I call it being
17 self-protective, I asked him about drugs and alcohol. He
18 admitted to having an alcohol problem, but did not admit to
19 drug problems.

20 And then later on in the interview, one of the things I
21 do is he has a rap sheet. A rap sheet is a list of all your
22 convictions of history. And as I went through his rap
23 sheet, I found there were some charges involving cocaine.
24 And at that point, when I confronted him, he admitted that
25 he had, also, done cocaine in the past, but had quit using

1 in 2000.

2 So there was an instance when I asked him a general
3 question, he would deny the behavior, and then later during
4 the interview as I found evidence that, perhaps, was
5 contrary, he admitted to it when confronted.

6 Q Now, in his timeline of history, starting as far back
7 as 1986, State's Exhibit No. 1, the conviction there, have
8 there been times when he was placed on probation by the
9 courts?

10 A Yes.

11 Q Have there been times when that probation got revoked
12 by the courts?

13 A Yes.

14 Q And then looking at Page 7, there's kind of list of
15 them there in your report, why is it important for you -- or
16 is it important for you to look at probation revocations on
17 a sex offender?

18 A It's very important.

19 Q Why is that?

20 A We know in the terms of mental illness called
21 Paraphilia, when you have a deviant sexual arousal, persons,
22 when they are caught and when they're under community
23 supervision, normally, their deviant arousal, that deviant
24 drive stays -- it, basically, goes into remission for, at
25 least, a year after the time they've been convicted or

1 released from probation. So the fact that he was on
2 supervision and reoffended again during supervision is
3 evidence that he has a more severe form of the illness, that
4 it's harder to control.

5 Q Okay. Now, in this case, his probation was revoked,
6 according to what I have in your report, at least, three
7 times; is that right?

8 A That's correct.

9 Q Okay. Did he get sex offender treatment while at the
10 South Carolina Department of Corrections?

11 A Yes, he did. And during the evaluation, I did not have
12 that data. I had through the Department of Corrections a
13 history of some of the programs. And he was very adamant
14 and said that he had treatment. And those records, I
15 recently received them on Friday and there is, indeed, proof
16 that he had some treatment while he was confined.

17 Q Okay. Now, they have something they used to CSTAR,
18 C-S-T-A-R, CSTAR-I. Is that the initial sex offender
19 treatment course, or was it back in the 1980's?

20 A Yes, sir, and the 90's.

21 Q And that's the one that he took and completed?

22 A That's correct.

23 Q That would be about 1987; is that right?

24 A Well, actually, in looking at his records, he had it a
25 number of times. Each time he went back into the Department

1 of Corrections; it looks like three separate occasions, he
2 completed the CSTAR-.

3 Q Okay. Did you, also, look at records where in 1992 and
4 1993, he then went to the next level, CSTAR-II, the second
5 level of sex offender treatment?

6 A Yes.

7 Q And what happened to him then?

8 A He was terminated.

9 Q Okay. For poor attendance or just for not going?

10 A On one occasion for poor attendance.

11 Q Okay.

12 A And another occasion for failure -- for not
13 progressing.

14 Q I show you this record, this printout from the
15 Department of Corrections, right here, have you see that
16 before?

17 A I have.

18 Q And is that the type of printout the Department of
19 Corrections does about a guy's stay in prison?

20 A Yes.

21 Q And does it mention him attending or being signed up
22 for this thing called CSTAR-II?

23 A Yes.

24 Q And what was the result both times?

25 A It's, actually, the same. I think it was a duplicate

1 entry. It shows that on June 2nd, 1994, he started
2 treatment in the CSTAR Group Phase II, and he was terminated
3 on October 25th, 1994, for poor attendance.

4 Q Okay. And this sheet right here, also, from the
5 Department of Corrections, does that show a different year
6 for Phase II?

7 A It does.

8 Q What year?

9 A It shows that he was enrolled on May 7th, 1993, and
10 terminated for insufficient progress.

11 Q Okay. Now, so based on what you've seen since you've
12 done your report. He went through Phase I. He tried Phase
13 II, at least, twice and got terminated for poor attendance
14 or something like that. Okay. But this is backing up early
15 1990's. Based on the fact that he got convicted again and
16 again after that, what effect did this sex offender training
17 have on him?

18 A Well, I'm familiar with the CSTAR program. I've,
19 actually, had some contracts and I've worked in the
20 Department of Corrections over the course of my last 28
21 years. And the CSTAR program, it had four phases. On the
22 first phase, CSTAR I, it's just, basically, education.
23 You're teaching someone what the diagnosis is, what the
24 illness is, what it means. CSTAR II begins where you begin
25 to process your behaviors. So CSTAR II is where the

1 treatment starts. CSTAR I is mainly an education group.
2 And so he's had the education group a number of times,
3 however, no evidence he got treatment. And without
4 treatment, he reoffended. So each time that he went back to
5 the prison and had CSTAR I, he offended again.

6 Q Okay. So is it safe to say if he gets it and offends
7 as soon as he gets out, whatever he got didn't take?

8 A That's correct.

9 Q Based upon -- well, one more thing. As part of the
10 records you looked at, you, also, mentioned earlier records
11 when he was serving time in the Department of Corrections.
12 Did you find any evidence of sexual misconduct found guilty
13 of while he was at the Department of Corrections?

14 A I did.

15 Q What did you find? I think I'm on Page 6 and 7 of your
16 report.

17 A Yes, sir, I've got it. He had two sexual misconduct
18 charges in the year 2000 and the year 2003. He was
19 convicted for masturbating in front of female officers.

20 Q Did he deny this to you?

21 A Yes. He stated that he was masturbating, but not in
22 public and that the female corrections officer rounded the
23 corner, but that he was not purposely masturbating in front
24 of her for arousal.

25 Q Okay. But the Department of Corrections found him

1 guilty of both of them as far as disciplinary infractions?

2 A Correct.

3 Q How does this -- being convicted of a sexual offense
4 while in prison, how does that relate to the type of
5 investigation you've done?

6 A Again, it shows just either very poor impulse control
7 or poor judgment, so it's a factor to consider. Because one
8 of the things you're doing in this statute is trying to
9 determine if they can control their behavior or not. So
10 again, it's either very poor judgment or that he's so
11 impulsive that even when it's a situation where most people
12 would not engage in those kinds of behaviors, he is.

13 Q Earlier in your testimony, you referred to a book
14 looked at by psychiatrists and psychologists called the DSM.
15 Does that stand for Diagnostic and Statistical Manual?

16 A Yes.

17 Q And that's the standard list of criteria for mental
18 diseases?

19 A That's correct.

20 Q And it's consistent throughout the country?

21 A Yes.

22 Q Now, let's look ahead. Based upon all the records
23 you've looked at, the convictions we've talked about, his
24 sex offender history while at the Department of Corrections,
25 have you been able to diagnose Johnny James Cook with a

1 relevant mental abnormality or a personality disorder or
2 both?

3 A I did.

4 Q What's your diagnosis?

5 A I diagnosed him with both a mental abnormality and a
6 personality disorder.

7 Q Let's start with what personality disorder did you
8 diagnose him with?

9 A Antisocial Personality Disorder.

10 Q And what does that mean?

11 A Personality disorders in psychiatry, those are things
12 about our personalities that are life-long and they're not
13 very adaptive. And so a personality disorder is diagnosed
14 when somebody continues to engage in maladaptive behaviors
15 through the course of their lifetime. So it's not just, for
16 example, if somebody just had one or two crimes, say, within
17 a year, they would not meet the criteria for Antisocial
18 Personality Disorder.

19 We look for a presence since childhood, childhood going
20 into adulthood of acts of illegal natures, of lack of
21 concern for the welfare of others, deceitfulness, there's
22 symptoms that we look at. And he's had that pattern, even
23 since childhood. He was in the Department of Juvenile
24 Justice for some aggressive behaviors. And these patterns,
25 if you look in his life, so he had the juvenile history.

1 And then since 1986, which is almost -- close to 30 years,
2 he's had a pattern of illegal acts.

3 Q So in addition to this personality disorder,
4 Antisocial, did you also find evidence or diagnose him with
5 any mental abnormalities?

6 A I did.

7 Q And what are those?

8 A His technical diagnosis -- and I apologize, because
9 this is a book, we have to go by the exact name. It's
10 called Unspecific Paraphilic Disorder.

11 Q And paraphilic means a sexual deviance?

12 A That's correct.

13 Q And what types of Unspecific Paraphilic Disorders did
14 you find evidence of to diagnose him?

15 A In psychiatry, when we diagnose an Unspecific
16 Paraphilic Disorder, we are to list the disorders that the
17 person has the criteria for. The reason I didn't list these
18 diagnoses separately is in deference to, actually, Mr. Cook
19 because he's denied these offenses. If he had admitted to
20 these offenses, the diagnosis would be Pedophilia, it would
21 be Exhibitionism, and it would be Voyeurism. And I'll
22 explain what those are. But because he's pled no contest
23 and he's denied those, I chose to put unspecified because
24 he's not admitting to those. The behaviors are enough, the
25 convictions are enough for me to have done that, but I still

1 wanted to just be as conservative as I could.

2 So in my opinion, I diagnosed him with Unspecified
3 Paraphilic Disorder. And the first was Pedophilic Disorder.
4 It's called --

5 Q What does that mean, Pedophilic Disorder?

6 A Pedophilic Disorder means arousal to children who have
7 not reached puberty, a child less than the age of 12.

8 Q Okay. Was his Pedophilic Disorder attracted to --
9 what's the entire thing you found him with?

10 A The technical diagnosis is Pedophilic Disorder,
11 sexually attracted to females, nonexclusive. And
12 nonexclusive means that he's also attracted to adult
13 females. There are some pedophiles that are only attracted
14 to children, never have relationships with adult females.
15 Mr. Cook has had a number of consensual adult relationships,
16 so that's why it's called nonexclusive.

17 Q And then the next one?

18 A The next was called Frotteuristic Disorder. And
19 Frotteurism is the nonconsenting touching of a person. So,
20 for example, one of the common places we see someone with
21 Frotteurism is maybe someone working in a shoe store and
22 they have a foot fetish and they touch women's feet when
23 they're trying on shoes. Another common place you see that
24 behavior is on crowded buses or trains where people may rub
25 up and bump against an unsuspecting person. But it means

1 nonconsenting touching of a body part of a person.

2 Q And this was based on the thing that happened in Belk?

3 A That's correct.

4 Q Okay. Go ahead. What else?

5 A And I need to add to that one. To be diagnosed with a
6 Paraphilic Disorder, those behaviors need to occur over six
7 months. And so I did not -- the reason I did not diagnose
8 Mr. Cook with Frotteurism is he's only had that one --
9 there's only been one report of that and that did not meet
10 the six-month criteria either.

11 Q But you found evidence of it because of what he did?

12 A Correct.

13 Q Okay.

14 A Just in totality with all the other sexual behaviors, I
15 had to look at that in that manner. Because when you have
16 one of these Paraphilic Disorders, you average four in a
17 lifetime, so that's, certainly, consistent with the history
18 and development of this diagnosis.

19 The third I diagnosed was Voyeuristic Disorder. And,
20 again, this is the peeping tom. And, again, I did not make
21 the full diagnosis because it did not have the six-month
22 period of time. There's only been the one conviction.
23 There were two women undressing in a bathroom. And the
24 affidavit stated that for him to have seen them, he would
25 have had to have been on the front porch. So it's only been

1 one episode of Voyeurism, which is why I did not diagnose
2 the full criteria for that, because he did not meet the
3 six-month criteria.

4 The Exhibitionistic Disorder, sexually aroused by
5 exposing genitals to pubertal children and physically mature
6 individuals. You have to look at who the behaviors are
7 directed at. And he's had four of those charges and does
8 meet the six-month criteria. But, again, he denies that he
9 was exposing himself in public, so, again, out of deference
10 to him and his legal rights, I chose to make the diagnosis
11 of Unspecified Paraphilic Disorder.

12 That means I think he has sexual disorders, there's
13 something wrong with him, he needs treatment. And these
14 disorders, it's consistent that there's been four different
15 kinds of behaviors over his life.

16 Q Now, the Pedophilic Disorder you found, that expands
17 almost 20 years?

18 A Correct.

19 Q From '86 to 2007, at least?

20 A Correct.

21 Q Now, when doing these type of evaluations, do you then
22 try to assess somebody's risks?

23 A Yes.

24 Q How do you do that?

25 A Well, there's a number of ways. There's some actuarial

1 scales that are used pursuant to the statute. What
2 actuarial scales are is kind of what the insurance company
3 does, for example. If they take your height, a woman is
4 five feet four inches, they say they can guess what your
5 weight is supposed to be and they do this statistically.
6 Say, for example, if you're a five-foot-four woman, you're
7 supposed to weigh 120 pounds. They give you a hundred
8 pounds for being five foot and they add five pounds for each
9 inch that you are. So that's an actuarial assessment. If
10 you go into a doctor's office, they may say you're
11 overweight for your size. Well, of course, that's not
12 necessarily always true. Some people are bigger boned, some
13 people maybe have very dense muscles. So, again, it's a
14 tool that we use.

15 So there is a test that I use called the Static 99R.
16 And what that test is, it's an actuarial scale. So it takes
17 people that have already been convicted of sex offenses.
18 These are people that have already been convicted. They've
19 done their time in prison and they reoffend again. They get
20 in trouble again. And what this test does is it compares
21 Mr. Cook to this group of offenders that we know got in
22 trouble again and we're looking at what do they have in
23 common, what things are similar about them? So I use that
24 test.

25 Q And the Static-99R, that's based on studies of

1 thousands of sex offenders who reoffended again?

2 A Yes.

3 Q And, basically, you go through things about him and
4 give him a score, a zero or a one or whatever it might be?

5 A That's correct.

6 Q Starting with his age and other things. Now, this
7 measures static factors, right?

8 A Yes.

9 Q And static factors are things that don't change -- or
10 can't change, except for age, of course?

11 A Correct. There's different things you look at when
12 you're looking at risk factors. There's static risk
13 factors, and those are things of the past. Those are things
14 that can't change, they're always going to be the same. And
15 then we also look at what's called dynamic risk factors.
16 Dynamic risk factors are things that you can change, things
17 that treatment can help.

18 So, for example, if we took the heart disease example,
19 you might have high cholesterol, but you can change that
20 with medication. You can't change your family history, but
21 you can change your cholesterol level. If you have high
22 blood pressure, you can take medicines and control that. So
23 we're looking at things that don't change and the things
24 that you can change.

25 Q What were the most significant static or unchangeable

1 risk factors about Mr. Cook that you found?

2 A He had a number. There's some factors that are
3 considered protective and then there are some factors that
4 are not protective. I'm going to get my exact test so I can
5 read you that. One of the things--- I'll go through --
6 there's, basically, 10 risk factors that we look at. And
7 some of them are protective for Mr. Cook.

8 The first factor that we look at is his age. And his
9 age is protective. What happens is we know that in adult
10 males, a normal sex drive -- a normal drive in a male is to
11 have sex every other day or every day, so two to seven times
12 a week, it depends, three to seven times a week. So what
13 happens is men, after the age of 45, their testosterone
14 begins to drop, so age does become a protective factor as we
15 get older. And so he got his age -- they look at ages 40 to
16 59 and consider that a protective factor. Now, when he
17 turns 60, he'll have even more protection against that. So
18 it's, basically, looking at testosterone. So that was a
19 protective factor for him because he's in his 50's now. I
20 believe he recently had a birthday.

21 One thing that's not considered protective for him is
22 that he has not lived -- he's not had a long-term intimate
23 relationship. And the Static-99 describes a long-term
24 intimate relationship as living with someone for two years.
25 Now, he's had some serious relationships and he's had some

1 that lasted over a year. One of the women died, the other
2 two, they broke up. But he has lived with someone, but not
3 for the two-year period that's defined. So that's
4 considered a risk factor, that he's not had a long-term
5 intimate relationship with an adult female.

6 One of the other factors, this was protective for him,
7 that he's never been convicted of violence associated with a
8 sexual act. So he's never had -- for example, he wasn't
9 accused of kidnapping someone and raping them and beating
10 them. So that's protective for him.

11 Q Meaning he didn't score a point?

12 A That's correct.

13 Q If he had had that, he would have gotten a point on
14 this scale?

15 A That's correct.

16 Q And because of his age, he got a minus one?

17 A Correct.

18 Q Go ahead.

19 A He has had prior nonsexual violence convictions. And
20 that would have been an assault and battery when he was in
21 juvenile court and, also, he had the assault and battery of
22 the woman at the department store.

23 Next, we look at -- this is where his risk is really
24 elevated more than most offenders. You have to look at the
25 number of prior sex offenses he's been charged and convicted

1 of. And he's had between three to five charges in the past.
2 So that elevated his risk significantly. You have to look
3 at the fact that he's had -- we take the criminal
4 solicitation of a minor charge, which was his last one, and
5 you go back in time. He's had five other charges of sexual
6 natures in the past with three prior convictions.

7 Q So in scoring this particular part, you're not
8 necessarily looking at sexually violent crime convictions,
9 you're looking at crimes of a sexual nature?

10 A That's correct.

11 Q That includes like the ABHAN, grabbing the girl at
12 Belk, for example?

13 A That's correct.

14 Q Okay. Go ahead.

15 A And then his prior sentencing dates also elevates his
16 risk. The fact that he's had four or more prior sentencing
17 dates.

18 He got -- another risk factor was a conviction for a
19 noncontact sex offense. And that's looking at his exposure,
20 his peeping tom behavior, and his indecent exposure charges.
21 So he's had noncontact offenses as well.

22 Finally, he -- excuse me, two more things. He got an
23 elevated risk for victims not being related to him. When
24 you're looking at people that commit sexual disorder acts, a
25 lot of times, if it's within the family, it's a lower risk

1 because sometimes there's things going on in the family that
2 doesn't necessarily mean the person is a pedophile. Maybe
3 there's a stepdaughter and there's some confusion. So all
4 of those -- when it's a family member, it's a different set
5 of things that we're looking at. So the fact that he's had
6 offenses among girls and women that were not in his family
7 elevates his risk.

8 And then, finally, he also had an elevated risk because
9 he's had victims that he did not know, they were strangers.
10 And that would be the victims of the indecent exposures,
11 that would be the victims of the Voyeurism and the victim at
12 Belk.

13 Finally, as a protective factor, he has not had any
14 male victims.

15 So those are, basically, the 10 factors that we looked
16 at in this case. And, again, the only thing that you can
17 see that can change is that when he's 60, he gets --
18 actually, it will lower his risk. So time alone will
19 eventually lower his risk.

20 Q So based on this scoring system, the scoring sheet you
21 used, looking for these risks, giving a point there, a point
22 there, subtracting a point, whatever, what was the final
23 score he got on the Static-99R based on his history?

24 A He scored a seven.

25 Q A seven?

1 A Yes.

2 Q Now, what does a seven mean as far as likelihood to
3 reoffend? The people that developed this test, they've come
4 up with some percentages, have they not?

5 A Yes.

6 Q For the chance of reoffending sexually five years out?

7 A Yes.

8 Q And what is his chance of reoffending sexually five
9 years out based upon the score and your knowledge of this
10 test and how to administer it?

11 A The different risk levels are well below average, below
12 average, average, well above average. And he scored,
13 actually, at the level of well above average risk level.

14 Q So a seven is well above average?

15 A Yes.

16 Q And his percentage of offending sexually five years
17 out?

18 A What they do is they look at, again, these people that
19 these tests were normed on and they looked at if you've
20 score a seven and we compare you to other offenders, 27
21 percent of people who score a seven go on to reoffend within
22 five years.

23 Q Do they also do a comparison as to how many times more
24 likely you are to reoffend than, say, the average sex
25 offender?

1 A Yes.

2 Q And what was the number here?

3 A That's called a relative risk. So when you compare him
4 to all the other sex offenders, the whole group that these
5 test were normed on, he's 5.25 times more likely to reoffend
6 than another sex offender. So even amongst the sex
7 offenders, his risk is elevated.

8 Q Now, that's the static factors that the Static-99R
9 measures. What about dynamic or changeable risk factors?
10 Did you find any significant dynamic factors relating to Mr.
11 Cook?

12 A Yes, I did. Would you like me to --

13 Q Go ahead, yes.

14 A There's a few. First of all is if you have multiple,
15 what's called, Paraphilias, meaning that he has different
16 areas that he has had sexual problems with, the indecent
17 exposure, the peeping tom, the offenses against the children
18 and then the grabbing of the women. So he's had multiple.
19 If all of his charges were just, say, peeping tom, he would
20 not have multiple Paraphilias, but the fact that he's had a
21 variety of those kind of behaviors, that's a dynamic risk
22 factor.

23 The fact that he has not had a long-term intimate
24 relationship with a female, even though, again, in his
25 defense, he has for a year, but the factors that they look

1 at are based on two years.

2 What I considered lifestyle impulsiveness, he's had a
3 lot of impulsivity over his years. If you look at his
4 history, he admits he's been a drinker. So a lot of his
5 offenses were involved -- had to do with alcoholism that
6 he's had some charges with, but he -- he -- when he's on
7 supervision, he does things impulsively that get him in
8 trouble again. So that's a factor. Those are things that
9 we can change. All of these things we can fix, we can
10 change and treat.

11 And in my opinion, he has a long-term pattern of
12 resistance to rules and supervision. He was violated on
13 probation three times. He's had numerous convictions. So
14 those are the things specifically about him that place him
15 at risk that can be treated.

16 Q Now, Dr. Maddox, in your opinion, to a reasonable
17 degree of medical certainty, have you diagnosed him with the
18 mental abnormalities and the personality disorder you
19 mentioned a few minutes ago?

20 A Yes.

21 Q And in your opinion, again, to a reasonable degree of
22 medical certainty, do these sexual disorders and that
23 personality disorder cause him serious difficulty in
24 controlling his behavior?

25 A Yes.

1 Q In your opinion, again, to a reasonable degree of
2 medical certainty, is Johnny James Cook, based upon all of
3 this and what you've testified about, is he likely to commit
4 future acts of sexual violence?

5 A In my opinion, yes.

6 Q Do these mental abnormalities and the personality
7 disorder that you found, in your opinion, again, to a
8 reasonable degree of medical certainty, do these things
9 affect his emotional or volitional capacity so that he is
10 predisposed to commit future sexually violent offenses?

11 A In my opinion, yes. And I base it on the fact --
12 again, if you look at people that are on supervision,
13 usually, most sex offenders will not reoffend while they're
14 answering to a probation officer, while they know they're
15 being monitored. And he has failed that supervision.

16 I also base it on the fact that he's had treatment
17 before. Even though it was basic treatment, it wasn't the
18 treatment he needs, it was the start of the treatment, but
19 each time, even after he had that treatment, of course, he
20 reoffended again.

21 So the fact that he's had some prior treatment and the
22 fact that he's offended while on supervision, those are
23 bases for that opinion.

24 Q Again, to a reasonable degree of medical certainty, do
25 you have an opinion or a conclusion as to whether Mr. Cook

1 has the propensity to be dangerous and commit future
2 sexually violent offenses?

3 A Yes, in my opinion, he does.

4 Q And is that --

5 A Especially to latency-aged females, children that are
6 not sexually developed, females.

7 Q And is that propensity that he has, again, to a
8 reasonable degree of medical certainty, is that propensity
9 of such a degree that it poses a menace to the health and
10 safety of others?

11 A In my opinion, it does.

12 Q Do you also have an opinion, again, to a reasonable
13 degree of medical certainty, does Mr. Cook's mental
14 disorders you've testified about, Pedophilic Disorder,
15 Voyeurism, the Antisocial, all those things, do those things
16 make him likely to engage in acts of sexual violence unless
17 he's confined for long-term control, care and treatment?

18 A Yes.

19 Q And again, in your opinion, to a reasonable degree of
20 medical certainty, does Johnny James Cook meet the legal
21 criteria to be considered a sexually violent predator at
22 this time?

23 A Yes, he does.

24 Q Is outpatient treatment the road for him?

25 A No.

1 Q Why not?

2 A I'm trying to look in my report. First of all, we know
3 that he's had treatment opportunities before and he was
4 terminated for from them. The CSTAR programs that he had in
5 the Department of Corrections, those are equivalent to
6 outpatient treatment. Those are treatments that you can
7 volunteer, you go to the groups. If you don't participate,
8 they can terminate. So he's, certainly, had an opportunity
9 at less restrictive groups in the past and he did not do
10 well.

11 Then he's had some difficulty even when he was under
12 supervision doing some of the requirements that he needed to
13 in terms of his sex offending behaviors. So he's failed
14 community programs as well.

15 Q Like being on probation and getting it revoked, for
16 example?

17 A Correct.

18 Q If released, who would be at risk for Mr. Cook?

19 A In my opinion, mainly, latency-aged females.

20 Q Mainly what?

21 A Latency-aged females, females that have not had sexual
22 development yet, below the age of 12.

23 Q Prepubescent?

24 A Yes.

25 MR. BOGLE: Thank you, Doctor. Please answer any

1 questions counsel may have or the Judge may have.

2 THE COURT: Let's take a break. We've been at it for
3 about an hour and 20 minutes. We'll take about a 15-minute
4 break.

5 Ladies and gentlemen, go back to your jury room and
6 refresh yourselves. I'm going to ask that before you come
7 back, if you would -- the only thing I want you to discuss
8 about this case is elect a foreperson. When you come back
9 in, I'm going to ask the foreperson take this end seat on
10 the front row and to keep that seat for the remainder of the
11 trial. I remind you again, the foreperson has no more say
12 than any other member of the jury panel. It's simply an
13 individual in which the Court needs to be able to
14 communicate with the jury.

15 So take a break, elect a foreperson and in about 15
16 minutes, we'll have you back out.

17 Everyone remain seated while the jury until the jury
18 panel gets out.

19 Again, do not discuss anything about this case.

20 (The jury exits the courtroom.)

21 THE COURT: We'll be at ease for about 15 minutes.

22 (Short break.)

23 THE COURT: Is the State ready?

24 MR. BOGLE: Yes, Your Honor.

25 THE COURT: The Defense ready?

1 MR. DUNN: Yes, Your Honor.

2 (The jury enters the courtroom.)

3 THE COURT: Ladies and gentlemen of the jury, I assume
4 y'all have selected a foreperson. Didn't even have to
5 change seats.

6 And your number?

7 THE FOREPERSON: 116.

8 THE COURT: Ms. Roach?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: Ms. Roach, when you come in and out the
11 rest of the trial, if you will always take that seat.

12 And then the alternate, ma'am, if you would always take
13 that seat.

14 The rest of you can sit wherever you see fit when you
15 come in and out.

16 Mr. Dunn, your witness.

17 MR. DUNN: May it please the Court, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. DUNN:

20 Q So as part of your evaluation of a person pursuant to
21 the Sexually Violent Predator program, is it possible for
22 you to administer some psychiatric or psychological tests
23 for that person?

24 A If you're licensed to administer and interpret them,
25 yes, sir. So, for example, the Static-99, I took a course

1 and passed that so that I'm able to license and administer
2 that test. But there's not many in psychiatry, but you can.

3 Q And the reasons why a doctor would administer those
4 tests is just to get a better idea of a person's
5 psychological or psychiatric functioning, right?

6 A It can be. But in this case, in specific, it's just a
7 more detailed test that looks at much more specific risk
8 factors than just relying upon them in general. But yes,
9 there are tests available that look at somebody's
10 personality profile. There's all kind of different
11 psychological tests one could administer.

12 Q And besides the Static-99R, you did not administer any
13 other tests to Mr. Cook?

14 A No, sir.

15 Q But there are -- as I asked before, there are other
16 tests out there that would be available for you to help
17 paint a picture of what he's like?

18 A Sure. Sure.

19 Q And you said that the likelihood of reoffending based
20 on the Static-99R was at 27 percent?

21 A Yes. What happened is he scored what's called a seven
22 on the Static-99. Then there's tables and you can look at
23 people with a score of seven. They look at the five-year of
24 how many get in trouble again. And they revise those
25 numbers every few years. They were just revised in 2016.

1 They try to update them, but that was the latest figures,
2 yes, sir.

3 Q So that means -- if it's a 27 percent likelihood,
4 there's 73 percent likelihood, he's not to reoffend,
5 correct?

6 A That's correct.

7 Q And you base that on his score, right?

8 A That's correct.

9 Q Now, earlier, you were shown a document by Mr. Bogle
10 regarding this sex offense treatment that he did while in
11 SCDC, right?

12 A Yes, sir.

13 Q And that was not something you've seen until, I believe
14 it was probably Friday before you saw that, right?

15 A That's correct. And I believe your office provided it.
16 That's correct.

17 Q And my office provided it to Mr. Bogle and Mr. Bogle
18 provided it to you, right?

19 A Yes, sir.

20 Q And you said he did the CSTAR-I, correct?

21 A Yes.

22 Q But that he did not do the CSTAR-II; is that right?

23 A Correct. He began it, but he was terminated. He,
24 certainly, did participate -- there was one of the forms
25 that I think he was in the program for three months. And

1 then the person left, the person transferred and then he was
2 terminated. But he did not complete it as far as the
3 records that I looked at.

4 MR. DUNN: May I approach the witness, Your Honor?

5 THE COURT: Yes, you may.

6 Q I'm going to show you a document that -- have you seen
7 that document before, Dr. Maddox? Have I shown it to you or
8 Mr. Bogle or somebody else?

9 A This looks familiar, yes.

10 Q And down in the right-hand corner, there's a bunch of
11 handwritten notes, correct?

12 A Yes.

13 Q And in there, does it not look like it says he
14 completed CSTAR-I and CSTAR-II?

15 A It, certainly, does say that.

16 Q And then even further underneath that, it looks like he
17 might have performed some CSTAR-III classes?

18 A Yes.

19 Q So it is your opinion then that he has not done
20 CSTAR-II?

21 A It's hard to know. Some of the records say he didn't
22 and they qualify it as terminating, but this is, certainly
23 -- I think it's very fair to say this is a South Carolina
24 Department of Corrections program status review and it looks
25 like it's describing how he's worked, what programs he's

1 completed. And this document indicates that he may have
2 very well completed it. So there's two documents kind of
3 competing.

4 Q And they're both coming from the State, correct?

5 A Yes, sir.

6 Q And in your documents that you reviewed in making your
7 evaluation, you looked at a bunch of what we call sentencing
8 sheets, right?

9 A Yes, sir.

10 Q And that's usually where a Judge signs off for a
11 sentence for a Defendant, correct?

12 A Yes, sir.

13 Q And along with those sentencing sheets, oftentimes,
14 there are attached indictments and warrants and those sort
15 of documents as well, correct?

16 A Correct.

17 Q And you reviewed those as well, correct?

18 A Correct.

19 Q During any of your reviewing of those documents, did
20 you ever look at actual court transcripts?

21 A No.

22 Q To see what the -- so the actual allegations of what he
23 was doing in court that day, you don't know what was said
24 between the Judge and the Defendant or the Defendant's
25 lawyer or the prosecutor or anybody else that was in court

1 that day?

2 A That's correct.

3 Q And in your practice, is it fair to say that a lot of
4 times -- let me ask you this, have you ever reviewed court
5 transcripts as part of your evaluations?

6 A Sure.

7 Q Is it fair to say that, oftentimes, the information
8 contained in those transcripts is not always the same
9 information that's contained in a warrant as far as
10 allegations or what somebody is pleading to?

11 A That's correct. Happens many times.

12 Q Besides the indictments and the sentencing sheets, did
13 you look at any police reports?

14 A Yes. There were some warrants and there were some
15 incident reports, yes, sir.

16 Q Did all the cases have incident reports or just some of
17 them?

18 A I would have listed them.

19 Q Okay. You would have put that in your report?

20 A Yes, sir. And I don't see -- let's see. It looks like
21 I mainly looked at arrest warrants and indictments. The
22 only incident reports I would have looked at would have been
23 some of the things that happened in the Department of
24 Corrections. They had write-ups of what he was accused of.

25 Q And earlier, Mr. Bogle asked you about -- kind of

1 explained what an Alford was, right?

2 A Yes, sir.

3 Q The part that wasn't mentioned, though, is the reason
4 why a Defendant takes an Alford plea, oftentimes, is because
5 you're being offered some kind of benefit; is that correct?

6 A Sure.

7 Q So as opposed to taking chances with a jury, they take
8 a term of years, a number that they know is coming their
9 way?

10 A Absolutely, yes.

11 Q And on the pleas for Mr. Cook, at least, two or three
12 of those occasions, he got time served on his sentences,
13 correct?

14 A Yes, he did.

15 Q Which means once he was done with the Judge that day,
16 he went back to the jail and was released home, correct?

17 A That would be my understanding.

18 Q Now, it's my understanding you have diagnosed Mr. Cook
19 with Unspecific Paraphilic Disorder, correct?

20 A Yes.

21 Q But then you listed four different types that he may
22 exhibit; is that correct?

23 A Yes.

24 Q Now, is it fair to say that on each of those -- or, at
25 least, on the Frotteuristic and the Voyeuristic and the

1 Exhibitionistic Disorders that there must be some kind of
2 period of -- of activity over a six-month period?

3 A That's correct. And he does not -- that's why he
4 doesn't meet the whole criteria for that, that's correct.
5 You have to have those behaviors for a six-month period of
6 time because -- especially in people maybe that they were
7 intoxicated with alcohol, they may do things that they would
8 not normally do. So you look for a pattern.

9 Q And the other thing that a person -- let's talk about
10 the -- I believe it was the Voyeuristic one, you said that
11 he got just tendencies because he was exposing himself in
12 the jail?

13 A No, that one would be different. Voyeurism is the
14 peeping tom charge.

15 Q I'm sorry, the Exhibitionism?

16 A Exhibitionism, yes, sir. He's had four different
17 counts of that over a period of time, in 2002, 2004, and
18 2012 while confined in the Department of Corrections. So
19 that one did span the six-month period of time.

20 Q But is it fair to say the DSM-V, when it talks about
21 one having that disorder, that not only does it mean that it
22 last over a six-month period, but that the person must be
23 getting sexual gratification by the act?

24 A That's correct. And that's another reason why I didn't
25 make the full diagnosis of Exhibitionism. He denied that he

1 had any sexual gratification. He denied that those acts
2 were sexually motivated.

3 Q So if you get caught masturbating in jail or in public,
4 that in and of itself is not Exhibitionistic behavior,
5 correct?

6 A That's correct.

7 Q In your practice, you have dealt with a number of men
8 who have been charged with or -- either criminally or with
9 -- by the Department of Corrections with this behavior of
10 exposing themselves?

11 A Yes.

12 Q Is it fair to say that some of that is a power struggle
13 between the prisoners and the guards?

14 A Oh, yes. Many persons in the Department of
15 Corrections, they have charges for indecent exposure. It
16 doesn't always mean that the person has a sexual disorder.
17 In the Department of Corrections, there are a number of
18 reasons why people engage in that behavior. Some of that is
19 to defy authority and others is because sometimes there's a
20 relationship with some of the staff. It happens within the
21 Department of Corrections. Sometimes, some of the inmates
22 have relationships with the corrections officers.

23 Q When you were testifying about the Static-99R score,
24 that there was a relative risk of 5.2 times more likely to
25 reoffend, those are just based on the factors -- with those

1 10 factors contained in the Static-99R, correct?

2 A That is correct.

3 Q And that's not based on actual testing that was done by
4 you of Mr. Cook?

5 A No, it's just based on the percentage and then his
6 score compared against the other offenders. Keep in mind,
7 the numbers on the Static-99, they're felt to be
8 underreported because many persons don't get caught, even
9 people who have been in trouble before. It only captures
10 the people that have actually been caught and are subject to
11 legal sanctions. So the numbers aren't always accurate.
12 But that relative risk is based on that percentage against
13 all other offenders. So it's a statistic, but it's still
14 based on the -- it's based off the score that I gave him.

15 Q Is it fair to say that at the end of the day that
16 whenever a psychiatrist or a psychologist starts diagnosing
17 a person, whether it's in this setting or even in the
18 clinical setting, that there's a high degree of subjectivity
19 along with that diagnosis?

20 A I wouldn't say subjectivity, but I think that's very
21 fair. Psychiatrists are very good -- we're pretty good at
22 48 hours of diagnosing dangerousness. If you compare us to
23 the public, we're at 66 percent. We usually get that right.
24 So if we're in an emergency room setting and we're looking
25 at whether somebody would be violent in the next 24 to 48

1 hours, we're very good.

2 This is a long-term prediction, trying to look at
3 long-term behaviors. And so all we can do is what we do in
4 medicine all the time. Again, if there is subjectivity to
5 it, you could be at high risk to have a heart attack, but
6 that doesn't mean that you're the person that's going to.
7 So yes, I think there is -- I don't know what to call it,
8 subjectivity or individual factors, but there is some
9 guessing in there.

10 Q If somebody came into a hospital and they had a broken
11 arm, you could stick them into a machine and the x-ray would
12 tell you that it was broken?

13 A Absolutely.

14 Q And that's a pretty high degree of reasonable -- the
15 x-ray would more than likely show it?

16 A It depends on the radiologist that reads it, so there's
17 some subjectivity there as well.

18 Q Likewise, if somebody came in with some kind of blood
19 disease or cancer, we can do tests and the test spits out a
20 number and we can know that person is suffering from
21 whatever diagnosis we're looking for, right?

22 A Well, it's a piece of information. Remember, the
23 methodology of medicine is you take tests, you take pieces
24 of information and you synthesize it and make it a
25 diagnosis. There's no one blood test or anything that will

1 give a definitive diagnosis. You have to have medical
2 training. You have to have experience. You have to get
3 more history when possible. You don't want to do anything
4 based off of one test or one test result.

5 Q But if a person comes into an ER, the psychiatrist has
6 a 66 percent chance of determining whether or not the person
7 is going to be dangerous within a 48-hour period?

8 A That's right.

9 Q And based on the Static-99R, 27 percent chance to
10 determine whether or not that person is going to reoffend
11 within the next five years?

12 A That's correct.

13 MR. DUNN: Beg the Court's indulgence.

14 Q The DSM-V -- earlier, you and Mr. Bogey were talking
15 about the DSM, correct?

16 A Yes, sir.

17 Q The Diagnostic Statistical Manual or whatever it's
18 called; is that right?

19 A Yes.

20 Q We are now in the Fifth Edition?

21 A Correct.

22 Q Up until a couple years ago, there was the Fourth
23 Edition, text revised, I think is what it was?

24 A That's correct.

25 Q Is it fair to say that the DSM changes over time?

1 A It does. I've been around since the DSM-II and I've
2 had to relearn every one of those. So yes, they do change.

3 Q And it's possible in the next couple of years, the DSM
4 goes to a six?

5 A I hope not, but yes, it's, certainly, likely. We're
6 learning more things about mental illness. There's so many
7 things going on in medicine and research that it does
8 require revising sometimes. And that's the same as all the
9 ICD-IX. If you go into your doctor's office, they're always
10 using a billing code. Those change every time, too.
11 They've had 10 revisions. And that's just keeping up with
12 research and data.

13 Q Is the diagnosis changing or is how they code it
14 changing on ICD?

15 A Both. Sometimes, we learn new disorders. For example,
16 the autism, they've changed, they've added diagnoses and
17 things. It just depends, but it's a little of both.
18 Sometimes, the codes change, too.

19 Q Autism would be found within the DSM, would it not?

20 A Yes.

21 MR. DUNN: I don't believe I have anymore questions,
22 just beg the Court's indulgence.

23 (Pause.)

24 MR. DUNN: No further questions, Your Honor.

25 THE COURT: Mr. Bogle, any redirect?

1 MR. BOGLE: Very briefly.

2 REDIRECT EXAMINATION

3 BY MR. BOGLE:

4 Q Dr. Maddox, earlier, I showed you documents from SCDC
5 which suggested that he had been terminated from the second
6 or third course of the sex offender treatment, right?

7 A Yes.

8 Q And the one you just looked at that counsel showed you
9 suggest that he completed it?

10 A Yes.

11 Q So it's safe to say there's some confusion between the
12 records?

13 A Yes.

14 Q But notwithstanding all that, he still reoffended
15 later?

16 A That's correct. That record was, I believe, in 1994,
17 and he still had numerous charges after that.

18 Q And when we're talking about what's in a warrant versus
19 what's in an indictment versus what's in a transcript, a
20 typed-up transcript of a guilty plea, what's in the
21 indictment is what you plead guilty to, isn't that correct?

22 A Yes.

23 MR. BOGLE: Thank you.

24 THE COURT: Any recross?

25 MR. DUNN: No, sir.

1 THE COURT: Thank you, Dr. Maddox. You may step down.

2 THE WITNESS: May I be excused, Your Honor?

3 THE COURT: Any objection?

4 MR. DUNN: No objection, Your Honor.

5 THE COURT: Dr. Maddox, you're excused.

6 Mr. Bogle, call your next witness.

7 MR. BOGLE: Your Honor, at this time, the State would
8 rest.

9 THE COURT: Ladies and gentlemen, we need to take up a
10 brief matter outside of your presence. I'm going to allow
11 you to go back to your jury room. We'll have you back in
12 here very shortly.

13 Everyone remain seated while the jury panel goes out.
14 Again, do not discuss any of the testimony.

15 (The jury exits the courtroom.)

16 THE COURT: Mr. Dunn, any motions?

17 MR. DUNN: Your Honor, I would make a motion for a
18 directed verdict. I would argue that the State or
19 Petitioner, whatever it is we're calling the State --

20 THE COURT: The Petitioner.

21 MR. DUNN: Petitioner. There has not been enough
22 evidence presented by the Petitioner for the jury to make a
23 decision whether or not Mr. Cook meets the criteria for
24 sexually violent predator.

25 THE COURT: Thank you.

1 Mr.. Bogle, do you wish to respond?

2 MR.. BOGLE: I'm looking at the standard applied to
3 directed verdict, the evidence presented in the light most
4 favorable to the nonmoving party. We introduced the
5 sexually violent convictions for him. We've got the mental
6 abnormalities and a personality disorder. We've got
7 testimony about his likelihood to reoffend based not just on
8 her observations of him violating probation, but, also, the
9 Static-99 scores. We think there is sufficient evidence to
10 go to the jury.

11 THE COURT: Thank you.

12 I will deny the motion on behalf of the Defense. The
13 Court agrees there is sufficient evidence by which this case
14 need go to the jury.

15 Mr. Dunn, do you intend to introduce any evidence?

16 MR. DUNN: Yes. I sort of treat these sexually violent
17 predator cases like a criminal matter. I believe if you
18 read the case law and it's the way the Court of Appeals and
19 Supreme Court does it, they also sort of treat it like a
20 criminal matter, meaning beyond a reasonable doubt, the
21 lawyer is subject to PCR and that sort of thing. Maybe not
22 PCR -- actually, I think there is a PCR on the attorney
23 where they look at the attorney's conduct to see if he's
24 done everything he's supposed to or she's done everything
25 she's supposed to.

1 My client indicates that he wants to testify. I don't
2 really think it's in his best interest. I just want to put
3 that on the record. His testifying will be over my
4 objection.

5 THE COURT: Mr. Dunn, obviously, in a criminal case, we
6 would bring the Defendant around forward and go over his
7 rights and make that decision. However, regardless, this is
8 still a civil case. As an officer of the court, you've
9 indicated you've fully advised your client that he has the
10 right not to testify, present any evidence. And he
11 understands the potential dangers he may subject himself to
12 under cross-examination?

13 MR. DUNN: Truthfully, I don't know if he does or not.
14 That's part of the reason --

15 THE COURT: Well, I mean --

16 MR. DUNN: I have explained it to him.

17 THE COURT: Well, I'm not going to explain it to him
18 again. This is a civil matter.

19 MR. DUNN: Yes, sir.

20 THE COURT: I note your objection. I've ruled on the
21 objection as far as the directed verdict and you've made,
22 for purposes of the record, your position on your client
23 testifying.

24 Let me ask you this, even though you've indicated that
25 you've advised him that you do not believe it's in his

1 interest to testify and that he still wants to testify, do
2 you intend to call him as a witness?

3 MR. DUNN: I believe I'm obligated to.

4 THE COURT: All right. Then we'll bring the jury back
5 in here -- do you have any other evidence that you intend to
6 present?

7 MR. DUNN: No, sir.

8 THE COURT: All right.

9 MR. DUNN: If I could have five minutes with my client?

10 THE COURT: Yes, sir.

11 (Pause.)

12 THE COURT: You ready?

13 MR. DUNN: He still wishes to testify.

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

15 (The jury enters the courtroom.)

16 THE COURT: All right. Thank you, ladies and
17 gentlemen. Right before you left to leave the courtroom,
18 the State had indicated that they had presented all the
19 evidence that they intend to introduce in the case and they
20 did, what we call, the State rest. We took up some matters
21 outside of your presence. We have taken care of those. At
22 this time, now, the Defense has the opportunity to present
23 any evidence they wish to present.

24 Mr. Dunn, call your first witness.

25 MR. DUNN: May it the Court, Your Honor. I call Johnny

1 James Cook.

2 THE CLERK: Mr. Cook, if you will raise your right
3 hand, please, put your left hand on the Bible.

4 JOHNNY JAMES COOK,

5 after being duly sworn, testified as follows:

6 THE WITNESS: Yes, I do.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. DUNN:

10 Q State your full name, Mr. Cook.

11 A Johnny Cook.

12 Q And where do you live?

13 A [REDACTED] Russell Street.

14 Q And where is that?

15 A Zion Hill.

16 Q Where is Zion Hill?

17 A It's --

18 Q Is that here in Winnsboro?

19 A Yes, sir.

20 Q How old are you, Mr. Cook?

21 A 53.

22 Q How far did you go in school?

23 A 12th grade.

24 Q You graduated high school?

25 A No, I didn't.

1 THE COURT REPORTER: I can't hear him.

2 THE COURT: You're going to have to speak up. You
3 might need to slow down just a little bit. The court
4 reporter has to take down everything that any of us say here
5 in the courtroom.

6 Go ahead.

7 BY MR. DUNN:

8 Q You have the same problem I do, Mr. Cook. Sometimes
9 you mumble towards the end of your sentence. I get yelled
10 at by court reporters all the time. You've just got to keep
11 making sure you keep your voice up.

12 A Yes, sir.

13 Q You were in the courtroom earlier when the State
14 entered in your sentence sheets into the record, correct?

15 A Yes, sir.

16 MR. DUNN: May I approach the witness, Your Honor?

17 THE COURT: Yes, you may.

18 Q I'm going to show you what's been marked as State's
19 Exhibit No. 1, 2, 3 and 4. Now, one of the things that Dr.
20 Crawford [sic] stated was that when you pled back in 1989 to
21 the ABHAN, you pled no contest; is that correct?

22 A Yes, sir.

23 Q And why did you plead no contest?

24 A Well, because I wanted to get out of jail. And if I
25 didn't plead to time served, they was going to keep me in

1 there. So that's why I pled to time served.

2 Q Now, the ABHAN one, you, actually, went to jail for a
3 little while, didn't you? Or did you immediately get put on
4 probation?

5 A It was '07, I stayed four years.

6 Q I'm talking about your ABHAN in 1989?

7 A Three years, three years probation.

8 Q And State's Exhibit No. 1, that was your original
9 charge back in 1987. Did you plead no contest to that one?

10 A Yes, sir.

11 Q Why?

12 A Because I wanted to get out of jail.

13 Q Did you do it?

14 A No, sir.

15 Q Did you do the ABHAN one?

16 A No, sir.

17 Q On State's Exhibit Nos. 2 and 3, which are the two lewd
18 acts back in 2011, which happened in 2007, why did you plead
19 under North Carolina vs. Alford?

20 A Well, that wasn't the original charge. The original
21 charge was criminal sexual conduct with a minor. They said
22 I was licking a child between her legs and kissing her on
23 the neck.

24 Q You're saying you didn't do it?

25 A Yes, sir.

1 Q Why did you plead to that one?

2 A Because I wanted to get out of jail.

3 Q Did you, in fact, get out of jail that day?

4 A Yes, sir.

5 Q Then the last one, State's Exhibit No. 4, the
6 solicitation of a minor, you pled under Alford on that one
7 as well, correct?

8 A Yes, sir.

9 Q Why?

10 A Because I wanted to get out of jail.

11 Q Did you do that?

12 A No, sir.

13 Q While you were in -- so in all these cases that you've
14 pled that we've heard about today, you did it because you
15 were trying to give yourself a benefit?

16 A Yes, sir.

17 Q And that benefit was to get out of jail?

18 A Yes, sir.

19 Q But you deny ever doing any of those acts?

20 A Yes, sir.

21 Q The State also brought up some convictions regarding
22 looking in a woman's window?

23 A I was just passing by. She said I was peeping in her
24 window.

25 Q You didn't peep in her window?

1 A No, sir. How can I peep in the window when I'm on the
2 sidewalk and she in her house? All you got to do is say
3 Johnny Cook just because of my record.

4 Q So your record is following you, is that what you're
5 saying?

6 A Yes, sir.

7 Q And she had indicated you had pled guilty or been found
8 guilty of some, I think she called it masturbating in public
9 or indecent exposures; is that correct?

10 A I was using the restroom and the officer rides up and
11 seen me, my pants wet because I couldn't find no place to
12 use the restroom, so I used the restroom in my pants. I
13 didn't pull my penis out because they would get me for
14 indecent exposure.

15 Q Why were you urinating in public?

16 A It was not in public, it was behind a building.

17 Q Why were you urinating behind a building?

18 A Because I had to use the restroom.

19 Q Did you not have a place to live or a place you could
20 go use the bathroom?

21 A In Zion Hill. I was trying to go behind the building.
22 I went behind the building, I had to use the bathroom there.
23 I couldn't pull myself out in public because I would get
24 indecent exposure, as usual.

25 Q When you were in jail, did you do any sex offender

1 treatment?

2 A Yes.

3 Q What did you do?

4 A I went to them when I was at Kirkland, CCI, Goodwin,
5 Stephenson, I went to all of them.

6 Q What programs did you do?

7 A Phase I, II and III.

8 Q And, in fact, you're the one that insisted that I kept
9 looking and digging deeper and deeper until we found those
10 records, right?

11 A Yes.

12 Q When you talked to Dr. Crawford last year and she did
13 the evaluation, she told you that she didn't have any
14 records of that, correct?

15 A Yes, sir.

16 Q When Dr. Crawford evaluated you, did she administer any
17 test to you?

18 THE COURT: It is Dr. Maddox.

19 MR. DUNN: I'm sorry, Dr. Maddox. You're correct, Your
20 Honor.

21 THE WITNESS: No, sir.

22 BY MR. DUNN:

23 Q You just talked with her?

24 A Yes, sir.

25 Q And you went over your criminal history and that sort

1 of thing?

2 A Yes, sir.

3 Q If this jury should let you go and not put you in the
4 program, do you have any plans to get further treatment?

5 A Yes, I signed up for mental health in Winnsboro.

6 Q When?

7 A I think last Tuesday.

8 Q Why did you wait till Tuesday to do that?

9 A Because that's when they came and approached me about
10 it.

11 Q Why did they approach you?

12 A Because I needed the program. They want to put me in
13 prison to take a CSTAR program, incarceration. It's not
14 because of the program, I think they just want to put me in
15 prison.

16 Q And you have been out of jail before where you had to
17 register as a sex offender, correct?

18 A Yes, sir.

19 Q And when you got out, you registered?

20 A Yes, sir.

21 Q How often are you supposed to register as a sex
22 offender?

23 A For life.

24 Q Do you know how often you're supposed to renew that?

25 A Every three months.

1 Q And where do you do that at?

2 A At the county, Fairfield County.

3 Q At the sheriff's office?

4 A Yeah, the sheriff's office.

5 Q And Dr. Maddox indicated you were supposed to wear a
6 GPS?

7 A Yes, sir.

8 Q Is that something that will stop when you get out of
9 jail?

10 A No, sir.

11 Q Something that will continue to go on?

12 A Yes, sir.

13 Q And since you've been out of jail, have you done it?

14 A Yes, sir.

15 Q Have you ever had any problems with your GPS
16 monitoring?

17 A Well, several times, when I didn't have no electricity
18 at my house, I had to go out and find electricity. Now that
19 I have electricity at my house, it wouldn't be no problem.

20 Q Where are you going to live?

21 A At [REDACTED] Russell Street in Winnsboro.

22 Q How lives there?

23 A I have a friend that stays with me.

24 Q Anything else that this jury needs to know about or
25 hear about from you as it relates to this case?

1 A That I have no intention of repeating or reoffending my
2 charges. I'm too old to live in the penitentiary the rest
3 of my life.

4 Q Anything else?

5 A No, sir.

6 MR. DUNN: I have no further questions, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BOGLE:

9 Q You had a conviction, didn't you, last year for failure
10 to keep that electronic thing charged?

11 A Yes.

12 MR. BOGLE: Nothing further.

13 THE COURT: Mr. Dunn?

14 REDIRECT EXAMINATION

15 BY MR. DUNN:

16 Q And the conviction you just told Mr. Bogle about, was
17 that what we were just talking about a second ago when you
18 ran out of electricity?

19 A Yes, sir.

20 MR. DUNN: Nothing further.

21 MR. BOGLE: Nothing further.

22 THE COURT: Thank you. You can step down, Mr. Cook.

23 Mr. Dunn, call your next witness.

24 MR. DUNN: Your Honor, the Respondent rest.

25 THE COURT: Thank you.

1 Ladies and gentlemen, this is an appropriate time for
2 us to break for the evening. We have some other matters
3 that we need to take up outside of your presence. I'm going
4 to ask that you be back downstairs ready to come up to the
5 jury room at 9:30 in the morning. Tomorrow morning, the
6 lawyers will have an opportunity to make closing arguments
7 to you and then the Court will instruct you on the
8 appropriate law that applies to this case.

9 I remind you again, do not discuss the case with
10 anybody tonight, any of the details of the case. Don't use
11 your iphones or pads or computers to Google or do any
12 research on any names, any past incidents. You've heard a
13 lot of information here. You are limited to what you hear
14 and see here in the courtroom. Again, I instruct you not to
15 do any type of looking up or research on your own on any
16 matter that you've heard here in court today.

17 I hope you have a good evening. We will see you
18 tomorrow morning at 9:30.

19 Everyone remain seated while the jury panel leaves the
20 courtroom.

21 (The jury exits the courtroom and is excused for the
22 day.)

23 THE COURT: Anything further from the State?

24 MR. BOGLE: No, Your Honor.

25 THE COURT: From the Defense?

1 MR. DUNN: No, sir.

2 THE COURT: I do have -- Mr. Bogle had submitted a
3 pretty complete proposed jury charge.

4 Mr. Dunn, have you seen that?

5 MR. DUNN: I have.

6 THE COURT: Do you have any objections to the charge as
7 presented by Mr. Bogle?

8 MR. DUNN: I don't believe so, but I'll double check
9 tonight.

10 THE COURT: Okay. Look over that.

11 And Mr. Bogle, I assume you have a standard-type
12 verdict form?

13 MR. BOGLE: I do. Let me pass it up.

14 MR. DUNN: I've seen that as well, Your Honor.

15 THE COURT: Any objection to the verdict form?

16 MR. DUNN: Again, I don't think so.

17 THE COURT: Take a look at that. I'll be here by 9:00
18 or so if we need to talk before 9:30.

19 Anything else?

20 MR. BOGLE: No, Your Honor.

21 MR. DUNN: No, sir.

22 THE COURT: Okay. We'll be at ease until tomorrow
23 morning.

24 (Court was adjourned for the day to be reconvened on
25 Tuesday, June 19, 2018.)

1 TUESDAY, JUNE 19, 2018

2 THE COURT: Is there anything we need to put on the
3 record before the jury comes in?

4 MR. BOGLE: No, sir.

5 MR. DUNN: I don't believe so.

6 THE COURT: Let's bring the jury in.

7 (The jury enters the courtroom.)

8 THE COURT: Good morning, ladies and gentlemen. I
9 appreciate your promptness. We are now ready to proceed in
10 this matter, the State of South Carolina vs. Johnny James
11 Cook.

12 Ladies and gentlemen, y'all have heard all of the
13 evidence that's going to be presented in the case. What
14 we're going to do next is the attorneys will have an
15 opportunity to give their closing statements to you. Once
16 those closing statements or closing arguments are made, then
17 I'm going to read you the law. We call that the charge on
18 the law. Once I complete that, then you'll be able to go
19 back to your jury room again to deliberate.

20 So at this point, Mr. Bogle has an opportunity to
21 address the jury.

22 Mr. Bogle.

23 CLOSING ARGUMENT BY MR. BOGLE

24 MR. BOGLE: Thank you, Your Honor. May it please the
25 Court.

1 Mr. Dunn.

2 First off, I'd like to thank you for doing your job for
3 Fairfield County and for the State. I'm sure there's lots
4 of things we might rather be doing right now, but your job
5 was to come in here, get qualified by the Judge, picked for
6 this jury, listen to the evidence and give an honest
7 decision on what should happen.

8 Now, here's where we are. Like I told you the other
9 day, this case was brought under the Sexually Violent
10 Predator Act.. The burden of proof on the State is beyond a
11 reasonable doubt. And I would suggest to you that what that
12 means is if you're firmly convinced that we've proven the
13 things we have to prove about him being a sexually violent
14 predator, you'll render a verdict for the State. If you
15 have some doubt, you've got to assign that doubt to him, you
16 render a verdict for him and he'll be released.

17 Now, what do we have to prove? Number one, has he been
18 convicted of a sexually violent crime? Well, there's four
19 of them. And you'll have all these documents back in the
20 courtroom with you. What you'll have is the sentencing
21 sheet on top where the Judge sentenced him. Beneath that is
22 the indictment, which tells what he did. And then the
23 arrest warrant, which is what got him arrested to begin
24 with.

25 Now, the next thing we have to prove is does he have a

1 mental abnormality or a personality disorder? Dr. Donna
2 Maddox was appointed by the Court at a previous hearing to
3 evaluate him. And this is kind of like a medical diagnosis
4 case. She looked at all the records. She met with him.
5 She ran a test on him, the Static-99R, which I'll talk about
6 in a second, and she diagnosed him with both a personality
7 disorder and a mental abnormality.

8 And I'm not one of these TV lawyers, I've got to refer
9 to notes for this, so bear with me. But she found that he
10 -- and this has not really been challenged, I don't think,
11 in the case. First off, she found out that he had an
12 Antisocial Personality Disorder, which means a lifetime of
13 committing crimes, big ones, small ones, all types, going
14 back to when he was a juvenile.

15 The next thing is a mental abnormality. She found
16 evidence of that Pedophilic Disorder, attracted to females,
17 nonexclusive. And what that means is, and it's shown up by
18 the crimes he's committed, a sexual attraction to under
19 puberty girls, little girls. He also -- and they're all
20 females, no boys. And he's also attracted to
21 appropriate-aged women. He's had relationships with adult
22 women in his past. So that's the mental abnormality.

23 She also found the Voyeuristic Disorder based upon the
24 peeping tom charges. She found an Exhibitionistic Disorder
25 based on the fact that he exposed himself and got convicted

twice on the outside in the public and then twice while he was in prison. And then the Frotteuristic Disorder, the rubbing up against or touching somebody. That would be the 16-year-old girl at Belk when he got convicted of the aggravated assault charge.

So the mental abnormality and the personality disorder are, basically, there. They're pretty much unchallenged. That's what we have.

The question is, can he control his behavior? Because one of the things you have to find, again, beyond a reasonable doubt is he's got these crimes, he's got the disorder, can he control it? And I would suggest to you there's history in the case that he cannot.

Because if you look at the timeline here, he gets convicted in 1986, the lewd act charge. He goes to prison. Prison is not a great place to be, I think we can all agree on that. And when he gets out, what happens? He offends again. In 2007, he offends again, two charges, pleads guilty in 2011. He gets time served, which probably meant he spent the time in jail from when he got arrested in 2007 till two years later in 2011. The point is jail is not a good place to be. He gets out of that, and what happens again? He's convicted again for the criminal solicitation of a minor.

Now, there's some talk about him saying -- he denies

1 guilt on these crimes. And that's something you've got to
2 take into consideration. Dr. Maddox did. He pled guilty
3 under something called North Carolina vs. Alford. It's a U.
4 S. Supreme Court case. And what it, basically, says is you
5 don't have to admit being guilty, but you tell the Court I
6 believe the Government has so strong a case that if I went
7 to trial, a jury is going to convict me. And that is
8 treated as a conviction by all the case law. You still have
9 to go to prison. You still lose certain rights. Like if it
10 was a felony, you lose the right to possess a gun. You
11 might lose the right the vote until you get a pardon or
12 something like that. So it's treated like a conviction. No
13 difference, still a conviction. And that's what we have
14 here.

15 Now, when he took the stand, he, basically, seemed to
16 tell us that he's the victim. That whenever something goes
17 wrong in Winnsboro, they come and get him. And I listened
18 to that and I thought well, okay, where's the sympathy for
19 the six-year-old girl and the nine-year-old girl, the two
20 11-year-old girls and the 16-year-old girl? Didn't hear
21 anything like that.

22 Dr. Maddox scored him on something called the
23 Static99-R. And I would suggest to you, think of going to
24 the doctor's office. Let's say you're having shortness of
25 breath, your heart is pumping real fast every time you do

1 anything, you're hot and sweaty, you don't know what's going
2 on with you. You go and see a doctor. The doctor talks to
3 you about all these symptoms. He listens to your heart and
4 he talks about your family history. And maybe your
5 grandmother or your grandfather or your father also had
6 heart trouble. Now, he knows from those symptoms that
7 you're likely to have a heart attack. And he may prescribe
8 certain medications to lower your blood pressure and things
9 like that.

10 Now, does that mean that he examined thousands of
11 people to determine that? No. But when he went to medical
12 school, he learned that previous studies of thousands of
13 people with those type of symptoms are likely going to have
14 heart trouble. So that's how he knows to diagnose you.

15 That's what the Static is. They've studied thousands
16 of sex offenders in multiple countries, people who have
17 committed a sex offense, then done it again, gotten locked
18 up again. And they have found certain factors. And she
19 scored him on that. He came out with a seven. What does a
20 seven tell us? A 27 percent chance of committing another
21 sexual offense in the next five years.

22 Now, that may not seem like much. You're thinking
23 okay, the State's got to prove this case beyond a reasonable
24 doubt. Shouldn't it be 51 percent or 60 percent? But put
25 it in context, this is a 27 percent chance of molesting

1 another child. Not of shoplifting or holding up a
2 convenience store or something like that, this is a pretty
3 serious crime. And 27 percent is a high score, putting him
4 in the high range of reoffending.

5 At the same time, another way to look at those numbers
6 is he's a little more than five times more likely to commit
7 another sexual offense against a child than the so-called
8 average sex offender. That puts him near the top. Again,
9 it's a study that's used by psychologists and psychiatrists
10 and that's the diagnosis she came up with and her
11 recommendation.

12 So that's where you are. We've got the convictions.
13 They're right here. You'll have them in the jury room.
14 We've got the mental abnormality and the personality
15 disorder. We've got the likelihood to reoffend. Because
16 every time he offends and gets sanctioned for it, he does it
17 again. And I would suggest to you that would meet the
18 burden of proof that he cannot control his behavior.

19 I'd like to thank you for doing your job. This is an
20 argument that I'm making to you. It's not evidence. The
21 evidence is what you heard on that witness stand and these
22 documents right here. In a few minutes, the Judge will give
23 you his charge. He'll explain to you what the law is. You
24 apply the law to the facts you've heard today and I would
25 suggest that the proper verdict would be a verdict to commit.

1 him to the Department of Mental Health for long-term
2 control, care and treatment. Thank you.

3 THE COURT: Mr. Dunn.

4 CLOSING ARGUMENT BY MR. DUNN

5 MR. DUNN: May it please the Court.

6 Good morning. In a second, the Judge is going to talk
7 to us about what reasonable doubt is and he's going to give
8 you the legal definition of it, which goes along the lines
9 of, basically, causes a reasonable person to hesitate to
10 act. I would argue to you that there are a number of things
11 that we've heard in the last few days that should cause you
12 as a jury a lot of hesitation before you start acting,
13 especially when the outcome of the case is as serious as
14 what the State is asking you to do, which is to deprive a
15 man of his liberty and put him into a secure facility for
16 treatment. And let's no mistake about it, when they put you
17 in a secure facility, you're not free to leave unless
18 somebody else lets you go. Your freedom has been removed --
19 or his freedom has been removed from him.

20 The statute says there has to be a mental abnormality
21 or personality disorder, that you have to be likely -- which
22 will cause a person to likely reoffend and that person then
23 must be put into a secure facility to protect the population
24 and to give him the treatment.

25 A couple things that Dr. Maddox said yesterday that

1 caused me a lot of hesitation and I'd like to point it out
2 for you to consider. One, there seemed to be a lot of
3 confusion as to some of the records that she reviewed or
4 didn't review. When she initially did her review and she
5 went over all of his records, she didn't go over transcripts
6 and see what kind of facts were put into the record when he
7 was pleading. She didn't look at his sex offender treatment
8 or other treatment that he got in SCDC originally. I had to
9 go find it for her. Gave it to the State, the State then
10 gave it to her for her to review. If they have trouble
11 finding that sort of thing at the beginning of the process,
12 how do we know that it's not going to continue on later on
13 when he's trying to be treated?

14 Two, she said that based on his scores for the
15 Static99-R, he's got a 27 percent chance of reoffending,
16 which means there's a 73 percent chance of him not
17 reoffending. That means seven out of 10 people don't ever
18 reoffend. The statute says likely to engage. The word
19 likely, in my opinion, does not mean the same thing as two
20 out of seven or three out of seven. Likely means more
21 likely than not something is going to happen. And yet, she
22 says he only has a 27 percent chance of reoffending based on
23 his Static99-R score.

24 Something else that she didn't do that I found
25 surprising is that she didn't administer any more

1 psychiatrist test to him or any kind of psychological test
2 to him as part of her evaluation. She reviewed some police
3 records. She did a Static test score, which all she had to
4 do was plug some numbers in based on those convictions. And
5 she talked to him a little bit. But she didn't, actually,
6 go through and administer any kind of tests, any kind of
7 psychological tests or any of that sort of thing you would
8 expect a doctor to do when they're evaluating a person,
9 especially for something as serious as this.

10 Something else she talked about that came out on
11 cross-examination is she didn't, actually, diagnose him with
12 Voyeurism or Exhibitionistic disorders, she diagnosed him
13 with unspecified with some of those characteristics. And
14 the reason why she couldn't diagnose him fully for those
15 other things is one, because he denied it; and two, because
16 some of those behaviors weren't there for the time frame
17 that were needed. When you talk about Exhibitionistic
18 behaviors, you have to be, actually, having sexual arousal
19 because you're exposing yourself to people, not because
20 you're urinating in public or because you're doing -- you
21 know, you're masturbating in public or whatever. The actual
22 reason why you get diagnosed with that is because that act
23 of exposing yourself is what's giving you the sexual
24 gratification not the fact that you're playing with yourself
25 or whatever in public. And I would argue to you that some

1 of her diagnoses were iffy at best.

2 And at the end of the day, I would argue that any time
3 you're dealing with psychiatry or psychology, there's a lot
4 of subjectivity to it. It's not something that's a hard
5 science. It's not something that you can necessarily
6 recreate with a test, a diagnostic test. You can't put them
7 into x-ray machine. You can't put them into MRI machines.
8 You can't do blood work, that sort of thing to get a
9 subjective sort of test when you go to your doctor and say
10 do I have heart disease and he checks your heart to see if
11 your heart's working properly and he checks your blood
12 levels to see if your red blood cells are good and white
13 blood cells are good and all those other things a doctor can
14 do to get a subjective idea of what your heart looks like.

15 You can't do that with psychiatry. A lot of this is
16 just subjectivity and it's based on studies. Like I said,
17 we have a 27 percent chance it's going to likely reoffend.
18 Is that enough to deprive a person of their liberty?

19 There are other things that can be done. He has to be
20 registered as a sex offender the rest of his life. He has
21 to be on GPS. The State will always know where he is and
22 what he's doing. He can get treatment in a noncontrolled --
23 if you're concerned about him getting treatment, he can get
24 treatment in a noncontrolled facility on the street. He can
25 talk to mental health. Other places like that offer this

1 sort of treatment.

2 He did the treatment that he was supposed to do when he
3 was in prison. Even though the State couldn't find it
4 originally, he did it and he completed CSTAR-1 and CSTAR-II.
5 And it looks like he started CSTAR-III.

6 I thank you for your service. I told you yesterday
7 this is not one of those fun kind of cases that you're going
8 to go out and brag about having been on a jury for one of
9 these kinds of cases. It's a difficult case. The easy
10 thing to do is just to lock him up and not even think about
11 it the second time. The hard thing to do is to apply the
12 law correctly and decide whether or not the State has,
13 actually, met its burden. If you throw away the key and not
14 even think about it, nobody can say anything to you later
15 on. We, as a society, don't like crimes against children.
16 That's no surprise. But when you, actually, look at this
17 law and say did he meet each one of these criteria, each one
18 of these elements of the law, my argument to you is no, they
19 have not, that he is not likely to reengage and that his
20 mental abnormality, it didn't with his diagnosis from Dr.
21 Maddox.

22 THE COURT: Thank you, Mr. Dunn.

23 CHARGE ON THE LAW

24 THE COURT: Ladies and gentlemen, now, I'm going to
25 give you what's called the charge on the law, which is

1 simply me reading the applicable law to you. And this may
2 take probably 15 or 20 minutes or so, so I ask that you
3 listen very carefully to the law as I charge on that.

4 Mr. Foreman and ladies and gentlemen of the jury, it is
5 now my duty as the trial judge under the Constitution of
6 this state to charge and instruct you on the law applicable
7 to this case. It is your duty as jurors to accept and apply
8 the law as I now state it to you.

9 The State has brought this case under the Sexually
10 Violent Predator Law of South Carolina. The State seeks the
11 civil commitment of Johnny James Cook, the Respondent, for
12 long-term control, care and treatment in a secure facility.
13 This is not a criminal proceeding seeking incarceration, but
14 rather, it is a proceeding seeking civil commitment. The
15 State of South Carolina alleges or claims that the
16 Respondent, Johnny James Cook, is a sexually violent
17 predator under the law.

18 The Respondent, that's Mr. Johnny James Cook, denies
19 that he is a sexually violent predator and the burden of
20 proof is therefore on the State to prove by evidence
21 sufficient to satisfy each of you beyond a reasonable doubt
22 that Mr. Cook is a sexually violent predator. If the State
23 is unable to meet that burden of proof as to one or more of
24 the elements of this claim, the Respondent is entitled to a
25 finding that he is not a sexually violent predator.

1 Ladies and gentlemen, I want to make sure you
2 understand that Mr. Cook is not accused of committing a
3 crime in this proceeding. As you heard from the testimony,
4 he did have previous charges for which he was sentenced by
5 the Court. The Respondent has now completed his sentence
6 for those charges and the State is now alleging that Mr.
7 Cook is a sexually violent predator. The State has the
8 burden of proof in this case and must prove its case beyond
9 a reasonable doubt.

10 If you find that the State has not met its burden, then
11 Mr. Cook will be released. If you find that the State has
12 met its burden of proof and find that he is a sexually
13 violent predator, he will not be released, but will be
14 committed to a secure treatment facility in Columbia
15 operated by the South Carolina Department of Mental Health.

16 Now, during this trial, you and I have separate duties
17 to perform. As the trial judge, it is my responsibility to
18 preside over this trial. And I, also, have the duty to rule
19 upon the admissibility of the evidence offered during the
20 process of this trial. In that regard, you are to only
21 consider the competent evidence before you and you're to
22 disregard from your mind any testimony ordered stricken.
23 And there was none ordered stricken in this particular case.

24 You are to consider only the testimony which has been
25 presented from this witness stand, together with any

1 exhibits admitted into the record of this case and any
2 stipulations of counsel made into the record, if there were
3 any.

4 Furthermore, I have the additional duty to charge you
5 on the applicable law of this case. And in that regard, I
6 am the sole judge of the law of this case. It is your duty
7 to accept and apply the law as I now state it to you. If
8 you have any preconceived ideas of what the law is or what
9 the law ought to be and it does not agree with what I tell
10 you the law is, you are obligated under your oath to abandon
11 those preconceptions because you are sworn to accept the law
12 precisely as I now state it to you.

13 In this trial, you are the sole and exclusive judge of
14 the facts and I am the judge of the law. Do not infer that
15 I have any opinion about the facts in this case from
16 anything I've said during the course of this trial in ruling
17 upon admissibility of evidence or otherwise, or from
18 anything that I now say during the course of this charge to
19 you. In this regard, the law simply does not permit me as a
20 judge to have an opinion about the facts. As jurors, it is
21 your duty alone to determine the effect, value, weight and
22 truth of the evidence presented during the course of this
23 trial.

24 While the arguments of counsel is a beneficial part of
25 every trial, you should remember the statements made by

1 counsel are not evidence. In presenting arguments, counsel
2 often refers to the evidence; however, you should base your
3 verdict on the evidence as you remember it. Therefore, if
4 there are any conflicts between the recollection of counsel
5 or the lawyers about the evidence and your own recollection,
6 you should rely upon your own understanding of the evidence.

7 Ladies and gentlemen, most civil cases tried in the
8 Court of Common Pleas, the burden of proving a claim is by
9 the preponderance or greater weight of the evidence.
10 However, this type of case under this particular statute,
11 the State's burden is greater than that. Here, it must be
12 beyond a reasonable doubt. It's already stated to you the
13 State has the burden of proof. Under the law of this state,
14 according to the sexually violent predator statute, the
15 State must prove its case to the standard of proof beyond a
16 reasonable doubt. If the State fails to meet this high
17 burden, then you must find Mr. Cook is not a sexually
18 violent predator.

19 What is a reasonable doubt in the law? Proof beyond a
20 reasonable doubt is proof that leaves you firmly convinced
21 that the Respondent is a sexually violent predator. Ladies
22 and gentlemen, there are very few things in this world that
23 we know with absolute certainty. And in this type of case,
24 the law does not require proof that overcomes every possible
25 doubt. If, based on your consideration of the evidence, you

1 are firmly convinced that Mr. Cook is a sexually violent
2 predator, then you must return a verdict for the State. If
3 on the other hand, you think there is a real possibility
4 that he is not a sexually violent predator, you must give
5 him the benefit of the doubt and return a verdict for the
6 Respondent, or for Mr. Johnny James Cook. Reasonable doubt
7 may arise from evidence that is in this case or from the
8 lack of evidence in this case. It is up to you, the jury,
9 to determine whether or not a reasonable doubt exist in this
10 case.

11 There are two types of evidence which are presented
12 during a trial, direct evidence and circumstantial evidence.
13 Direct evidence is the testimony of a person who claims to
14 have actual knowledge of a fact, such as an eyewitness. It
15 is evidence which immediately establishes the main fact to
16 be proven. Circumstantial evidence is proof of a chain of
17 facts and circumstances existing indicating the existence of
18 a fact. It is evidence which immediately establishes
19 collateral facts from which the main fact may be inferred.
20 Circumstantial evidence is based on inference and not on
21 personal knowledge or observation. It is proof that does
22 not actually establish the fact in question, but that
23 asserts or describes something else from which you may
24 either reasonably infer the truth of the fact or, at least,
25 reasonably infer an increase in the probability that the

1 fact is true. For circumstantial evidence to be sufficient
2 to warrant the finding of fact, the circumstances must lead
3 to that fact with reasonable certainty. The facts and
4 circumstances should be considered in light of ordinary
5 experience and common sense. The existence of a fact cannot
6 be based on speculation, surmise or conjecture.

7 The law makes absolutely no distinction between the
8 weight or value to be given to either direct or
9 circumstantial evidence. Nor is a greater degree of
10 certainty required of circumstantial evidence than of direct
11 evidence.

12 In determining what the facts in this case are, you
13 must judge the credibility, which simply means the
14 believability of the witnesses and the value of weight to be
15 given to their testimony. You alone must decide the force,
16 effect and truth of the testimony. In making this decision,
17 there are many things you may and should take into
18 consideration, such as the appearance and manner of the
19 witness on the stand, a characteristic often referred to as
20 the demeanor of the witness. Was the witness forthright or
21 hesitate? Was a witness' testimony consistent or did it
22 contain discrepancies? What was the ability of the witness
23 to know the facts about which he or she testified? Was
24 there some reason a witness would want to give testimony
25 which would help or hurt one side or the other? In other

1 words, was the witness biased or prejudiced? Was the
2 testimony of the witness reasonable considered in light of
3 all the evidence in the case in the light of your own
4 experience and common sense? Was the testimony of the
5 witness corroborated or made stronger by other testimony and
6 evidence? Or was it made weaker or impeached by such other
7 testimony and evidence?

8 Jurors, please, understand that you have the right to
9 believe a small portion of a witness' testimony and discard
10 the larger portion, or vice versa. You may believe all of a
11 witness' testimony or none. You may believe the testimony
12 of a single witness against that of many witnesses, or the
13 other way around. And, of course, you do not determine the
14 truth merely by counting the number of witnesses presented
15 by each side. The fact the testimony is not controverted
16 does not mean you must accept it as true and undisputed.
17 You still must gauge the credibility of the witness to
18 determine the believability or truth of the facts offered to
19 prove the testimony.

20 In exercising your mental processes and attempting to
21 decide the truth, the law simply requires that you exercise
22 good judgment, your common sense, your sense of logic and
23 reason and your experiences in life. You then apply these
24 attributes to the evidence and apply the law as I'm now
25 going to state it to you and thus, arrive at a verdict.

1 During the course of this trial, you also heard the
2 testimony of an expert witness. The rules of evidence
3 ordinarily do not permit witnesses to testify to opinions or
4 conclusions. Instead, they can testify as to facts they
5 perceive, such as what they saw, smelled, heard or touched.
6 However, an exception to this rule exist for a witness we
7 call an expert witness, a witness who has special knowledge,
8 skill, experience, training or education in a particular
9 field that may state an opinion as to relevant and material
10 matters in which the witness claims to be an expert.

11 In determining the weight to be given to such an
12 opinion, you should, likewise, consider the qualifications
13 and credibility of the expert and the reasons given for the
14 opinion. You are not bound by such opinion. Rather, you
15 should give it the weight, if any, which you think it
16 deserves. The value and effect of expert testimony is a
17 matter to be solely estimated by you, the jury. No opinion
18 of an expert can be accepted in and of itself as truthful or
19 reliable, but must be weighed by you and convince your
20 judgment beyond a reasonable doubt and with the same force
21 and effect as any other fact proved in this case before you
22 can rely upon it.

23 You must consider expert testimony in the same manner
24 as you do any other testimony and give to it such weight as
25 you believe it to be entitled when considered with all the

1 other evidence in this case. Such testimony is given for
2 the purposes of helping you and not for the purpose of
3 controlling your judgment.

4 The elements which the State must prove beyond a
5 reasonable doubt are one, that the Respondent has been
6 convicted of a sexually violent offense. I charge you that
7 lewd act on a child and criminal solicitation of a minor are
8 sexually violent offenses. And two, that the Respondent
9 suffers from a mental abnormality or personality disorder
10 that makes him likely to engage in acts of sexual violence
11 if not confined in a secure facility for long-term control,
12 care and treatment.

13 Inherent in these two elements is that the State must
14 prove the requirement that the Respondent's mental
15 abnormality or personality disorder causes him serious
16 difficulty in controlling his behavior. In other words, the
17 State must prove beyond a reasonable doubt that the
18 individual it seeks to commit suffers from a mental illness
19 which he cannot sufficiently control without the structure
20 and care provided by a mental health facility rendering him
21 otherwise likely to commit a dangerous act.

22 In order for you to better understand the elements of
23 the State's cause of action, I'm going to define to you some
24 of the terms I've just used. Mental abnormality. That
25 means a mental condition affecting a person's emotional or

1 volitional capacity that predisposes a person to commit
2 sexually violent offenses. This mental abnormality or
3 personality disorder must cause Mr. Cook serious difficulty
4 in controlling his behavior.

5 Likely to engage in acts of sexual violence means the
6 person's propensity to commit acts of sexual violence is of
7 such a degree as to pose a menace to the health and safety
8 of others so that he is dangerous to others.

9 Again, I remind you that the burden of proof is on the
10 State to prove to your satisfaction beyond a reasonable
11 doubt that the Respondent has been convicted of a sexual
12 violent offense as I've instructed you and, also, suffers
13 from a mental abnormality or personality disorder that makes
14 him likely to engage in acts of sexual violence if not
15 confined in a secure facility for long-term control, care
16 and treatment. If the State carries its burden of proof and
17 convinces you beyond a reasonable doubt as to each of the
18 two elements of its cause of action, it is entitled to a
19 finding that Mr. Cook is a sexually violent predator. If
20 the State does not meet that burden of proof as to one or
21 both of these elements, the Respondent is entitled to a
22 finding that he is not a sexually violent predator.

23 Madam Forelady and ladies and gentlemen of the jury, as
24 you retire to begin your deliberations, I express to you the
25 hope that each of you will be mindful of the importance of

1 your responsibility. You're not called upon to serve as
2 jurors very often and the proper performance and duty
3 requires each of you to reach the height of freeing your
4 mind of all improper influences. It's the Court concern
5 that whatever verdict you find will be the result of your
6 going into that jury room and confining your consideration
7 to the evidence and the law which you have heard in this
8 courtroom, weighing it fairly and impartially, as I'm sure
9 you will do. Your verdict in this case cannot be based on
10 sympathy, compassion, prejudice or emotion or some other
11 consideration not found in the evidence. Remember, your
12 verdict must be unanimous.

13 The verdict form -- Madam Forelady, this will go back
14 with you in just a few moments. The verdict form states,
15 has the Petitioner, the State of South Carolina, proven
16 beyond a reasonable doubt that the Respondent, Johnny James
17 Cook, is a sexually violent predator under the South
18 Carolina Sexually Violent Predator Act? We, the jury,
19 unanimously, that means all 12 have to agree, answer the
20 question as follows, either one -- and the order in which I
21 read these or the order in which they're placed on this
22 verdict form has no significance. You just have to put one
23 in front of the other. The first is yes, Johnny James Cook,
24 is a sexually violent predator. The second is no, Johnny
25 James Cook is not a sexually violent predator.

1 Madam Forelady, when the jury has reached a unanimous
2 verdict, if you would check the appropriate box, sign your
3 name to it and date. And today is the 19th. That will go
4 back with you in just a few moments.

5 I remind you that when you go back to your jury room,
6 do not begin discussing the case until the verdict form and
7 any pieces of evidence that have been introduced, the
8 bailiff will bring those back to you. If at any time during
9 your deliberations somebody gets up and has to go to the
10 restroom or leave, I don't know if you have smoke breaks
11 here, you must stop deliberations. You can only deliberate
12 and discuss the case when all 12 of you are present in the
13 room. Once you have reached a verdict and filled out the
14 appropriate form, if you would simply just knock on the door
15 and let the bailiff know that you have reached a verdict,
16 you will then be brought back here in the courtroom and then
17 I'll ask that you pass the verdict form up to the Court at
18 the appropriate time.

19 I'm going to let you go back to your jury room. I may
20 have to take up some matters of law before the verdict form
21 and exhibits come back to you. But as soon as they do, you
22 can begin deliberating.

23 Madam Alternate, if you would just step down right here
24 and not go back.

25 Y'all are excused to the jury room.

1 (The jury exits the courtroom.)

2 THE COURT: We had one alternate for this trial and,
3 thankfully, you were not called upon to serve. If someone
4 had gotten sick overnight and not been able to serve, you
5 would have been in that spot. But now that we've reached
6 the spot that the jury is going to begin deliberating, you
7 are free to go. You can, certainly, stay with us if you
8 want to see the outcome or you may leave. But call tonight
9 after 6:00 for instructions about the remainder of the week.

10 If you'll just step outside that door, one of the
11 bailiffs will assist you. But you can leave and just call
12 after 6:00.

13 (The alternate juror was excused.)

14 THE COURT: Anything for the record from the State?

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

16 THE COURT: From the Defense?

17 MR. DUNN: No, sir.

18 THE COURT: All right. Then let's send back the
19 verdict form and I believe there were four exhibits that
20 were introduced.

21 We'll be at ease while the jury deliberates.

22 (The jury began deliberating at 10:14 a.m.)

23 THE COURT: We have a note from the jury.

24 (Off-the-record discussion between Court and
25 attorneys.)

1 (WHEREUPON, Court's Exhibit No. 1 was marked for
2 identification.)

3 THE COURT: We have a verdict.

4 Let's bring the jury in.

5 (The jury enters the courtroom.)

6 THE COURT: Madam Forelady, has the jury reached a
7 verdict?

8 THE FORELADY: Yes, we have, Your Honor.

9 THE COURT: Madam Clerk, will you publish the verdict?

10 VERDICT

11 THE CLERK: In the matter of the care and treatment of
12 Johnny James Cook, Respondent, has the Petitioner, the State
13 of South Carolina, proven beyond a reasonable doubt that
14 Respondent, Johnny James Cook, is a sexually violent
15 predator under the South Carolina Sexually Violent Predator
16 Act? We, the jury, answer the question as follows: Yes,
17 Johnny James Cook is a sexually violent predator. Signed by
18 the foreperson, dated June 19th, 2018, Winnsboro, South
19 Carolina.

20 THE COURT: Anything further from the State?

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

22 THE COURT: Anything from the Defense?

23 MR. DUNN: No, Your Honor.

24 THE COURT: Ladies and gentlemen of the jury, thank you
25 for doing your work very diligently. I appreciate your

1 promptness over the last day, last 24 hours. You are free
2 to leave. Call tonight after 6:00 and you will receive
3 instructions about what we'll be doing tomorrow.

4 Thank you. You're free to go for the rest of the day.
5 Call tonight after 6:00. I hate to tell you, just because
6 you served on one doesn't mean you might get off on another.
7 So call back after 6:00. Thank you.

8 (The jury exits the courtroom and is excused for the
9 day.)

10 THE COURT: Anything else from the State?

11 MR. BOGLE: No, Your Honor, not from the State.

12 THE COURT: From the Defense?

13 MR. DUNN: Your Honor, I just renew all my previous
14 objections.

15 THE COURT: All right. Thank you. I note you have
16 renewed all your previous objections. The Court's ruling on
17 those will remain the same.

18 MR. BOGLE: May I approach, Your Honor?

19 THE COURT: Yes.

20 MR. BOGLE: This is a proposed order.

21 THE COURT: Mr. Dunn, have you seen the order?

22 MR. DUNN: Yes, sir.

23 THE COURT: All right. I have signed the order.

24 MR. BOGLE: What will happen, Judge, I will give the
25 jail the name of the contact person at mental health to call

1 and set up a time to bring him down there. You have to call
2 ahead and set up a time. It usually takes about two, three
3 days at the most.

4 THE COURT: Thank you.

5 MR. BOGLE: Thank you, Your Honor.

6 THE COURT: That concludes this matter.
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA.)

COUNTY OF AIKEN.)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in Court of Common Pleas for Fairfield County, South Carolina, on the 18th and 19th days of June, 2018.

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

August 24, 2018

Penny M. Johnson

Penny M. Johnson
Official Court Reporter

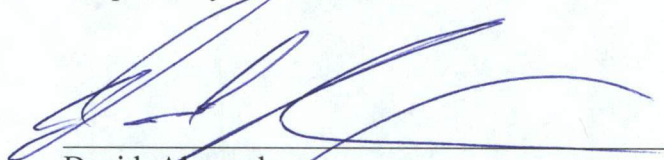
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CERTIFICATE OF COUNSEL FOR APPELLANT

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "David Alexander", is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of February, 2019.